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Case No: QB-2019-001461

IN THE HIGH COURT OF JUSTICE

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QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 5th September 2019

Before :

HIS HONOUR JUDGE GRAHAM WOOD QC

- -

Between :

EAST HERTFORDSHIRE DISTRICT COUNCIL

Claimant

- and -

THOMAS DOHERTY and 18 OTHERS **Defendant**

- -
- -

Meyric Lewis and Charles Merrett (instructed by **Sharpe Pritchard, solicitors**) for the **Claimant**
Alan Masters (instructed by **BPS Solicitors**) for the **Defendants**

Hearing date: 25th July 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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His Honour Judge Wood QC :

Introduction

1. This court is concerned with two applications. The first application is a committal to prison of 19 named individuals ("The Defendants") for contempt of court arising out of their breach of a court injunction ("the injunction") relating to the use of land to the east of Stigwood Farm, Chapel Lane, Westland Green, Little Hadham, in Hertfordshire, ("the land") granted pursuant to Section 187B of the Town and Country Planning Act 1990. The second is an application by the Defendants to vary or discharge that injunction.

2. In brief outline, the Defendants are travellers, comprising several families, mostly related, who moved onto the land with their caravans very shortly before Easter of this year, and began to establish hardstanding and fenced-off plots for number of pitches. The Claimant is the planning authority responsible for the enforcement of planning control in relation to the land. The injunction was obtained from Lane J over the telephone on 20th April 2019 requiring the Defendants (then largely unidentified) to remove the hardstanding, and the caravans and mobile homes sited on the land said to be in breach of planning control, within seven days of the order. There has been no compliance with that order.

3. Both applications were listed for hearing before me on 25th and 26 July 2019. In circumstances which I will clarify later, admissions were received by the court in relation to 18 of the 19 Defendants[1] that the injunction had been breached and it was unnecessary to hear any evidence on the committal application. The final disposal of the admitted breaches for contempt by way of sentence will be dealt with at a later date as referred to at the end of this judgment.

Factual background, planning history relating to the land and injunction procedures

4. The history is drawn from the Claimant's witness evidence, principally the affidavits of Claire Sime, Kim Bowers, Helen Standen and Sara Saunders. It is largely unchallenged.

5. On 19th April, which was Good Friday, council officers were alerted to the fact that significant quantities of hardcore were being moved on to the land and that an unauthorised travellers' site was being established. A temporary stop notice was drawn up and a number of copies made available for service on the occupiers of the land on the same day. This required the immediate compliance with planning control in advance of any further enforcement measures being taken. It was established that the use of the land was agricultural, and there was no outstanding planning application for a change of use to allow the creation of hardstanding and the siting of mobile homes and caravans. Council officers attended on the

[1] Thomas O'Driscoll has played no part in these proceedings, is unrepresented, and is believed to be no longer present on the site.

same day and attempted to serve the stop notice. They observed some operatives with heavy machinery, as well as travellers in and around caravans, including some with young children. All were evasive and did not accept service of the stop notice. Several copies were left on vehicles, and pinned to posts in and around the site. Work of digging and hard-core laying nevertheless continued. It is noteworthy that in limited conversation an observation was made that it had not been expected that "the council worked on a Good Friday".

6. The temporary stop notice was drafted on the basis that the engineering works were being undertaken contrary to planning policy in the adopted plans GBR2 and HOU9 in the East Herts District Plan.

7. On the following day, 20th April, there was no change in that the site continued to be occupied with caravans and mobile homes, and the work of laying access roads with the hardcore was continuing. The decision was made to apply for an emergency injunction, and this was sought over the telephone pursuant to section 187B. It was considered appropriate that any unlawful or unauthorised works and occupation should be prevented before travellers' families became established, in the light of the breaches of planning control. The injunction was granted by Mr Justice Lane and the order contained both restraining and mandatory terms. In outline, pending the granting of planning permission or further order, the Defendants were forbidden from using the land for residential purposes, including the storing and siting of caravans and mobile homes, or from undertaking any further development, and were required to remove their mobile homes and caravans, together with the hardstanding already laid within seven days of service of the order. Service was to be effected by the affixing of a copy of the order in a transparent waterproof envelope on the land. The Defendants were then unidentified, and named as "persons unknown" in addition to Thomas Docherty who had provided his name the day before.

8. When council officers arrived to serve the order, work was still being undertaken, with lorries and heavy plant machinery on-site, and topsoil was being delivered. A police officer was present with them, and some of the occupiers were spoken to. They were informed of the terms of the order, and that the site had to be restored. A copy of the order was affixed to a post on land. The court has seen photographs of the order in place.

9. Over the following several days there were a number of visits made to the land by council officers. They are described in detail in the affidavit of Kim Bowers. During these visits on the 23rd and 24th April it was observed that work was continuing, with grab lorries in operation, fences being built, and road surfacing material being moved. It was seen that the court documents were still in place initially on the post where they had been fixed. Several conversations were had with occupants, and an indication was provided that a planning application was being made. Individuals were unwilling to give their names.

10. Representatives of the Claimant council continued to visit on a number of days thereafter, from 25th April and following, and although no excavating or landscaping works were then ongoing, the caravans remained on site, and there was significant evidence of family occupation, with males, females and children present, and several vehicles. The court

order which had been removed from the post, was affixed once again and several discussions took place. In the course of these discussions some names were provided, and it was indicated that a planning consultant, Mr Brian Woods, was advising the travellers on a formal planning application which was underway.

11. The requirement to reinstate the land was not complied with by 27th April 2019 and signs of occupation were observed on the many days thereafter. By 8th May 2019 it was noted that there were 23 caravans and mobile homes on the land, in breach of the injunction.

12. A formal planning application was indeed submitted by the travellers. It was in the name of Timothy Mahoney and Traveller group. This was accompanied by a letter from Mr Woods, the planning consultant, dated 29th April 2019 in which the occupants of 10 separate pitches were identified. Although it is suggested that there were procedural errors in the application, it was validated four days later on 3rd May 2019.

13. The description of the proposal for which planning was sought was:

> *"change of use of land to 10 pitches accommodating the siting of 10 mobile homes and stationing 10 touring caravans and 10 utility buildings. Formation of access road and hard standings."*

14. It was stated that the work had already started, and the description provided for the existing use was "*fenced area Gypsy/Traveller site*". Whilst that may have been strictly accurate in fact, the use of the land before the entry of the travellers had, of course, been agricultural in a rural area. It seems to me that this is probably not a correct description in terms of representation.

