

IN THE HIGH COURT OF JUSTICE

Claim No.

KING'S BENCH DIVISION

IN THE MATTER OF SECTION 222 LOCAL GOVERNMENT ACT 1972

IN THE MATTER OF A CLAIM FOR AN INJUNCTION

B E T W E E N :

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

Claimant

- and -

**PERSONS UNKNOWN ON THE LAND AT BARRINGTON'S PLAYING
FIELDS, BARRINGTON ROAD, LONDON E12 6JH**

Defendants

**SKELETON ARGUMENT
ON BEHALF OF THE CLAIMANT**

INTRODUCTION AND SUMMARY

1. The Claimant local authority, the Council of the London Borough of Newham (**'the Council'**) makes a Part 8 Claim for a prohibitory injunction preventing the Persons Unknown from trespassing on the Barrington's Playing Fields, Barrington Road, London E12 6JH (**'the Playing Fields'**), land within the London Borough of Newham owned and controlled by the Council, which has a full beneficial freehold interest in the land.
2. With that application, the Claimant applies for an interim injunction on a without notice basis due to its urgency, albeit that informal notice is being attempted by affixing the Claim Form, Application Notice and the witness statement of Miss Louise Wilcox, Head of Parks and Green Assets at Council, and her exhibits to the entrance to the Playing Fields. (The attempt to give informal notice in this manner is being attempted by Miss Wilcox on the evening of 30th May 2024.) This skeleton argument is filed on behalf of the Claimant in support of its application for interim relief, which the Claimant will ask

to be heard in the emergency applications court in the King's Bench Division on the morning of 31st May 2024.

3. This application is brought on an urgent basis because the unknown trespassers, who appear to be organised and to use around twenty vehicles, have secured the Playing Fields with locks on the entrance and are using them to flytip substantial quantities of rubbish, causing a public health hazard. The Council is unaware of any evidence that any of the trespassers occupied the site prior to 24th May 2024.
4. The background facts are set out in the witness statement of Miss Wilcox, dated 30th May 2024 and her short bundle of exhibits, to which the court is referred and which are not repeated.
5. As Miss Wilcox says at para 11:

It is necessary and expedient for the protection of the site and to prevent repeated encampments, fly tipping and environmental health risks such as rat infestation etc. to obtain an interim injunction order. It is necessary to bring these proceedings against persons unknown for this site as it is not possible to identify the individuals. In view of the aggravating features of this incident and the deliberate flouting of the law by the current occupants it is apparent the site is vulnerable to persons unknown unless an order is in place. Accordingly I respectfully request that the Court grants the injunction in the terms set out in the draft Order or alternatively in terms it thinks fit on an interim basis pending final Order..

6. This skeleton argument sets out the legal framework for: (a) the powers exercised by the Council in seeking this injunctive relief; and recent caselaw concerning (b) the circumstances in which the court may grant 'newcomer injunctions' against persons unknown who are both current and past trespassers and may trespass in the future; (c) injunctions on the grounds of a nuisance on public highways and public spaces; and, for completeness, (d) how the Court should consider cases in which defendants claiming to reside in boats, shacks, caravans or other temporary structures or vehicles claim they may not be removed because to do so would amount to their right to a private life pursuant to Article 8 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms ('**the Convention**') protected by s 6 of the Human Rights Act 1998 ('**the HRA**'). The skeleton argument concludes by addressing the grounds on which the Council submits that the considerations in *American Cyanamid v Ethicon*

([1975] A.C. 396) are met and that the Court should grant an interim injunction in the terms sought.

7. The Application Notice is accompanied by a draft Injunction Order that sets out certain protections, addressed in detail below, to ensure that those affected are likely to become aware that it has been imposed, its provisions, the evidence in support and the return date on which the Court will be asked to list a further hearing.

