

B E T W E E N :

- (1) NUNEATON AND BEDWORTH BOROUGH COUNCIL
(2) WARWICKSHIRE COUNTY COUNCIL**

Claimants

-and-

- (1) THOMAS CORCORAN
(2) – (53) OTHER NAMED DEFENDANTS
(54) PERSONS UNKNOWN FORMING UNAUTHORISED ENCAMPMENTS
WITHIN THE BOROUGH OF NUNEATON AND BEDWORTH**

Defendants

CLAIMANTS' SKELETON ARGUMENT

for the final hearing listed on 16, 17 & 18 December 2024

References

- Core Bundle – [CB/tab/page]
- Evidence Bundle – [EB/tab/page]

Essential pre-reading (one day – 16th December 2024 – allocated):

- First witness statement of Philip Richardson [EB/3/184-1228]
- Witness statement of Carol Ingleston [EB/2/10-183]
- Sixth witness statement of Philip Richardson [EB/15/2221-2286]
- Witness statement of Waheeda Sheikh [EB/19/2320-2525]
- Interim injunction order [CB/11/69-82]

INTRODUCTION

1. This is the final hearing of the Claim for injunctive relief against various named Defendants and a defined category of Persons Unknown. The injunction sought is a so-called 'Traveller Injunction', in that it prohibits the formation of unauthorised encampments and the depositing of controlled waste. The injunction is sought against the named Defendants on

a borough-wide basis, with the injunction against Persons Unknown sought on the basis that it should apply only to a list of specific sites within the Borough.

2. Interim relief, which reflects the above relief sought at this hearing, was granted by Timothy Straker QC (sitting as a Deputy Judge of the High Court) on 19 March 2019 [CB/11/69-82].
3. Where the injunction is sought against the named Defendants, it can properly be characterised as a final injunction, and this hearing is therefore a ‘final hearing’. Where the injunction is sought against Persons Unknown, following the decision of the Supreme Court in *Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors* [2023] UKSC 47; [2024] 2 WLR 45 (*‘Wolverhampton’*), the injunction cannot be properly characterised as ‘final relief’, but rather a continuation of the existing interim injunction, subject to future and regular review.
4. This Claim was caught within the *Barking & Dagenham* litigation, which culminated in the appeal to the Supreme Court in *Wolverhampton*, to which the Claimants were successful respondents. As such, these proceedings have a complex procedural history, which shall be outlined below. For example, the final hearing had originally been listed to be heard in December 2022.
5. The Appellants in *Wolverhampton* (those being three organisations that represent the interest of the Gypsy and Traveller community) have been notified of this final hearing.
6. No named Defendant has formally acknowledged service or defended the Claim, and it is submitted that judgment should therefore be entered for the Claimants in relation to the named Defendants. The Claimants are only precluded from seeking default judgment by reason of this being a Part 8 Claim (CPR 8.1(5)), which procedure the Claimant was required to use pursuant to PD 49E para 4.
7. The Claim against each of the named Defendants is set out in the relevant Scott Schedule for that Defendant, which can be located in the in the separate bundle of Scott Schedules. The Claimants have not received any response to those Schedules, nor has any Defendant or Person Unknown indicated any intention or desire to participate in these proceedings.

Outstanding Application(s)

8. There is one outstanding Application that also fall to be determined at this final hearing, that being the Application dated 18 August 2022, by which the Claimants seek to add an additional (142nd) site to the list of sites included within the scope of the order being sought against Persons Unknown. The Application can be found at **[CB/8/56-50]**, and the evidence in support at **[EB/15/2221-2286]** (the sixth witness statement of Philip Richardson dated 17 August 2022) and **[EB/16/2287-2290]** (the witness statement of John Bosworth dated 16 August 2022).
9. Further, it has come to the Claimants' attention that the names of some of the named Defendants as recorded on the Claim Form require amendment. The relevant Defendants are:
 - D2 Jessica Dodd, should be 'Jessica Dodds';
 - D27 Paul McDonagh, should be 'Paul McDonagh'
 - D29 Bernard McDonagh, should be 'Bernard McDonagh'
 - D30 John McDonagh, should be 'John McDonagh'
 - D31 Mike McDonagh, should be 'Mike McDonagh'
 - D32 Martin McDonagh, should be 'Martin McDonagh'
 - D33 Aaron McDonagh, should be 'Aaron McDonagh'

Service

10. The Claimants are filing with the court (and will provide in hard copy, if required) certificates of service relating to the Claim Form, Amended Claim Form and notice of this hearing.

PROCEDURAL HISTORY, THE PARTIES AND THE ORDER SOUGHT

Procedural History

11. This Claim has endured an extended procedural path on its way to final hearing, and it may be of assistance for the Court to understand the same. To that end:

- i. On 22 February 2019, an alternative service order granted by Dove J **[CB/10/66-68]**;
- ii. On 19 March 2019, the interim injunction order was granted by Timothy Straker QC (sitting as a Deputy Judge of the High Court) **[CB/11/69-82]**;
- iii. October to December 2020 – a series of Orders are made by Nicklin J by which 38 injunctions in the same nature of the Claimant’s injunction (and including the Claimant’s injunction) were brought back before the Court for re-consideration. Following a case management hearing held on 17 December 2020, a two-day hearing was listed for 27 and 28 January 2021;
- iv. Nicklin J, following the hearing on 27 and 28 January 2021, and the consequent decision at **[2021] EWHC 1201 (QB)**, directed by way of an Order dated 24 May 2021 **[CB/16/113-114]** that the power of arrest against the 54th Defendant (Persons Unknown) should be discharged, and that a hearing should be held to determine whether the Claimant had abused the Court’s process by not yet advancing the Claim to a final hearing;
- v. The Claimants appealed the decision of Nicklin J (**[2021] EWHC 1201 (QB)**);
- vi. The abuse of process hearing took place on 28-30 July 2021. Nicklin J, by an order dated 30 July 2021 **[CB/20/122-128]**, made no order on that application and gave directions for the filing of further evidence and the sending of letters to the named Defendants. No directions for a final hearing were made in light of the outstanding appeal (of **[2021] EWHC 1201 (QB)**) to the Court of Appeal;
- vii. The appeal was heard by the Court of Appeal on 30 November to 2 December 2021. The Claimant was successful on appeal **[CB/22/131-133]** (*London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* **[2022] EWCA Civ 13; [2023] QB 295**);

