IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
[2020] EWHC 2014 (QB)

No. QB-2020-002013

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday, 6th July 2020

Before:

MR JUSTICE FREEDMAN

B E T W E E N :

SURREY HEATH BOROUGH COUNCIL — Claimant

- and –

(1) JAMES ROBB
(2) SUZANNE ROBB
(3) THOMAS ROBB JNR
(4) KAITLYN ROBB
(5) SCARLETT ROONEY
(6) PERSONS UNKNOWN — Defendants

MS C. BOLTON (instructed by Sharpe Pritchard LLP) appeared on behalf of the Claimant.

MR A. MASTERS (instructed by Mason & Co) appeared on behalf of the Defendants.

J U D G M E N T

MR JUSTICE FREEDMAN:

1 This is a judgment arising out of a hearing which took place before the court on Wednesday 1 July 2020. This case concerns an application under s.187B(1) of the Town and Country Planning Act 1990 ("the TCPA") for injunctive relief against the defendants in respect of development of land and its use for caravans at a site known as the land lying north of Bagshot Road, Chobham, Surrey, HM Land Registry title no. Sy680017 ("the land").

2 On 12 June 2020 Murray J granted a without notice injunction to the claimant on an application pursuant to s.187B(1) of the TCPA. Following a hearing on the return day on 19 June 2020 I renewed the injunction by a judgment given orally on 22 June 2020. I thereafter gave a further written judgment on 24 June 2020 dealing with directions in relation to the adjourned return day for 1 July 2020. This judgment should be read alongside the judgment of Murray J and my earlier judgment.

3 The continuation injunction on 22 June 2020 was on the basis that there would be a hearing on 1 July 2020. The defendants had served statements through Mr James Robb and Mr Michael Levy dated 18 June 2020 to the effect that they had not had a sufficient opportunity to serve evidence and that the defendants have not yet had time to give comprehensive instructions in response to the first witness statement of Ms Greenfield, not least because that statement was not received until 17 June 2020. The defendants also adduced expert planning evidence from Mr Brian Woods, also dated 18 June 2020.

4 At the hearing on 22 June 2020 a timetable for service of evidence was fixed for further evidence from the defendants by 1 p.m. on Thursday 25 June 2020 and evidence in response of the claimant by 1 p.m. on Monday 29 June 2020. On 22 June 2020 after an oral judgment had been delivered, Mr Masters, counsel for the defendants, stated that the named defendants wished for the hearing to be held in the Royal Courts of Justice and not by video hearing. They also sought that cross-examination of Ms Greenfield take place at the hearing. On 24 June 2020 I handed down a judgment stating that the hearing would take place remotely, suggesting that the defendants could arrange to be with their lawyers by arrangements being made to attend rooms, whether at chambers, a solicitor's office or other premises hired for the purpose. The defendants served a short further statement of James Robb, the first defendant, and a supplemental report of Mr Woods on 25 June 2020. In the meantime, on the same day at 9.20 a.m. a letter had been sent by the solicitors for the claimant seeking information relating to matters such as where the defendants had been living, the land which they owned and their financial resources, including income and savings. The email sought the following information:

> "1. Where each of the Defendants (sic) been living since they vacated the Land at the Knoll, please provide any documentary evidence to demonstrate the same: including notices of eviction/directions to leave which include their names if it was alleged they were living on roadside encampments; which boroughs they have been travelling through or living in; where they were based during the lockdown; and dates at different locations if they allege they were on roadside encampments.
>
> 2. If any of your clients contend that they were evicted/directed to leave by any Councils from a roadside encampment or unauthorised encampment in the last 6 months please state by which local

authorities and which dates, with details of where the encampment was located;

3. Any real property or land owned by the Defendants with reference to which Defendant owns the property/land, or have been owned by any of the Defendants in the (sic) 3 years;

4. Any pitches or plots on caravan sites owned by any of the Defendants, or, which any of the Defendants have a tenancy or licence to occupy and their whereabouts with address details.

5. Any caravan pitches or plots any of the Defendants have occupied in the last 3 years with full details of the same.

6. The income and savings of each Defendant and their business interests and employment status both now and over the last 2 years.

7. Any tenancies or licences of any of the Defendants to occupy bricks and mortar housing which they have or have had the benefit of in the last 3 years and the reasons why that accommodation is no longer available to them.

8. Which local authority lists are the Defendants currently on for a traveller's pitch and when was their name added to the list.

9. Which schools are the children of the Defendants enrolled at, with which address given to the education authority, and on which dates were they enrolled in these schools.

10. What relatives do the Defendants have in the County of Surrey with bricks and mortar accommodation.

11. How was Mr Robb proposing to fund development of a bricks and mortar property on the Land he currently occupies.

12. Where did the static caravans currently on the site come from, when were they purchased and who delivered them, please provide receipts for purchase and delivery".

5 The claimant's response from Mr Levy was that the defendants had to concentrate on the preparation of the evidence for later that day. Mr Rose of the claimant's solicitors wrote saying that it would suffice if the information was provided separately and asked for a reply within 24 hours. Mr Levy stated that it would take a few days to collate such information as they were able to provide and this could be given when evidence was adduced at the hearing on Wednesday 1 July 2020.