15. It was clear that the occupation was going to continue notwithstanding the injunction, with the Defendants undoubtedly hoping that such occupation could be formalised by the granting of planning permission. However, all of them remained in continuing breach. On 7th May 2019, when the Defendants were seemingly unrepresented, an application was made by them to the High Court to vary or discharge the injunction. It was said that witness statements and exhibits would follow within 14 days. For reasons which are not clear, that application was not accepted by the court as valid, and remained unissued and unsealed. It is an important date in the chronology and may become relevant, because the present application to commit was issued in respect of the first tranche of Defendants on 15th May 2019. The named Defendants were Thomas Docherty, Timothy Mahony, Ann O'Driscoll, Madison Clarke, Dena Morgan, Heather Mary Bryan, Peter Donoghue, Julie O'Reilly, Anthony Stokes, Christine Mahony, Lisa Marie Byrne, Thomas Bryan, and Donna Bull.[2]

16. Be that as it may, following service of the committal application (first tranche), on 22nd May an application was made on behalf of all the Defendants, on this occasion accepted by

[2] It is not entirely apparent to me from where these names were derived, because they do not coincide with the names provided by Mr Woods in his letter accompanying the planning application.

the court, by BPS solicitors, to vary or discharge the injunction. It was accompanied by a witness statement of Mr Jeremy Browne, a partner in the firm. This statement provided a significant amount of personal information about several named individuals who were occupying the land in 10 separate plots which had been divided. Reference was made to the health, education and welfare requirements of the various families, including a number of children, in support of the stated need to have a settled place to live, which underpinned the planning application which had yet to be considered. On behalf of the Defendants, Mr Browne asked that they be permitted to reside on the land pending the determination of the planning application and any subsequent appeal.

17. Because individuals had been identified in Mr Browne's statement who had not previously been known to the Claimant council, a second committal application was made including these named individuals (second tranche): Vanessa O'Driscoll, Sean Mahoney, Nicola Barry, Thomas O'Driscoll, Charlene Price, Crystal Doherty, and John O'Sullivan. This was served on 30 May 2019.[3] It made little sense for the Claimant to take enforcement proceedings but not include all those who may be acting in breach of planning control and the injunction subsequently obtained.

18. The two committal applications were supported by a substantial raft of evidence from the Claimant council dealing with the history of attendance by various officers when the initial injunction was granted and describing the breaches which were relied upon. There were also affidavits from two police officers who had attended to accompany council officers. There were numerous photographs, including some taken from an aerial perspective, showing the extent of the land use, and how the pitches were being laid out. In addition to the evidence relating to breaches of the injunction, the Claimant also relied upon extracts from Facebook pages which included many of the Defendants' own photographs to demonstrate the extent of their knowledge of the planning restrictions, and how they were determined to carry on regardless of any court order to set up a travellers' community.

19. The return date for the committal applications was 10th June. They came before Nicol J. The Claimant was represented by Saira Sheikh QC and Charles Merrett and the Defendants were represented by the same counsel who has appeared before me. The court provided a number of directions. In summary form, these included the adjournment of the committal applications to be heard together with the application to vary or discharge the injunction, which was deemed to have been made despite any procedural issues, on the first open date before the end of the term, with an estimated length of hearing of two days, and a timetable for the service of any further evidence.

20. Representations made on behalf of the Defendants to the court on the occasion of that hearing are relevant. Mr Masters, counsel for the Defendants, acknowledged that the Defendants were in "technical breach" of the order of Lane J. I do not believe that further elaboration was provided, but this was taken as an admission, followed up by email from the Claimant's solicitors on 13 June 2019 in which such an admission was recorded. I understand that no formal procedure was followed whereby any schedule of breaches was put to any of

[3] Time for service of the second application was abridged by Cheema-Grubb J to allow both be dealt with at the same committal hearing.

the named individual Defendants, and that the admission of a technical breach was made on their collective behalf.

21. Following that hearing, and in accordance with the court's direction, further evidence was provided on behalf of the Defendants. This comprised a second statement from Mr Browne, who exhibited the report of an independent social worker, Diane Clark, addressing the welfare and health needs of the children and their families, as well as statements from many, but not all of the named Defendants. These statements included personal family details, describing health problems that some of the children suffered from, and also explained how they had individually acquired plots on the land and moved onto it on Good Friday. It is noted that most describe not becoming aware of the injunction until early the following week. It is unnecessary to condescend to any further detail within those statements, because this court is only concerned with general principles; however, I make it clear that I have read each statement and noted the contents.

22. The council also provided further evidence, significantly in the form of a further affidavit from Sarah Saunders, the Head of Planning and Building Control together with number of exhibits. She engaged with the statements from the individual Defendants and undertook an analysis of their evidence, particularly in the context of actions which were taken knowingly in breach of the injunction order. She addressed the Defendants' application to vary the injunction, the planning considerations, including aspects of the material provided by the Defendants planning consultant, and the housing/homelessness assessments which had been undertaken for individual Defendants.[4] She also referred to way in which the Claimant had approached the action taken to remove the Defendants with regard to the so-called "Porter" considerations. I do not intend to go into the detail of her evidence for the purposes of this judgment, because most of the points will be considered when I address the respective cases of the Claimant and the Defendants below.

23. Shortly prior to the hearing listed before me, the Defendants planning application was rejected. A copy of the decision letter, together with the reasons set out in the report of the planning officer was supplied to the court. The summary reasons for refusal were:

> "the application site is unsustainably located, in relation to accessibility to existing local services, and would result in significant adverse impact on the visual amenity and character of the rural area and surrounding landscape, contrary to policies HOU9 and HOU 10 of the East Herts district plan the 2018, the National planning policy framework, and the associated planning policy for travellers sites."

24. It is noteworthy that within the delegated report of the planning officer at section 9 it deals with "other material considerations" in which reference is made to the "Porter" exercise and the human rights implications pursuant to article 8 of ECHR. These considerations, as will be seen, or central to the application to vary or discharge the injunction.

The hearing before this court

[4] She pointed out that all were offered alternative temporary accommodation which was refused.

25. For reasons explained in paragraph 3 above, submissions were made on the issue of variation or discharge of the injunction going forward only and not on the breach. There was no issue taken with the suggestion made by the Claimant that whilst an application to vary or discharge should normally to be dealt with at the sentencing stage of a committal for contempt of court, i.e. after the question of breach had been determined, following the approach laid out by Sir Anthony Clarke MR in **South Cambridgeshire v Gammell [2005] EWCA Civ 1429**, in the light of the admissions made of breach on behalf of the Defendants, such a determination was unnecessary.

