Neutral Citation Number: [2020] EWHC 2154 (QB)

Case No: QB-2019-004220

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5th August 2020

Before :

HIS HONOUR JUDGE AUERBACH
SITTING AS A JUDGE OF THE HIGH COURT

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Between :

CHICHESTER DISTRICT COUNCIL	**Claimant**
- and -	
(1) JAMES CORNELIUS SULLIVAN	**Defendants**
(2) WILLIAM HUGHES	
(3) GEORGE EDDIE SMITH	
(4) KARLA SMITH	
(5) NANCY SMITH	
(6) RUBY SMITH	
(7) FRASER SIBLEY	
(8) ROSS ALAN BRIDGER	
(9) GEMMA CREIGHTON	
(10) WAYNE GODDARD	
(11) GEORGE SMITH (JUNIOR)	
(12) KIMBERLEY GODDARD	
(13) GLENN HENRY GEORGE KEET	
(14) KATHY BOYDEN	
(15) DANIEL HUGHES	
(16) JOSIE LOUISE HUGHES	
(17) MICHAEL JOHN COOPER	
(18) BONNIE HUGHES	
(19) DELLA SULLIVAN	
(20) WAYNE SMITH	
(21) FRED ALBERT SMITH	
(22) MARK GODDARD	
(23) APRIL LAMB	
(24) HENRY BEN GILES	
(25) GARY HOPKINS	
(26) CAROLINE GODDARD	
(27) KATIE KEET	
(28) PERSONS UNKNOWN	

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Gwion Lewis (instructed by **Chichester District Council**) for the **Claimant**
Rebecca Hawksley (instructed by **Hawksley Solicitors**) for the **Defendants (**D2, D3, D4, D5, D6, D7, D8, D10, D12, D13, D14, D18, D22, D24 and D25)

Hearing dates: 27th and 28th July 2020

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JUDGMENT

HIS HONOUR JUDGE AUERBACH:

Introduction

1. The Claimant seeks a permanent injunction in respect of land north-west of Birdham Farm, Birdham Road, West Sussex, which I will call the Site. The Site is outlined in red on a plan attached to the draft injunction. The Claimant is the local planning authority for the District in which it is situated. The order is sought pursuant to section 187B Town and Country Planning Act 1990.

2. The permitted planning use of the Site is agricultural. It was part of a field. Since 2015, however, it has been divided into a number of sub-plots. These are today in the ownership of a number of the Defendants; and a number of the Defendants, and in some cases their families, all of whom are gypsies, are living on different plots on the Site in caravans and mobile homes. The Claimant's case is that the physical development of the Site, and its occupation for domestic purposes, is, and has already been found to be, a serious breach of planning control; and that, all other attempts to bring this situation to an end over the course of some years having failed, it is now appropriate for the Court to grant a permanent injunction.

3. Originally there were Twenty-Seven named Defendants, with persons unknown as the Twenty-Eighth. However, the First and Nineteenth Defendants today only own a boundary strip along the northern edge of the Site. It is not used for access. They are not occupying any other part of the Site. In the course of argument I asked Mr Lewis, who appeared for the Claimant, what steps, were I to grant an injunction relating to the whole Site against either or both of them, it would be within their power to take in order to comply with it. Having taken instructions, he informed me that the application against those two particular Defendants was no longer pursued.

4. The injunction sought, as originally drafted, would, in summary, have the following effects upon the Defendants. First, it would require them to comply with four existing enforcement notices within three months. Secondly, and more particularly, it would restrain them from carrying out development without planning permission, and from bringing caravans or other living accommodation on to the Site without the Claimant's written approval. Thirdly, it would require them to remove the caravans, mobile homes and various installations and works presently on the Site and associated with domestic use, such as hardstanding, tarmac, and cabling and utility pipes; and to restore the Site to its former state as agricultural grassland.

5. Pending this final hearing, an interim inhibitory injunction was granted by HH Judge Pearce, sitting as a Judge of the High Court, in March of this year. On that occasion the Court heard from counsel for the Claimant and in person from the Second, Third and Seventh Defendants. Directions were given and the final hearing listed for May. Subsequently, Stewart J postponed the final hearing to 27 and 28 July and revised the directions timetable.

6. At this hearing the Claimant was represented by Mr Lewis of counsel. Ms Hawksley, solicitor-advocate, appeared for the following fifteen Defendants: the Second to Eighth inclusive, the Tenth, Twelfth, Thirteenth, Fourteenth, Eighteenth, Twenty-Second, Twenty-Fourth and Twenty-Fifth.

7. The Claimant relies, in relation to the substance of the matter, on five witness statements from its planning enforcement manager, Shona Archer, made between November 2019 and June 2020. The Claimant also relies on statements from colleagues of Mrs Archer involved in enforcement and investigations, from process servers, and from an in-house solicitor.

8. There were statements from four of the Defendants. One of them, for reasons I will explain, I will refrain from naming. The others were from the Third, Seventh and Twenty-Fourth Defendants. Mrs Archer's fourth statement of 25 June 2020 was by way of her response to those four statements.

9. Without objection on either side, some Governmental material relating to the Covid-19 pandemic was put before me, these being matters of public record, and of which, as such, I can take judicial notice. As I will describe, I heard submissions about whether, or how far, I can or cannot take judicial notice of other matters said to relate to the pandemic.

10. Regarding service, Ms Hawksley confirmed that she had no issue on behalf of the Defendants she represents. However, as there remain other Defendants who did not appear and were not represented, and indeed have not responded to the proceedings at all, I note the following.

11. Process servers attended the Site in March 2020 to effect service of the claim form and associated documentation, and then again to effect service of the interim injunction. Some other potentially relevant addresses were also attended. Service has been effected by a mixture of personal service, and leaving and/or affixing documents at appropriate locations. In May 2020 the Order, and a covering letter from the Claimant, giving the date and place of this hearing, were displayed at the entrance to the Site. Notices of this hearing have also been served by special delivery and by post, to other potentially relevant addresses. I am satisfied that overall there has been proper service.

The Facts

12. The essential history and background of this matter is not in dispute.

13. The Site is situated within the Chichester Harbour Area of Outstanding Natural Beauty (AONB), and forms part of open arable farmland.

14. Unauthorised use of the Site began in 2015 when two caravans moved on to it. The Site was subsequently progressively divided into a number of residential plots. Boundary fencing, utility pipes and hard standing and a tarmac access track have been installed. The work has been very extensive. Caravans, mobile homes, timber stable buildings and dog kennels have been installed on various parts of the Site. There are other motor vehicles. A number of families and other people have now been living on the Site for some time.

15. The named Defendants all identify as being of the gypsy/traveller community. In more detail the position regarding each of them is as follows.

16. The First and Nineteenth Defendants (against whom this application is, I have noted, no longer maintained) originally acquired the whole Site, but today own only the northern boundary strip.

17. The Second Defendant owns a t-shaped strip of land on the Site, which gives the means of vehicular access from the main road on to the various plots into which the Site has now been sub-divided, and on which a track has been laid.