THE COUNCIL'S STATUTORY POWERS

8. The Claimant is a local authority within the meaning of section 270(1) of the Local Government Act 1972 (**'the 1972 Act'**). Section 222 of the 1972 Act confers upon a local authority the power to institute civil proceedings in its own name, where the authority considers it 'expedient for the promotion or protection of the interests of the inhabitants of their area'. The Claimant considers it expedient for such purposes to institute proceedings for the relief sought and to protect its land from trespass. In *Richmond LBC v Trotman* ([2024] EWHC 9 (KB)), HHJ Blair KC, sitting as a judge of the High Court, found that a local authority 'has the necessary legal standing to bring proceedings in its own name for the protection of the interests of the inhabitants of its area in a claim for an injunction to prevent a public nuisance' (at para 55).
9. Section 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 (**'the 2014 Act'**) confers upon local authorities the ability to seek an injunction in cases where there is "anti-social behaviour" as defined in section 2 of that Act.
10. Section 111 of the 1972 Act confers upon local authorities a power to do anything which is calculated to "facilitate, or is conducive to or incidental to, the discharge of any of its functions". The Claimant considers it would be discharging its function by protecting its land from trespass.
11. Section 2 of the Local Government Act 2000 confers upon local authorities a power to do anything which it considers is likely to achieve the "promotion or improvement" of the economic, social or environmental well-being of its area". The Claimant considers that the relief sought is likely to achieve such objectives. The Claimant is the local

authority with responsibilities for the riverbanks running through the London Borough of Enfield including the Areas.

12. The Claimant accordingly exercises its statutory powers and property rights to prosecute these proceedings.

‘NEWCOMER’ INJUNCTIONS

13. The Supreme Court considered circumstances in which ‘newcomer’ injunctions may be imposed in *Wolverhampton City Council and others London Gypsies and Travellers and others* ([2023] UKSC 47; [2024] 2 WLR). The following exposition of the law by their Lordships is of general application:

- (1) That:

166. Tempting though the superficial similarities may be as between possession orders against squatters and injunctions against newcomers, they accord no relevant precedent for the following reasons. First, they are the creature of the common law rather than equity, being a modern form of the old action in ejectment which is at its heart an action *in rem* rather than *in personam*: see *Manchester Corpn v Connolly* [1970] Ch 420, 428—9 per Lord Diplock, *McPhail v Persons, Names Unknown* [1973] Ch 447, 457 per Lord Denning MR and more recently *Meier* [2009] 1 WLR 2780, paras 33—36 per Baroness Hale JSC. Secondly, possession orders of this kind are not truly injunctions. They authorise a court official to remove persons from land, but disobedience to the bailiff does not sound in contempt. Thirdly, the possession order works once and for all by a form of execution which puts the owner of the land back in possession, but it has no ongoing effect in prohibiting entry by newcomers wishing to camp upon it after the order has been executed. Its shortcomings in the Traveller context are one of the reasons prayed in aid by local authorities seeking injunctions against newcomers as the only practicable solution to their difficulties.

- (2) That an injunction against newcomers is only likely to be justified as a novel exercise of an equitable discretionary power if (at para 167):

- (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 (i.e. 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.

(3) Newcomer injunctions are not constitutionally improper and ‘so far as the local authorities are seeking to prevent the commission of civil wrongs such as trespass, they are entitled to apply to the civil courts for any relief allowed by law.’ (Para 170).

(4) That (at para 172)

In our view the theoretical availability of byelaws or other measures or powers available to local authorities as a potential alternative remedy is not shown to be a reason why newcomer injunctions should never be granted against Travellers. Rather, the question whether byelaws or other such measures or powers represent a workable alternative is one which should be addressed on a case by case basis. We say more about that in the next section of this judgment.

(5) The Court set down the following considerations as guidance to court’s asked to consider imposing newcomer injunctions (as summarised in the headnote of the Weekly Law Report of the case, altering the numbering to improve clarity):

...such an injunction was only likely to be justified as a novel exercise of the court’s equitable discretionary power if the applicant:

- (a) demonstrated a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other available remedies (including statutory remedies),
- (b) built into the application and the injunction sought, procedural protection for the rights (including Convention rights) of those persons unknown who might be affected by it,
- (c) complied in full with the disclosure duty which attached to the making of a without notice application and
- (d) showed that, on the particular facts, it was just and convenient in all the circumstances that the injunction sought should be made;
- (e) that, if so justified, any injunction made by the court had to
 - (i) spell out clearly and in everyday terms the full extent of the acts it was prohibiting, corresponding as closely as possible to the actual or threatened unlawful conduct,
 - (ii) extend no further than the minimum necessary to achieve the purpose for which it was granted,
 - (iii) be subject to strict temporal and territorial limits,
 - (iv) be actively publicised by the applicant so as to draw it to the attention of all actual and potential respondents and (v) include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the injunction; and that, accordingly, it followed that the challenge to the court's power to grant the impugned injunctions at all failed
 (post, paras 142—146, 150, 167, 170, 186, 188, 222, 225, 230, 232, 238).