- viii. On 23 May 2022, a directions hearing took place timetabling the Claim through to this final hearing. That timetable directed that Scott Schedules setting out the Claim against each named Defendant should be filed and served [CB/23/134-138];
 - ix. Permission to appeal was granted by the Supreme Court on 25 October 2022 [CB/25/141], with the hearing then expedited to a February listing (the appeal becoming known as the *Wolverhampton* appeal). Consequently, on the application of the Claimants, this Claim was stayed (with the interim injunction remaining in force throughout the period of the stay) [CB/26/142-143]
 - x. The *Wolverhampton* appeal was heard on 8 and 9 February 2023, the appeal was refused with judgment handed down on 29 November 2023.
 - xi. On 27 March 2024, a directions hearing was held, and directions to this final hearing set down [CB/28/146-148].
12. Following the Supreme Court’s decision in *Wolverhampton* additional updating evidence was filed and served in accordance with the Order of Heather Williams J at [CB/28/146-148]. That evidence is contained in the witness statement of Waheeda Sheikh [EB/19/2320-2525], which confirms that there have been a further 17 encampments since June 2022.

The Parties

The Claimants

13. The First Claimant is the local authority for the administrative area of Nuneaton and Bedworth. The Borough is located within Warwickshire and comprises 78.95 square kilometres, with a population of 125,200 (making it the most densely populated borough in the county) (**WS1 Philip Richardson para 6 [EB/3/184-1228]**). The Second Claimant is the relevant local highway authority.
14. Between April 2015 and the end of 2018, the Claimants experienced 103 unauthorised encampments within the Borough (**WS1 Philip Richardson para 14 [EB/3/184-1228]**).

The encampments caused significant nuisance to businesses and inhabitants of the First Claimant's administrative area. The Claimants attempted to manage these encampments by issuing of section 77 Criminal Justice and Public Order Act 1994 (CJPOA) directions, requiring the Defendants to leave the land, and through the police exercising their section 61 CJPOA powers directing the Defendants to leave the land. These powers proved to be ineffective in resolving the issue, and on many occasions the encampment simply moved to another site within the First Claimant's administrative area, necessitating the whole process to start again.

15. The sites targeted by the Defendants have included open green space, business sites, sports and recreation areas, car parks and sites close to schools. A number of these sites have been accessed by the Defendants through forced entry, causing damage to land and property **(WS1 Philip Richardson paras 94-98 [EB/3/184-1228])**. By the time the Claimants or the police managed to move the Defendants from the sites, the site was frequently found to have been fly-tipped with commercial and household waste. Human excrement and soiled materials were usually found on the site, which is prejudicial to health **(WS1 Philip Richardson paras 72-76 [EB/3/184-1228])**.
16. The evidence also confirms that where the Travellers have been approached by members of the public and officers, there have been at times serious threats of violence and intimidation **(WS1 Philip Richardson paras 82-89 [EB/3/184-1228])**. The Travellers' conduct has also led to school closures and other adverse impacts on schools **(WS1 Philip Richardson paras 90-93 [EB/3/184-1228])**.
17. The geographical spread of encampments is shown on the maps exhibited at **[EB/3/1086-1087]**. The encampments have had a negative impact on the inhabitants of the area for the following reasons:
 - (i) The travellers have fly-tipped many sites;
 - (ii) The threats have at times been of a serious nature, including actual violence in the form of assault;
 - (iii) The encampments leave behind untreated human excrement, as the Defendants do not use the toilets within their own caravans and do not clean the site prior

to leaving the site. Human excrement has been found on most sites the Defendants have occupied;

- (iv) Impact on open green space;
- (v) The cost of clearing-up after the encampments.

The named Defendants

18. The Claim, seeks an order against 33 named Defendants and Persons Unknown. The injunction is sought against the named Defendants on a borough-wide basis. The Order sought (and which has been granted on an interim basis) does not prohibit lawful encampments.
19. The Scott Schedules set out the case against the 33 remaining named Defendants, and the content shall not be repeated in this skeleton.
20. Where the name of a person alleged to have committed the wrongs complained of is known, that person has been named as a Defendant in the proceedings, as is required, as they are not a Person Unknown. As the Court will see from the evidence in support of the Claim against each of the named Defendants, the identity of the named Defendants has often been ascertained by way of VRM checks. Specifically, the VRM of vehicles noted as being present at an encampment were checked against the Police National Computer, and the registered keeper of and, in some instances, those associated with the vehicle, have been named as Defendants in the proceedings.

Persons Unknown

21. The injunction is **not** sought against Persons Unknown on a borough-wide basis; rather, the Persons Unknown injunction is sought only in relation to a specific list of sites within the Borough.
22. As is explained in the witness statements of Philip Richardson and Waheeda Sheikh, the 141 (now 142) sites chosen for protection against Persons Unknown are those which have

been, or are likely to be, targeted by unauthorised encampments (the latter being sites in the same nature as those which have already been targeted), especially where unauthorised encampments would be especially harmful to the land and the inhabitants of the Borough. The Claimants accept that they have not, and cannot, assess the welfare needs of all Persons Unknown who may enter the Borough and form an unauthorised encampment, such that it would be inappropriate to seek a precautionary Borough-wide injunction against those persons. Rather, the Claimant has sought to strike a balance between the as yet unknown needs of Persons Unknown, and the need to protect land in the Borough and the interests of the inhabitants of the Borough.