18. The Eighteenth Defendant, who is the daughter of the First and Nineteenth Defendants, and wife of the Second Defendant, owns plot 6a.

19. The Third Defendant owns plots 2 and 3, and lives on plot 3 in a mobile home, with his wife, the Fourth Defendant. The Fifth Defendant, their daughter, lives on plot 2 with her family. Another daughter, the Sixth Defendant, lives in a caravan on plot 3 with her husband, the Twenty-First Defendant. The Third and Fourth Defendants' son, the Eleventh Defendant, lives on plot 2 with his wife. The Twentieth Defendant also lives on plot 2 or 3. Another daughter, the Sixteenth Defendant, owns and lives on plot 3a with her children.

20. The Seventh Defendant owns plot 4 and lives on plot 5. The Eighth Defendant owns and lives on plot 7 with the Ninth Defendant. The Tenth Defendant owns and lives on plot 8 with his wife, the Twelfth Defendant.

21. The Twenty-Second and Twenty-Sixth Defendants have lived on plot 1 but are not currently living there. Ms Hawksley's instructions were that they have gone for good. Mr Lewis' position was that the Claimant has not seen the evidence to satisfy it of that.

22. The Thirteenth Defendant owns plot 9. The Seventeenth Defendant owns plot 1. The Twenty-Seventh Defendant lives somewhere on the Site. The Fourteenth Defendant owns plot 5. The Fifteenth and Twenty-Third Defendants co-own plot 10. The Twenty-Fourth Defendant lives on plot 10 with his family. The Twenty-Fifth Defendant owns and lives on plot 6b with his partner and her children.

23. Mrs Archer's evidence sets out, and documents, a very detailed chronology of events since February 2015. I note the following.

24. During the course of 2015 an application by the Second Defendant and Joe Smith, who at that time also had an interest in part of the Site, for permission to provide a single pitch for gypsy accommodation and stables, was refused. A formal direction was also issued removing rights to erect fences, and so forth. During the course of 2015 the Claimant issued three temporary stop notices and three enforcement notices in relation to various plots. In County Court proceedings in June the First and Second Defendants gave undertakings not to carry out any more work or bring any further homes on to the Site.

25. During the course of 2016 the Claimant issued a further enforcement notice and a further stop notice. At a County Court hearing in April the Second, Tenth, Fourteenth and Eighteenth Defendants gave undertakings to refrain from further development and from bringing further caravans onto the Site.

26. The Claimant now specifically relies upon enforcement notice BI/30 of 21 September 2015, requiring hardcore, tracks, hardstanding, gates and fencing to be removed, and enforcement notice B1/31 of 3 March 2016, adding requirements to cease using the Site as a caravan site. It also highlights stop notice BI/32, of 3 March 2016, the addressees of which included a number of the Defendants, and which required cessation of various building activity and of the importation of caravans.

27. Over seven days between February and May 2017, Inspector Diane Lewis, appointed by the Secretary of State, held a public enquiry into appeals made by several of the Defendants and others, including against the enforcement notices BI/30 and BI/31, as well as an appeal by the Second Defendant against the refusal of his planning application. By her decision of 2 August 2017, the appeals were dismissed and/or the enforcement notices upheld with amendments. Compliance with the amended enforcement notices was as a result required, by way of ceasing residential occupation, by 2 August 2018, and then by way of clearing the Site of all the physical manifestations of unlawful development by 2 November 2018. However, this did not happen.

28. In August 2018 officers of the Claimant visited the Site to gather evidence and provide so-called human rights audit forms to all occupiers to complete, relating to their family and personal circumstances.

29. In October 2018 the Claimant wrote warning owners and occupiers of its intention to seek an injunction. Its planning committee authorised officers to seek an inhibitory injunction that month. In April 2019 letters again warned of the Claimant's intention to seek an injunction. Further checks and enquiries took place, including a further site visit to confirm occupancy in July 2019. In October 2019 the planning committee confirmed that the Claimant should proceed with High Court action seeking a mandatory injunction. The present proceedings were issued in November.

30. On a visit in February 2020 officers of the Claimant observed no significant change in the general picture of development and use. In June 2020 another mobile home was observed being brought on to the Site. It is not suggested by or on behalf of any of the Defendants, that there has been even partial compliance with the enforcement notices, as amended by the Inspector.

The Inspector's Report

31. The 2017 Inspector's Report followed seven days of hearings and a site visit. The main text runs to sixty or so pages. It is careful and thorough.

32. The Inspector noted at [37] that the Site is within the Chichester Harbour AONB and "has the highest status of protection in relation to landscape and scenic beauty under national policy."

33. The bulk of the report concerned notice BI/31. One ground of challenge asserted that it wrongly treated the whole Site as a single planning unit. The Inspector concluded at [68]-[70] that this was a question of fact and degree; that various features, including the history of sub-division, common purpose, single site access and ability to switch or further sub-divide plots, supported the selection of a larger unit. She considered

that the persons on whom the notice was served "should be able to know what they have done wrong."

34. Further on, the Inspector concluded that, for the purposes of the National Planning Policy Framework, the development that had occurred amounted to major development within an AONB. So planning permission should be refused, save in exceptional circumstances and where in the public interest.

35. The Inspector accepted that most of the appellants had gypsy status, and found that the mixed use was associated with a gypsy way of life, and that planning policies for travellers applied. She considered that Article 8 of the ECHR imposed a positive obligation to facilitate the gypsy way of life, and noted that the best interests of the children living on the Site must be a primary consideration. She noted that Public Sector Equality Duty (PSED) imposed by section 149 Equality Act 2010 was engaged.

36. Further on, the Inspector concluded that the undeveloped Site made a positive and important contribution to the special qualities of the landscape character of the AONB and the heritage of the local village, and that there had been a fundamental change in land use which had detrimental consequences on the landscape character. There had been intentional unauthorised development which had caused serious harm.

37. When considering the question of alternative sites, which she did in some detail, the Inspector noted that Article 8 does not confer the right to a home. After surveying the evidence she concluded that it "indicates caution about accepting that all families would be forced to live on the roadside" but accepted that the loss of a settled base would, for health reasons, have particular consequences for the Twenty-Sixth Defendant. She reviewed other Article 8 factors, including particularly those affecting the children. She considered, at [171], that "the personal circumstances and human rights of the appellants provide considerable weight in favour of the development."

38. The Inspector, however, concluded that the environmental considerations were compelling, and that the other considerations did not outweigh them. However, she also went on to consider whether the interference with Article 8 rights, in furtherance of the environmental objective, was proportionate, including looking at the circumstances of the occupiers of each plot in turn. Ultimately, she concluded that lack of success in the appeal would cause differing degrees of disruption to home and family life, from, in some identified cases, very serious, in others, serious, and in others, something less than that. Ultimately, she concluded that in each case the interference was necessary and proportionate. She also reached the same conclusion in relation to Article 1 of the First Protocol (peaceful enjoyment of possessions).

