



Neutral Citation Number: [2020] EWHC 1900 (QB)

Case No: QB-2020-002289

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 July 2020

Before:

MR JUSTICE LINDEN

Between:

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF HACKNEY**

Claimant

- and -

**PERSONS UNKNOWN IN LONDON
FIELDS, HACKNEY (THE
'PRESCRIBED AREA') WHO ARE:**

- (1) ORGANISING, ATTENDING OR
PARTICIPATING IN AN
UNLICENCED MUSIC EVENT
AND/OR RAVE(S); AND/OR**
- (2) PLAYING LOUD MUSIC; AND/OR**
- (3) URINATING AND/OR DEFECATING
OTHER THAN WHEN MAKING USE
OF TOILET FACILITIES DESIGNED
FOR THIS PURPOSE; AND/OR**
- (4) LIGHTING FIRES, FIREWORKS,
STOVES, BARBEQUES AND/OR
NAKED FLAMES (WITH THE
EXCEPTION OF A CIGARETTE
LIGHTER), INCLUDING ON ANY
EQUIPMENT OR ENTERTAINMENT
DEVICE; AND/OR**
- (5) CONSUMING OR SELLING OF
NITROUS OXIDE (LAUGHING GAS)
SAVE WHEN USED FOR A VALID
AND DEMONSTRABLE MEDICINAL**

PURPOSE; AND/OR

- (6) UPROOTING, DESTROYING OR DAMAGING ANY TREE, SHRUB OR PLANT; AND/OR**
- (7) BRINGING VEHICLES, INCLUDING ANY ENGINE OR GENERATOR, ONTO ANY PART OF THE PRESCRIBED AREA, WITH THE EXCEPTION OF VEHICLES/ENGINES/GENERATORS BELONGING TO THE EMERGENCY SERVICES OR EMPLOYEES, AGENTS OR CONTRACTORS OF THE COUNCIL; AND/OR**
- (8) LEAVING LITTER IN THE PRESCRIBED AREA; AND/OR**
- (9) THREATENING OR USING VIOLENCE, OR ENGAGING IN ABUSIVE BEHAVIOUR TOWARDS MEMBERS OF THE PUBLIC OR EMPLOYEES OR AGENTS OR CONTRACTORS OF THE CLAIMANT WHO QUESTION OR CHALLENGE THEIR ENGAGEMENT IN ANY OF THE BEHAVIOUR DESCRIBED ABOVE.**

Defendants

Ms Kuljit Bhogal (instructed by Legal Services, London Borough of Hackney) for the Claimant
No Defendants attended or were formally represented

Hearing dates: 9 and 10 July 2020

JUDGMENT

THE HONOURABLE MR JUSTICE LINDEN:

Introduction

1. This matter came before me in Court 37 on Thursday 9 July 2020, which was the return day for the interim injunction granted by Mrs Justice Thornton on Friday 3 July 2020 (“the Thornton Order”). Thornton J also provided a very helpful short judgment which explained the decisions which she took at that stage (“the Thornton Judgment”).
2. Proceedings were issued by the Council on 2 July 2020, exercising its powers under section 222 Local Government Act 1972 to bring civil proceedings where it considers that this is expedient for the protection of the interests of the inhabitants of its area. In the proceedings, the Council seeks to prevent various forms of anti-social behaviour which are said to amount to the tort of public nuisance and to have been taking place in a park known as London Fields, in London E8, for some time (“the Claim”). The Council feared that this behaviour would be repeated over the weekend of 4 and 5 July 2020 given the relaxation of the Covid-19 related social distancing rules on 4 July 2020 but, more generally, it wishes to put a stop to various behaviours which are disturbing the enjoyment of the park by other users and causing a nuisance to those who live adjacent to the park.
3. At the same time, the Council also made an emergency without notice application for an interim injunction. Thornton J summarised the Council’s application for interim relief as follows at paragraph 8 of her Judgment:

“The local authority seeks relief because it is seriously concerned about potential activities which may take place in London Fields over the weekend following the lifting of lockdown restrictions. For several years the area has been used by people to gather in large numbers in order to participate in unlicensed music events and for other reasons. Since the easing of lockdown and sunny weather, anti-social activities have increased. These include urinating and defecating around the area; the use of open fires and barbecues, loud amplified music being played, damage to woodland and wildlife, drug and alcohol usage and litter in the area, as well as aggressive and threatening behaviour when people are asked to refrain from the activities “

4. Because their names were not known when the proceedings were issued by the Council, the Defendants to the Claim and the respondents to the application for interim relief were identified as three categories of unnamed members of the public, each defined by reference to the sort of behaviour which was sought to be prevented. These categories are discussed further below. Although the telephone hearing on 3 July 2020 could in principle be joined by any member of the public including the public, unsurprisingly in the circumstances, no Defendant participated.
5. The relevant terms of the Thornton Order are discussed in more detail below but, at the hearing on 3 July 2020, there were a number of issues which needed to be addressed given the potentially conflicting rights and interests of users of London Fields and local residents. These issues included:
 - a. The method of service of the proceedings and of any interim order which was made.
 - b. How best to frame any order so that it was clear who was subject to it and what they were prevented from doing. In accordance with well-established principles, this was important given that breach any order would be a contempt of court and given that it was proposed to attach a power of arrest to the injunction pursuant to section 27 of the Police and Justice Act 2006.
 - c. Although drinking alcohol in London Fields does not of itself amount to the tort of public nuisance the Council takes the view that much of the anti-social behaviour

which it wishes to address is rooted in drug and alcohol abuse and therefore wishes the Court to ban the consumption of alcohol whether or not the consumer also behaves anti socially in a way which arguably amounts to a public nuisance.

6. Thornton J resolved these issues on a strictly temporary basis by:

- a. Making provision for service to be affected by alternative methods and in alternative places to those which would normally be required under CPR Part 6;
- b. Making the Order against all members of the public entering London Fields;
- c. Banning members of the public from consuming alcohol and from certain other activities until the return date of 9 July 2020;
- d. Attaching a power of arrest to all of the behaviours prohibited by her Order.

7. In relation to the alcohol issue she said this:

“8. I have been particularly concerned about the Council’s proposal to introduce an alcohol ban on the basis that drinking alcohol is not of itself an unlawful activity and the Canada Goose criteria require me to consider whether there are other proportionate means available to the Council. Ms Bhogal tells me that the Council has considerable experience of attempting to manage the area and other means have failed. Moreover, the Council considers that alcohol is the root cause of the previous and ongoing serious anti-social behaviour.

