



Neutral Citation Number: [2021] EWHC 1186 (QB)

Case No: QB-2021-001698

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
URGENT APPLICATIONS COURT

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 6th May 2021

Before :
MR JUSTICE FORDHAM

Between :

**HINCKLEY & BOSWORTH BOROUGH
COUNCIL**

Claimant

- and -

**KATHLEEN ANNE MORRISON
LEVI SYKES
ISAAC DRAPER
PERSONS UNKNOWN**

Defendants

Hugh Richards (instructed by Ivy Legal) for the **Claimants**

Hearing date: 6.5.21

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. In this case Mr Richards and the materials before the Court have satisfied me that it is necessary and proportionate, and using the word favoured by Parliament “expedient”, to make the interim injunction order sought, pursuant to section 187B of the Town and Country Planning Act 1990, to prevent further unauthorised development on the land to which this application relates.
2. The terms of the Order I will make are not only going to be required to be served in accordance with the Order, but they are going to be available from the court file as a public document for any person who wishes to see the detail. If any member of the press or public or other person who has observed this public hearing wishes to access the Order, or wishes to have the approved written version of this ruling, they are very welcome to email my clerk jessica.turner1@justice.gov.uk and those will be provided by email. The mode of hearing for this application was by Microsoft Teams. The case was not listed in the cause list. But what was listed was that, as the Urgent Applications Judge, I would be dealing at 2 o’clock today with ‘without notice’ applications. There was an email address, usable by any member of the press or public who wished to observe any hearing that took place. Those arrangements sought to replicate, and in some ways may even have been more accessible than, the arrangements that would have applied if we had all been physically in the courtroom together. I am satisfied that a remote hearing was justified in this case. The open justice principle was secured in the ways that I have just described.
3. What satisfies me of the justification for the interim injunction are the materials before the Court and in particular Mr Richards’s skeleton argument of 5 May 2021 and two witness statements of Tom Wicks dated 4 May 2021 and 5 May 2021. I am also fully satisfied, by reference to the contents of those materials, that it is appropriate and necessary for this Order to be made against persons unknown; that the modes of service contained within the Order are justified and necessary; and that it is appropriate for this application to have been made and heard, albeit in a public hearing, ‘without notice’ to the Defendants.
4. The land in question is ‘land to the south east of Leicester Road, Barwell, opposite Hinckley rugby club’. The circumstances are these. On 1 May 2021 complaints were received by the Claimant relating to development of the land. There is no planning permission. In the light of activities on the ground a Temporary Stop Notice was issued on 2 May 2021 to prevent further unauthorised development of the land. What has happened and continue to happen, as is described in the evidence and captured in photographs, are significant and substantial operations involving diggers, hardstanding and fencing, described by Mr Wicks as being engineering work on a remarkable scale. A site visit on 4 May 2021 found there were diggers operating on site; there were also on site three static caravans; and two touring caravans. As a result of conversations which took place with the Second and Third Defendants the Claimant understands, and has been told, that the intention is that the development works will continue notwithstanding the Temporary Stop Notice. And so they have. The First Defendant is the registered owner of the land. The three named Defendants are all believed to be resident in caravans on the site.
5. The interim order which I make today does not disturb the status quo as at the time that the Order is served. What it does, as in my judgment is clearly and urgently

necessary, is to prevent – on an interim basis – any further developmental activity or the bringing of caravans onto the site, or the coming onto the site to live on the land or in a caravan of any person not already doing so. That is the gist, but that gist is not a substitution for the clear and express terms of the order. I am quite satisfied that there is a triable issue; that damages would be an inadequate remedy; that no undertaking in damages is needed or appropriate from the Claimant; and that the balance of convenience and justice strongly favours the grant of the application. Planning merits are not for me, still less today. But Mr Wicks has cogently explained in his witness statement evidence how the position of the Claimant, at least for the purposes of the action that it has decided it is appropriate to pursue, is as follows: that the use of the land as a residential caravan site causes harm to the character and appearance of the countryside; that it is contrary to the relevant and applicable planning policies; and that the scale and nature of the change of use in combination with the relatively exposed setting leads to a harmful replacement of open rural land (as to character and appearance) by incongruous physical encroachment and attendant domestic activity. There are, on the face of it, strong and compelling reasons to suppose that unless restrained, further activities in pursuing an unauthorised development in breach of planning controls, would continue. This is a course of action which has continued in flagrant defiance of a Temporary Stop Notice. In accordance with the obligations and high duties of candour and fairness which apply in ‘a without’ notice application, Mr Richards has – in particular – drawn my attention to the fact that the Claimant acknowledges that there is a pressure in the region for further residential caravan sites. I have taken that consideration into account.

6. The ‘without notice’ nature of the application, in my judgment, is fully justified in the circumstances. I accept on the evidence that works to the land have been carried out over a Bank Holiday weekend and are continuing notwithstanding the Temporary Stop Notice. I accept that there was a real and substantial risk that if notice were given that an injunction were being sought, that would accelerate unauthorised activities and occupation on the land in the period between service and the hearing of the application. Those affected have the protection of being able to apply to the Court on 48 hours’ notice to vary or discharge the Order. There is also a return date one week tomorrow, to have a hearing at which all parties can participate, so that a fully informed court can consider the position going forward. I repeat: the Order I am making has been designed to be prohibitory of further and new activity. No mandatory order is sought, or has been made on a without notice basis: to require anything to be removed from the land; any person who (at the time of service of the Order) is already living on the land or in a caravan on the land to be evicted. What the Order does is to prohibit further activity: bringing of caravans onto the land; entering into occupation on the land; bringing machinery; bringing storage containers; spreading building materials or waste; expanding the hardstanding; erecting a fence; and so on. Again, that is to gist the relevant part of the Order but that is no substitute for the precise terms of the Order.
7. Finally, the Order provides – as I have mentioned – for modes of service. To the extent that an address is known (ie. on the part of the First Defendant), that any person is present at the time of service, or that any person is resident at the time of service in a caravan or mobile home, the Order provides for the modes of service: by delivery to that address; personally; and by attaching copies at the entrance doors of any caravan or mobile home. But, in relation to all of the Defendants, there is also provision in the

Order - which I am satisfied is necessary and justified - for service by means of using stakes placed in the land and by attaching copies of the Order at the main entrance. Those modes of service are particularly important in relation to the Fourth Defendant – “persons unknown” – which the Order describes as “persons unknown intending to live on the land or carry out activities covered by” the operative paragraph set out later on the face of the order. Finally, I am grateful to Mr Richards and his instructing solicitor Ms Visagie for confirming the Claimant’s intention is that this written ruling also be provided to the Defendants.

6.5.21