39. However, consideration of the evidence of family circumstances led the Inspector to amend the notice so as to allow 12 months from her decision to cease the uses, and 15 months from her decision to carry out remedial works. Overlapping similar conclusions informed the outcomes of the other appeals.

Evidence Regarding Personal Circumstances and Human Rights Issues

40. The Inspector's report, as I have described, contains information about the circumstances of the different families and individuals, with whom she was concerned, as matters stood in 2017. Some responses were also received to the human rights audit forms given out by the Claimant in 2018. The information in them included some children's ages and schools attended, in one case notified a current pregnancy, attempts to find other accommodation and so forth. In certain cases some medical information was provided.

41. In further correspondence in 2018 and 2019 the Claimant again invited the occupiers to notify it of any personal circumstances or other matters they would wish it to take into account when coming to its final decision about whether to proceed to Court. Following the issue of these proceedings, in February 2020, officers of the Claimant who visited the Site left letters for the occupiers advising them to contact the Claimant if they had any new personal circumstances of which it should be aware.

42. I turn to the issues raised in the witness statements from four of the Defendants, and Mrs Archer's statement responding to them.

43. As I have noted, the Third Defendant, George Smith, owns two plots, and lives with his wife and two children on one of them. He accepts that they should have left the Site by now, but says that they have nowhere else to go. He says that the two permanent gypsy/traveller sites in the District are full and part of a transit site has been sold off. He says that his wife, Karla Smith, is unwell and shielding. One of his daughters (who he names) has a condition (he identifies it, and provides medical evidence), which would put her at particular risk if she fell pregnant while on the road.

44. Mr Smith's daughter Nancy, the Fifth Defendant, is pregnant, as is his daughter-in-law Jodie, with her baby due in August. His daughter, Josie, who lives on another plot, is also pregnant, her due date being in September. He refers to experience of the hostility displayed by non-gypsies, and his fears for the health and wellbeing of his family if compelled to live on the road. He says that owing to the pandemic they will not be able to access toilet and shower facilities at leisure centres and suchlike. He says that in order to move he needs land with planning permission, which is hard to achieve. He refers to the example of the Second Defendant, who, he says, has been refused planning permission for pitches. He proposes that the Court grant modified orders which would require his family to leave only when the Claimant offers them suitable alternative accommodation. He refers to his work and ties in the area.

45. The Seventh Defendant, Fraser Sibley, lives alone on plot 5 in a mobile home. He says that if required to leave the Site he would have to live on the side of the road. He says he has spoken to Mrs Archer on many occasions about alternative housing, but without success. He too complains of part of the transit site having been sold off. He also refers to the impact of the pandemic on life on the road, in particular in relation to availability of public toilets and leisure facilities, and the hostile attitudes of others to gypsies.

46. The Twenty-Fourth Defendant, Henry Giles, lives on a plot on the Site, with his partner and his two children, aged 13 and 11. The children are enrolled in a local secondary school. He says that he cannot go anywhere else. His family have been on the housing list for some years without success, and previous applications for plots

have been refused. He raises health issues relating to himself and his partner (which he identified). He too raises concerns about life on the road and the impact of the pandemic.

47. The other Defendant from whom there was a statement lives on the Site with his family. He gives medical information about one of the children, who he says is shielding. He says that a request to erect a fence to support this was refused. He too complains of a lack of alternative accommodation. Having regard to her age, and the evidence about her medical circumstances, I have decided not to name the child, or, therefore, in this connection, him. But he is a named Defendant and the Claimant knows who he is, and who the child is.

48. The principal points made by Mrs Archer in reply are as follows.

49. In response to Mr Smith, she says that West Sussex County Council operates two public sites for the gypsy and traveller community in Chichester District, as well as a transit site. Part of the transit site has not been sold off. Rather, permission has been granted for changes to part of it, but she says that this will not affect the number of pitches that it will accommodate.

50. She refers to a conversation on Site with Karla Smith. She notes that no medical evidence has been provided in relation to her. However, even accepting that she has the conditions mentioned, they do not place her in a clinically extremely vulnerable group. She says that it is not correct that public toilet facilities have been closed or restricted during the pandemic. She refers to evidence that Mr Smith's son owns a bricks and mortar house.

51. Regarding the pregnancy of Nancy, she again notes the lack of medical evidence, but notes in any event that she would appear presently to be in the first trimester. She says that the Claimant does not accept that it would be proportionate to delay the impact of the injunction sought in her case.

52. In respect of Jodie's pregnancy, I was told that evidence of ante-natal appointments had been provided and the Claimant accepts that she is pregnant and has a due date in August. Its position is that the proportionate response in her case would be to defer the impact of the Order sought, on her and her husband, until two months after the birth of her child. In relation to Josie, said to be pregnant with a due date in September, and her family, again, following provision of further evidence, the Claimant now takes the equivalent stance.

53. Mrs Archer says that Mr Hughes has in fact been successful in a planning application for three pitches, on appeal. Another application has been refused but is under appeal. A third is being processed.

54. In response to Mr Sibley, Mrs Archer refers to evidence that he owns bricks and mortar accommodation elsewhere and to a check showing that he has not approached the Claimant to discuss his housing options. She repeats her points about the transit site and public conveniences.

55. In response to Mr Giles, Mrs Archer says that in 2019 he continued with development on the plot that he occupies, despite being informed of these proceedings. She says

that checks show that neither he nor his partner have approached the Claimant to discuss their housing options.

56. In response to the other statement, concerning the child, Mrs Archer referred to the lack of medical evidence. She also noted that the conditions in question would not place the child in a clinically extremely vulnerable group, and in any event that the Government intended to pause the shielding programme from the end of July. She says that medical evidence was requested in support of the application to erect a fence, but there was no further response. She refers also to what she saw on a Site visit in April 2020, and to the Claimant having found no record of this Defendant having applied for housing.

The Law

57. Pursuant to section 55 Town and Country Planning Act 1990, a material change of land use, or building or similar operations, constitute development for which planning permission is required. Pursuant to section 171A and following provisions, development without the required permission is a breach of planning control and may lead to enforcement measures including the issue of an enforcement notice. Non-compliance with such a notice is an offence which may attract a fine.

58. Section 187B of the 1990 Act enables a local planning authority which considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained, to apply to the Court for an injunction. The court "may grant such injunction as it thinks appropriate". Provision is also made for an injunction to be granted against persons unknown.

59. There is clear guidance in the authorities about the section 187B power. There was no dispute before me about the principles that emerge. The leading case is *South Bucks District Council v Porter* [2003] 2 AC 558, from which, in the speech in particular of Lord Bingham of Cornhill, a number of points emerge.