9. With some reluctance, I have arrived at the view that the lifting of lockdown and reopening of the pubs on Saturday 4th July amounts to unusual and compelling reasons so as to justify making the order in the terms sought by the Council. The Council is not alone in its concerns about what may transpire over the weekend. The Prime Minister has today urged people to act responsibly.”

8. Thornton J therefore granted the Council’s application in terms which were wide in their reach but short in their duration. She explained her approach as follows at paragraph 16:

“I have not been prepared to make the order for the 12 months sought by the Council given the nature of the restrictions and its interim nature. I have been prepared to agree to its terms on the basis it is in place for this weekend only, given the particularly unusual and compelling circumstances. The application is to return to Court next week for further judicial consideration about the longer term. Anyone affected by the order has the opportunity to make representations to the Court next week.”

The hearing before me on Thursday 9 July 2020

9. The hearings before me were conducted by telephone in view of the Covid-19 pandemic. The Order which I made is attached as Annex 1 for ease of reference.

10. Ms Kuljit Bhogal appeared for the Claimant as she did before Thornton J. Her application was for the Thornton Order to be extended for a year, with one or two minor changes to the drafting. As at the hearing before Thornton J, she presented the Council’s case with conspicuous fairness. Her submissions were also well informed and helpful.

11. It had been indicated that three members of the public would also attend the hearing and I understand that they were supplied by the Council with the relevant documentation for this purpose. In the event, I received written objections or concerns about the Thornton Order from two people, including a Mr Barry Murphy who also attended the hearing. I wish to pay tribute to Mr Murphy’s public spiritedness in participating in the hearing. He may have no

background in the law, but his written submissions tested the Council's case in a measured and fair way and raised a number of relevant points which had struck me in preparing for the hearing.

12. At the outset of the hearing, and in the interests of transparency, I raised the fact that I am very familiar with London Fields and explained why. I did not consider that this gave rise to any conflict of interest, as such, but it did mean that if I relied on my knowledge of the location in addition to the evidence which I received I would draw this to the attention of the parties. Ms Bhogal took instructions and indicated that there was no objection to my dealing with the case. Nor did Mr Murphy object.

The Claim

13. Ms Bhogal confirmed at the outset of the hearing that the only tort alleged against the Defendants is public nuisance, albeit on the basis of a range of group and individual behaviours. In broad terms, a public nuisance is behaviour which inflicts damage, injury or inconvenience on all members of a class who come within the sphere or neighbourhood of its operation. A person may bring an action in their own name in respect of a public nuisance when they have suffered some particular, foreseeable and substantial damage over and above what has been sustained by the public at large, or when the interference with the public right involves a violation of some private right of the claimant. A local authority may also institute civil proceedings in public nuisance in its own name pursuant to section 222 Local Government Act 1972: see *Nottingham City Council v Zain* [2002] 1 WLR 607.
14. I was persuaded, as Thornton J was, that the activities alleged in the Claim and the supporting evidence relied on for the purposes of the application for interim relief gave rise to a triable issue as to whether they amounted to the tort of public nuisance, whether towards other users of the park or towards residents living adjacent to London Fields. Whether all or any of the activities alleged do amount to a public nuisance is very much capable of dispute, and it will be for the Council to prove its case in this regard at trial particularly bearing in mind the potential arguments to the contrary, including that the interference with the enjoyment and rights of others is not sufficiently serious or persistent to amount to a public nuisance and/or that the prohibition on certain of the activities which Council seeks would infringe the rights to freedom of assembly and expression of those restrained. Obviously, it is not for me to determine these issues at this stage and I have not done so.

The issues in relation to the application to extend the Thornton Order

15. At the outset of the hearing on 9 July 2020 I identified four main headings which, from my reading of the papers, appeared to need to be considered and which reflected potential concerns on my part about the proposed continuation of the Thornton Order. These were:
 - a. The parties: who were the Defendants and who should be subject to any order which I made?
 - b. What should anyone who was subject to any order be prohibited from doing?
 - c. Should there be a power of arrest attached to any part of the injunction and, if so, to breach of which prohibitions?
 - d. How long should the order last for, and what directions for trial should there be?
16. I then explained my provisional concerns under each heading so that they could be fairly addressed in argument. Ms Bhogal agreed that in the light of these concerns, it would be appropriate to deal with the issues under each of these headings in turn, although there was a

degree of overlap between them. As will be seen below, in the light of my rulings it was also necessary to revisit the question of service.

17. In this judgment, I will provide a short summary of what was decided in relation to these issues and why, so as briefly to explain my reasoning to the public and to any court which may consider this case in the future. A number of the issues will no doubt be considered in greater detail at the trial of the Claim but, in the interim, I would ask the Council to post a link to this judgment on its Facebook page, Twitter feed and website so that anyone who seeks access to the documents in the case is able to read it.

The decision of the Court of Appeal in the *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303

18. In the *Canada Goose* case the Court of Appeal gave definitive guidance on the question how the courts should address claims brought against defendants who cannot be named by the claimant at the time when proceedings are issued and/or when interim or final injunctive relief is sought in the context of such proceedings. The issues arose in the context of attempts to restrain animal rights protesters who gathered at the Canada Goose store in Regent St London, and there were therefore some differences between the substantive legal issues in that case and the issues in the present case, but the procedural points which the Court of Appeal made were generally applicable to claims and applications against “persons unknown”. These included emphasising that:

- a. The fundamental starting point is that the claim remains a private law claim in which it is alleged that the defendants have committed a tort or torts. It follows from this that there are certain basic principles of private law litigation which require to be adhered to, albeit in adapted form to take account of the fact that the defendants are not named individuals. The inherent limitations of private law litigation also mean that such claims are potentially a blunt instrument when deployed to address issues which are normally the subject matter of public law or criminal proceedings.
 - b. Service of the claim form, of any application for interim relief and of any court order on the defendants to the claim is therefore as important as in any other legal proceedings. Service has to be affected in accordance with the Civil Procedure Rules 1998 so that, as far as possible, any given person will know whether or not they are subject to the jurisdiction of the court as a result of the proceedings.
 - c. Although it is permissible to identify a defendant by defining them rather than naming them, where this is not possible, and although it is also permissible to define the class of defendants in a way which means that those who join in the tortious or prohibited activities after the commencement of the proceedings (referred to by the Court as “Newcomers”) are caught, it is not permissible simply to sue “an unknown defendant” or to have a final order which applies to Newcomers. Any definition of groups of defendants therefore needs to ensure that it is clear whether a given person is or is not accused of the tortious conduct alleged and is or is not claimed against.
19. At paragraph 82 the Court of Appeal then gave the following guidance as to the principles applicable to applications for interim relief in the context of this type of proceedings:

“(1) The “persons unknown” defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The “persons unknown” defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary

by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".