The application for an adjournment

6 The defendants applied for an adjournment on short notice. The basis of the application was as follows. (1) The case is about the defendants' homes and their ability to live with their extended families in accordance with their traditional way of life in caravans and that the defendants wish to be present to hear and understand the arguments advanced on their

behalf and to be in a position to give instructions and to give evidence and be cross-examined. (2) The defendants wish their counsel to have the opportunity to cross-examine Ms Julia Greenfield on her evidence. (3) The statements served on behalf of the claimant of Jonathon Partington, the claimant's development manager, and the third statement of Julia Greenfield were "on a cursory examination" more than rebuttal statements, but new assertions and it would be impossible to undertake this prior to the hearing listed for 1 July 2020. (4) On 25 June 2020, as noted above, the defendants served a list of questions to be answered which could only be provided in oral evidence on 1 July 2020 or in writing if the hearing were adjourned. (5) The defendants live in mobile homes and there is nowhere to listen without background noise, distraction, or disturbance. Also, internet connection/mobile phone reception are poor in their rural location. (6) Enquiries made of counsel's chambers as well as other chambers did not lead to premises being available due to some being closed and social distancing and access only to their own clients. (7) The claimant's actions may be a breach of Article 8 of the European Convention of Human Rights ("ECHR") and ignore the interests of seven children on site and for this reason alone the defendants must be able to participate in these proceedings. (8) The defendants have provided undertakings which they believe to be adequate of no development until the final determination of the proceedings and not to bring further caravans onto site. (9) Thus, it is in the interests of justice for the matter to be adjourned.

7 In my judgment, these reasons were inadequate to support an application for adjournment for the following reasons, namely

(1) the desire of the defendants to hear the arguments was considered in the judgment of 24 June 2020. It was decided that they ought to be able to make arrangements to hear matters remotely, whether at a barrister's chambers or a solicitor's office or at some other offices. The failure to make arrangements for the defendants to be able to watch the proceedings has not been explained adequately. There was information in the most general terms about not being able to meet in counsel's chambers without identifying the enquiries or the answers. There was no information provided as to attempts to obtain facilities in a solicitor's office or in other offices and the inference is that these attempts were either not made or not made adequately. Whilst this might not have been straight forward in view of the current pandemic, the defendants have not shown that their failure to be able to attend remotely was unavoidable. They have had the advantage of their solicitor and counsel attending at the remote hearing on 1 July 2020 and so their interests have been protected. Their non-attendance in these circumstances was not a reason for an adjournment.

(2) It was decided by the judgment of 24 June 2020 that a remote hearing would take place on 1 July 2020 and no change of circumstances has been identified for the hearing not to take place. That judgment decided that there was not a need for cross-examination, but that such application could be renewed at the hearing. I shall expand on this below, but I reject the submission that cross-examination was required at the interim hearing.

(3) The statements of Jonathan Partington and Julia Greenfield were properly served as reply statements. Mr Partington properly replies to the two statements of Brian Woods and Julia Greenfield's third statement is a short rebuttal statement to the witness statements of James Robb. It also properly proves that despite the terms of the injunctions thus far the defendants have continued to occupy the site as a residential gypsy caravan site which appears to be uncontroversial.

(4) It was contended in the skeleton argument that there were problems about not having been given a hard copy bundle. However, an electronic and paginated bundle had been provided. The transcript of the judgment of Murray J was not made available until during

the hearing, but the critical aspect here was the transcript of the hearing itself which had been provided. The judgment was substantially the same as that of the note of his judgment.

(5) The list of questions referred to above appeared to have been about relevant subjects. It is obviously right that the questions asked at 9.20 a.m. on 25 June 2020 could not be answered in the evidence of the defendants provided later that day at 1 p.m. as further directions of 22 June 2020. However, that does not explain why the answers to many of the questions could not have been provided by 1 July 2020; that is to say, a week after the questions were asked. The failure to answer the questions is not a basis for adjourning the hearing.

(6) The inability to listen to the evidence from mobile homes is answered by the first of these numbered points. The first and fifth points are aspects of the same point.

(7) Likewise, the sixth point is part of the same point and is dealt with in the first of these numbered points.

(8) The defendants were able to provide information relating to the children. The application for an adjournment seems to have in mind that the information provided orally at the hearing is inappropriate. There was no reason not to provide the information as ordered by written statements and any paucity in the information provided was not due to want of opportunity.

(9) The undertakings offered were not sufficient for the claimant and so a hearing was required in order to determine whether they were insufficient and/or what injunctions should be made until trial.

Cross-examination

8 The submissions above in support of an adjournment were founded in part on the alleged need to have cross-examination at an interim hearing. Mr Masters submitted that an interim hearing with cross-examination was frequently ordered and particularly in relation to such injunctions relating to travellers. He said that it was necessary to have a hearing before considering what he described as the eviction of the defendants from their homes. He said that there had been cases in which he and Ms Bolton had appeared against each other where this had happened. It is right that this is not the first case where Mr Masters has appeared for travellers and Ms Bolton has appeared for a local authority. Ms Bolton said that cross-examination had not been ordered at an interim hearing. That did not occur in the case of *Surrey Heath Borough Council v Shir & Ors* [2019] EWHC 3251 (QB) where after a fully contested interim hearing with the same representation an order in similar form to the current one which had been ordered without notice in that case was continued without any cross-examination being ordered.

9 In my judgment, it is rare for cross-examination to be ordered on a hearing for an interim injunction. When Mr Masters was giving instances of cross-examination being ordered, this seemed to be in the context not of applications for interim injunctions but hearings of preliminary issues. It is particularly to be noted that the desire to cross-examine was not confined to some particular narrow aspect of the case but was general. No circumstances have been shown for cross-examination at an interim stage and especially so when the cross-examination was not limited to a discrete subject. In any event, if there were to be cross-examination of Ms Greenfield and oral evidence from the defendants as suggested, then justice would require the defendants too to be cross-examined. The cross-examination would not be complete without some disclosure or provision of information in advance.