60. First, the jurisdiction is original, not supervisory. The section is permissive, and requires the exercise of a discretion, both as to whether to grant an injunction, and, if so, in what terms. But, like all such discretions, it must be exercised judicially and with due regard to the purpose for which it was conferred. Every case goes on its own facts, but potentially relevant considerations include whether the history supports the conclusion that nothing short of an injunction will be an effective restraint. If so, that will "point strongly" towards the grant of an injunction, as will a history of unsuccessful enforcement and persistent non-compliance.

61. The Court will not normally investigate the planning merits of the decisions made by the democratically accountable planning authority, Secretary of State or inspectors. The Court is not exercising, or re-exercising, their functions.

62. Within [31], Lord Bingham said this:

> "When application is made to the court under section 187B, the evidence will usually make clear whether, and to what extent, the local planning authority has taken account of the personal circumstances of the defendant and any hardship an injunction may

> cause. If it appears that these aspects have been neglected and on examination they weigh against the grant of relief, the court will be readier to refuse it. If it appears that the local planning authority has fully considered them and nonetheless resolved that it is necessary or expedient to seek relief, this will ordinarily weigh heavily in favour of granting relief, since the court must accord respect to the balance which the local planning authority has struck between public and private interests. It is, however, ultimately for the court to decide whether the remedy sought is just and proportionate in all the circumstances, and there is force in the observation attributed to Vaclav Havel, no doubt informed by the dire experience of central Europe: "The Gypsies are a litmus test not of democracy but of civil society" (quoted by McCracken and Jones, counsel for *Hertsmere* in the fourth appeal, "Article 8 ECHR, Gypsies, and Some Remaining Problems after *South Buckinghamshire*" [2003] JPL 382, 396, f.n. 99)."

63. The Court must, in exercising its discretion, be satisfied that the grant of an injunction would be a proportionate interference with the defendants' rights to respect for their family life under Article 8 ECHR, and to peaceful enjoyment of their possessions under Article 1 of the First Protocol. As to the impact of these Convention rights, Lord Bingham said this, at [34]

> "If section 187B is interpreted and applied in accordance with the principles adumbrated in the foregoing paragraphs, it is very questionable whether article 8 of the European Convention has any bearing on the court's approach to an application under the section. But since the European Court of Human Rights has given judgment in two cases involving Gypsies in the United Kingdom, brief reference should be made to those cases. In both it was effectively common ground that enforcement action by the local planning authority to secure the removal of the Gypsy from a site involved an interference by a public authority with the Gypsy's right to respect for her home, that such interference was in accordance with the law and that the measures pursued aims entitled to recognition under the Convention as legitimate. The issue was whether measures were "necessary in a democratic society" or, differently expressed, whether the means employed to pursue those legitimate aims were proportionate."

64. After discussing those cases – *Buckley v United Kingdom* (1996) 23 EHRR 101 and *Chapman v United Kingdom* 33 EHRR 99 – he continued at [37]:

> "These cases make plain that decisions properly and fairly made by national authorities must command respect. They also make plain that any interference with a person's right to respect for her home, even if in accordance with national law and directed to a legitimate aim, must be proportionate. As a public authority, the English court is prohibited by section 6(1) and (3)(a) of the Human Rights Act 1998 from acting incompatibly with any Convention right as defined in the Act, including article 8. It follows, in my opinion, that when

> asked to grant injunctive relief under section 187B the court must consider whether, on the facts of the case, such relief is proportionate in the Convention sense, and grant relief only if it judges it to be so. Although domestic law is expressed in terms of justice and convenience rather than proportionality, this is in all essentials the task which the court is in any event required by domestic law to carry out."

65. I note that further useful guidance as to potentially relevant considerations in the given case is to be found in the speech of Simon Brown LJ in *Porter* in the Court of Appeal [2002] WLR 1359, at [38] – [42].

66. I note also that in *Chapman*, the ECHR said, at [99], that Article 8 does not in terms give the right to be provided with a home; at [102], that "[t]he 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 environmental rights of other people in the community"; and at [115] that "[t]he humanitarian considerations which might have supported another outcome at national level cannot be used as the basis for a finding by the Court which would be tantamount to exempting the applicant from the implementation of the national planning laws and obliging governments to ensure that every Gypsy family has available for its use accommodation appropriate to its needs."

67. Although it involved a very different sort of application, for a Borough-wide *quia timet* injunction against persons unknown, there is also guidance of wider relevance to injunction applications against members of the gypsy and travelling communities, in the recent decision of the Court of Appeal in LB *Bromley v Persons Unknown* [2020] EWCA Civ 12, in particular at [108].

68. For completeness, I note that in *South Cambridgeshire District Council v Taylor* [2019] EWHC 741, it was noted, at [13], that a number of earlier decisions (some were cited) have made clear that, under this jurisdiction the Court has the power to grant both a mandatory and an inhibitory injunction.

Multiple Defendants

69. Ms Hawksley submitted that, whilst, of course, in appropriate cases, a claim may be pursued against multiple Defendants, in this case that was inappropriate and unfair. In particular she said that the effect of proceeding in one action against all the Defendants together was that it obliged them, if they wished to defend the action, to share personal and sensitive information with all the other Defendants. She said that four of the Defendants who she represented had told her that they were not prepared to put in statements, because they did not want others who live on the Site to know about their personal matters. She said, similarly, personal data about individual Defendants was included in the single hearing bundle, which was available to be read by all the other Defendants.

70. Ms Hawksley submitted that this approach itself contravened Article 8 rights. Further, she said, it was discriminatory, because it had been taken simply because the Defendants are gypsies. They each owned and/or occupied separate plots on the Site.

A lady who occupied an adjacent plot who is said to be in breach of planning control, and who is not a gypsy, was the subject of separate action. But these Defendants had all been lumped together.

71. I do not accept these arguments. First, it is clear, I think, that the reason a single application involving all Defendants, and persons unknown, has been made, is because of the various features of the history, and circumstances relating to the Site as a whole, that were described by the Inspector in the passage I have cited above, when she was considering the objection raised to the issue of a Site-wide enforcement notice. Some of those features are, in this case, *linked* to the fact that the Defendants are gypsies, but that does not mean that a different approach has been taken to them, *because* they are gypsies, as opposed to, because of the implications of those features themselves.

72. Further, while it is correct that individual circumstances, and in particular Article 8 considerations, may differ, and the Court must be satisfied that an injunction is appropriate in relation to *each* Defendant, this can be entirely accommodated within the four walls of this multi-Defendant claim. Indeed I have been shown or given evidence, and heard submissions, about the particular circumstances of certain individuals or families; and the format of the claim would not prevent the Court from granting different relief, or none, in relation to individual Defendants if thought appropriate.

73. Further, I fully appreciate the concern about sensitive personal information, but both the litigation and pre-litigation processes can accommodate and address this in various ways. In particular, although there is a presumption in favour of open justice, including hearings, whether in relation to multiple or single Defendants, being held in open Court, any Defendant could have raised any such concerns with the Court, and invited it to make appropriate orders, for example, for anonymity, redaction of documents, restrictions on sharing of documents, reporting restrictions, or even for the claim against them to be severed from the others. Further, while I of course accept that Ms Hawksley has faithfully reported her instructions, I did not have any *evidence* before me to the effect that any individual felt wholly unable to participate in the litigation, because of such concerns.