(2) The "persons unknown" must be defined in the originating process by reference to their conduct which is alleged to be unlawful.

(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief.

(4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as "persons unknown", must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction.... "

Who should be subject to any order which I made?

20. The first concern which I raised with Ms Bhogal was that the class of defendants to the Claim ("the Defendants") was narrower than the class of people who were subject to the Thornton Order and whom the Council proposed should be subject to the extended Order. Thus, in the Claim Form and Particulars of Claim the Defendants were defined as follows:

“PERSONS UNKNOWN GATHERING IN LONDON FIELDS, HACKNEY (THE ‘PRESCRIBED AREA’) FOR THE PURPOSES OF ORGANISING, ATTENDING OR PARTICIPATING IN GATHERINGS WHICH MAY INVOLVE THE PLAYING OF AMPLIFIED MUSIC (1)

PERSONS UNKNOWN GATHERING IN LONDON FIELDS, HACKNEY (THE ‘PRESCRIBED AREA’) AND DEPOSITING WASTE OR OTHER ITEMS ON THE LAND SUCH AS TO CAUSE A NUISANCE OR ANNOYANCE (2)

PERSONS UNKNOWN GATHERING IN LONDON FIELDS, HACKNEY (THE ‘PRESCRIBED AREA’) AND CAUSING DAMAGE TO THE AREA (3)”

21. In other words, the allegation of public nuisance was made against people “gathering” in London Fields for the purposes of musical events, people who gather and deposit waste etc and people who gather and cause damage to the area. This is a subset of the people who were subject to the Thornton Order and would be subject to the Council’s proposed order, who were defined as follows:

“PERSONS UNKNOWN ENTERING LONDON FIELDS, HACKNEY (THE
‘PRESCRIBED AREA’) AS SHOWN BY THE SHADED GREEN AREA IN THE MAP
ATTACHED TO THIS ORDER”

22. In other words, anyone who happened to be in London Fields at any given time was subject to the Thornton Order. Although this approach was apparently taken in the interests of achieving absolute clarity as to the application of the Order its very significant disadvantage, it seemed to me, was that the Council was seeking an order which would be imposed on users of London Fields who are not Defendants and never will be. It may be permissible in certain urgent cases to obtain interim relief before proceedings are issued, and therefore before a person is formally a defendant, and there are other specific situations in which orders may be made against non-parties (e.g. orders for disclosure against third parties). But I could not see any basis on which this could be done in the circumstances of the present case, where the Council is not accusing, and could not accuse, all persons using London Fields of committing the tort of public nuisance. Nor does it have any intention of bringing a claim against them on this basis.
23. As is well known, the type of injunction which the Council seeks is one which applies on an interim basis pending a trial of the dispute between the parties to the dispute. Applying *American Cyanamid* principles, the court decides whether it should make orders which preserve the status quo in some or all respects so that justice can be done between the parties at trial. It is inherent in this that the person or persons who are subject to the interim order are parties to the claim. The class of persons who are subject to the interim order may be a subset of the total group of defendants to the claim but not the other way round. In the present case I could not see how the proposed Order could apply to persons who are not, and are not intended to be, parties, still less to people who are unnamed and who may become subject to the Order simply by dint of visiting London Fields or merely walking across it to get from A to B.
24. Ms Bhogal ultimately accepted this and, to be fair to her, the draft order for the original application to Thornton J for interim relief did, indeed, limit the application of the proposed injunction to the Defendants as they were then defined.
25. My second concern in relation to the parties was that there were people against whom the Council apparently did wish to bring a claim and on whom it did want the proposed Order to “bite” but who did not fall within the then current three classes of Defendant. As I have noted, the Defendants had to be people who “gathered” in London Fields for a specified purpose or who “gathered” and who did something which was said to be a public nuisance. It was not clear to me how this would work in relation to a person who, for example, left a gathering to defecate in the bushes and I did not see how this would apply at all to such a person who had not been part of any gathering at any stage, although I understood that the Council would still contend that they committed a public nuisance. Similar points could be made in relation to any other instances of the behaviour which the Council sought to prevent but which were committed by an individual who denied that they were part of a “gathering”.
26. Ms Bhogal confirmed that in the light of these points she wished to give further consideration to the definitions of the Defendants in the Claim Form and Particulars of Claim. Arrangements were therefore made for a further hearing on 10 July 2020 at which applications could be made if appropriate.

What should those who are subject to any order be prohibited from doing?

27. The main issue under this heading was in relation to the proposed ban on alcohol. There were also certain subsidiary issues in relation to behaviours which were not prohibited by the proposed Order but which appeared to be alleged to be causing a public nuisance. I dealt with this second category of issues at the hearing on Friday 10 July 2020.

28. In relation to alcohol, the proposed Order prohibited:

“(i) consuming anything which a Police Officer or Authorised Person reasonably believes to be alcohol

“(ii) failing to comply with a request made by a Police Officer or Authorised Person to surrender anything which is reasonably believed to be alcohol”

29. An “Authorised Person” was defined as “an employee, agent or contractor of the Council”.

30. It will be seen that any consumption of alcohol was intended to be caught, regardless of whether it accompanied any form of anti-social behaviour. So, parents of a family which decided to spend a Sunday afternoon away from their cramped Council flat, having a picnic in London Fields with their children, could not have a glass of beer without being in contempt of court for breaching the proposed Order and liable to arrest without warrant. To make matters worse, even if they decided to drink lemonade they would be at risk of the same fate if a police officer or Council employee or contractor had reasonable grounds to suspect that there was vodka in it. Meanwhile, if a group of friends went to the “Pub on the Park” or the “Cat and Mutton”, which are just outside the protected area, drank to their hearts content and then spent the afternoon in the park, they could be as drunk as they wished provided they did not commit any of the other acts prohibited by the Order. Similarly, under the proposed order it would be perfectly permissible for any person to step out of the protected area in relation to London Fields whenever they wished to drink as much alcohol as they wished, and then step back into the area, as often as they wished.