This has a particular resonance in this case, not least because of the unanswered questions referred to above.

Speedy trial

10 In my judgment, the time for cross-examination is trial. However, the thrust of the submissions of the defendants is that the full circumstances of this case require to be examined at the earliest opportunity and, on their case, before the defendants were ordered not to use the site for residential purposes. On this basis of the need for an early evaluation of the merits of the case, the court canvased with the parties the possibility of having a speedy trial. The parties have agreed in principle that a speedy trial should take place in the week commencing 24 August 2020 and to provide a draft direction to which the court will return at the conclusion of this judgment. This will give the parties the opportunity to prepare for trial. Both parties through their counsel are committed to a speedy trial. The case will be case managed and there will be a pretrial review. It is a fixture and the parties are expected to maintain it. In the interests of continuity, the past directions agreed by the parties are predicated on the basis that I shall conduct the trial and shall deal with the case management in the meantime.

11 In these circumstances, the following occurs. First, as regards the interim injunction application it is more limited than would otherwise be the case, because it is for a limited duration, given the imminence of a speedy trial next month. Secondly, the case for an adjournment either falls away in view of the speedy trial, or, if it is still live, it is not granted as regards the hearing of an application for an interim injunction. No longer does any question about cross-examination arise because it will happen imminently at trial. In any event, it is not appropriate for an interim injunction application. No longer is there a problem about any absence of readiness of the defendants for the full hearing because the full hearing will be at the trial. The defendants have had adequate opportunity to be ready for an interim hearing. The numbered findings above in answer to the points raised about an adjournment are repeated. However, by organising a speedy trial at once, there is catered for the need to bring on at an early opportunity the full evaluation hearing and cross-examination and the points raised by the defendants as regards the prejudice of not having such a hearing largely fall away.

The new evidence since 22 June 2020

12 The matters which now arise are to deal with the development of the case since my judgment of 22 June 2020. I do not intend to repeat the matters therein set out and this judgment should be read alongside it. The only issue now is whether the injunction about not occupying the site as a residential gypsy caravan site should continue until the trial or should it be lifted, as the defendants contend, or should there be some other order. The questions then remain about the arguability of the case and about the balance of convenience between now and trial and what order is just and convenient in all the circumstances of the case. It is, first, necessary to consider the developments that have taken place as regards evidence. I intend to touch upon areas of controversy, but the court is mindful that it is not necessary to resolve these matters pending the speedy trial, save insofar as is necessary for the limited purpose of the proper order between now and trial. The scope of the evidence was very limited. The first witness statement was understandably limited in scope because there was limited time between receiving the first witness statement and the first hearing on 19 June 2020. However, by the time fixed for evidence on Thursday 25 June 2020 the defendants had had the first witness statement of Julia Greenfield for over a week. The second statement of James Robb is limited in its ambit and is quite general in what it says.

13 First, there is no information as to what housing the defendants had in the period prior to moving on to the Lightwater site in October 2019. Mr James Robb asserted wrongly at para.2 that in March 2018 the defendants were living on the Lightwater site. This was accepted by Mr Masters to have been wrong, but there was no explanation as to how the error arose, nor was there any evidence as to where the defendants had actually lived prior to Lightwater, despite that being a question asked on 25 June 2020. Secondly, although there is reference in para.5 to moving to various places between December 2019 and 7 June 2020, there is no documentary evidence showing where the defendants were and particularly what they did during lockdown from 23 March 2020. This paucity of information was following a "no comment" response to an enquiry about the defendants' welfare needs and the question as to where they had been living. This had been mentioned in Ms Greenfield's first witness statement at para.10. Thirdly, despite evidence in the same statement that it appeared that Mr James Robb was a man of means from his land purchases and activities (para.10 and 11) he has not provided any specific information, either in evidence or in answer to the question, about his means asked in the email of 25 June 2020.

14 Fourthly, Mr James Robb's second witness statement at para.8 refers to Broxbourne but is not specific about when the defendants lived there. In any event, there is an inconsistency between the reason for leaving Broxbourne given in para.8 of the statement and a different reason given in welfare check forms when the defendant moved on to the Lightwater site. Since these are personal matters it is not necessary to spell these out in this judgment.

15 Fifthly, there is an assertion in para.9 that there was nowhere else to go other than the site in question as a permanent base for the family, but this did not address any of the matters which had been raised in Ms Greenfield's first witness statement about other addresses which might have been available. There was no explanation as to why Mr James Robb had not been able to stay at his father's property at 11 Hazelwood, Knaphill, Surrey, nor has there been any explanation in evidence as to why he was not living at his registered address of 114A Robin Hood Road, Knaphill, Woking. In the course of the hearing Mr Masters said that this was his sister's address which he had used for correspondence. This would give rise to further questions, but for the moment this is not in evidence. This is despite these matters having been raised in the first witness statement of Ms Greenfield at para.10.