26. The submissions were provided against the background of informal undertakings offered to the court by the Defendants. The first undertaking which I understand is given regardless of the outcome of the application to vary or discharge, is that an appeal against the refusal of planning permission for the change of use of the land will be formally commenced by 6th August 2019.[5] The second undertaking, which would be operative in the event that the application to vary or discharge is granted, is that the Defendants would remove their caravans and mobile homes from the land together with the hardstanding that has been installed within a reasonable time after the refusal of any appeal. The Defendant's counsel, Mr Masters, has advised the court that the Defendants are confident of succeeding in any planning inquiry.

27. In addition to opposing any application to vary or discharge the injunction, effectively to preserve a status quo position, counsel on behalf of the Claimant council, Mr Lewis, who appeared with Mr Merrett, drew the court's attention to the length of time involved in the statutory appeal process to the Secretary of State under section 78 of the 1990 Act, producing a printout from the GOV.UK site on this issue. Whilst the undertaking was noted, technically the Defendants had six months in which to start the process from the date of service of the notice. Where the appeal was dealt with on written representations, it was usually 26 weeks from the date of decision, and this could be extended to 46 weeks where hearings or inquiries were involved. If account was taken of the possibility of judicial review it remained feasible that final resolution could not take place for up to 18 months from the date of the first decision. This was said to be a relevant matter in circumstances where the Defendants had entered into unlawful or unauthorised occupation of the land, and where it was being sought to preserve the status quo.

The nature of the Defendants' case on variation or discharge of the injunction

28. I have already made reference to the statements provided by many of the Defendants which touch upon personal family circumstances. The report of the independent social worker is based upon information which she has gleaned from attending the travellers' site and speaking to various families. She describes the family dynamics and employment roles undertaken by the husbands/male partners, with the females being principally the child carers. The ages of the children are given, and references made to several medical ailments which are suffered by the children, for the most part. Christopher, the 14-year-old son of Anne

[5] As this judgment is supplied *after* that date, it is assumed that this step has now been taken.

O'Driscoll, has leukaemia, but it is in remission. He has been required to travel to children's hospitals in Liverpool and London, and a settled base is sought on his behalf. Madison Clark, one of the younger Defendants, has atypical cystic fibrosis and suffers from recurrent chest infections. She has a very young daughter and needs to live in an area away from a polluted environment. Maisie, the 12-year-old daughter of Patrick Clark and Dena Morgan, has type 1 diabetes and requires daily injections. The children of Charlene Price and Lisa Brock both have asthma and would significantly benefit from a stable environment. Peter Donoghue is a recovering drug addict, and his three children are benefiting from having their father in a secure and safe setting, and providing a positive influence on him. Thomas Doherty has an under-active thyroid which has not been treated, whilst his children have dental issues, but are settled in the local school in Little Hadham. Two of the children of John O'Sullivan have asthma, as does John himself, and the family had previously lived on an overcrowded and unsafe site. Anthony Stokes has three children, but is separated from his wife. They live with him during the week, on the site, but there is more prospect of the family getting back together again if they do not have to keep moving around.

29. Ms Clark makes reference to the policy enshrined in the *Every Child Matters* initiative and the role of multi-agency partnerships in ensuring that the aims of the policy are fulfilled, including support for health, safety, enjoyment and achievement, positive contribution, and economic well-being for all children. In view of the fact that these children are being kept safe by their parents, are now in a settled environment, with most registered in local schools, and with local medical practices, and residing in separate travellers plots which were well-structured and with family support which was both emotional and practical, in her opinion all the interests and needs were being met on the present established site.

30. Whilst there was no medical evidence to verify any of the medical conditions referred to, some limited evidence was provided of local school attendance for several of the children.

31. Mr Masters' primary submission was that against this background, the Claimant council had been in breach of its public sector equality duty in its entire approach to the Defendants' occupation of the land. This commenced with the service of the initial stop notice which it is said was an entirely inappropriate procedure, and designed to bypass the more structured process which would be involved with the service of an enforcement notice, specifying a breach and allowing for a period of compliance, and which itself could be the subject of challenge by way of appeal.

32. If this "normal" process had been adopted, the necessary enquiry could have been made as to the nature of the occupation, and the welfare and human rights aspects which might be implicated with families, including children moving onto the site. The Claimant's failure, said Mr Masters, infected the initial application under Section 187B and the role of the court, by way of misrepresentation, because Lane J would not have been engaged with human rights issues both under article 8, and article 3.1 of the UN Convention on the Rights of the Child 1989. Repeated requests have been made for a transcript of the telephone hearing in which the injunction was granted, and in the absence of any such transcript it was reasonable to

assume that there had been no "**Porter**" enquiry[6] assessing the proportionality of granting the injunction when taking into account family and private life considerations. Far from this being a case where the Defendants were "*cocking a snook*" at the system by occupying the land without authorisation, this was more akin to the Claimant council playing the system by keeping basic information from the court which was relevant. It would have been open to the Claimant, if not at the very outset when the Defendants first moved onto the site, at least when the planning application was made, to obtain the necessary welfare information because they had the names and identities of most of the occupants.

33. It was also relevant, said Mr Masters, that this was not a flagrant breach of planning control as asserted, because the Defendants had applied for planning permission within a very short time of moving onto the land. At the time of the occupation there was no injunction in place, and the Defendants moved there because there was nowhere else for them to live. They come within the definition of gypsies and travellers within the relevant policy (PPTS) which has implications for planning considerations. As far as the planning history is concerned, there had been no previous history of refusal, nor was there an extant enforcement notice at the time of occupation. Though in a rural location, and previously agricultural land, it was not within greenbelt or a national park, but in a countryside setting which would not have been outside permission as a travellers' caravan site under that policy. Mr Masters acknowledged that planning permission had been refused at first instance, but submitted that there was very good reason to assume success on appeal. In support, he relied upon a decision which had been referred to by Mr Woods in his second statement involving an application for planning permission in very similar circumstances where the Secretary of State had granted permission because outstanding need had been established when there was no identified site available within East Herts. It was said in that decision that that the lack of alternatives made interference with the gypsies' private and family rights more serious.

34. Mr Masters submits that there is no evidence in the present case from the Claimant council in relation to any considerations which they might have had as to the applicable factors under the PPTS policy.