14. In his judgment handed down on 24th May 2024 in *High Speed Two (HS2) Ltd and another v Persons Unknown and others* [**‘HS2’**] ([2024] EWHC 1277 (KB), at para 30), Ritchie J applied the test to be applied in applications for interim ‘newcomer’ injunctions that he had set out in *Valero Energy v Persons Unknown* [**‘PUs’**] & *Bencher & Ors* [**‘Valero Energy’**] ([2024] EWHC 134, at para 57, excluding the first four that apply only to applications for summary judgment), which in turn took into account :

Balance of convenience - compelling justification

(5) In interim injunction hearings, pursuant to *American Cyanamid v Ethicon* [1975] AC 396, for the Court to grant an interim injunction against a defendant the balance of convenience and/or justice must weigh in favour of granting the injunction. However, in PU cases, pursuant to *Wolverhampton*, this balance is angled against the applicant to a greater extent than is required usually, so that there must be a "compelling justification" for the injunction against PUs to protect the claimant's civil rights. In my judgment this also applies when there are PUs and named defendants.

(6) The Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UK.SC 23, if the PUs' rights under the European Convention on Human Rights (for instance under Articles 10(2) and 11(2)) are engaged and restricted by the proposed injunction. The injunction must be necessary and proportionate to the need to protect the Claimants' right.

Damages not an adequate remedy

(7) For the Court to grant a final injunction against PUs the claimant must show that damages would not be an adequate remedy.

(B) Procedural Requirements - Identifying PUs

(8) The PUs must be clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the Claim Form), and (b) clearly defined geographical boundaries, if that is possible.

The terms of the injunction

(9) The prohibitions must be set out in clear words and should not be framed in legal technical terms (like "tortious" for instance). Further, if and in so far as it seeks to prohibit any conduct which is lawful viewed on its own, this must also be made absolutely clear and the claimant must satisfy the Court that there is no other more proportionate way of protecting its rights or those of others.

The prohibitions must match the claim

(10) The prohibitions in the final injunctions must mirror the torts claimed (or feared) in the Claim Form.

Geographic boundaries

(11) The prohibitions in the final injunctions must be defined by clear geographic boundaries, if that is possible.

15. Ritchie J extended the injunction against PUs, including newcomers, in *HS2*, albeit not in respect of some recently acquired land (see para 62).
16. There is no evidence that any of the trespassers on the Playing Fields are assembling or protesting about political or related matters and so their rights under Article 10 and/or 11 of the Convention are not arguably engaged (unlike in *Ziegler*).

OTHER RECENT INJUNCTIONS GRANTED TO LOCAL AUTHORITIES TO PREVENT A PUBLIC NUISANCE

17. In a related context, the Divisional Court held in *Ackerman v London Borough of Richmond* [2017] EWHC 84 (Admin) that ‘it was legitimate for the respondent [as a local authority] to regulate the way in which the appellant and others occupy the river bank, land held for the benefit of the whole community, to the detriment of other uses of the land and river bank’ (para 28).
18. In *Cambridge City Council v Traditional Cambridge Tours Ltd* [2018] EWHC 1304 (QB), Whipple J (as she then was) held (at para 54) that ‘[t]he Council is obviously entitled to take action to prevent a trespass of land belonging to it, whether or not that trespass happens to be connected with or a prelude to unlawful activity on the River Cam, which falls under the jurisdiction of a different authority.’ It is notable that that injunction was granted on an interim basis.