Planning evidence

16 In addition to the foregoing, there is evidence about planning matters contained in the two reports of Mr Brian Woods of 18 June 2020 and 24 June 2020 and in the second witness statement of Mr James Robb. It should be said at the outset that in addition to this there is a whole volume of material of various reports to which reference was made in the course of argument. It is not appropriate in this interim decision to go through the evidence in detail. That will be for trial. By ordering a speedy trial the time and opportunity for that full hearing has been accelerated. It is first to be noted that the development work and the change of use occurred without permission. Mr Woods says that sometimes this occurs and retrospective permission is granted. He is of the "professional opinion that there is a good prospect of obtaining planning permission on a temporary basis". He said that the court was misled by the description of the site being surrounded by heritage assets. There were in fact three heritage properties, one opposite the land at Brook House and two others adjoining the site, namely Penny Cottage and Maltmans. He says that there would be some impact, but not as great as that of a detached house, as per the earlier applications. Further, the impact can be mitigated by tree and hedge planting. In his supplemental report he said that landscaping could be undertaken and in any event the appeal showed that the claimant had prejudged the application. Mr Partington drew attention to the view of the planning inspector that the proposed development (which at that stage was a detached house) would

harm the character and appearance of the area and would not preserve the settings of two listed buildings (Maltmans and Brook Place: paras.16 to 23 of the inspector's report).

17 As regards green belt, whilst Mr Woods acknowledges that the site is green belt, there are other sites where a development in green belt has been allowed. Mr Woods points to sites in Ongar, Essex and in Warlingham, Surrey. He also referred to a recommendation made in respect of a green belt site at Farningham Road, Kent. Mr Partington pointed to the fact that in the appeal the inspector had pointed to development in the green belt being inappropriate and would have caused additional harm to openness, both spatially and visually, and countryside encroachment. Further, he pointed to para.16 of the planning policy for traveller sites ("PPTS") which said that temporary or permanent development was inappropriate and harmful to the green belt and should not be approved except in very special circumstances. He said that subject to the best interests of the child, personal circumstances and unmet need were unlikely to clearly outweigh the harm to the green belt and any other harm so as to establish very special circumstances. He also referred to the written ministerial statement of 17 December 2015 which states that intentionally developing green belt sites without planning permission is a material consideration which weighs against the grant of planning permission. This is a policy decision because of the absence of opportunity to limit or mitigate harm and the expense and time-consuming nature of enforcement action.

18 The defendants were particularly critical about relying by the claimant on TBH SPA. None of the site was within 400 metres of the special protection area and whilst it was within five kilometres, so was the entirety of the borough. This had not been a relevant consideration in the planning appeal. All that was required was a contribution to the strategic access management and monitoring measures. This was not arranged but now could be.

Discussion

19 For the reasons given in my judgment of 22 June 2020 it is appropriate to continue the injunctions until the current hearing. It was a part of that judgment that the court would be able to reconsider the matter afresh at this hearing. It has been done in the light of the above-mentioned new evidence and extensive further submissions, both in writing and orally. It is not accepted that a good reason has been shown not to be ready for these proceedings or to explain why the evidence was so limited and why there have been no answers to the questions raised on 25 June 2020. Further, there has not been any adequate explanation as to why arrangements could not have been made for the defendants to attend an office to watch the hearing. For the reasons set out above, the court was entitled to proceed on the basis of the evidence as it now stands. Despite the foregoing, the court has allowed for difficulties which the defendants have had by fixing a full hearing at the earliest opportunity. Taking into account the nature of the relief sought, the speedy trial will enable matters to be dealt with in August. Thus, the considerations now concern an interim injunction simply from now until the hearing in August. It is important to note in that context that in reaching conclusions as to the way ahead it is simply on the evidence thus far placed before the court. The evidence is quite limited and in no sense do interim findings have a bearing on the final result where matters will be considered afresh. The matter will be tried on the basis of the evidence as it then appears. The very fact that the court is allowing for a speedy trial is to allow at an early stage a much fuller presentation of evidence of the parties relevant to making a final order. It is also the case that the court is dealing with this matter by reference to the interim injunction criteria at this stage and especially the balance of convenience rather than the criteria applicable at a final trial of the action. The primary question is whether the injunction should be continued in the form that it was ordered by Murray J and continued by me, namely preventing the defendants from

using the site as a residential gypsy caravan site and from residing on the land or any part thereof. The other parts of the injunction are not controversial, because the defendants do not oppose in the interim an order against developing the land. They say that the *status quo* is non-development but that an injunction preventing use and residence is akin to an eviction order which is inappropriate until after the merits of the case have been fully heard and determined. Indeed, they will then say that it would be inappropriate until after the final determination of the current planning application. They say that it offends against their rights under Articles 6, 8 and 14 of the European Convention of Human Rights, against the equality duty in s.149 of the Equality Act 2010 and in the case of the children against their rights under the European Convention of Human Rights and under Article 3 of the United Nations Convention on the rights of the child.

20 Notwithstanding the evidence that has been filed since the hearing of 22 June 2020, the evidence remains to the following effect. First, there is a more than arguable case that there has been a serious breach of planning control by not only developing the land, but also by changing its use by residing there and using it as a caravan site. This applies in particular to the case about doing this on green belt land and to the argument that there would have to be very special circumstances to justify the use of the land in this way. This is said by the claimant to be so important that subject to the best interests of a child, personal circumstances and unmet need are unlikely clearly to outweigh harm to the green belt so as to establish very special circumstances. The claimant also says that a material consideration in the light of the ministerial statement will be that this has been done without prior consent. Against this background it may be at trial that it will appear that there are very special circumstances and/or that the material consideration of no prior permission does not prevent the balance being in favour of the defendants. To this end it will be necessary to consider the evidence as a whole about the possibility of obtaining such permission in respect of green belt land. It may also be necessary to consider the relevant policies of the claimant towards gypsies and travellers and how this affects the defendants and the overall merits of the case. Those matters may well feature at the trial.