35. The House of Lords made it clear in **Porter** that proportionality was relevant to the court when considering the grant of an injunction under section 187B. Under article 8(2) of the ECHR a balance was required between the public interest in upholding planning laws and preserving the environment, and the removal of traveller communities and gypsies from land with the disruption and potential hardship which that would cause. Whilst the court was the arbiter of this balance in determining whether or not an injunction should be granted, it was incumbent on the local planning authority to provide the necessary evidence that went to proportionality. Mr Masters made reference to the judgment of Lord Bingham at page 580:

> "When application is made to the courts under section 187B the evidence will usually make clear whether, and to what extent, the local planning authority has taken account of the personal circumstances of the defendant and any hardship an injunction may cause. If it appears that these aspects have been neglected and on examination they weigh against relief, the court will be ready to refuse it."

[6] South Bucks District Council v Porter [2003] 2 AC 558, already referred to above and considered in more detail later in this judgment

36. Further submissions were made that the present case is distinguishable from the more extreme situation which arose in the case of **Mid Bedfordshire District Council v Brown [2005] 1WLR 1460** relied upon by the Claimant's, in which it is said that the occupants were *cocking a snook* at the system, because there they had knowledge of the injunction before moving onto the land, and proceeded to occupy it nevertheless.

37. Welfare enquiries included the best interests of the children, submitted Mr Masters, under the United Nations Charter, and given prominence by the Supreme Court, albeit in an immigration context, in **ZH (Tanzania) v Secretary of State for the home Department [2011] UKSC**. Further, the Article 8 rights of gypsies had been affirmed by the ECHR in the case of **Chapman v United Kingdom [2001] 33 EHRR 18** , where there were positive duties imposed upon a local authority, particularly in respect of suitable alternative sites, when decisions were made which affected their lifestyles. In the present case, there has simply been no consideration by the Claimant, it is said, to consider where the Defendants might move to.

38. Mr Masters submitted that the Claimant should have acted in advance of eviction, as he described it, in discharge of its humanitarian duty, because it had knowledge that children were involved, and the effect of any injunction would be to deprive them of their homes.

39. In terms of an appropriate procedural approach to the Porter enquiry, if the status quo was preserved by the variation of the injunction, in other words if the Defendants were not required to move from the land, there would remain an opportunity for a full investigation of all the relevant considerations , on the assumption that the family and human rights aspects, and issues of proportionality would be taken into account on the planning appeal.

Claimant's response to the application to vary or discharge

40. I have already made reference to the comprehensive affidavit of Sarah Saunders, which sets out the council's position. Submissions were provided by Mr Lewis of counsel.

41. In opposing the application, Mr Lewis rejected any suggestion that the section 187B jurisdiction should only be used in exceptional circumstances. It was intended to give teeth to planning enforcement, not least in circumstances where more conventional measures of enforcement which led to quasi-criminal proceedings and fines would be cumbersome or ineffective. He gave as an example Sunday trading injunctions; other remedies did not have to be exhausted before an application could be made under s187B.

42. He submitted that it was unnecessary for the Defendants to remain in occupation of the site while the planning appeal was pursued. It is relevant that this was a clear and flagrant breach of planning control when the site was first occupied, such occupation occurring in what was perceived by the Defendants to be a quiet period when there was unlikely to be

local authority intervention. The council were proactive in attempting to secure the removal of the occupants at a very early stage before any family roots had been established. It was not accepted that when the application was made within two days for an injunction, the human rights considerations of the occupants were ignored, but in any event it was to be noted that none of the individual names, let alone the family structures were known at the time that the matter was dealt with by Lane J. In this respect, he referred to the observations of the Master of the Rolls, **Sir Anthony Clarke** in the case of **South Cambridgeshire DC v Gammell [2006] 1 WLR 658**, at paragraph 33

> "…..In the light of the principles in the authorities and those conclusions I would summarise the position as follows. 1. The principles in South Bucks set out above apply when the court is considering whether to grant an injunction against named Defendants. 2. They do not apply in full when a court is considering whether or not to grant an injunction against persons unknown because the relevant personal information would, ex hypothesi, not be available. However this fact makes it important for courts only to grant such injunctions in cases where it is not possible for the applicant to identify the persons concerned or likely to be concerned. 3. The correct course for a person who learns that he is enjoined and who wishes to take further action, which is or would be in breach of the injunction, and thus in contempt of court, is not to take such action but to apply to the court for an order varying or setting aside the order. On such an application the court should apply the principles in South Bucks. 4. The correct course for a person who appreciates that he is infringing the injunction when he learns of it is to apply to the court forthwith for an order varying or setting aside the injunction. On such an application the court should again apply the principles in South Bucks……..." [7]

43. In the present instance a primary relevant consideration was indeed the "*cocking a snook*" principle drawn from the **Mid-Bedfordshire case**, where the court should take into account the fact that despite knowledge of the injunction that was obtained, Defendants pressed on regardless with their occupation and development of the land for several days, with an application to vary or discharge not being pursued for a number of weeks. It should be noted that the works commenced on Good Friday and continued over the Bank Holiday weekend when it might not have been expected that any action would be taken.

44. Mr Lewis submitted that whilst the leading authority on conducting a proportionality and human rights exercise was the House of Lords decision in **South Buckinghamshire DC v Porter [2004] UKHL 33**, this was considered in a more contemporary context in **Ashford BC v Stevens [2018] EWHC QB** by HHJ Parkes QC sitting as a judge of the High Court:

> "96. *Porter* is authority for the propositions that:
>
> i) s187B confers an original and discretionary jurisdiction to be exercised with due regard for the purpose for which it was conferred to restrain actual or threatened breaches of planning control;
>
> ii) it is inherent in the remedy that its grant depends on the court's judgment of all the circumstances of the case;
>
> iii) although the court will not examine matters of planning policy and judgment which lay within the exclusive purview of the planning authorities, it is not obliged to grant relief because a planning authority considers it necessary or expedient to restrain a planning breach; and,

[7] Emphasis supplied

> iv) the court should have regard to all the circumstances of the case (including personal circumstances), is required by s6 Human Rights Act 1998 to act compatibly with Convention rights, and, having regard to Art.8 rights, will only grant an injunction where it is just and proportionate to do so."