74. I am therefore unable to conclude that the format of the litigation has had the effect of denying any Defendant, whether in breach of Article 8, in a discriminatory fashion, or otherwise unfairly, the full opportunity, if they wished, to defend the action and advance their own personal case.

75. Ms Hawksley said, also, that the multi-Defendant approach had implications for the form of any injunctive relief; but that is a distinct point, to which I will return.

Relevant Considerations – Submissions and Discussion

76. There was, and really could be, no dispute, that the development which has taken place, and still exists today, on the Site, by way of the building and similar works that have taken place, and the domestic use to which it is being put, is in plain breach of planning control. It is also clear, from the decisions of its planning committee, that the Claimant has come to the view that it was necessary or expedient to seek an

injunction in that regard. Accordingly, the jurisdiction to grant a section 187B injunction is engaged.

77. As to the exercise of the Court's discretion, both as to whether to grant such an injunction, and, if so, against whom, or in what form, I will consider in turn the particular aspects that were canvassed in argument before me, as being relevant in this case.

78. I turn first to features weighing in favour of the grant of injunctive relief.

79. First, Mr Lewis submits that the breaches of planning control are extensive and longstanding. The history going back to 2015, and current situation, that I have described, plainly show that that is right.

80. Secondly, Mr Lewis again rightly submits that all attempts to restrain these breaches, and to have them remedied, have wholly failed. In particular, the enforcement notices have not been complied with. The extended deadlines set by the Inspector, for compliance by the end of 2018, were not met. This is notwithstanding that non-compliance with them may itself attract criminal sanction. The history also indicates that the breaches are plainly intentional.

81. In addition, the breach of planning control in this case relates to a Site falling within an AONB, which has a high status of protection; and I have noted the conclusions of the Inspector as to its seriousness, which I cannot go behind, and which are compelling.

82. I conclude, pausing here, that this is a case in which it has been shown that nothing short of an injunction will provide effective restraint of what amount to serious, longstanding and ongoing breaches of planning control.

83. A further factor weighing on the side of granting relief is that the Council's planning committee has specifically considered and authorised this litigation. Although Ms Hawksley submitted that the process was peremptory, the decisions are a matter of record, and I do not think the Court can or should seek to go behind them, or to speculate about the debate. What the record does show is that the committee proceeded by stages, first authorising the seeking of an inhibitive injunction, and only after further investigations and work, the seeking of a mandatory injunction. Looking at the overall history, and chronology, I do not think the Claimant can be said to have acted in haste.

84. This is also a case where there have been conscientious and proactive efforts by the Claimant, to gather information about the personal issues or circumstances that are, or may be, affecting individual Defendants or family members. The position as at 2017 was exhaustively investigated, and documented, by the Inspector. Since then the Claimant has sought to gather in further information in the human rights audit forms and subsequent correspondence. Some of the Defendants availed themselves of those forms and/or have presented evidence to the Court. As I have indicated, I am not persuaded that the others have not had a fair opportunity to do so.

85. I turn to the particular features relied upon by Ms Hawksley as militating against the grant of injunction, or one in the terms sought by the Claimant.

86. First, she submitted that the effect of granting an injunction or injunctions will be to put those Defendants who live on the Site on to the road. There is, she said, nowhere else for them to go.

87. As to that, I consider, first, what I can conclude about the factual position.

88. Responsibility for the provision of public sites providing pitches for the gypsy and traveller community within this District lies with West Sussex County Council. There was no dispute before me that there are two permanent sites and one transit site, and that they are all full.

89. While Mrs Archer referred to the Second Defendant's successful application for a three-pitch site, which has not been filled, Ms Hawksley said her instructions were that there were issues about conditions. She was not giving evidence, but nor did I have evidence from which I could infer that the success of this application means that these are three pitches to which some of the other Defendants can in fact now move. This was, really, the limit of the Claimant's hard evidence as to current private pitch availability.

90. The Claimant of course has general housing responsibilities, including duties towards the homeless, and such support has been, and is, potentially available to the Defendants and their families who live on the Site. I note the apparent conflict between the evidence of Defendants who say they have sought to avail themselves of support, and that of Mrs Archer who says that the Claimant has no records of such contact. From discussion during submissions it seems likely that the explanation is that these Defendants were in fact referring to unsuccessful efforts to secure a public site pitch from the County Council.

91. Mrs Archer referred to evidence and investigations showing or suggesting that certain Defendants have interests in conventional bricks and mortar properties, and/or have, or have used, such addresses. Mr Lewis also submitted that some gypsy/travellers are not wholly averse to bricks and mortar accommodation and may be willing to tolerate living in it, at least on a temporary basis.

92. However, all of these Defendants are gypsy/travellers (though individuals may describe themselves, or their particular ethnicity, culture or heritage in different ways); and the facts of this case, at least in relation to those who live on site, provide tangible expression of their adherence to that way of life. Ownership of, or association with, conventional property may have any number of explanations. I cannot infer from it alone that bricks and mortar accommodation would be an acceptable solution for any of those Defendants.

93. I conclude that I must assume, for the purposes of what I have to decide, that, for at least some, possibly all, of the Defendants who live on the Site, being required by an injunction to leave it will mean that they will, or at least may, and at least to start with, and possibly for an uncertain period, go on the road.

94. There are then the following aspects to consider, touching upon personal circumstances, or otherwise on the impact of granting some sort of injunction on the Convention rights of some or all of the Defendants.

95. First, it is clear that there are quite a number of school-age children living on the Site, many, at least, of whom are attending local schools. Many, at least, of those living on site, including children, are also registered with local GP practices. I recognise that most of them have also been living there now for an appreciable time – years, rather than weeks or months.

96. I turn to the further evidence that I have about the individual circumstances of certain Defendants. I note that the Twenty-Sixth Defendant – about whom the Inspector had a particular concern, is not presently living on the Site, and, according to Ms Hawksley's instructions, has left for good. I do not think there is anyone else in relation to whom the evidence contained in that report, or the returned human rights forms, adds materially to the current picture that I have from the four Defendants' witness statements filed in this action.

97. I turn to the three women who are pregnant. In relation to Jodie Smith and Josie Hughes, the Claimant, rightly, acknowledges, that they ought not to be required to leave the Site when at a very late stage of pregnancy, or imminently after having given birth. On the evidence I have it would appear that Nancy Smith is in the early stages of pregnancy, and Ms Hawksley did not make any further representation specifically about her; nevertheless, not being required to leave imminently might also be of help to her. In relation to Ruby Smith, I appreciate what has been said about the significance of her health condition, but she is not presently pregnant, and I do not think any particular modification is currently necessitated in her case.

98. Whilst sympathising with the other adult Defendants in relation to whom the evidence raises specific health conditions, I do not think any of these is such as to preclude an order being made in relation to any of them, or to point to a need to extend the compliance period peculiarly in any of their cases.