21 The claimant's case is made the stronger by reference to the considerations of the heritage sites and the argument that the change of use of the proposed development would harm the character and appearance of the area and would not preserve the settings of at least two listed buildings. The SPA consideration is much less significant, bearing in mind that a belated contribution to the SAMM would remove some of the force of the argument. There is an argument that the SPA consideration was pitched higher than need be the case, but this was not material in the scale of things, given the points regarding green belt and heritage considerations. Further, it is to be noted that the development and change of use as a matter of fact took place without prior contribution being made.

22 The question then is whether the injunction at present ought still to be confined on the basis of the balance of convenience between now and the trial. The evidence adduced in this regard has been limited as discussed above. It has failed almost entirely or with any particularity to deal with the evidence as to where the defendants were in the period prior to the occupation of the Lightwater site. This is entirely relevant as to where they can be expected to live from now until trial. The only evidence given was not correct and the suggestion that they had lived in Lightwater from March 2018. Further, evidence as to where they were since the removal from the Lightwater site to 7 June 2020 has been given without any specificity and without documentary evidence. This point is potentially the more significant by reason of the refusal to give information about where they were in the context of the welfare check form. It was obviously of importance, because of the way in which the case was put against the defendants in the first witness statement of Julia

Greenfield. This too is highly relevant to where the defendants can be expected to live between now and the trial.

23 Another aspect of the way in which the case was put was that the defendants had housing options and resources from which they could be expected to find other housing. The defendants could have provided information about the various properties referred to in the first witness statement of Julia Greenfield, but they have declined to do so with any specificity. I have referred to this above. Likewise, there is an absence of information as to the ability of them or some of them to live temporarily with Mr James Robb's father. There has also been no information to rebut the case that Mr James Robb is a man of means, as inferred in the first statement of Ms Greenfield. There has not been information provided as to his capital or income or that of the other defendants. For the purpose of this interim hearing, the court is entitled to infer, as did Murray J, that the effect of an injunction preventing their residing on the land will not render them homeless and/or will not lead to their having nowhere to go. It is significant in this regard that no application has been made to the claimant at any stage about their housing needs.

24 There were arguments advanced as to whether the claimant made inadequate provision for gypsies and travellers. There is a question as to whether it has adequately assessed the needs of the traveller community and whether there were or would be an adequate supply of sites now and in the next five years. However, at least at this interim stage the other findings about the defendants not being rendered homeless and with a trial in seven weeks' time these other considerations have less significance. They have not sought alternative accommodation from this or any other local authority. There has been a good deal of evidence about the possible sites available to the defendants, about their resources, which have not been answered. The defendants have sought to make submissions without evidence as to these matters and have invoked the National Planning Policy Framework of February 2019 and the planning policy for traveller sites. Without evidence to rebut the inference that the defendants had other accommodation and/or resources to obtain accommodation, at this interim stage this court, as Murray J, is entitled to take into account these inferences in the overall balance of convenience. It was said that the defendants have a cultural aversion to bricks and mortar. This is touched upon but not developed in the evidence. It is said that it is not sufficient that the only accommodation available in the interim is bricks and mortar. In my judgment, this is a point again which is not developed in the evidence that could have been over the period of a fortnight from the service of the evidence to the hearing of 1 July. The court takes into account the fact that there may be a cultural aversion to bricks and mortar housing. However, this must go into the balance against the unlawful or unauthorised conduct of the defendants at a particular site. It is not clear that they will not be able to have their caravans elsewhere, but if they are dependent on bricks and mortar housing for the next few weeks then it is noted that gypsies and travellers dependent on local authorities to provide temporary housing can be provided with emergency accommodation by bricks and mortar housing: see *Sheridan v Basildon Borough Council* [2012] EWCA Civ 335 citing in particular a judgment of Longmore LJ in *Lee v Rhondda Cynon Taff County Borough Council* [2008] EWCA Civ 1013. At trial there may a different position which will emerge subject to the defendants engaging in the process and providing far more detailed evidence than has thus far been presented.

25 I have also considered the interests of the children and Article 3 of the United Nations Convention on the Rights of the Child. Their rights are also to be taken into account in the context of Article 8. The issue of the welfare of the children was raised in Ms Greenfield's first witness statement at para.27 to 28 and there has been no response from the defendants. Further, as regards schooling of the children, there is a dearth of information provided by the defendants about the schooling of the children, just as there has been little information about

where they have been living. Although special needs of two of the children are identified, there is no evidence to suggest that the children will not be provided for by the parents or that the parents will not be able to look after their needs, even with this injunction in place. There is no specific evidence that puts the children at risk or that their interests will not be looked after by the adult defendants. It was contended by Mr Masters that it was necessary for the claimant to obtain a welfare report by a welfare officer before seeking any injunction. This is notwithstanding the limited engagement by the defendants in the welfare enquiries. I have taken into consideration the fact that such questions were raised in respect of the children involving the same parties in *Surrey Heath Borough Council v Shir* at para.34 to 35 where the judgment of Cranston J in *Broxbourne BC v Robb* [2011] EWHC 1626 QB at para.50 to 51 was taken into account. In this case there are not only the circumstances which apply as regards the adult defendants where the balance of convenience is, in my judgment, in favour of the claimant, but there is no evidence indicating particular matters of concern concerning the welfare of the children, both in the previous case and in the instant case. Further, in this case the degree of disruption is particularly limited because of imminence of trial, where a large part of the time between now and then is the annual school holidays. It is also limited because of the very short-term nature of the occupation of the site in this case.