45. Mr Lewis provided two further examples where the courts have upheld injunctive relief in support of planning control regarding the same as proportionate and necessary notwithstanding potential private life and family hardship: **Ilyas v Aylesbury Vale DC [2011] EWCA Civ 1377** and **Forest of Dean District Council v Wildin [2018] EWHC 2811 (QB)**.

46. There were several matters which the court should take into account on this application to vary the injunction, to preserve, in effect, the status quo, said Mr Lewis.

47. In respect of the planning application, not only has it been rejected at first instance, but also there is little prospect of it succeeding on appeal, which could take many months, if not in excess of one year to be concluded on inquiry. The development is contrary to policy GBR2 and HOU9 in relation to the adopted local plans, and although this court is not invited to carry out its own assessment of the planning merits, he asks that the conclusions of the planning officer are taken into account. In particular, the basis of refusal provided grounds of unsustainability of location in relation to accessibility of local services, and significant adverse impact on visual amenity and the character of the rural area and surrounding landscape, contrary to the development plan and national planning policy.

48. Further, the Defendants have not produced any evidence to show that they comply with the Government policy for Travellers and Gypsy sites, and it would be incumbent upon them do so. It is relevant, in this regard, that the Claimant council is not required to provide pitches on sites by way of other suitable accommodation, but that the provision of bricks and mortar can discharge their duties. Reference is made to the case of **Codona v Mid Beds DC [2004] EWCA**. Mr Lewis refers to the fact that these Defendants have all been offered suitable alternative accommodation and in all instances it has been rejected.

49. It is to be noted that the Defendants were registering at local services within a few days of entering into occupation the land and it could not be said that they have any dependence on this particular location. They had no previous link with the area.

50. The court should take into account the fact, submits Mr Lewis, that the Defendants had very early knowledge of the injunction which was served on the day that it was obtained, and there is evidence that it was brought to their attention on subsequent days. It is not just relevant to the question of breach, with which the court is not immediately engaged (save in the context of sentence) but also to the issue of any variation.

51. In respect of the Defendants' article 8 rights, and the best interests of the children, it is submitted that these are not unqualified rights or interests and they should be considered in the context of the need to uphold planning control in the public interest. Whilst the European

court had acknowledged the importance of Article 8 rights in planning considerations for gypsies and travellers, nevertheless in a challenge where unlawful occupation had been established from the outset, in **Chapman v UK [2001] 33 EHRR 18** it was held that interference with the applicant's rights was proportionate to the legitimate aim of preservation of the environment. Specifically reference was made to paragraph 102:

> 102. Where a dwelling has been established without the planning permission which is needed under the national law, there is a conflict of interest between the right of the individual under Article 8 of the Convention to respect for his or her home and the right of others in the community to environmental protection (see paragraph 81 above). When considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully. If the home was lawfully established, this factor would self-evidently be something which would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of the home in a particular place was unlawful, the position of the individual objecting to an order to move is less strong. The Court will be slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the Court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community.

52. The present case, submitted Mr Lewis, is apposite. Relying on the case of **Stevens v The Secretary of State for Communities and Local Government and Guildford Borough Council** (an authority produced in copy form only and seemingly unreported, dealing with a planning challenge in the administrative court) Mr Lewis pointed out that any planning consideration will take into account proportionality, and consider Article 8 factors, as occurred in the present case, and will occur on any appeal.[8]

The principles to be applied by this court

53. The parties are substantially in agreement as to the principles which must be applied in dealing with an application to vary or discharge an injunction in these circumstances. Although the initial position of the Defendants had been that there should be an adjournment of the breach proceedings to enable a "full Porter enquiry", it has now been acknowledged, following the admissions made by the Defendants, that this court can be engaged in the process when proceeding to deal with the application to vary or discharge of the injunction. Essentially, it is a variation application, because the Defendants do not seek to remove the prohibitory requirement in relation to further development, but merely seek to stay on the land.

54. The guidance given in the **Porter** case lies at the heart of this application. I identify, as Judge Parkes did in the **Ashford** case, that the key passage is the endorsement by the House of Lords (Lord Bingham at paragraph 20) of the approach provided by Simon Brown LJ in the Court of Appeal at paragraph 38: –

> "20. The Court of Appeal's ruling on the approach to section 187B was expressed in five paragraphs of Simon Brown LJ's judgment, which I must quote in extenso:

[8] Paragraph 9.3 of the initial planning decision refers to the "Porter Exercise".

"*The approach to section 187B*

38. I would unhesitatingly reject the more extreme submissions made on either side. It seems to me perfectly clear that the judge on a section 187B application is not required, nor even entitled, to reach his own independent view of the planning merits of the case. These he is required to take as decided within the planning process, the actual or anticipated breach of planning control being a given when he comes to exercise his discretion. But it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for himself all questions of hardship for the defendant and his family if required to move, necessarily including, therefore, the availability of suitable alternative sites. I cannot accept that the consideration of those matters is, as Burton J suggested was the case in the pre-1998 Act era, 'entirely foreclosed' at the injunction stage. Questions of the family's health and education will inevitably be of relevance. But so too, of course, will countervailing considerations such as the need to enforce planning control in the general interest and, importantly therefore, the planning history of the site. The degree and flagrancy of the postulated breach of planning control may well prove critical. If conventional enforcement measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be the readier to use its own, more coercive powers. Conversely, however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gipsy moving onto the site might, indeed, involve him in less hardship than moving him out after a long period of occupation. Previous planning decisions will always be relevant; how relevant, however, will inevitably depend on a variety of matters, including not least how recent they are, the extent to which considerations of hardship and availability of alternative sites were taken into account, the strength of the conclusions reached on land use and environmental issues, and whether the defendant had and properly took the opportunity to make his case for at least a temporary personal planning permission.

39. Relevant too will be the local authority's decision under section 187B(1) to seek injunctive relief. They, after all, are the democratically elected and accountable body principally responsible for planning control in their area. Again, however, the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

40 Whilst it is not for the court to question the correctness of the existing planning status of the land, the court in deciding whether or not to grant an injunction (and, if so, whether and for how long to suspend it) is bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end. In this regard the court need not shut its mind to the possibility of the planning authority itself coming to reach a different planning judgment in the case.