99. I will return to the child to whose health and medical history one of the Defendants has specifically referred in his evidence, because this is said to be particularly significant in light of the pandemic.

The Proportionality Exercise – Subject to the Pandemic

100. I can begin now to engage in what I call the proportionality exercise – the process of standing back and looking at the overall picture and balance of considerations, in favour of or against granting an injunction or injunctions, or doing so in particular terms. That includes the need in particular to ensure that any interference with the Defendants' Convention rights is no greater than is, in my judgment, necessary to the purpose of the injunction, and proportionate.

101. Ms Hawksley was commendably realistic and candid in her stance. She recognised that she would struggle to convince the Court not, at least, to grant an inhibitory or status quo injunction, restraining any *further* development (by way of building work or increased domestic use) from taking place in the future. But that is not the real battle ground in this case. Given what has already occurred, and the current position, such an injunction would not by itself really give the Claimant any material relief from its point of view. More significant, therefore, was Ms Hawksley's candid acknowledgement that, in the absence of the pandemic, she would struggle to

convince the Court not to grant the mandatory injunction in both its limbs – cessation of domestic use and dismantling of the physical development – as well.

102. She was right about that. The breaches of planning control are extensive, pervasive and long-standing. Having regard to the status of the site within an AONB they are very serious. The matter has been very thoroughly examined, and all of this is very fully set out, in the Inspector's report. The breaches are intentional, have continued since she reported, and all other efforts to curb or reverse them have failed. The Claimant has a compelling case that nothing short of an injunction will provide effective restraint, and that these factors together point strongly towards the grant of one, in principle.

103. The lack of available alternative accommodation in terms of gypsy/traveller pitches is an important and weighty consideration, because of the real and significant difference it makes to the impact on the occupier-Defendants' Convention rights, generally and having particular regard to their way of life. As I have noted, I proceed on the assumption that, at least to start with and for an uncertain period, some, or all of them, may go on the road. The impact on the children in particular will be significant. But while the lack of alternative pitches is undoubtedly therefore a weighty consideration, as Ms Hawksley acknowledged, it is not a trump card. It must still be weighed in the balance against the considerations on the other side.

104. In summary, applying the guidance in the authorities, and bearing in mind the statutory purpose for which the power has been conferred, these considerations would not be sufficient alone to outweigh the compelling features pointing towards the grant of a mandatory injunction in this case. However, the fact that occupiers, or some of them, may be out on the road, and the impact, in particular, on the lives of the children, are considerations which may have an impact on the terms of any injunction, in this case, in particular, the time which I allow for compliance.

105. However, Mrs Hawksley submits that the impact of the pandemic makes all the difference, and tips the scale away from the grant of any sort of mandatory injunction. I therefore turn to this aspect next.

Impact of the Pandemic

Submissions

106. The following key points or themes emerge from the overall written and oral submissions on this general topic.

107. Ms Hawksley acknowledged that the initial lockdown imposed in March, and the associated legal restrictions and Government guidance, have been eased. But, she submitted, I can take judicial notice of the fact that a second wave is highly likely, and that there may be further local outbreaks leading to increased risk and re-imposition of local restrictions, at any time.

108. Secondly, she said that the pandemic, and associated restrictions, have a distinct impact on members of the gypsy and traveller communities. She referred to a letter from the Minister of State for Housing, Communities and Local Government to Local Authorities, earlier this year, on mitigating the impacts of the pandemic on such

communities. This states that some gypsies and travellers are particularly vulnerable and may have been asked to shield. It refers to such matters as the challenges of observing social distancing on many sites, and the impact of closure of leisure centres and recycling centres.

109. That document refers in turn to Local Government Association guidance on protecting vulnerable people during the outbreak. Ms Hawksley highlighted that this places gypsy and traveller communities in the category of those who may suffer from a reduction of usual services. She also referred to guidance from the Welsh Government which, whilst obviously not applicable to England, she commended for its insight and approach into the increased risks and support needs faced by gypsies and travellers during the pandemic.

110. Ms Hawksley said that the pandemic created increased risks to, and difficulties for, travellers on the move, with regard to access to toilet and washing facilities, and greater vulnerability to hostile treatment. Track and trace would not work for them. Healthcare, if needed, would be harder to access. Restricted access to refuse sites could also affect the Defendants' ability to comply rapidly with any order. Because of the distinct impact of the pandemic on the gypsy/traveller community it was, submitted Ms Hawksley, a discriminatory act to seek to send the Defendants out on the road.

111. Ms Hawksley submitted that, in view of the pandemic, the Court should not be granting a mandatory injunction at this time. If it refused one, the Claimant would not be precluded from reapplying (though she said that it should only do so plot by plot – a point to which I will come) as and when the pandemic situation had improved. Alternatively, the Court could stay any mandatory injunction for a suitable period – she proposed a year. Alternatively, the Court could provide that its order would only take effect as and when a given Defendant was offered a permanent pitch.

112. Ms Hawksley also referred to the Practice Direction of 26 March 2020, staying possession proceedings for 90 days, which she said had since been extended to 31 August 2020. Though not applicable, this, she said, showed that a stay was the right way to go. Whilst accepting the serious nature of the planning harm within an AONB, which could not be gainsaid and must be resolved, the land, said Ms Hawksley, can be restored; people, she said, can't.

113. In reply on this aspect Mr Lewis made the following principal points.

114. First, we are now in a very different situation than we were following lockdown in March. As to the future, although there are some additional localised restrictions in some parts of the country, no evidence had been put before the Court to suggest that the rate of infection in or around Chichester is any higher than the current average. The Court could take judicial notice that a second wave in winter is a possibility, but anything beyond that would require evidence. The Court could *not*, as Ms Hawksley had suggested, take judicial notice of the proposition that a second wave is "highly likely".

115. At present, said Mr Lewis, the general level of risk and restriction is such that the pandemic is not a reason to defer, or stay, the proceedings, or any order, generally, or on the sort of timescale being suggested by Ms Hawksley. Leisure centres and refuse

centres have reopened, albeit with restrictions. There is no reason to believe the Defendants could not access the resources needed to clear the Site. The Court could, if it was concerned about them having sufficient time to complete the removal work, stagger the cessation of use, and then final removal of remaining infrastructure.

116. Even recognising the possibility of a second wave in winter, there was now a window in which action could and should be taken, given the longstanding, extensive and serious breaches of planning control in this case. It would be neither necessary nor proportionate to put off time for compliance until the risk from Covid-19 entirely disappears – something that could be years away.

117. As to the suggestion of discrimination in this respect, what mattered, said Mr Lewis, was the actual evidence of individual vulnerabilities, and the Claimant's approach to that. The Claimant had proactively enquired and given opportunities for the Defendants to raise any personal vulnerabilities or other circumstances affecting themselves or family members. The Claimant had considered and responded to all the information in fact provided, on a case by case basis. It had taken its obligations seriously and fully discharged them under the Public Sector Equality Duty as well as under Article 8. These proceedings were not a forum for an Article 14 challenge.