26 As was the case when the matter was before Murray J and before me on 22 June 2020, I am satisfied that damages are not an adequate remedy for the claimant. The court should consider whether damages are an appropriate alternative remedy for the local authority in the event of (inaudible). Plainly, in these circumstances the local authority is acting as custodian of the public interest and there is no financial compensation capable of repairing the damage to that interest. The injunction sought is for the protection of the environment and the protection of the public interest. It is there to protect the rights of other property owners and residents in the locality. There is more than an arguable case that an injunction is justified under s.187B of the TCPA so that the development should not be allowed to continue and that the defendants should not be allowed to stay on the site.

27 I am satisfied in particular that there is more than an arguable case about the following matters:

(1) The considerations about green belt and heritage buildings are factors which weigh heavily in favour of exclusion even for the next seven weeks until trial. The continued use of the site as a caravan site is inimical to the character of the land and adversely affects the land and this is a more potent consideration than what will happen to the defendants in the interim because of some of the factors referred to below.

(2) The change of use should not have been embarked upon without prior planning approval. The fact that retrospective planning permission might sometimes be granted does not justify the course of action taken.

(3) In view of the previous planning permission sought and the factors referred to above, the adult defendants would have known of the difficulties of obtaining planning permission prior to doing development work and moving on to site.

(4) That knowledge was particularly acute because of the effect of the unauthorised development and occupation of the land at Lightwater which was the subject of litigation between the parties, injunctions restraining occupation at a without notice stage by Turner J and on notice injunctions thereafter culminating in the full interim hearing before her honour Judge Sarah Richardson.

(5) The claimant has made a strong *prima facie* case on the evidence before the court that there is no reason to believe that the defendants would be homeless as a result of the injunction.

(6) There is also a strong *prima facie* case that Mr James Robb has the means to purchase expensive parcels of land and could, therefore, seek alternative accommodation.

(7) Mr Robb has links with other accommodation and has not addressed any of this with any particularity in his evidence.

(8) The site occupants have not approached the claimant over temporary accommodation or claimed to be homeless.

(9) There is also a strong *prima facie* case that there is no reason to believe that the defendants were short of money to be able to rent a property or the like.

(10) At the point when the injunction was served on the defendants, they had only been in occupation for under a week and so this was very short-term occupation. Mr Masters said that this was not relevant, but the shortness of occupation was taken into account by Lewis J in the *Runnymede* case at para.23 which involved a period of eight days between occupation and injunction. In this case the period is five days. In *Runnymede* there was a period of a further 17 days until the interim hearing. In this case it was a further 19 days. Lewis J also cited that it has to be taken into consideration whether the home was established lawfully or unlawfully: see *Chapman v United Kingdom* para.102 to which reference will be made below.

28 The foregoing and the other matters in this judgment give rise to a serious issue to be tried for the purpose of *American Cyanamid*. I mentioned in my judgment of 22 June 2020 the need to depart from the *American Cyanamid* considerations to have a higher threshold for an interim injunction which, although framed in a negative form, involves the defendants vacating the premises. To that end I said that this was a case that would satisfy a threshold of a higher than arguable case. It is a sufficiently strong *prima facie* case to justify an injunction of this kind in the circumstances of this case. However, it is what it says. It is *prima facie*. There has not been a trial or even a mini trial. That is very much for August and I shall return to that later in this judgment. Further, the foregoing matters also go to the balance of convenience. I am satisfied that the balance of convenience is in favour of the grant of the relief sought at this stage. I am also satisfied that it is just and convenient to order an injunction. This is not simply because of the issues highlighted to date, but also the matters to which I refer in the remainder of this judgment.

The original order of Murray J

29 There is a further factor. I shall consider the criticisms made below of the order of Murray J. In my judgment, on the information before the court at present the original order was justified as a without notice order. The defendants have remained at the site and have apparently taken no steps to seek to honour the order thus far as regards not ceasing to reside at the site. The factor is that the court should not vary the injunction because that would be to condone the breach. Attention was drawn to the judgment of Cranston J in *Broxbourne v Robb* above at para.51 about variation of an injunction where somebody was in breach:

> "The fact is that there is properly in place an injunction prohibiting residential occupation of the site. To vary the injunction so as to

> permit the very action that it is designed to prevent would fail to acknowledge the force of the injunction".

A fuller quote appears in my judgment of 22 June 2020.

Human rights considerations

30 The court has had regard to the human rights considerations in this case and at this stage. As regards Article 6 rights in the circumstances set out above this was a proper order to make against the defendants at the without notice stage. The defendants have had adequate opportunity to give evidence and make representations between the time of the without notice injunction and the hearing of 1 July 2020. There has not been an opportunity to have what was called a full *Porter* hearing yet, but that is not a reason to defer the grant of interim relief, especially where the adult defendants have carried out development work and changed the use of the land without prior permission. See the judgment of Her Honour Judge Sarah Richardson in *Surrey Heath BC v Shir & Others* above at para.48 - 49 cited in my judgment of 22 June 2020. The rights of the defendants have been respected, especially by ordering a speedy trial so that the full *Porter* hearing can take place at the earliest opportunity. That is in no way to defer that hearing, because the defendants themselves applied for an adjournment on the basis that they were not ready for a hearing on 1 July 2020 and they wished the full hearing to be with cross-examination. The course of action of having a speedy trial was a response to those considerations and thus takes into account and respects the Article 6 rights of the defendants.