31. I declined to make such an order for the following reasons amongst others:

- a. The classes of Defendant named on the Claim Form and in the Particulars of Claim did not include individuals or even “gatherings” of individuals who were doing nothing more than drinking alcohol or appearing to drink alcohol. Even individuals who were part of a “gathering” would only be Defendants if they had gathered for the purpose of playing loud music etc, or had gathered and deposited waste in the park or damaged the area, and in this event, they would be Defendants whether or not they drank alcohol as well. As noted above, I could not see any basis for making an interim injunction against individuals or even participants in “gatherings” who were not, and were not intended to be, parties to the proceedings.
- b. Even if the Claim were brought against individuals or groups of individuals who were drinking alcohol I did not accept that drinking alcohol, still less drinking liquid which a police officer or Council employee or contractor reasonably believed to be alcohol, could even arguably be a public nuisance in itself. Since there would be no triable issue that such a person had committed a tort, the application for interim relief would fail the first requirement of *American Cyanamid*. Although it was argued that I could take this step on the basis of the fifth *Canada Goose* principle cited at paragraph 19 above – that the prohibition “*may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights*” – I did not accept that this principle applied to a person who was not alleged to be a tortfeasor at all: it is one thing to prohibit a person who has, say, been harassing or assaulting another person

from being within 250 yards of her address (*Burris v Azadani* [1995] 1 WLR 1372); but it is quite another to ban an entirely law abiding person from doing things which are lawful.

- c. Even if I nevertheless had a discretion to make the proposed order, I would not have made it. Of particular importance in this regard is the fact that, I was told, in 2010 a Drinking in Public Places Order (“DPPO”) was made in relation to London Fields. This is now designated a Public Spaces Protection Order (“PSPO”) pursuant to section 75 Anti-Social Behaviour, Crime and Policing Act 2014. Although I was not shown this Order, I was told that it prohibits the consumption of alcohol and anti-social behaviour in London Fields. Accordingly, by virtue of section 63 of the 2014 Act, a person who is drinking alcohol on London Fields, or what is reasonably believed to be alcohol, and is required by a constable or an authorised person to stop would commit an offence if, without reasonable excuse, they failed to desist. This seemed to me to provide adequate protection for park users and other members of the public.
32. A further concern which I had was in relation to the Council’s argument that I should grant the relief sought, and order that the injunction last for a year, because the DPPO/PSPO would expire in October this year and the process of putting in place a further PSPO would take some time. It would take some time because section 59 of the 2014 Act enacts specific conditions which require to be satisfied before a PSPO can be made and because section 72 requires publicity for any proposal to make such an order, consideration of particular matters including the rights of park users to freedom of assembly and of expression under Articles 10 and 11 of the European Convention on Human Rights, and consultation with local stakeholders. It seemed to me that as a matter of discretion this told against the grant of interim relief by the Court, rather than in favour: it would be inappropriate for the Court to grant injunctive relief which short circuited the democratic procedures required to ban alcohol in London Fields which are mandated by Parliament, unless there were good reason to so. This is even more so the case given that the Council has not actually taken any of the steps required by section 72 of the 2014 Act despite the fact that it has been aware of the expiry date of the existing PSPO throughout.

The hearing(s) before me on Friday 10 July 2020

Summary

33. In the light of my rulings on the points referred to above, I adjourned the hearing of the Council’s application to 10 am on Friday 10 July 2020 so that it could consider its position. There were then three hearings by telephone in which I made rulings on various issues and gave directions as set out in my Order. Further written comments were received from Mr Tearle overnight, which I read, but he and Mr Murphy were unable to attend on 10 July 2020, although they did not object to the hearing going ahead.

Addition and substitution of parties

34. Overnight, the Council applied to amend the Claim Form so as to define the Defendants in a different way. I gave permission to amend pursuant to CPR 19.2 and 19.4 so that the Defendants to the Claim are now as set out in the title to this judgment. The same classes of person are subject to the interim Order which I made. The categories are at least clear, although I anticipate that there will be issues at trial as to whether all or any of the actions described in the definitions involve, on the evidence, the commission of the tort of public nuisance when they are carried out by an individual or at all.

Service

35. Ms Bhogal applied for me to dispense with service of the amended Claim Form pursuant to CPR 6.16 but I declined to do so. The changes to the definitions of the Defendants were very significant, both in form and substance, as they potentially caught a substantial number of people who had not previously been Defendants. I did not accept that there were exceptional circumstances which would warrant dispensing with service. On the contrary, it seemed to me to be highly desirable that all reasonable steps should be taken to ensure, as far as possible, that the alteration in the class of persons against whom the Claim is made is brought to the attention of those persons.
36. I accepted, however, that there was good reason to authorise service by methods and at places which were not otherwise permitted by CPR Part 6 given that the Claim is against persons who cannot currently be identified and, indeed, against future users of London Fields. Pursuant to CPR 6.15(1) I therefore authorised service in the manner which is set out in my Order. The steps which the Council is required to take are similar to those which were required by the Thornton Order but they have been enhanced in that they require the Council to take additional steps to bring the Claim and the Order to the attention of interested parties, and particularly the users of London Fields, by electronic and other means.