23. The Order sought (and which has been granted on an interim basis) does not prohibit lawful encampments, nor does it prohibit encamping in any way in the areas of the Borough not covered by the injunctive relief.
24. The Claimants submit that injunctive relief against Persons Unknown is required as it has not been possible to identify all those who have unlawfully encamped on the sites in the Borough for which protection is sought, and as it is far more likely than not that, following the grant of final relief, persons who have not yet unlawfully encamped in the Borough will attend the Borough and form an unauthorised encampment. Unless the final Order in this Claim captured any such 'newcomer', they would not be restrained from forming an unauthorised encampment and the Claimants would be put to the expense of seeking further injunctive relief, which expense is met with public funds.

FACTUAL BACKGROUND

25. As stated above, between April 2015 and the end of 2018, the Claimants experienced 103 unauthorised encampments within the Borough, at least 12 encampments between the grant of the interim injunction and June 2022 (**WS6 Philip Richardson para 5 [EB/15/2221-2286]**) and have experienced a further 17 since June 2022. In relation to the named Defendants, various of the entries on the Scott Schedules detail the Claim against each of the named Defendants, the clean-up costs incurred by the Claimant by reason of the encampments. As can be seen from that evidence, the costs incurred by the Claimant often runs to the hundreds, and sometimes thousands, of pounds per encampment.

Impact of Unauthorised Encampments

26. The Claimant respectfully asks the Court to consider in full the first witness statement of Philip Richardson [EB/3/184-228]. In that witness statement, details the various adverse impacts that the unauthorised encampments have had on the Borough, and does so under the following headings:

- i. Fly-tipping;
- ii. Risk to public health (including by the depositing of human excrement);
- iii. Damage to the wealth and prosperity of the Borough;
- iv. Threats and intimidation;
- v. Environmental impacts on greenspace and damage to land;
- vi. Community tension.

27. In very short form, the unauthorised encampments are often linked to forced entry onto the relevant land, fly-tipping (often on a commercial scale), the depositing of untreated human excrement and other soiled materials which are prejudicial to human health (see in particular the witness statement of Robert John Watson [EB/1/3-9]), and anti-social behaviour (such as threats and intimidation, fire and health and safety hazards and defecation in public places).

Management of Unauthorised Encampments

28. The Claimants' management of unauthorised encampments is summarised in the witness statement of Carol Ingleston [EB/2/10-183] and the first witness statement of Philip Richardson [EB/3/184-1228]. Further, the First Claimant operates a policy of toleration, where appropriate, and deals with encampments in accordance with the 'Dealing with Unauthorised Encampments in Warwickshire Protocol 2017' (see **WS6 Philip Richardson paras 14-16 [EB/15/2221-2286]** and the exhibits referred to therein [EB/15/2270-2286]).

LEGAL FRAMEWORK

29. The Court's power to grant injunctions is wide-ranging, and is derived from the Senior Courts Act 1981, s37, which provides:

(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.

30. As set out above, the Claimants in these proceedings sought and obtained the interim injunction pursuant to the Local Government Act 1972, s222 and the Town and Country Planning Act 1990, s187B.

Town and Country Planning Act 1990, s187B

31. The Town and Country Planning Act 1990, s187B (**‘s187B’** hereafter) provides:

- a) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to court for an injunction, whether or not they have exercised or are proposing to exercise any of their powers under this Part.*
- b) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.*
- c) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.*
- d) In this section “the court” means the High Court or the county court.*

32. Accordingly, the court may grant an injunction where a local planning authority (such as the Claimant) considers it necessary or expedient to restrain an actual or apprehended breach of planning control. The court has a wide jurisdiction as to the scope and terms of the Order (**s187B(2)**), which Order may be sought against Persons Unknown (**s187B(3)**).

33. The underlying cause of action in a claim brought under s187B is a breach of planning control.

Breach of planning control

34. The Town and Country Planning Act 1990 (the **‘TCPA 1990’**), **s55(1)** defines ‘development’ as:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

35. The **TCPA 1990, s55(3)** provides:

For the avoidance of doubt it is hereby declared that for the purposes of this section –

a) ...

b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if –

- i. the superficial area of the deposit is extended, or*
- ii. height of the deposit is extended and exceeds the level of the land of the adjoining site.*

36. Pursuant to the **TCPA 1990, s57(1)**, planning permission is required for the carrying out of any development of land. Planning permission may be obtained by way of express grant, or by way of deemed grant through permitted development rights. Carrying out development (as defined in the Act) without the required planning permission constitutes a breach of planning control (**s171A(1)**).

37. The breaches of planning control complained of in this Claim are primarily the material change in the use of the relevant land to a temporary Traveller site, and by the depositing of refuse or waste materials, without the requisite planning permission.

38. Unusually, the cause of action that underlies a claim brought pursuant to **s187B** (that being a breach of planning control) is not one upon which the Court can adjudicate; the Court is not entitled to reach its own independent view on the planning merits of the case. The decision as to whether something is or is not a breach of planning control is a matter for the local planning authority, or the Secretary of State on appeal, and not the Court, as confirmed by the House of Lords in *South Buckinghamshire District Council v Porter & Anr* [2003] UKHL 26; [2003] 2 AC 558 (*Porter*) at [11], [20], [29] and [30].

39. That said, the court's power to grant an injunction under **s187B** remains a discretionary one, albeit that discretion is not unfettered (see **Porter [28]-[29]**). Underpinning the court's jurisdiction to grant an injunction is the Senior Courts Act 1981, s37(1), which provides that the court may grant an injunction when it considers it '*just and convenient to do so*'. The discretion must be exercised judicially, meaning, in this context

...that the power must be exercised with due regard to the purpose for which it was conferred: to restrain actual and threatened breaches of planning control. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for. (Porter at [29] per Lord Bingham).