19. *Kingston-upon-Thames RBC v Salzer* [2022] EWHC 3081 (KB) concerned repeated breaches of mooring byelaws and trespass on a local authority's land abutting the River Thames. Deputy High Court Judge Jeremy Hyam KC held, at para 20, that the claimant local authority had the proprietary right, through its leasehold and other interests, to prevent mooring by land in which it held those interests (paras 20 and 29).
20. The injunction in *Trotman (supra)* was imposed on the grounds of nuisance alone, HHJ Blair KC having found that Mr Trotman was not trespassing on the Council's land (because of insufficient evidence that his vessels were attached to the land on the riverbed, see para 51). The injunction was necessary because the defendant's vessel affected 'the ability of other river users to moor their boats on that stretch of the Thames in accordance with the byelaws' (para 52); and that it was causing a public nuisance preventing other river users from accessing the river bank (para 54). In this index case, the trespassers also interfere with the right of the Council to access its own land, by having secured it through locked gates by which they control access to the Playing Fields.
21. In *Enfield LBC v Snell and Others* ([2024] EWHC 1206 (KB)) HHJ Aurbach granted an interim injunction against various trespassers including the occupier of a shack constructed on a riverbank owned by the Claimant Council. That injunction was also imposed on the grounds of nuisance as well as pursuant to Council's proprietary rights.

CIRCUMSTANCES WHERE A TRESPASSER LIVES ON A VEHICLE OR VESSEL

22. DHCJ Hyam KC also considered, in *Salzer*, the circumstances in which the owner or occupier of a boat may defend a claim for an injunction preventing its mooring by a riverbank on the grounds that it was his home and that the injunction would be a disproportionate breach of his right to a private life pursuant to Article 8 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms protected by s 6 of the Human Rights Act 1998. The learned judge reminded himself of paragraph [61] of the Supreme Court decision in *Manchester City Council v. Pinnock*

([2010] UKSC 45), an appeal concerning possessions proceedings with respect to a tenancy granted by a local authority. In respect of the engagement of Article 8, Lord Neuberger, giving the judgment of the Court explained:

“First, it is only where a person's "home" is under threat that article 8 comes into play, and there may be cases where it is open to argument whether the premises involved are the defendant's home (e.g. where very short-term accommodation has been provided). Secondly, as a general rule, article 8 need only be considered by the court if it is raised in the proceedings by or on behalf of the residential occupier. Thirdly, if an article 8 point is raised, the court should initially consider it summarily, and if, as will no doubt often be the case, the court is satisfied that, even if the facts relied on are made out, the point would not succeed, it should be dismissed. Only if the court is satisfied that it could affect the order that the court might make should the point be further entertained.”

23. This finding followed that of the Court of Appeal in *Akerman* (at para 43).

24. DHCJ Hyam KC found that an injunction preventing Mr Salzer from mooring his vessel in Kingston would not be a disproportionate interference with his Article 8 rights on four grounds set out at para 52. The facts in that case were as follows:

(i) Mr Salzer appears to have used V2 or an equivalent houseboat as his home notwithstanding that it has no attached sanitation or electricity. This indicates a very temporary and intermittent link to any temporary mooring.

(ii) The boat V2 has never been moored in the same place for a very long period. Rather it has persistently overstayed in one place and then moved on to another.

(iii) Mr Salzer can have had no right to expect that he has any right to live and moor on the Gazebo landing stage or indeed any part of the Kingston riverside. The evidence suggests that has never done anything other than ‘squat’ on moorings until he has either voluntarily, or been requested to move on.

(iv) The local authority as the body responsible for the moorings in question, has a reasonable expectation that it may enforce its mooring policy.

25. While the above findings relate directly to those living on boats, they have an obvious cross-application to trespassers living in caravans, as might be the case with one of the current occupiers in this case. Moreover, HHJ Auerbach imposed an injunction against the occupiers of a shack and caravans in *Snell*.