Amendments to what is prohibited by the Order

37. The terms of my Order are largely self-explanatory but three points should be mentioned.
- a. First, I was asked to prohibit the consumption of alcohol in conjunction with one of the other prohibited activities. Under this proposal, which I had indicated on 9 July 2020 that I was prepared to consider, a person would be prohibited from drinking alcohol or what was reasonably believed to be alcohol combined with one of the prohibited activities which arguably did amount to a public nuisance e.g. drinking alcohol and playing loud music or drinking alcohol and lighting a fire. Ultimately, I declined to make such an order for three main reasons:
- i. I considered that the PSPO provided users of London Fields with sufficient protection for the reasons I have given above at paragraphs 31(c) and 32;
 - ii. I was concerned about a lack of clarity as to when a person would be regarded as drinking alcohol in conjunction with one of the other prohibited activities: for example, to be in breach of the proposed Order would they have to be drinking at the same time as playing loud music, or would it be sufficient that they had or had had a drink at some point that day or afternoon, or within an hour of the playing the loud music, and so on?
 - iii. I also considered that the ban on alcohol was strictly superfluous given that a Defendant would only be in breach of the proposed Order if they also did an act which arguably amounted to a public nuisance and would not be in breach if they did not. Although I might have granted such an order on the basis that it was proportionate to protect the interests of the public by analogy with the approach in *Burris* (supra) and *Hubbard v Pitt* [1976] QB 142 I did not consider that it was proportionate to do so in the present case for the reasons which I have given.
- b. Second, with some misgivings, I allowed a prohibition on:
- “Threatening or using violence, or engaging in abusive behaviour towards any member of the public or any employee, agent or contractor of the Council who question or challenge behaviour [which is prohibited by the first part of the Order]”*

- c. This seemed to me to address a specific aspect of the concerns about what is said to have been occurring, namely that there has been a threatening or abusive reaction when, for example, a person has been asked not to urinate in front of flats and houses next to the park. My misgivings were about whether this amounted to a usurpation of the role of the criminal law – see the principles discussed in *Birmingham City Council v Shafi* [2009] 3 All ER 127 at paragraphs 26 to 36, to which I drew Ms Bhogal’s attention – but I was persuaded to underpin the primary prohibitions in this way on an interim basis.
- d. Third, some changes to the drafting of the existing prohibitions were made so as to minimise the scope for uncertainty or debate as to what was and was not allowed.

The power of arrest

38. As will be apparent from the terms of my Order, I did not accept that a power of arrest should be attached to all breaches of the interim injunction. Section 27 Police and Justice Act 2006 provides, so far as material, as follows:

“(2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.

(3) This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either–

(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or

(b) there is a significant risk of harm to the person mentioned in that subsection.”

39. I was satisfied that section 27(3)(b) was, just, satisfied in the case of paragraphs 1(i)-(iii) of the injunction given that loud music is capable of causing stress and sleep disturbance to those who live near the park and urination and defecation in the park pose an obvious health hazard given that the park is used by a large number of people, including children. I considered that section 27(3)(a) and (b) were satisfied in the case of paragraph 2. Again, with some misgivings given that the injunction applies to prohibited activities by individuals, whether or not in conjunction with others, I decided that a power of arrest should be attached in order to make the injunction more effective given the general nature of the conduct alleged and the evidence of the part which drink and drugs have played.

Duration and directions for trial

40. I was willing to grant the interim injunction which is set out in my Order but only on the basis that there would be a trial and that this would take place in the near future. There would also be a right to apply to discharge the Order in the intervening period. Interim injunctions are not an end in themselves and should not be granted as a way of solving a problem without finally resolving the issues in a Claim. I therefore was not prepared to grant an interim injunction for a year, as requested, and I listed the trial and gave directions as appears from my Order. These directions are very much a default position, so as to ensure that the basic steps in the preparation for trial have been established. Should any Defendant, or indeed the Council, wish to seek more detailed or different directions, provision has been made for an agreement or an application to the court.

Conclusion

41. I have considerable doubts about the legal merits of the Council's underlying claim as currently framed and some concerns about the appropriateness of the Council using a private law claim for injunctive relief, combined with a power of arrest, to add to the relevant statutory powers which it and the police already have. However, it is not appropriate to resolve those doubts in the context of an application for interim relief. Given that there are clearly very real issues in relation to the behaviour of some users of London Fields I have granted a limited Order for a short period pending a trial at which the issues will no doubt be considered in depth.

ANNEX 1

[ORDER OF 10 JULY 2020]

CLAIM NO. OB-2020-002289

IN THE HIGH COURT

QUEEN'S BENCH DIVISION

BEFORE THE HONOURABLE MR. JUSTICE LINDEN

IN THE MATTER OF S.222 OF THE LOCAL GOVERNMENT ACT

1972 RE: LONDON FIELDS, HACKNEY, E8

B E T W E E N:-

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF
HACKNEY**

Claimant

-and-

PERSONS UNKNOWN IN LONDON FIELDS, HACKNEY (THE 'PRESCRIBED AREA') WHO ARE:

- (1) ORGANISING, ATTENDING OR PARTICIPATING IN AN UNLICENCED MUSIC EVENT AND/OR RAVE(S); AND/OR**
- (2) PLAYING LOUD MUSIC; AND/OR**
- (3) URINATING AND/OR DEFECATING OTHER THAN WHEN MAKING USE OF TOILET FACILITIES DESIGNED FOR THIS PURPOSE; AND/OR**
- (4) LIGHTING FIRES, FIREWORKS, STOVES, BARBEQUES AND/OR NAKED FLAMES (WITH THE EXCEPTION OF A CIGARETTE LIGHTER), INCLUDING ON ANY EQUIPMENT OR ENTERTAINMENT DEVICE; AND/OR**
- (5) CONSUMING OR SELLING OF NITROUS OXIDE (LAUGHING GAS) SAVE WHEN USED FOR A VALID AND DEMONSTRABLE MEDICINAL PURPOSE;**

AND/OR

- (6) UPROOTING, DESTROYING OR DAMAGING ANY TREE, SHRUB OR PLANT; AND/OR**
- (7) BRINGING VEHICLES, INCLUDING ANY ENGINE OR GENERATOR, ONTO ANY PART OF THE PRESCRIBED AREA, WITH THE EXCEPTION OF VEHICLES/ENGINES/GENERATORS BELONGING TO THE EMERGENCY SERVICES OR EMPLOYEES, AGENTS OR CONTRACTORS OF THE COUNCIL; AND/OR**
- (8) LEAVING LITTER IN THE PRESCRIBED AREA; AND/OR**
- (9) THREATENING OR USING VIOLENCE, OR ENGAGING IN ABUSIVE BEHAVIOUR, TOWARDS MEMBERS OF THE PUBLIC OR EMPLOYEES OR AGENTS OR CONTRACTORS OF THE CLAIMANT WHO QUESTION OR CHALLENGE THEIR ENGAGEMENT IN ANY OF THE BEHAVIOUR DESCRIBED ABOVE.**

Defendants

INTERIM INJUNCTION ORDER

If you do not comply with this order you may be held in contempt of court and imprisoned or fined, or your assets may be seized.

If you do not understand anything in this order, you should go to a Solicitor, Legal Advice Centre or Citizens Advice Bureau.