Local Government Act 1972, s222

40. The Local Government Act 1972, s222 ('**s222**' hereafter) provides:

- 1) *Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area –*
 - a. *they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and*
 - b. *they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment.*

41. Accordingly, **s222** does not create a cause of action. Rather, it confers on local authorities the power to bring proceedings to enforce obedience to public law, without the involvement of the Attorney General: **Stoke-on-Trent City Council v B&Q (Retail) Ltd [1984] AC 754**.

42. The guiding principles as to the exercise of the court's discretion under s222 are identified in **City of London Corporation v Bovis Construction Ltd [1992] 3 All ER 697** at 714 (per Bingham LJ), and include:

...the essential foundation for the exercise of the court's discretion to grant an injunction is not that the offender is deliberately and flagrantly flouting the law but the need to draw the inference that the defendant's unlawful operations will continue unless and until effectively restrained by the law and that nothing short of an injunction will be effective to restrain them: see Wychavon DC v Midland Enterprises (Special Events) Ltd (1986) 86 LGR 83 at 89.

43. Where an injunction is granted under s222, a power of arrest may be attached to the injunction pursuant to the **Police and Justice Act 2006, s27**. To that end, **s27(2)** provides:

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

44. Section **27(3)** provides:

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

- a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or*
- b) there is significant risk of harm to the person mentioned in that subsection.*

Persons Unknown: Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors

45. The Supreme Court, in *Wolverhampton*, considered many issues relating to so-called Traveller injunctions against newcomer Persons Unknown. The Court dismissed the appeal and found that ‘final’ injunctive relief can be granted against newcomer Persons Unknown, albeit that Court held that such an injunction, in its operation against newcomers, is neither interim nor final in substance, and is instead a form of without notice relief (see [139]).

46. Throughout the course of its judgment, the Court examined the distinguishing features of such injunctions and, of particular importance, the principles that govern when such relief can and should be granted (ie. when it would be just and convenient to grant such relief). Specifically, at [167] the Court set out the following.

These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:

- i. *There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.*
- ii. *There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226-231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.*
- iii. *Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.*
- iv. *The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.*
- v. *It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries.*

47. The practical application of the principles affecting an application for a newcomer injunction against Gypsies and Travellers, and the safeguards that should accompany the making of such an Order, were considered in detail at [188]-[237]. The same shall not be extracted in full here, and the Court is respectfully asked to read and consider the same, with the relevant parts being referred to below in submissions.

Precautionary relief

48. The injunction is sought to restrain apprehended breaches of planning control (and the various nuisances complained of that flow from those breaches). To that end, the Claimants

are seeking *quia timet* relief (or ‘precautionary relief’), albeit the relief sought is not *pure* precautionary relief on the basis that the apprehended wrongs, and resulting harm, have already occurred. As such, it is not clear to what extent the Court should apply the principles that guide the grant of precautionary relief, although they do clearly have some relevance and application.

49. The flexible guiding principles to be applied when considering whether to grant precautionary relief were revisited by Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456; [2019] 4 WLR 2 (*‘Vastint’*), which decision has since been approved in *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2022] EWCA Civ 13; [2023] QB 295 (*‘Barking & Dagenham’*) by Sir Geoffrey Vos MR at [83].

50. The guiding principles are set out in *Vastint* at [26]-[31]. In particular, at [29] Marcus Smith J quotes from *Gee, Commercial Injunctions, 6th ed (2016), para 2-035*

There is no fixed or ‘absolute’ standard for measuring the degree of apprehension of a wrong which must be shown in order to justify quia timet relief. The graver the likely consequences, the more the court will be reluctant to consider the application as ‘premature’. But there must be at least some real risk of an actionable wrong.

51. Marcus Smith J, at [31], then sets out the following five propositions

(1) A distinction is drawn between final mandatory and final prohibitory quia timet injunctions. Because the former oblige the defendant to do something, whilst the latter merely oblige the defendant not to interfere with the claimant's rights, it is harder to persuade a court to grant a mandatory than a prohibitory injunction. That said, the approach to the granting of a quia timet injunction, whether mandatory or prohibitory, is essentially the same.

(2) Quia timet injunctions are granted where the breach of a claimant's rights is threatened, but where (for some reason) the claimant's cause of action is not complete. This may be for a number of reasons. The threatened wrong may, as here, be entirely anticipatory. On the other hand, as in Hooper v Rogers, the cause of action may be substantially complete. In Hooper v Rogers, an act constituting nuisance or an unlawful interference with the claimant's land had been committed, but damage not yet sustained by the claimant but was only in prospect for the future.

(3) When considering whether to grant a quia timet injunction, the court follows a two-stage test: (a) First, is there a strong probability that, unless restrained by injunction, the defendant will act in breach of the claimant's rights? (b) Secondly, if the defendant

did an act in contravention of the claimant's rights, would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of actual infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate?

*(4) There will be multiple factors relevant to an assessment of each of these two stages, and there is some overlap between what is material to each. Beginning with the first stage—the strong possibility that there will be an infringement of the claimant's rights—and without seeking to be comprehensive, the following factors are relevant: (a) If the anticipated infringement of the claimant's rights is entirely anticipatory—as here—it will be relevant to ask what other steps the claimant might take to ensure that the infringement does not occur. Here, for example, *Vastint* has taken considerable steps to prevent trespass; and yet, still, the threat exists. (b) The attitude of the defendant or anticipated defendant in the case of an anticipated infringement is significant. As *Spry, Equitable Remedies*, 9th ed (2013) notes at p 393: “One of the most important indications of the defendant's intentions is ordinarily found in his own statements and actions”. (c) Of course, where acts that may lead to an infringement have already been committed, it may be that the defendant's intentions are less significant than the natural and probable consequences of his or her act. (d) The time-frame between the application for relief and the threatened infringement may be relevant. The courts often use the language of imminence, meaning that the remedy sought must not be premature. (*Hooper v Rogers* [1975] Ch 43, 50)*

(5) Turning to the second stage, it is necessary to ask the counterfactual question: assuming no quia timet injunction, but an infringement of the claimant's rights, how effective will a more-or-less immediate interim injunction plus damages in due course be as a remedy for that infringement? Essentially, the question is how easily the harm of the infringement can be undone by an ex post rather than an ex ante intervention, but the following other factors are material: (a) The gravity of the anticipated harm. It seems to me that if some of the consequences of an infringement are potentially very serious and incapable of ex post remedy, albeit only one of many types of harm capable of occurring, the seriousness of these irremediable harms is a factor that must be borne in mind. (b) The distinction between mandatory and prohibitory injunctions.