41 True it is, as Mr McCracken points out, that, once the planning decision is taken as final, the legitimate aim of preserving the environment is only achievable by removing the gipsies from site. That is not to say, however, that the achievement of that aim must always be accepted by the court to outweigh whatever countervailing rights the gipsies may have, still less that the court is bound to grant injunctive (least of all immediate injunctive) relief. Rather I prefer the approach suggested by the 1991 Circular: the court's discretion is absolute and injunctive relief is unlikely unless properly thought to be 'commensurate' -in today's language, proportionate. The approach in the Hambleton case [1995] 3 PLR 8 seems to me difficult to reconcile with that circular. However, whatever view one takes of the correctness of the Hambleton approach in the period prior to the coming into force of the Human Rights Act 1998, to my mind it cannot be thought consistent with the court's duty under section 6(1) to act compatibly with convention rights. Proportionality requires not only that the injunction be appropriate and necessary for the attainment of the public interest objective sought -here the safeguarding of the environment -but also that it does not impose an excessive burden on the individual whose private interests -here the gipsy's private life and home and the retention of his ethnic identity -are at stake.

42. I do not pretend that it will always be easy in any particular case to strike the necessary balance between these competing interests, interests of so different a character that weighing

> one against the other must inevitably be problematic. This, however, is the task to be undertaken by the court and, provided it is undertaken in a structured and articulated way, the appropriate conclusion should emerge."

55. Where breaches of planning control are concerned, or questions arise as to whether or not planning permission should have been granted or refused, it is not considered appropriate that a court dealing with injunctive relief under section 187B should undertake any in-depth investigation of the planning issues, and any question which arises should only be addressed on a broad basis. In **Porter** Lord Bingham said at paragraph 30:

> "30. As shown above the 1990 Act, like its predecessors, allocates the control of development of land to democratically accountable bodies, local planning authorities and the Secretary of State. Issues of planning policy and judgment are within their exclusive purview. As Lord Scarman pointed out in Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment [1985] AC 132, 141, "Parliament has provided a comprehensive code of planning control". In R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions[2001] 2 WLR 1389, [2001] UKHL 23, paragraphs 48, 60, 75, 129, 132, 139-140, 159 the limited role of the court in the planning field is made very clear. An application by a local planning authority under section 187B is not an invitation to the court to exercise functions allocated elsewhere. Thus, it could never be appropriate for the court to hold that planning permission should not have been refused or that an appeal against an enforcement notice should have succeeded or (as in Hambleton [1995] 3 PLR 8) that a local authority should have had different spending priorities. But the court is not precluded from entertaining issues not related to planning policy or judgment, such as the visibility of a development from a given position or the width of a road. Nor need the court refuse to consider (pace Hambleton) the possibility that a pending or prospective application for planning permission may succeed, since there may be material to suggest that a party previously unsuccessful may yet succeed, as the cases of Mr Berry and Mrs Porter show. But all will depend on the particular facts, and the court must always, of course, act on evidence."

56. It seems to me from that this case, and from the other authorities referred to by counsel, that I can draw the following principles on an application to vary an injunction in these circumstances.

57. First of all, the same approach as would be applied when obtaining a section 187B injunction in the first place where the identities and personal circumstances of the individuals occupying the land unlawfully are known, or on reasonable enquiry could have been found out, should be taken on an application to vary that injunction, namely a balancing exercise between the public interest in upholding planning control and environmental protection and the private interests of the individuals, particular where the welfare and health of families and children are involved. This involves issues of necessity and proportionality.

58. Second, whilst the court will not become involved in nuances of the planning considerations, or undertake an analysis of the prospects of a successful challenge, it will be necessary to consider that there is a sound basis for the establishment of breaches of planning control. The refusal of planning permission for the development which it is sought to be restrained by the injunction will potentially provide such a basis.

59. Third, whilst the weight to be attached to individual factors will be variable in every case, material considerations will include the following:

(a) The circumstances in which the land was first occupied;
(b) the manner in which the injunction was initially obtained, including information available about the occupants, and the extent to which such information could have been sought by the planning authority in addressing Article 8(2) questions;
(c) how the occupants have conducted themselves after becoming aware of either the planning control restriction or the injunction, that is the extent of any breaches;
(d) the evidence presently available as to the circumstances of the occupants, including health, welfare and family issues, and the impact of continuing the injunction in the context of those issues insofar as Article 8 and the best interests of the children might be engaged;
(e) a general assessment as to the prospects of any appeal;
(f) the need to ensure that court orders are respected and obeyed;
(g) whether the application to vary was made timeously;
(h) the amount of time that has elapsed between the original order and the hearing of the application to vary, and in particular, where it is sought to preserve the status quo, how long it will take for the resolution of the planning appeal process in the context of potential planning harm.

60. Clearly, this is not an exhaustive list.

Determination

61. It is appropriate to address, first and foremost, the argument of the Defendants' counsel that the Claimant had abused procedures in obtaining the injunction by not only failing to give the court sufficient information about the family dynamics of those occupying the land to enable Lane J to make an effective Porter/proportionate assessment, but also in not adopting a more graduated process such as serving an enforcement notice. In other words, as Mr Masters put it, not "*coming to the court with clean hands*".

62. In my judgment, there is little substance to either of these criticisms. Whilst an enforcement notice carries with it sanctions for non-compliance, and would be effective in certain situations, particularly those involving individual householders and businesses for whom the occupation of land is not an issue, as opposed to its adaptation or development, it would make a nonsense of the peremptory procedure available under the 1990 Act which provides for immediate relief, if it could not be utilised in a situation where there was occupation of rural land in breach of planning control at short notice, and where time was of the essence to prevent establishment of residence or landscape damage.

63. Clearly, the stop notice was an essential prerequisite to the obtaining of a mandatory and prohibitive injunction, because it afforded the Defendants an opportunity to comply, provided that it was brought to their attention. On the evidence, I am quite satisfied that it was. I do not believe that the council's use of the stop notice was in any way inappropriate as an advance step to seeking injunctive relief. It would have been open to the Defendants, on receiving notification, to immediately desist, on the basis that the Claimant's objection to the occupation was going to be vigorously pursued. This should be contrasted to the situation where the planning authority might be prepared to turn a blind eye when travellers enter onto land in order to establish a site.

64. In relation to the provision of information to the court and account being taken of Article 8(2) considerations, I note that the Defendants have sought, but have been unable to obtain any transcript of the telephone application. [9] However, even if one was available, it would have been surprising if any reference had been made to individual family or welfare issues in the absence of any identified defendant. Early engagement with council officers had shown an unwillingness to provide names, but on the other hand a tendency to be obstructive, continuing with the installation of the hardstanding and fencing notwithstanding a clear objection on the part of the planning authority. In the circumstances, in my judgment, the duty, described by Mr Masters as the "equality duty" is significantly qualified. The Claimant is seeking to remove quickly and peremptorily unnamed individuals from land which has been occupied without authority in breach of planning control. I accept in this context the evidence of the Claimant's witnesses in affidavit form that consideration was given to the question of proportionality and the engagement of human rights issues when the application was initially made, although the extent would be severely limited by the absence of any identities. However, the corollary to this was that bringing to an end and unlawful occupation swiftly and with minimal disruption as a proportionate means of enforcing planning control when there would have been little or no establishment of the family life.