118. Mr Lewis said that the stay on fast-track civil possession proceedings does not provide an analogy that supports the Defendants. He pointed out that it expressly does not apply to injunctions.

119. Mr Lewis said that, if the Court granted a mandatory injunction and then there was a dramatic development, such as a serious local outbreak, leading to the imposition of local restrictions, the Claimant would of course take a responsible approach, and be prepared, if appropriate, to consent to any necessary variation of the terms of the order. The Defendants could in any event apply for one if they believed they had good cause. This provided a safety net in respect of contingencies of that sort.

Discussion

120. No reader of this decision needs to be told by me how extraordinary and pervasive an event the Covid-19 pandemic is, in terms of its health, social and other impacts, in both gravity and scale. It is absolutely right, in principle, that its impact on this application calls for distinct consideration, and very careful appraisal. I have navigated my way to a conclusion on this aspect in the following way. First, I have considered what I would do in the absence of the pandemic. Then I have considered the impact of the current pandemic situation. Then I have considered the impact of what the future may hold.

121. Addressing the first of those questions, for reasons I have given, undoubtedly, in the absence of any pandemic implications, I would in principle grant the injunction sought, both inhibitory and mandatory, and in both its limbs – requiring the domestic use of the land to cease and what I may call the infrastructure to be removed.

122. Given the long history of persistent and extensive breach, the previous enforcement orders, the extended period that was allowed by the Inspector but simply not taken, and the time that has passed since even the period that she allowed had expired, I do not think the Claimant's general starting point of three months was wrong.

Nevertheless, as I have described, it has also rightly and sensibly modified its approach in certain individual cases.

123. I am, as I have noted, also mindful of the particular impact more generally on those families with school-age children. Notwithstanding the extensive nature of some of the infrastructure, I am not persuaded that particularly longer is needed for it to be removed; but staggering the mandatory elements is prudent. That is, not least, so that some infrastructure, such as the surfacing on the track, which may facilitate the orderly removal of caravans, mobile homes and other infrastructure, could potentially be left until last.

124. To take account of the impact on those families with school-age children, and the pregnant women I have mentioned, a more extended period to comply would be warranted in their cases; and I consider that the best and most practical approach is to extend this not just to them, but across the board. On that basis, the period of time I would allow for all domestic occupation of the Site to cease, and therefore for all the caravans, mobile homes and other appurtenances, to be removed, is by the end of the year, on 31 December 2020. I would then allow an extra month for all remaining physical development to be removed, and the land reinstated, by 31 January 2021.

125. I turn to consider the current situation in relation to the pandemic. Although the Government continues to make adjustments, the overall restrictions and guidance currently applicable in relation to England have been considerably eased compared to what was imposed in March. Although there have been local outbreaks and resurgences in certain parts of the country, with associated re-imposition of more severe local restrictions, it was not suggested to me that this applies now, or is foreshadowed, in Chichester or its immediate environs.

126. I have no reason to doubt the Claimant's evidence that public toilets are not currently restricted. I accept of course, that these do not offer facilities for bathing and personal hygiene, but I can take judicial notice of the fact that leisure centres have reopened, albeit on a reduced scale and with restrictions. Refuse facilities have also reopened, albeit, again, with restrictions. I do not have any evidence to suggest that the Defendants will, on account of the pandemic, have greater difficulty dismantling, removing, and properly disposing of, the infrastructure on the timescale that I envisage.

127. I have reflected on the Governmental guidance to which I have referred, but the letter from the Minister of State, in particular, seems to have been written at an earlier stage of the pandemic, when more stringent restrictions applied in England; and I have endeavoured to take on board the wider insights offered by the Welsh material, in my approach to this aspect.

128. There is also valuable discussion of the wider social and indeed historical context in relation to the situation and culture of gypsy/traveller communities in some of the other authorities that I have mentioned. Gypsies and travellers experience prejudice, hostility, and worse, just because of who they are; and it would be naïve not to suppose that the pandemic may exacerbate the risk of such treatment, particularly for those who are on the move. But I do not accept Ms Hawksley's invitation to find that maintaining this application in current circumstances is itself an act of discrimination by the Claimant *because* the Defendants are gypsy/travellers. The Court would not

grant an order that facilitated an act of discrimination; but there is no evidence before me to support that proposition in this particular case.

129. Reflection on the stay on possession proceedings does not further Ms Hawksley's case. Injunctive relief was excluded, and the current extension, which, to my understanding is under CPR 55.29, will, I believe, expire on 23 August 2020. Thereafter, the ongoing requirement will be for information about any individual impacts of Covid-19 on the individual defendant(s) in a given case, to be put on the table.

130. Pausing there, after careful consideration, I am not persuaded that the current situation in relation to the pandemic tips the balance against the grant of injunctive relief that would require the Defendant-occupiers to leave within the timescale of the end of the year, that I have otherwise arrived at.

131. The situation of the child to whom I have referred is something on which I have particularly anxiously reflected. There is no medical evidence before the Court, but I certainly entirely accept what the witness says in his statement (and in the email he sent to Mrs Archer) about this child's health.

132. Mr Lewis is correct that this child is not "clinically extremely vulnerable" as defined in the Government's original shielding guidance, because none of the specific examples given apply, and the Court has not been shown any evidence, nor has it been suggested, that they have been classed as clinically extremely vulnerable by a clinician. He is also right that they would not in any event appear to be within the sub-category of clinically extremely vulnerable children. He is also correct that, having eased the guidance as of 6 July, the government has generally paused shielding as of 1 August 2020.

133. That said, Ms Hawksley is right that shielding has only, as the Government puts it, been "paused", and it could, at some point, be reintroduced. I also have no doubt that the family are generally anxious for the welfare of this child, and particularly at this time. However, I can only go as far as the evidence will take me. I also consider that the more extended compliance time that I am contemplating would itself allow a further opportunity for the family to address any issues relating to this child. Further, if, which I sincerely hope will not occur, there were to be some untoward development in this child's health during the compliance period, an application to vary the order could, if thought necessary, be made. But, as matters stand, I conclude that an additional extension in their case, is not now necessary or proportionate.

134. I turn then, to consider the implications of what may or may not be the future situation in relation to the pandemic. I can certainly take judicial notice of the fact that there is a responsible body of informed opinion to the effect that there is a real risk of a general second wave at some point. Even as I have been coming to, and writing, this decision, there have been some localised outbreaks, with associated re-imposition of restrictions, and adjustments to the England-wide restrictions. It is fair to assume that there may be more of this to come. However, there is considerably uncertainty, and, whatever assistance it might or might not have offered, no expert evidence has been put before me.