31 The court has had regard to the Article 8 rights of the parties and to the submission that this is a removal from their home. However, for the purposes of the interim injunction only the above mentioned factors apply, including the short period of occupation, the knowledge which they would have had that such occupation was unauthorised and the likelihood that the claimant would take action to prevent the occupation and to remove them, as it had in the previous case of *Surrey Heath BC v Shir*. Further, the factors above which indicated that the defendants were likely to have alternative accommodation and/or the resources to obtain alternative accommodation, at least on a temporary basis, until the hearing leads the court to conclude that the injunction can be done proportionately whilst respecting their private lives. At least at this stage it appears that the injunctions do not lead to no alternatives being available to the defendants other than to remain in occupation of the land without planning permission in a green belt area. In this regard at this interim stage and pending the full hearing, the court has taken into account the analysis of Article 8 in this context by Lord Bingham in *South Buckinghamshire District Council v Porter* [2003] 2 HC 558 at para.34 to 37. The court has also been referred to *Chapman* and particularly para.102 and 113 quoted at para.36 of the judgment of Lord Bingham. Paragraph 102 reads:

> "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. 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 weight against the legitimacy of requiring the individual to move. Conversely, if the establishment of a 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.

103 A further relevant consideration, to be taken into account in the first place by the national authorities, is that if no alternative accommodation is available, the interference is more serious than where such accommodation is available. The more suitable the alternative accommodation is, the less serious is the interference constituted by moving the applicant from his or her existing accommodation.

…

113 The Court is therefore not persuaded that there were no alternatives available to the applicant besides remaining in occupation on land without planning permission in a Green Belt area. As stated in *Buckley*, Article 8 does not necessarily go so far as to allow individuals' preferences as to their place of residence to override the general interest (judgment cited above, p.1294 § 81). If the applicant's problem arises through lack of money, then she is in the same unfortunate position as many others who are not able to continue to reside on sites or in houses attractive to them."

The Bromley Case

32 Attention was drawn by the defendants to the case of *The Mayor and Burgesses of London Borough of Bromley v Persons Unknown* [2020] EWCA Civ 12. It is relied upon as regards the need for procedural fairness in respect of injunctions in this area, taking into account the vulnerability of gypsies and travellers as an ethnic minority. This has been emphasised in earlier cases. However, the primary aspect of *Bromley* is about the impact of an injunction which is county wide as opposed to injunctions about individual sites. Further, the section on procedural fairness referred to in paras.31 - 34 of *Bromley* are specifically in respect of an injunction against persons unknown, particularly on a final basis in circumstances where they will be unable to put their case.

33 *Bromley* also referred to *Chapman*, to which reference has been made above. It drew attention to the need to have regard not only to the risk of interfering with the home of the defendants, but also to their ability to maintain the identity of gypsies and the need to have consideration "to their needs and their different lifestyle". The court has had regard at this interim stage to the particular interests of gypsies and travellers and to their rights, particularly as regards Articles 8 and 14 of the ECHR and also the general equality duty under s.149 of the Equality Act 2010. *Bromley* also referred to the case of *Connors*, but that was a case about a summary power to evict travellers from a lawful traveller site without giving any reason and without those reasons being subjected to court review and without posing the Article 8 consideration. *Bromley* also referred to the need for proportionality,

especially at paras.104 and 108 and to the need for special engagement with the gypsy and traveller community. As the defendants recognise, this is in the particular context of county wide injunctions. Whilst principles of proportionality and respect of the needs and lifestyle of gypsies and travellers have application in the instant case, the considerations of proportionality and the considerations in *Bromley* are of a very different nature. There is a difference in kind between unauthorised residence on a specific site in a green belt/heritage protected site and residents in a county as a whole.

The order made by Murray J on 12 June 2020

34 It was not necessary to cite the *Bromley* case to Murray J in this case. It sufficed that he was referred to the principles in *Porter*. As noted above, *Bromley* was of a very different type of case. The court has to consider whether a without notice injunction was required in respect of unauthorised residence as well as unlawful development. This was emphasised to Murray J in the course of argument. Ms Bolton said, as is apparent from the transcript:

> "I do accept that this is not the usual *status quo* of simply leaving what is on there on the basis that we know nothing about the family and their circumstances. This is an order asking them not to continue to occupy the land".

She went on to say:

> "The simple fact is that they ought not to be allowed to remain on the site where they are clearly knowingly breaching planning control and have done quite a significant amount of environment harm and will no doubt continue to develop this site if they are left on there".

35 It was said that there could not be an injunction until the defendants had the opportunity to put their own side of the story. There was not proper consideration, it was submitted, of the shortage of sites in the borough or of alternative sites which were appropriate and the effect of the previous eviction in the above-mentioned action. However, it is apparent that Murray J took into account what he described as the history of the earlier action (para.11 to 14 of the judgment), the appearance that this family did not lack alternative ability to obtain accommodation and would not be homeless (para.14 of the judgment), the "blatant and deliberate breaches of planning control" (para.18 of the judgment and see also para.10 and 13), the means of Mr James Robb (para.19 of the judgment). Murray J drew attention to the fact that a similar order had been made in the case of *Surrey Heath BC v Shir* by Turner J and to the case of *Runnymede v Doig* [2017] EWHC 1873 (Ch). There was a bald submission that *Runnymede* was not compliant with the principles in *Porter*. That was a surprising submission in that Lewis J in *Runnymede* in para.18 and onwards cited *Porter* and quoted extensively from it. Lewis J did observe that *Porter* dealt with a final injunction after an interim injunction. Other criticisms included that there was not consideration of the best interests of the children or of the available other sites. There was consideration of the shortness of the occupation and the failure to observe a temporary stop notice. All this is part and parcel of a multifactorial approach in reaching the conclusion which was, in my judgment, available to Murray J.