Any person becoming aware of this Order can apply to the court for this Order to be varied or discharged but you must obey this Order unless it is varied or discharged by the Court.

On 10 July 2020, before Linden J, sitting as a Judge of the High Court at the Royal Courts of Justice, London, Strand, Holborn, WC2A 2LL.

UPON hearing Counsel for the Claimants by telephone and Mr Murphy as a litigant in person and reading a two-page document produced by Mr Murphy and emails from Mr Tearle dated 8.7.20 and 10.7.20;

AND UPON considering the Claimant's Part 8 Claim Form, N16A application for an injunction, N244 Application Notice, the draft interim injunction order, the draft Power of Arrest, the witness statements of Patrizia Valpondi both dated 2.7.20, the two skeleton arguments filed by the Claimant in advance of the last hearing (both dated 2.7.20), a further skeleton argument filed on 8.7.20, the witness statements of Patrizia Valpondi dated 8.7.20, David Tuitt dated 8.7.20 and Gavin Avey-Hebditch dated 8.7.20, a letter from the Association of Broadway Traders ('ABT'), a two-page document produced by Mr Murphy, emails from Mr Tearle dated 8.7.20 and 10.7.20, an N244 Application Notice from the Claimant dated 9.7.20 and which seeks permission to amend the Claim Form and Particulars of Claim and a revised draft order;

AND UPON the Court being satisfied that it is appropriate to make an injunction order pursuant to s.222 of the Local Government Act 1972 and the Court having exercised

its discretion to grant injunctive relief pursuant to section 37(1) of the Senior Courts Act 1981;

AND UPON the Court finding that it is just and convenient to grant injunctive relief in all of the circumstances;

AND UPON the Court being satisfied that the conduct which is prohibited by this Order consists of or includes the use or threatened use of violence against other persons and/or there is a significant risk of harm to other persons from the Defendants within the meaning of s.27 of the Police and Justice Act 2006, a power of arrest is attached to this order whereby, any constable may (under section 27 of the Police and Justice Act 2006) arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of the provisions specifically identified below or otherwise in contempt in relation to such provision;

AND UPON the Court being satisfied, pursuant to CPR 6.15, that there is good reason to authorise service by a method or at a place not otherwise permitted by CPR Part 6, such that service by posting of a Public Notice (which includes an email address from which the documents listed below can be requested, and a link by which the amended statements of case and other documents in the case may be accessed) in various locations in and around the Prescribed Area, and the posting of that Public Notice on the Claimant's website and links to relevant documents on its Facebook and Twitter accounts, are adequate steps to constitute service of the Claim Form by alternative means pursuant to CPR 6.15(2);

AND UPON the Court being satisfied that it is appropriate to dispense with personal service of this interim injunction order and power of arrest in view of the alternative methods of effecting service set out below;

AND UPON the Court being informed that Thornton J had approved the amended description of the Defendants as set out in the header of her Order of 3.7.20;

AND UPON the Court considering the Claimant's N244 Application Notice dated 9 July 2020 and the accompanying revised draft order which seeks permission to amend the descriptions of the Defendants to this Claim;

AND UPON the Claimant undertaking to file an amended Form N208 Claim Form and amended Particulars of Claim showing the amended description of the Defendants to this claim as reflected in the header of this Order;

IT IS ORDERED THAT:

The Defendants, unless the Council has given prior written permission, are forbidden, whether by themselves or by instructing or encouraging others, from:

1. Organising or participating in any of the following activities in the Prescribed Area shown as the area shaded in green on the attached map marked "Schedule 1":
 - i. unlicensed music events and/or Raves;
 - ii. the playing of loud music, whether or not amplified, through the use of equipment which includes but is not limited to musical instruments, free-standing speakers, sound systems, loudspeakers, microphones, DJ sets or generators;
 - iii. urinating or defecating other than when making use of toilet facilities designed for such use;
 - iv. the lighting of fires, fireworks, stoves, barbeques and/or naked flames (with the exception of a cigarette lighter), including on any equipment or entertainment device
 - v. the consumption or sale of nitrous oxide (laughing gas) save when used for a valid and demonstrable medicinal purpose
 - vi. uprooting, destroying or damaging any tree, shrub or plant
 - vii. bringing vehicles, including any engine or generator, onto any part of the Prescribed Area, with the exception of vehicles/engines/generators belonging to the emergency services or employees, agents or contractors of the Council;
 - viii. leaving litter in the Prescribed Area.

2. Threatening or using violence, or engaging in abusive behaviour, towards any member of the public or any employee, agent or contractor of the Council who questions or challenges behaviour by them which is referred to in paragraph 1 above.

3. A power of arrest shall be attached to paragraphs 1(i) (ii) (iii) and 2 of this Order.
4. This interim injunction order and power of arrest shall last until 4pm on Friday 16 October 2020 unless extended, varied or discharged by further order of the Court.
5. Pursuant to CPR 6.15(2), service of the Amended Claim Form and Amended Particulars of Claim is deemed to have been effected by the following alternative means, namely the placing of the Public Notice found in Schedule 2 of this Order (page 10):
 - a. at various locations in and around the Prescribed Area as identified in exhibit GMAH02
 - b. on the Councils' Facebook and Twitter accounts to include a link from which the documentation can be accessed
 - c. on the Council's website
6. Personal service of this injunction is dispensed with pursuant to CPR 81.8. Service of this interim injunction order and accompanying power of arrest shall be effected by:
 - a. placing a shortened version this interim injunction order, map and power of arrest in various locations in and around the Prescribed Area as identified in exhibit GMAH02
 - b. posting copies of a shortened version of this interim injunction order and power of arrest, and a link from which the documentation can be accessed on the Claimant's Facebook and Twitter
 - d. by posting full copies of this interim injunction order and power of arrest on the Claimant's website
 - e. the shortened version of the injunction order to be posted in accordance with (a) and (b) above shall include the map at Schedule 1 of this Order.
7. The Notice of Injunction to be used can be found at found at Schedule 3 of this order (pages 11-13).