135. What I have to do, based on what the Court can, and should, sensibly take into account regarding what the future may hold, is ask myself whether it should cause me to take a different approach to whether, in principle, to grant mandatory injunctions, and/or on what terms, in particular as to duration, at the point when I am reaching this decision. Mr Lewis spoke of there being a "window" before the winter, which the Court should take. To be clear, and fair to him, he was not, I think, suggesting that, on this account, I should grant less of a period for compliance than I otherwise would, so as to ensure that the window was not missed. But, if it needs saying, I would certainly not be prepared to do so. Rather, his case was that the period for compliance which he in principle proposed would fall within that window.

136. Having arrived at the conclusion, so far, that I would grant injunctions requiring domestic use to cease by 31 December 2020, and the land to be fully restored by 31 January 2021, I would, therefore, certainly not be prepared to shorten those deadlines for any reason. Rather, what I have to decide at this point is whether consideration of what the future may hold calls for me to extend those timescales, or, in some way to postpone making an order at all. My conclusion is that it does not.

137. My reasons are, in summary that, having reflected on this aspect, I consider that the risk of a second wave, or, for example, a local outbreak, can be managed and addressed, if need be, should they arise. Mr Lewis has stated that the Claimant would be appropriately responsive to any such significant development. But the Defendants do not have to take it on trust. They, or any of them, would have the ability to apply for a variation of the orders, or the orders as related to them, if there was a material specific change in circumstances, for example by way of imposition of new restrictions in England, or the locality, whether or not the Claimant supported or opposed the application. The possibility of seeking a variation of the order would also be available in the event, were it unfortunately to occur, of a serious Covid-19 related development in relation to an individual Defendant or family member. The order will, however, require them to inform the Claimant's representative of any proposed application before making it.

138. There must, of course, be good arguable grounds for any such application; and it would need to be supported by appropriate evidence, such as in relation to any new national or local restrictions, or appropriate medical evidence relating to individual circumstances. Any such application would, of course, be considered on its merits, and on the basis of the evidence presented to the Court. The point for present purposes is simply that this possibility provides a safety valve in the event of any such serious development.

139. From what I have said it follows that I do not agree that Defendant occupiers should be required to depart only as and when offered suitable alternative pitches by the County Council. The availability, or not, of alternative sites was an important consideration to weigh in the scales, and I have done so; but it does not outweigh the factors pointing the other way in this case. For reasons I have given, factoring in the impact of the pandemic does not change this conclusion. I would also have been concerned that such a generalised condition would be a recipe for uncertainty, given the obvious potential for dispute as to what is or is not suitable in any given case.

Terms of The Order

140. There are the following final matters to consider under this heading.

141. First, I am satisfied that the relief granted should extend to persons unknown. Ownership of the different plots is a matter of record at the Land Registry, and which of the named Defendants are, or are also, living on the Site, is also tolerably clear. But there is also evidence that there may be other people living there who the Claimant has been unable to identify. There is also a clear risk that others may arrive. I note Mrs Archer's evidence about the new caravan seen arriving in June; something which Ms Hawksley told me was not the responsibility of any of her clients.

142. Secondly, Ms Hawksley argued that it would be wrong, in principle, to grant a single Site-wide injunction in respect of all of the Defendants. This was her second line of argument proceeding from the proposition that there should have been separate proceedings, one claim per plot, against the owners and occupiers of each plot. She also submitted that it was the respective owners of each plot who had the ability to remove buildings, and other installations, not those who were mere occupiers. The owners should also not be required to take action in relation to plots that they did not own.

143. Mr Lewis said this aspect had already been considered by the Inspector when reviewing the appropriateness of the Site-wide enforcement notices. Her reasons for considering them to be justified were sound, and equally justified the grant of Site-wide injunctions. There was a history of fluidity, change and elements of uncertainty in relation to the ownership and occupation of different plots. Individual plots could change hands as to both ownership and occupation. Fragmented orders would not be practically enforceable. No-one could be properly punished for a breach which was not by them, and which they could not have done anything about. A Site-wide injunction applying to all Defendants struck a fair and proper balance in this case.

144. In reply Ms Hawksley noted that who owns which plot is a matter of record. She also went through the dates of acquisition of each plot by their current owners. With one exception they were all acquired by January 2017, with plot 6b having been acquired by Mr Hopkins in August 2019. The picture had therefore, she said, been stable for some time. Further, she submitted, if an injunction required an owner to take positive steps to clear their own plot, they could not frustrate its effect by transferring ownership to someone else. They would simply be choosing to put themselves in a position where they could not comply, but would still be liable for that non-compliance.

145. Finally, submitted Ms Hawksley, the consideration by the Inspector of the suitability of Site-wide enforcement orders was a distinct matter; and whilst the sanction for breach of an enforcement order was criminal, it was limited to a fine. The grant of an injunction, which could lead to someone being committed to prison for a breach, was a very different matter.

146. My conclusions on this aspect are as follows. First, it seems to me that, in principle, a distinction should be drawn between those positive steps to remove physical development, and reinstate the land, which are of a nature such that only the owner could be compelled to take them, and steps to cease using the land for domestic or other non-permitted purposes. I agree that, in principle, the former mandatory requirement should only extend to the owners of each plot, on the date of this

decision, and only, in relation to each of them, in respect of the plot or plots which they own. The latter mandatory requirement should, however, extend to all the Defendants, including the persons unknown. Anyone who is engaging in unlawful use of any part of the Site, or permitting it on their land, must simply stop doing so, whether by themselves or through others. They can all properly be required to do that.

147. I have reflected on whether the line between these two things might in practice be blurred in a way that might cause difficulty. But I do not think so. The occupiers will plainly have to remove their caravans, mobile-homes, vehicles, chattels and any other moveable possessions. The individual plot owners will be co-liable for ensuring that that is done in respect of their plots. They will also have responsibility for removing anything that remains on their respective plots, and for restoring them to their former state, of forming part of a single undeveloped field, including the removal of any remaining fences or other partitioning, cabling, pipes or other fixed infrastructure.

148. The Claimant has identified the current owners of every part of the Site, and they are all Defendants. It seems to me that this approach is both principled and workable. It is not necessary to draft a series of separate injunctions to achieve this result. The draft simply needs to be amended to indicate that, in respect of any positive step which only the owner of a given part of the Site is able to take, with regard to physical development, the order shall only apply, in respect of that step, to the owner of that part. Further, it should not be forgotten that, as the draft order correctly provides, it would of course be a contempt to knowingly assist in, or permit, a breach of such an order, or for an individual Defendant to do something the order prohibits, whether themselves or through others acting on their behalf or with their encouragement.

149. As I have indicated, the deadline for compliance should be 31 December 2020 in respect of cessation of all prohibited use, and 31 January 2021 in respect of removal of all remaining physical development and restoration of the site to grassland. As noted above, it should not apply to the First or Nineteenth Defendants.

150. At the hearing, Mr Lewis and Ms Hawksley both helpfully indicated that, in the event that I decided to grant an order or orders, they would be able to liaise with one another with a view to producing a draft amended order intended to reflect what the Court had decided. I will now ask them to do just that. The final wording of the order will, of course, be determined by me.