52. Paragraphs [29]-[31] of *Vastint* were reproduced in full by Meade J in ***Koninklijke Philips NV v Guandong Oppo Mobile Telecommunications Corp Ltd* [2022] EWHC 1703 (Pat)** at [18], stating that ‘*there is very little dispute about the principles*’. Meade J goes on to say, at [19]

*It is clear from the decision of Marcus Smith J and the earlier cases that he cites, including *Islington Council v Elliott* and *Lloyd v Symonds* that assessment of the appropriateness of quia timet relief is a multifactorial test. The court is not just to assess as a percentage the likelihood of the defendant doing the act which is sought to be restrained, but must have regard to the other matters identified in those paragraphs.*

SUBMISSIONS

53. Given the recent and significant developments in the law relating to injunctions against newcomer Persons Unknown, the submissions in this skeleton argument shall be divided into two main sections: those that relate to Persons Unknown, and those that relate to the named Defendants. Whilst there will be some overlap between the two submissions, the significance of *Wolverhampton* and the guidance set out therein is such that the same must be dealt with carefully and in full by the Claimants, and the submissions on the case against Persons Unknown must not be conflated with the case against the named Defendants.
54. A third section of submissions in relation to the power arrest shall then follow.
55. The Claimants respectfully suggest that the Court may be assisted by considering the judgment of Butcher J in *Rochdale MBC v Heron & Ors* [2024] EWHC 1653 (KB). Those proceedings are related to this Claim in that the Claimant was also a respondent to the *Wolverhampton* appeal, and also seeking a borough-wide order against named Defendants and site-specific order against Persons Unknown. The judgment is an example as to how the court should approach these Claims in circumstances where no named Defendant has defended the Claim, and where a power of arrest is sought, and where no undertaking in damages needs to be offered by the Claimants.
56. With the significance of *Wolverhampton* in mind, the Claimants shall first deal with the submissions in relation to Persons Unknown.

SUBMISSIONS: PERSONS UNKNOWN

57. The Claimants' submissions shall in the first instance be structured around the guidance set out at [167] and [188]-[237] of *Wolverhampton*, before addressing the *Vastint* multi-factorial test.

Compelling justification for the remedy

58. The guidance at [167(i)] of *Wolverhampton* requires there to be a compelling need, sufficiently demonstrated by the evidence, for the remedy that is sought, which is not

adequately met by other measures available to the Claimants. At [188], the compelling need is described as the ‘*overarching principle that must guide the court at all stages of its consideration*’. At [218] the Supreme Court also held that there ‘*must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm*’.

59. Further, the guidance at [188]-[217] of *Wolverhampton* must be considered when the court is assessing whether there is a compelling justification for the injunctive relief sought. At [189], the Supreme Court said that there are three preliminary questions:

- i. whether the local authority has complied with its obligations to consider and provide lawful stopping places for Gypsies and Travellers;
- ii. whether the local authority has exhausted all reasonable alternatives, including whether it has engaged in dialogue with the Gypsy and Traveller community to try and find a way to accommodate their nomadic way of life by giving them time and assistance to find alternative or transit sites, or permanent accommodation;
- iii. whether the local authority has taken steps to control or prohibit unauthorised encampments and related activities by using other measures and powers at its disposal.

60. Paragraphs [190]-[217] then go on to further dissect each of the three preliminary questions.

61. It is clear that the guidance in *Wolverhampton* militates in the same direction as s222, in that injunctive relief should be granted in circumstances where nothing short of an injunction will suffice to restrain the wrongful conduct complained of.

Evidence of wrongful conduct requiring a remedy

62. The Claimant has given clear and comprehensive evidence of wrongful conduct requiring of a remedy: **WS1 Philip Richardson [EB/3/184-1228]**, **WS Carol Ingleston [EB/2/10-183]**, **WS Sgt Scrutton [EB/8/1266-1836]**, **WS6 Philip Richardson [EB/15/2221-2286]** and **WS Waheeda Sheikh [EB/19/2320-2525]**.

The three preliminary questions: (1) the obligation to consider and provide lawful stopping places

63. The relevant guidance in Wolverhampton can be found at [190]-[202].
64. The provision for Travellers in the Borough (both permanent and transit) is set out in **WS6 Philip Richardson paras 10-13 [EB/15/2221-2286]** and **WS Waheeda Sheikh paras 15-23 [EB/19/2320-2525]**.
65. The First Claimant operates a policy of toleration, where appropriate, and deals with encampments in accordance with the 'Dealing with Unauthorised Encampments in Warwickshire Protocol 2017' (see **WS6 Philip Richardson paras 14-16 [EB/15/2221-2286]** and the exhibits referred to therein **[EB/15/2270-2286]**).
66. Further, the First Claimant is currently working with the Second Claimant, neighbouring local authorities and Warwickshire Police to agree a standard county-wide protocol on negotiated stopping (**WS Waheeda Sheikh paras 12 and 22-23 [EB/19/2320-2525]**).