8. Any committal application issued in respect of a breach of any injunction order made by the court, may be supported by witness statements in place of affidavits.
9. The final determination of the Claim (“the Hearing”) will take place before a High Court Judge in the week commencing 12 October 2020 with a time estimate of two days. Dates of availability should be submitted by 24 July 2020 with a view to fixing the date for the Hearing.
10. Any Person Unknown who wishes to participate in these proceedings should inform the Claimant’s solicitor by email [legalservices@hackney.gov.uk] as soon as reasonably practicable. They should also inform the Court in writing.
11. Subject to any directions to the contrary which are agreed by the parties or made by the Court on application in writing by the Claimant or any Person Unknown:
 - a. Upon a Person Unknown notifying the Claimant’s solicitor pursuant to paragraph 10 above, they will be provided with copies of the amended statements of case, the application notices which have been issued in the proceedings and the documentary evidence in support of those applications as well as any witness statements or other documentary evidence on which the Claimant relies or which is disclosable pursuant to CPR 31.6;
 - b. As soon as reasonably practicable and in any event not less than 14 days before the final determination of the Claim any Person Unknown who wishes to resist the Claim will:
 - i. notify the Claimant’s solicitor in writing as to whether they resist the Claim in whole or in part and, if so, give details of the basis on which they do so; and
 - ii. provide the Claimant’s solicitor with copies of any witness statement, documentary or other evidence, and any written arguments on which they rely.
12. Not less than 7 days before the Hearing the Claimant will file with the Court and serve on any Person Unknown who intends to participate in the Hearing:
 - a. The evidence of service of this Order on which the Claimant relies;

- b. Any additional evidence on which the Claimant relies for the purposes of the Hearing;
 - c. A skeleton argument and draft of the final Order which it seeks.
13. Any person becoming aware of this Order can apply to the Court for this Order to be varied or discharged.
14. The Claimant has permission to amend the description of the Defendants to this Claim to the description found in the header of this Order. Service of the Claim Form, Particulars of Claim and associated documents shall be effected in accordance with paragraph 5 of this Order.
15. Liberty to apply.

Mr Justice Linden

10 July 2020

DEFINITIONS for the purposes of this interim injunction order: ‘Authorised

Person’ means an employee, agent or contractor of the Council.

‘Music’ includes sounds wholly or predominantly characterised by the emission of a succession of repetitive beats.

‘Rave or raves’ means a gathering of persons on land in the open air (whether or not trespassers) at which amplified music is played (with or without intermissions) and is by reason of its loudness, duration and the time at which is played, likely to cause serious distress to the inhabitants of the locality, and for this purpose such a gathering continues during intermissions in the music.

‘Prescribed Area’ means the parts of the London Borough of Hackney that are shaded in green and shown on the attached map.

‘Vehicle’ includes the operation of any engine or generator, for the avoidance of doubt bicycles are not vehicles for the purposes of this Order.

CONTACT DETAILS OF THE CLAIMANT

Due to the current restrictions as a result of Covid-19 if you need to contact the Council, you are strongly advised to do so by email.

Name: Josephine Sterakides, Senior Lawyer, Hackney Legal Services

Email: legalservices@hackney.gov.uk

Address: London Borough of Hackney

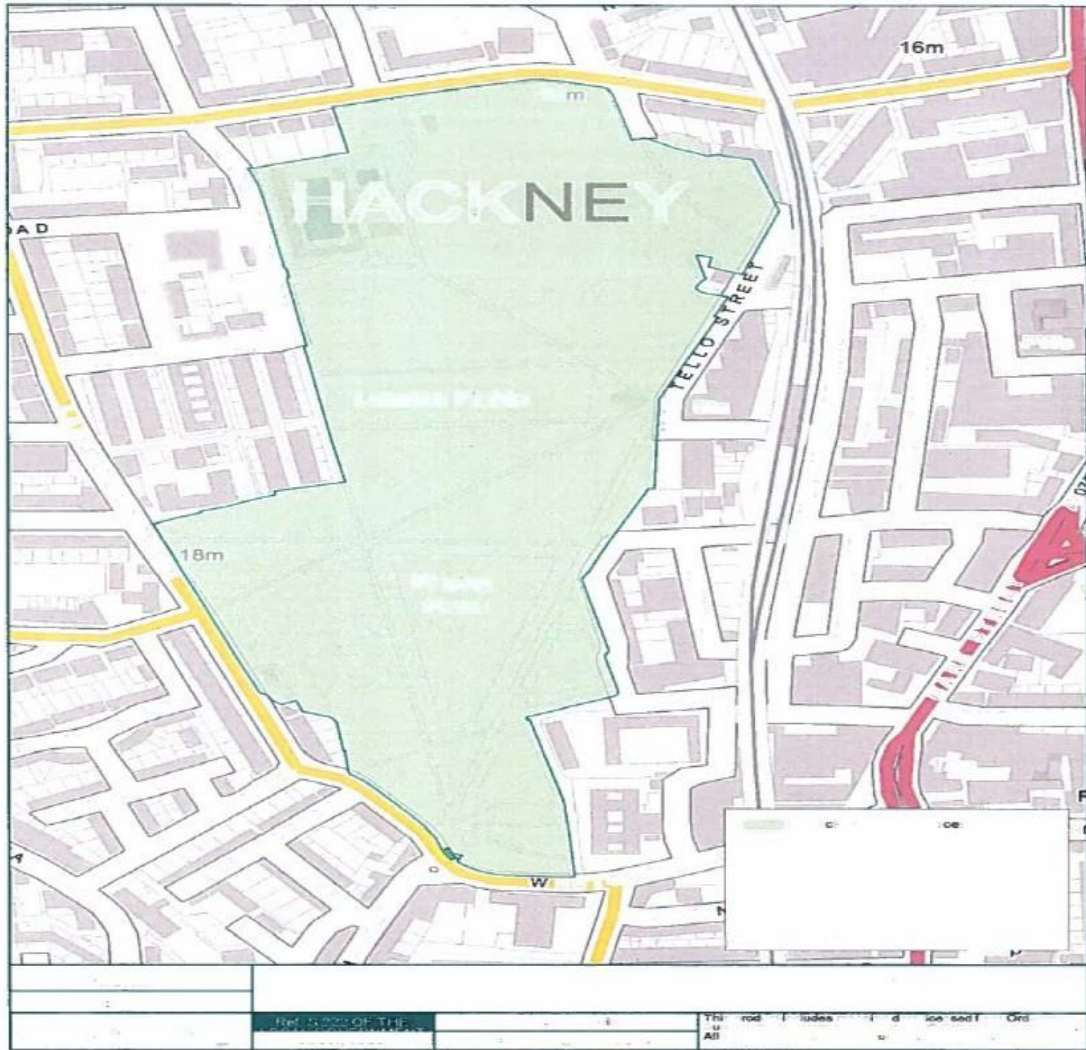
Legal Services

London Borough of Hackney

3rd Floor, 1 Reading Lane

London, E8 1GQ

Schedule 1 - Map of the Prescribed Area – green shaded area



Schedule 2 – Public Notice to be posted in accordance with paragraph 5 of this order

PUBLIC NOTICE OF PROCEEDINGS

TAKE NOTICE that the London Borough of Hackney has issued proceedings to seek an injunction order and power of arrest to prohibit certain activities from taking place on London Fields, Hackney (the ‘Prescribed Area’). The Claim Number is: QB-2020-002289.