36 It was said that the case was to be distinguished from other cases where a party had come on to the land after the injunction. That is an important point, but it is not necessarily a decisive point. In the previous case of *Surrey Heath BC v Shir,* it was contested that the

defendants had come on to the land only after the injunction, but the judge found that they had come on to the land only after the injunction. However, the judge concluded that it would not have led to a different conclusion if she had found that they had been on the land prior to the injunction. It was said that the decision in *Runnymede* was of a different nature, because it involved gypsies having cleared the land of a significant amount of trees and doing greater development than in the instant cases and involving 33 caravans.

37 These distinctions are real distinctions, but the question in this case is whether the injunction of Murray J was inappropriate either on the basis that the full *Porter* hearing was first required or in the circumstances of the particular case. It is also the question as to whether the injunction should be modified between now and the speedy trial. In this regard I refer again to the decision of Her Honour Judge Richardson and to para.46 to 51 where she dealt with the submission that such an injunction could not be granted pending a full *Porter* hearing. In particular, as she said at para.49:

> "In the present case it is the claimant's case that in breach of the injunction further individuals have moved on to the site. A full *Porter* hearing as envisaged by Mr Masters can and should be undertaken at the final hearing. At the interim stage the local authority must provide the best information and evidence that it can to enable the court to give consideration to the factors which weigh in the balance, whilst accepting that more detailed information may be available at the hearing. That must be right."

The court has acted on the information available at this stage in order to assess whether there is a case for an interim injunction. It is based simply on the evidence at this stage and in no way is it a dress rehearsal for a different exercise to be carried out a trial to which I shall shortly refer.

Conclusions

38 Taking into account all of the evidence at this stage, I am satisfied that it is appropriate to order that the injunction be continued in its current form until trial and that there is a sufficiently arguable case at this stage that the balance of convenience is in favour of the claimant and an injunction is just and convenient. In my judgment, the injunction should be continued, both as regards development not being allowed to continue and the defendants not being allowed to stay on the site. That decision is, in my judgment, justified under Article 8. It is justified in the light of the facts of the case. The injunction does serve a legitimate public interest, namely, to protect the environment and the public interest. Further, it also protects the rights of others, namely the owners of the heritage sites and any other residence's rights and interests should be accommodated within the planning system. The injunction would be in accordance with the law. Section 187B(1) provides for the court to grant an injunction of this nature. In my judgment, the grant of this injunction is proportionate, balancing the above interests against those of the defendants and particularly bearing in mind the conclusions which I have reached in the section above as regards the balance of convenience.

39 It is important to make clear the following. Although, in my judgment, the defendants have had the opportunity to put in more evidence than they did in advance of the hearing, that will be irrelevant for the case at trial. The fact that I have come to the judgment for the purposes of this injunction that the case is a sufficiently strong *prima facie* case to justify the making and continuation of the injunction, including about not living on the site, is also not

relevant to the trial. It is precisely to accommodate the submissions of the defendants that there is to be a speedy trial. In making his application for cross-examination Mr Masters recognises, as does the court, that it happens frequently that a case which appears to be a strong *prima facie* case on paper changes its complexion following cross-examination. Of course, that might work to the advantage of the claimant or the defendants. Further, whether the paucity of the evidence at this stage is justified or not, at trial the defendants will have the opportunity to present its full case. The claimant also has the opportunity to supplement its case. In short, the trial of the action will be what Mr Masters has called throughout the full *Porter* hearing and this is a very different exercise from the interim hearing. The court will try the matters on the basis of the evidence presented, both the written evidence of witnesses and the documentary evidence and with the advantage of observing cross-examination of witnesses. The trial will not be by reference to the considerations at this interim stage but by reference to all the evidence and argument at that stage and the principles to be applied in relation to a final hearing.

40 The parties have agreed to most of the directions. There is a question as to the time for the witness statements. It has been agreed that I should try the case. That continuity will enable the court to case manage through to and including trial. I shall revert after this judgment to the respects in which there is currently no agreement. There is agreement as to most of the directions. There is an issue as to the provision of information as required in the letter. I shall also deal with that following the conclusion of this judgment. The parties having expressed their commitment to the speedy trial, the court will assist the parties as far as reasonably possible by case managing the case from now until trial.

L A T E R

41 An application is made for permission to appeal. The application for permission to appeal is rejected. It is said that *Porter* was not properly assessed. For the reasons given in my judgment, the court has taken the view that it is appropriate for the injunction to continue. The relevant factors were taken into account. The particular position of the defendants was assessed and particularly in that regard a speedy trial has been ordered in order to bring at as early a time as reasonably possible the full *Porter* hearing and that will now take place on 24 August. So, for those reasons the application is rejected. An appeal has no real prospect of success and there is no compelling reason why an appeal should take place.

CERTIFICATE

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** This transcript has been approved by the Judge**