The three preliminary questions: (2) exhaustion of all reasonable alternatives

67. As is set out below, the Claimants submit that it has explored and exhausted all reasonable prohibitory and enforcement action prior to seeking injunctive relief. However, [189] and [203] of *Wolverhampton* also raises the consideration that local authorities should seek to engage with Gypsy and Traveller communities in an attempt to encourage dialogue and co-operation, and better understand the needs of the respective parties.
68. To that end, the Claimants have notified the Appellants in the Supreme Court proceedings in *Wolverhampton* (those being three organisations that represent the interests of the Gypsy and Traveller community) of this final hearing.
69. The Claimants accept that, on the whole, there may not been the level of dialogue with representative groups that appears to have been contemplated by the Supreme Court in *Wolverhampton*. However, in the circumstances, the Claimant respectfully submits that

this should not be a barrier to the continuation of the interim injunction when all the circumstances of this case are considered, and specifically:

- i. the guidance being new relatively guidance, with which the Claimants have had limited time to comply;
- ii. the constructive approach to enforcement that has been adopted by the Claimant;
- iii. the frequent unwillingness of those who form unauthorised encampments to engage with the officers of the Claimant; and
- iv. the absence of a response from those representative groups who have been made aware of this Application.

The three preliminary questions: (3) steps to control or prohibit unauthorised encampments by other measures and powers

70. The Claimants have considered, and used, other measures and powers in an attempt to control and prohibit unauthorised encampments as set out in the witness statement of Carol Ingleston [EB/2/10-183] and the first witness statement of Philip Richardson [EB/3/184-1228].

Procedural protections

71. Paragraph [167(ii)] of *Wolverhampton* requires there to be procedural protections for the rights of newcomers to overcome the strong prima facie objection of subjecting them to a without notice injunction. Those protections should include generous liberty to apply provisions, and an obligation to take all reasonable steps to bring the application and any order to the attention of those who may be affected by any order made. These are expanded upon in [226]-[232].

Liberty to apply

72. The injunction sought will include a generous liberty to apply, as the interim injunction does.

Notification of the Application and any Order

73. The Claimants have notified the Appellants in ***Wolverhampton*** of this final hearing. Appropriate provision for the notification of any Order made can, and should, be made in the Order granted.

Territorial and temporal limitations

74. Paragraph [167(iv)] repeats guidance from earlier case law and requires newcomer injunctions to be constrained by territorial and temporal limitations to ensure, as far as is practicable, that they neither ‘*outflank nor outlast the compelling circumstances relied upon*’. That guidance is expanded upon in [225], where the Supreme Court highlighted the exceptional nature of the remedy and found:

- i. ‘[w]e have considerable doubt as to whether it would ever be justifiable to grant a Gypsy or Traveller injunction which is directed to persons unknown, including newcomers, and extends over the whole of a borough or for significantly more than a year’;
- ii. ‘an injunction which extends borough-wide is likely to leave the Gypsy and Traveller communities with little or no room for manoeuvre’;
- iii. the injunction must be a proportionate response to the unlawful activity to which it is directed;
- iv. injunctions of this kind must be reviewed periodically, and come to an end with the effluxion of time in all cases after no more than a year unless an application is made for their renewal. Such an application should be supported by evidence as to how effective the injunction has been, whether any grounds for its discharge have arisen, whether there is any proper justification for its continuation and whether and on what basis any further order should be made.

Territorial limits of the Injunction

75. The interim injunction, and the order sought in this Claim, are **not** borough-wide as against Persons Unknown, nor have they ever been. The injunction at present applies to only 141 sites, and will apply to 142 sites if granted in the form sought.
76. It is submitted that the Claimant has taken a proportionate and restrained approach to the territorial reach of the injunction, and sought to protect only the most sensitive areas in which the greatest harm is suffered by reason of unauthorised encampments. Members of the Travelling community can encamp in the remaining areas of the Borough without being in breach of any injunction granted.

Temporal limits of the injunction

77. In accordance with the ***Wolverhampton*** guidance, the Claimants seek a one-year order against Persons Unknown. If the Claimant perceives there to be a need to seek a further continuation of the Order upon its expiration, a further application will need to be made, upon which the necessary review of the Order will take place. If no further application is made, the Order will expire by the effluxion of time.
78. Whilst the ***Wolverhampton*** guidance does not apply to named Defendants, the Claimants are mindful of the nature of the remedy that it is seeking, and therefore seeks a five-year order against named Defendants.

It is just and convenient to grant the injunctive relief sought

79. Paragraph [167(v)] of ***Wolverhampton*** repeats the requirement of the Senior Courts Act 1981 that it must be just and convenient to grant the injunction. The Supreme Court gave the example that it may not be just and convenient to grant the relief sought where a local authority has failed to comply with its duties in relation to the provision of sites for members of the Travelling community.

80. There are also several other miscellaneous points of guidance set out between [188]-[237] that do not obviously fall within any of the other subsections of [167], and which should therefore be considered in the general assessment of whether the relief is just and convenient. Those considerations include:

- i. that the intended respondents to an application must be defined as precisely as possible, identified and enjoined where possible and, if the order is sought against newcomers, the possibility of defining the class of persons by reference to conduct and/or intention should be explored and adopted if possible [221];
- ii. the injunction should be clear and precise, and use everyday terms, when setting out the acts that it prohibits. The prohibited acts must correspond as closely as possible to the actual or threatened unlawful conduct, and extend no further than the minimum necessary to achieve the purpose for which it was granted [222]-[224];
- iii. the order is not an interim order, in the sense that it is holding the ring until the final determination of the merits at trial, and where an application is a public body acting pursuant of public duty, and undertaking in damages may not be appropriate. That said, there are some instances in which a cross undertaking may be considered appropriate. The matter should be considered on a case-by-case basis, and an applicant must equip the court with the most up-to-date guidance and assistance [234].