65. It follows, in my judgment, that the injunction was necessary and proportionate at the time that it was obtained, and that there was no abuse of procedure or misleading of the court by the Claimant council in the provision of information.

66. The question which then arises is whether or not on the basis of present evidence, or circumstantial change on applying "**Porter**" considerations to the present application to vary the injunction by removal of the mandatory elements to preserve the status quo pending any planning appeal, it continues to be necessary and proportionate as a means of enforcing planning control. It seems to me that there are a number of material considerations which inform the answer to this question.

67. First, whilst the evidence has been considered on the papers only, and has not been tested under cross-examination, it seems to me incapable of challenge that the Defendant travellers moved onto the land on Good Friday or very shortly before, and commenced works of landscaping almost immediately. I am quite satisfied that they would have been aware of the planning restrictions, having acquired by purchase several plots of agricultural land in a rural area. It is not unreasonable to impute to the travelling community, against a background of fairly regular confrontation with the planning authorities, a degree of knowledge as to those planning restrictions, and the likely response of the planning authority. It is relevant that the Defendants took up occupation over the Bank Holiday weekend, at a time when an immediate reaction of any planning enforcement officer was not likely to be anticipated. The evidence suggests a degree of surprise that officers were working on Good Friday. Equally, it might be considered surprising that contractors were prepared to work over a bank holiday weekend, unless those undertaking the hardstanding construction were closely involved with the travellers themselves. It is a reasonable conclusion on the basis of the evidence

[9] My understanding is that they are not normally recorded

particularly in connection with the plant hire, and the nature of the occupations of several of the Defendants, that much of the labour was provided not by independent contractors, but by the Defendants themselves. Thus, it is not difficult to conclude that the intention was to "steal a march" on those who might enforce planning restrictions. It may be, in the light of the hardship which this community faces, that they fervently and genuinely believe that this is the only way in which they can establish a site, in other words to have caravans, hardstanding and enclosure in place before any enforcement action is taken.

68. I am satisfied that the Defendants were not only aware of the stop notice when it was first provided by council officers, but also became aware that an injunction had been obtained very soon after it was, with a number of prohibitive and mandatory requirements, the most significant of which was their near immediate vacation of the land. Even allowing for the fact that some will have been illiterate, it is clear that there were several who were not, and in a close-knit community such as this, the terms of the injunction could have been communicated to all. Notwithstanding the order, the overwhelming evidence is that over the following 2 to 3 days, and until 24th April at least, work continued to establish the site, with the laying of hard-core, the creation of hardstanding, and the provision of fencing. In their evidence, none of the Defendants have sought to gainsay this, or to suggest that they ceased to work immediately upon becoming aware of the terms of the injunction. In fact, the admitted breaches clearly lie at the heart of this, as well as the refusal to leave the land.

69. In such circumstances, though largely relevant to any action which the court might take on committal, it is appropriate to regard this case as one where there was a deliberate and significant breach intended to achieve a particular end, namely the establishment of a traveller site, and moving on from that the legitimisation in planning terms of that site. This situation is one which should be distinguished from those where enforcement action is taken after land has been occupied without authority, and significant steps have been taken to establish a home.

70. In this respect I am also satisfied, as can be implied from my comments above, that the Claimant moved quickly to enforce, and with the clear intention of preventing the establishment of a travellers' caravan site.

71. There is no doubt that several of the Defendants, and their family members, have health issues which will require regular attendance at GP surgeries, and occasionally hospital. There are young children, most of whom will have to attend school, and who will require care and support. Their welfare should be considered to be of paramount importance. Clearly Article 8 rights are engaged in this case, as are best interests considerations, and the **Porter** approach should require the court to ensure that such rights are respected and preserved insofar as is proportionate and necessary for the purposes of enforcing planning control. However, in terms of the evidence provided, there is little more than an outline sketch of family dynamics, and whilst reference is made to medical ailments, there is virtually no supporting medical evidence. I have only seen a small selection of school records in relation to the identified children. What is more notable is that despite the provision of statements from almost all the Defendants, none have sought to go into any detail as to the circumstances in which they were previously living, other than to provide general descriptions of life on the road. For

instance, there is no detail of the extent to which education or medical services could not be accessed prior to moving to the site. Several Defendants refer to taking up occupation of the land as a means of providing a permanent or semi-permanent base for their children having been made aware of its purchase other family members but do not condescend to detail.

72. The report of the independent social worker Ms Clark is helpful in providing information about those family dynamics, and an overview of the settlement on the land. The health, welfare and educational needs of the families are identified on a general basis and there is no doubt that a picture is provided of a community which would significantly benefit from being settled and having rights to occupy the land where they are already able to secure access to local services such as GP surgeries and schools. However, to a large extent it amounts to a statement of the obvious. Any traveller community which has previously been disrupted through lack of any site is bound to benefit from the acquisition of a permanent pitch. In my judgment, there is nothing in the evidence of the independent social worker, or the statements provided which suggest that the interference with private and family life will be above the norm which might be expected on the enforcement of an injunction to evict, or more considerable than this community has been used to over many years and before their occupation. It does not follow that the interference with their Article 8 rights should be ignored; however, the weight to be attached to private and family life considerations is somewhat less than might arise if there had been compelling evidence, for example, of serious health issues which could only be ameliorated by living in this location, or this had been a long settlement before enforcement action was taken with children having had an opportunity to settle into schools, or other family members had acquired work locally.

73. Insofar as having regard to the best interests of the children may require any further consideration beyond the scope of Article 8, the point is properly made that these are not unqualified interests in the context of the need to uphold planning control. Clearly whilst the children are settled and supported on the land in their individual family groups, for as long as the injunction is not enforced, it might be said that their interests would clearly be met by being in accommodation where they will not face disruption.