You can obtain copies of the Amended Claim Form, Amended Particulars of Claim and associated documents by emailing legalservices@hackney.gov.uk

You can also view copies of the Amended Claim Form and Particulars of Claim on the Council’s website at <https://hackney.gov.uk/crime-and-safety>

The Defendants to the proceedings are PERSONS UNKNOWN IN LONDON FIELDS, HACKNEY (THE ‘PRESCRIBED AREA’) WHO ARE:

- (1) ORGANISING, ATTENDING OR PARTICIPATING IN AN UNLICENCED MUSIC EVENT AND/OR RAVE(S); AND/OR
- (2) PLAYING LOUD MUSIC; AND/OR
- (3) URINATING AND/OR DEFECATING OTHER THAN WHEN MAKING USE OF TOILET FACILITIES DESIGNED FOR THIS PURPOSE; AND/OR
- (4) LIGHTING FIRES, FIREWORKS, STOVES, BARBEQUES AND/OR NAKED FLAMES (WITH THE EXCEPTION OF A CIGARETTE LIGHTER), INCLUDING ON ANY EQUIPMENT OR ENTERTAINMENT DEVICE; AND/OR
- (5) CONSUMING OR SELLING NITROUS OXIDE (LAUGHING GAS) SAVE WHEN USED FOR A VALID AND DEMONSTRABLE MEDICINAL PURPOSE; AND/OR
- (6) UPROOTING, DESTROYING OR DAMAGING ANY TREE, SHRUB OR PLANT; AND/OR
- (7) BRINGING VEHICLES, INCLUDING ANY ENGINE OR GENERATOR, ONTO ANY PART OF THE PRESCRIBED AREA, WITH THE EXCEPTION OF VEHICLES/ENGINES/GENERATORS BELONGING TO THE EMERGENCY SERVICES OR EMPLOYEES, AGENTS OR CONTRACTORS OF THE COUNCIL; AND/OR
- (8) LEAVING LITTER IN THE PRESCRIBED AREA; AND/OR
- (9) THREATENING OR USING VIOLENCE, OR ENGAGING IN ABUSIVE BEHAVIOUR TOWARDS MEMBERS OF THE PUBLIC OR EMPLOYEES OR AGENTS OR CONTRACTORS OF THE CLAIMANT WHO QUESTION OR CHALLENGE THEIR ENGAGEMENT IN ANY OF THE BEHAVIOUR DESCRIBED ABOVE.

Schedule 3 –Notice of Injunction to be posted in accordance with paragraph 6 of this order

NOTICE OF INJUNCTION

On 10 July 2020 the High Court made an interim injunction order with a power of arrest which prohibits the activities listed below. The Claim Number is: QB- 2020-002289.

You can see a full copy of this injunction order, map and power of arrest on the Council's website. You can also request a full copy of these documents from the email address legalservices@hackney.gov.uk

If you do not comply with this order you may be held in contempt of court and imprisoned or fined, or your assets may be seized.

If you do not understand anything in this order, you should go to a Solicitor, Legal Advice Centre or Citizens Advice Bureau.

Any person becoming aware of this Order can apply to the court for this Order to be varied or discharged but you must obey this Order unless it is varied or discharged by the Court.

The following activities have been **prohibited (this means you must not do them)**:

1. Organising or participating in any of the following activities in the Prescribed Area shown as the area shaded in green on the attached map marked "Schedule 1":
 - i. unlicensed music events and/or Raves;
 - ii. the playing of loud music, whether or not amplified, through the use of equipment which includes but is not limited to musical instruments, free-standing speakers, sound systems, loudspeakers, microphones, DJ sets or generators;
 - iii. urinating or defecating other than when making use of toilet facilities designed for such use;

- iv. the lighting of fires, fireworks, stoves, barbeques and/or naked flames (with the exception of a cigarette lighter), including on any equipment or entertainment device
 - v. the consumption or sale of nitrous oxide (laughing gas) save when used for a valid and demonstrable medicinal purpose
 - vi. uprooting, destroying or damaging any tree, shrub or plant
 - vii. bringing vehicles, including any engine or generator, onto any part of the Prescribed Area, with the exception of vehicles/engines/generators belonging to the emergency services or employees, agents or contractors of the Council;
 - viii. leaving litter in the Prescribed Area.
2. Threatening or using violence, or engaging in abusive behaviour towards any member of the public or any employee, agent or contractor of the Council who question or challenge behaviour by them which is referred to in paragraph 1 above.
 3. A power of arrest shall be attached to paragraphs 1(i) (ii) (iii) and 2 of this Order.
 4. This interim injunction order and power of arrest shall last until 4pm on Friday 16 October 2020 unless extended, varied or discharged by further order of the Court.
 5. There will be a **further hearing in the week commencing 12 October 2020**. Further details can be found in the full Injunction Order which can viewed on the Council's website or a copy of which can be requested from the email address legalservices@hackney.gov.uk
 - .
 6. If you wish to participate in the next hearing you should email your name and telephone to the email address given below.

CONTACT DETAILS OF THE CLAIMANT'S LEGAL REPRESENTATIVES

Due to the current restrictions as a result of Covid-19 if you need to contact the Council, you are strongly advised to do so by email.

Name: Josephine Sterakides, Senior Lawyer, Hackney Legal Services

Email: legalservices@hackney.gov.uk

Address: London Borough of Hackney, Legal Services, London Borough of Hackney, 3rd Floor, 1 Reading Lane, London, E8 1GQ

SCHEDULE 1: MAP OF PRESCRIBED AREA TO WHICH THIS ORDER APPLIES

(the green shaded area):