81. This skeleton has already addressed the Claimants' compliance with its obligations to make provision for the Travelling community, and the same shall not be repeated here.

The 'Defendants'

82. As to the matters set out in [221], it is submitted:

- i. the Claimants have identified a significant number of persons associated with the formation of unauthorised encampments in the Borough and who can be served with the proceedings, and have added those persons as named Defendants to the Claim;

- ii. the Claimants have defined the categories of Persons Unknown in accordance with the *Wolverhampton* guidance.

The prohibitions

83. As to the matters set out in [222]-[224], it is submitted:

- i. the prohibitions sought, and which exist in the interim injunction, meet the guidance in *Wolverhampton*. The prohibitions are clear and, for the most part, are drafted in everyday language without reference to legal concepts or specialist language;
- ii. the prohibitions are narrowly drawn, and correspond directly to the relevant unlawful conduct (ie. a breach of planning control by reason of a material change of use without the requisite permission, including by the depositing of waste);
- iii. the combination of the definition of the class of Persons Unknown, coupled with the narrow drawing of the prohibitions, ensures that only conduct that is in any event unlawful is prohibited by the terms of the Order.

Undertaking in damages

84. As to the question of a cross-undertaking in damages, the Court is again respectfully referred to the judgment of Butcher J in *Rochdale MBC v Heron & Ors* [2024] EWHC 1653 (KB), and specifically [55] and [59]-[60].

85. It is ordinary in injunction proceedings brought by a local authority exercising a law enforcement function in the public interest for the court not to require an undertaking in damages: *Kirklees Metropolitan BC v Wickes Building Supplies Ltd* [1993] AC 227 at p274B-E and p275C-D.

86. Leaving aside the technicality that the relief sought in this Claim is not ‘interim’, the Claimants accept that any injunction granted could be reviewed following the activation of the liberty to apply clause, such that it is possible that a future court may conclude, at least

in relation to the person who made the relevant application, that the Order should be varied or discharged in so far as it affects that person. In those circumstances, a successful applicant might well argue that they should have had the benefit of an undertaking in damages given by the Claimant.

87. In that regard, in ***FSA v Sinaloa Gold plc & Ors*** [2013] UKSC 11; [2013] 2 AC 28 (***FSA***), Lord Mance (delivering the unanimous judgment of the Court) held:

Different considerations arise in relation to law enforcement action, where a public authority is seeking to enforce the law in the interests of the public generally, often in pursuance of a public duty to do so, and enjoys only the resources which have been assigned to it for its functions. Other than in cases of misfeasance in public office, which require malice, and cases of breach of the Convention rights within section 6(1) of the Human Rights Act 1998, it remains the case that English law does not confer a general remedy for loss suffered by administrative law action. That is so, even though it involves breach of a public law duty. In the present context, the fact that an injunction is discharged, or that the court concludes after hearing extended argument that it ought not in the first place to have been granted, by no means signifies that there was any breach of duty on the public authority's part in seeking it.

88. Therefore, unless the Claimants have acted in misfeasance of public office, or in breach of the hypothetical applicant's Convention rights, no remedy in damages would in any event be forthcoming, such that an undertaking for the same need not be required. It is denied that the Claimant has acted in either of these ways.

89. To that end, the Claimant acknowledges that it is often argued that injunctive relief of the kind sought by the Claimant interferes with the article 8 rights of Gypsies and Travellers. However, that argument is made on a false premise. Sir Geoffrey Vos MR, when delivering the judgment of the Court of Appeal in ***Barking & Dagenham*** held at [104]-[105] that it was not right for Coulson LJ to say in ***London Borough of Bromley v Persons Unknown & Ors*** [2020] EWCA Civ 12; [2020] PTSR 1043 that members of the Gypsy and Traveller community can rely on an article 8 right to respect for their home, because they have no home on land that they do not own. Therefore, where a person has formed an encampment on land without the permission of the owner and/or in contravention of public (or criminal) law, there can be no question of interference with article 8 rights, and therefore no suggestion that compensation might be payable by the Claimants for a breach of those rights.

90. The Master of the Rolls at [105] acknowledged that members of the Gypsy and Traveller community could rely on an article 8 private and family life claim to pursue a nomadic lifestyle. However, the Human Rights Act 1998 (and s6(1)) is individualised, in that a public authority must not act incompatibly with the Convention rights of a particular person. The exact circumstances of any particular newcomer to the injunction cannot be known unless and until they make themselves known in the proceedings (by, for example, activating the liberty to apply clause, or by coming forward prior to the grant of the Order). The Court can therefore only consider (but in any event must still consider) the rights of newcomers in the abstract. In those circumstances, there can again be no question of interference with article 8 rights of specific newcomers, and therefore no question of compensation in relation to the same.
91. In any event, article 8 is a qualified and not an absolute right, and must be balanced against competing rights (including, but not limited to the rights of the inhabitants of the Claimants' administrative areas, and the Convention rights of landowners under article 1 to the first protocol).
92. Nonetheless, and as observed by the Supreme Court in *Wolverhampton*, there are some instances in which an undertaking in damages may be required from a claimant local authority, citing *Birmingham City Council v Afsar* [2019] EWHC 1619 (QB) ('*Afsar*'). In that case, Warby J noted that an undertaking in damages *may* be required, but that should not be done as a matter of course; it was a matter of discretion for the Court to be considered in the particular circumstances of the case, and what the Court considers to be fair in those circumstances (at [3(3)]).
93. Warby J, when considering circumstances that may be material to the exercise of that discretion made reference to [31] of *FSA* (see [3(4)]), as well as setting out other considerations at [3(5)]: whether the public authority was acting pursuant to a statutory duty in seeking relief, the fact that a public authority has limited resources to fulfil its functions, whether some other person or body would be able to (and would) act if the public authority did not, and the undesirability of deterring a public authority from acting in the public interest.