74. I have also addressed the question as to where the Defendants and their families might move if the injunction was not varied to preserve the status quo and they were required to leave. As already indicated, there is a dearth of information as to the nature of sites previously occupied, whether collectively or individually, apart from general observations about "life on the road". On the other hand, it might be said that the Claimant council has not engaged substantially with the provision of evidence in relation to other sites which might be suitable for accommodating a traveller community of this size and dynamic. In her third affidavit at paragraph 92, when addressing the decision on planning appeal referred to by Mr Woods in his report dealing with a not dissimilar situation involving the same planning authority where the lack of suitable sites was a prevailing consideration,[10] Ms Saunders stated the Claimant's view that the adopted district plan demonstrated an up-to-date five-year supply of deliverable sites, with it providing further allocations to meet its identified needs in relation to gypsies and travellers accommodation, and with it providing further allocations to

[10] Wheelright's Farm (APP/J1915/C17/3174667 et al)

meet such needs the end of the plan period in 2033. This is reflected in the report of the planning officer who rejected the application for planning permission.[11]

75. In this respect, it is to be noted that most of the Defendants, were they to be evicted and rendered homeless, could be housed in bricks and mortar accommodation. Most have rejected this, and although I acknowledge that it may be an anathema to the travelling community to give up life on the road, so to speak, it is necessary to consider such hardship in the context of not only an unauthorised occupation in breach of planning control, but also what may be only a temporary measure pending the planning appeal. If that appeal is successful, the Defendants could return to the land which they own, and develop it. If it is unsuccessful, or in any event in the interim, steps could be taken, whilst the families are housed, to identify other potential locations where they could follow their culture and way of life. The probable absence of any alternative site, therefore, is a factor which in my judgment carries little weight in the overall balance.

76. Of course, if there is a lack of traveller sites which are unoccupied, this may well be a factor taken into account on any planning appeal which will consider the application of PPTS. Otherwise, insofar as this court is able to consider the potential merits of the planning appeal process outcome, as I have indicated above this will only be on the broadest scope. In this regard, planning permission was refused on the basis that the application site was unsustainably located in relation to accessibility to existing local services, and would result in significant adverse impact on the visual amenity and character of the rural area and surrounding landscape, contrary to the planning authority's policies HOU9 and HOU10. Save that an application in not dissimilar circumstances appears to have been allowed on appeal involving the same planning authority, no compelling evidence has been produced to this court to demonstrate that this appeal is likely to succeed on inquiry. It will be a relevant consideration on any appeal, which would be seeking retrospective planning permission, that the site was created as an intentional unauthorised development.

77. I have given careful consideration to the chronology of events, and in particular the steps which were taken by the Defendants following the initial occupation of the land. At paragraph 67 above, I have already referred to the deliberate nature of the Defendants conduct in proceeding with their development notwithstanding knowledge of both the stop notice, and subsequently the injunction proceedings. I find words such as "*flagrant*" and "*cocking a snook*" to be somewhat emotive, and not particularly helpful when the court is undertaking a balancing exercise particularly taking into account **Porter** considerations. It is sufficient that the actions are deliberate and calculated to achieve a particular end, and on objective assessment amount to an open disregard of legal requirements including those set out in court orders. In my judgment, however, it is relevant that steps were not taken immediately by the Defendants to seek the regularisation of their position, but only after significant landscaping establishment had taken place. The application for planning permission was not made until approximately ten days after occupation, and at the time when the injunction was in force. The application to vary or discharge the injunction was not made promptly, but although the formal issue of such an application occurred after the council had made its application to commit for contempt, I am prepared to accept that an attempt was

[11] Paragraphs 8.9-8.11

made to file an application to vary or discharge on behalf of the Defendants at an earlier stage and before enforcement steps were taken for breach. Nevertheless, it is self-evident that these breaches were continuing over a period after the Defendants had become aware of the injunction restrictions.

78. I take all the matters set out above into account when seeking to the strike necessary balance between the clearly competing interests in this case, namely those of the Defendants to secure a settled site for their travelling community and those of the Claimant council to enforce planning control. As Simon Browne LJ acknowledged in the Court of Appeal in the **Porter** case this is not always an easy exercise. The Defendants have now been in occupation of the site for almost four months, albeit without lawful planning permission, and in continuing breach of the order made by Lane J on 20th April 2019. A degree of settlement will have been achieved, particularly with local schooling and health services. Family units will have become established. Enforcement of the injunction which will necessarily follow if the application to vary is refused will undoubtedly be disruptive.

79. However, I am quite satisfied that this injunction both in its prohibitive and mandatory terms satisfies tests of proportionality and necessity. For reasons which have been set out, the need to enforce planning control in the context of such unauthorised occupation, and in circumstances, where as I have found, there were deliberate attempts to pre-empt the council in any action which it may take by seeking to establish pitches and hardstandings before these could be prevented, significantly outweighs any interference with the Defendants' Article 8 rights, and it is therefore proportionate for lawful restraint to be imposed by the injunction. Further, in my judgment, this is an entirely necessary process to prevent continuing breach of planning control. I can find no justifiable basis for permitting the variation which is sought, and accordingly this injunction must remain in its present form.

Preliminary observations on sentence

80. It will be necessary to sentence the Defendants individually in respect of the breaches which have been admitted. As I indicated in the course of the hearing in July, I propose to do with this at a hearing in the week commencing 23rd September 2019 at the Royal Courts of Justice. It is necessary for the Defendants to attend the purposes of this process.

81. Further, I have already indicated on the basis of the material provided that this is not a case where the court would be minded to deprive any individual of his or her liberty, and that suspended sentences depending upon the circumstances of each defendant would be appropriate. In view of the fact that the application to vary the injunction has been unsuccessful, I do not propose to deal with sentence disposal by way of fines.

82. A material consideration to the sentence imposed will be whether or not the Defendants have abided by the terms of the injunction. They are now required to leave the land, and whilst their continuing occupation pending the outcome of the application to vary the injunction will be ignored for the purposes of any contempt of court, this cannot be the case if

it continues in the aftermath of the dismissal of that application. The terms of the injunction also require the removal of caravans, mobile homes, and the hardstanding and fencing which has been put in place. However, failure to remove the hardstanding and fencing by itself, whilst a requirement of the injunction, will not be considered an aggravating feature for the purposes of sentence pending the resolution of the planning appeal process.

Conclusion

83. I invite counsel to agree any consequential orders, including costs, save for the imposition of sentences, with which I shall deal at the hearing in September. However, this judgment shall be handed down in advance of that hearing and the terms of the order shall be considered effective from the date of handing down.

HH Judge Wood QC

19th August 2019