94. In the circumstances, Warby J did require an undertaking from the claimant local authority, the reasons for which are set out at [5] of the judgment. In doing so, Warby J considered that: (i) s222 was permissive (contrasted with the local authority's duty to protect the highway), (ii) the action was not being taken on behalf of the public at large, but a smaller section of the public (those related to the specific school in question), (iii) the individuals referred to in (ii) could bring their own private law actions, (iv) relatedly, there is no magic in the local authority taking on the burden of the claim, (v) the injunction sought interfered with Convention rights and (vi) there being little prospect that the undertaking would impose a great burden on the claimant local authority, it being unlikely that the injunction would cause any material loss – with the only likely loss being injury to rights and freedoms.

95. It is submitted that there is no reason to depart from the ordinary position and require the Claimants to give an undertaking in damages in this Claim. No undertaking in damages has been required in these proceedings prior to this Claim (including when the grant of the interim Order was made in 2019).

96. When considering the exercise of the discretion, the Claimants respectfully reminds the Court that:

- i. the First Claimant is responsible for the enforcement of planning control in the Borough. In the absence of the First Claimant taking action, no other person can or would take action to enforce against the breaches of planning control that have occurred, and which are threatened;
- ii. for the reasons set out above, it is denied that the Claimants are interfering with the article 8 rights to a home of any member of the Gypsy and Traveller community. If and to the extent that there is any interference with the right to a family and private life, that right is in any event qualified and must be balanced against the rights of others, and the injunction is unlikely to cause a material loss that may be compensated by an award of damages.

97. In any event, if a successful application for discharge or variation is made following the grant of an injunction, the Court has the power to make an award of damages, with which

the Claimant must comply, if it considers it appropriate to do so; not requiring an undertaking in damages does not shut the door on an order for damages being made at the point of variation or discharge. Therefore, there is no reason why, if material loss is suffered (which the Claimants deny is a possibility), that loss cannot be compensated for at the appropriate time.

Full and frank disclosure

98. Finally, and having taken [167] of *Wolverhampton* out of sequence, the Claimants submit that they have complied with the duty of full and frank disclosure throughout these submissions and in its evidence.

Conclusion on the *Wolverhampton* guidance

99. The Claimants submit that they have met the guidance in *Wolverhampton* to such an extent it is both just and convenient to grant a one-year injunction against Persons Unknown at this time. The evidence demonstrates that the interim injunction has been effective in combating the problem of and harm caused by unauthorised encampments, especially when compared to other enforcement mechanisms that have proved ineffective.

100. That said, the Claimants are mindful that the Court will guard carefully the Persons Unknown jurisdiction (and rightly so). If the Court is satisfied that a remedy should be granted (which the Claimant submits it should), but there are concerns over the Order that is sought, or with any of the *Wolverhampton* guidance, the Claimant will of course be receptive to the same and work with the Court to fashion the appropriate remedy.

SUBMISSIONS: NAMED DEFENDANTS

Evidence against the named Defendants

101. None of the named Defendants have formally acknowledged service of or defended the Claim.

102. Pursuant to the direction of Linden J [CB/23/134-138], the Claimants produced a Scott Schedule for each named Defendant against whom the Claim was proceeding, setting out the allegations against each Defendant, and where the evidence in support of the allegation can be found. The Schedules can be found in the Scott Schedule bundle.

103. The Claimants do not repeat the content of those Schedules, and respectfully refers the Court to the same. Each allegation amounts to a breach of planning control (and trespass), and the various nuisances and harms caused by each encampment, and other aggravating factors, are detailed in the evidence referred to in the Schedules.

The *Vastint* multi-factorial test

104. Finally, the Claimants submit that the *Vastint* test is met in relation to the named Defendants, for the same reasons as set out above in relation to Persons Unknown.

105. The Claimants also submit that where there is limited evidence of the named Defendants forming recent encampments in the Borough (ie. since the grant of the interim injunction), it is submitted that the same is evidence of the interim injunction working effectively (which, it should be remembered, is still supported by the power of arrest in relation to named Defendants). Further, the reduction in incidents of the conduct complained of since the grant of the interim injunction is not a reason to refuse to grant final injunctive relief (*S v Poole Borough Council* [2002] EWHC 244 (Admin) at [19] per Simon Brown LJ).

106. Without the injunction, the Claimants apprehend that further encampments will form in the Borough (as they did prior to the interim injunction, and still continue to do, albeit with reduced frequency and duration), and that further harm of the kind complained of in the Claimants' evidence will result from the same.

SUBMISSIONS: POWER OF ARREST

107. Where an injunction is granted pursuant to s222, a power of arrest may be attached to any provision of the injunction pursuant to the Police and Justice Act 2006, s27.

108. As explained above, the interim injunction was originally granted with a power of arrest that took effect against both the named Defendants and Persons Unknown.

109. At this hearing, the Claimants seek an Order with a power of arrest that takes effect against **both** the named Defendants and Persons Unknown, that being the most effective and efficient mechanism by which the Order can be enforced (especially against Persons Unknown). Without the power of arrest, the mechanism for enforcement would be by way of committal proceedings only; however, those proceedings are only effective where the identity of the alleged contemnor is known and where they can be personally served with the committal proceedings. Further, committal proceedings are a much slower enforcement mechanism than the power of arrest, which in turn enables an encampment to remain in situ for much longer, and allows further harm to be caused and accumulate.

110. The Claimant has demonstrated that the power will not be abused, and has not taken a heavy-handed approach with its use to date (and has not in fact sought the arrest of any person under the power at all, instead preferring a constructive approach to enforcement).

CONCLUSION

111. The Claimants seek a five-year injunction order in the same terms as the interim injunction order against the remaining named Defendants, and a one-year injunction order in the same terms as the interim injunction order (with the option to seek an extension upon review).

**Caroline Bolton
Natalie Pratt
Radcliffe Chambers**

10 December 2024