APPLICATION OF THE *AMERICAN CYNAMID* CONSIDERATIONS

26. In summary and in general terms, the evidence of Miss Wilcox establishes – at least on a *prima facie* basis pending trial – that the Defendants and unknown trespassers have:

- (1) Trespassed on the Council's land, to which they have no right to enter or occupy;
- (2) Prevented the Council from accessing its land by barring them from the site – which was not the case in any of the recent trespass cases of *Ackerman*, *Salzer*, *Trotman* or *Snell* and so are guilty of a more serious act of trespass than any of them;
- (3) Caused a nuisance by flytipping and (according to the hearsay evidence given by Miss Wilcox) permitting large numbers of vehicles to enter the Playing Fields; and
- (4) Caused serious risks to public health by the accumulation of a large mound of rubbish (that can be seen in photographs exhibited by Miss Wilcox) in the vicinity of housing, through the risk of attracting vermin (albeit there is no direct evidence as to whether this has yet occurred);
- (5) Only entered the Playing Fields if permitted to by the organisers of the trespass, given that the latter have secured the premises and (as Miss Wilcox was able to see) allow only selected individuals in and out of them;
And that they have thus:
 - (6) Been responsible for anti-social behaviour; and
 - (7) Caused a public nuisance.

27. The above is easily sufficient to establish a serious issue to be tried. Indeed, none of the actual trespassers could have any arguable defence to the imposition of an injunction against them, albeit it is accepted that the Council must surmount a more onerous test if it is to persuade the Court to impose an injunction on newcomers.

28. It is submitted that the narrow balance of convenience justifies an injunction against the current trespassers and against newcomers for a short period before the return date. Addressing and applying the tests set out in the guidance in *Wolverhampton*.

- (a) A compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other available remedies.

The Council has a lawful right to access its premises, to remove those barring that access and to prevent the build-up of rubbish that risks public health and could not enforce that right other than by the injunction sought.

- (b) Built into the application and the injunction sought, procedural protection for the rights (including Convention rights) of those persons unknown who might be affected by it.

The Court is asked to make an order that would require the Council to publish the order, claim form, application notice, evidence in support, notification of the return date and notification of the right of any person affected to apply to set aside or vary the order on: (i) all entrances to the Playing Fields; and (ii) a page of the Council's website, the link to which must be advertised on the said notification published at the entrances.

- (c) Complied in full with the disclosure duty which attached to the making of a without notice application.

Insofar as it might be relevant to the Court's assessment or proportionality or otherwise, Miss Wilcox sets out in her witness statement the recent history of the Playing Fields, including that they were leased, the previous lease was forfeited in 2015 and they are currently disused and awaiting redevelopment. She gives evidence about all that she or the Council know about the trespassers. The Council is unaware of any other disclosure that may affect the Court's assessment of the tests to be applied in applications for newcomer injunctions.

- (d) Showed that, on the particular facts, it was just and convenient in all the circumstances that the injunction sought should be made.

See para 28 above.

- (e) That, if so justified, any injunction made by the court had to

- (i) Spell out clearly and in everyday terms the full extent of the acts it was prohibiting, corresponding as closely as possible to the actual or threatened unlawful conduct.

The injunction prohibits the entry into or occupation of the Playing Fields and requires that PUs must not create a nuisance or engage in anti-social behaviour, which is the behaviour causing the need for the injunction. The Council asks the Court to prohibit entry as well as occupation within the period until the return date to allow the Council to remove the trespassers, clear the rubbish and secure the Playing Fields; and it so asks given that the trespassers were able to occupy the Playing Fields and secure them for themselves, that they appear to be organised and that there is a substantial risk that they will again occupy them if they are not prevented from doing so.

- (ii) Extend no further than the minimum necessary to achieve the purpose for which it was granted.

In the first instance, the interim injunction will permit the Council to clear the Playing Fields and secure it before the Court considers whether to extend it and on what terms. At that stage, further evidence will be produced that the Court can consider and the Council will reflect on whether and in what way the terms of the injunction might be varied to ensure that it did no more than the minimum necessary.

- (iii) Be subject to strict temporal and territorial limits.

The injunction will, if granted, be restricted to the Playing Fields themselves.

- (iv) Be actively publicised by the applicant so as to draw it to the attention of all actual and potential respondents.

See under (b), in this paragraph, above.

- (v) Include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the injunction; and that, accordingly, it followed that the challenge to the court's power to grant the impugned injunctions at all failed.

The proposed order would allow an application to vary and discharge provided that it was on two working day's notice, which it is submitted is a reasonable period.

29. As a London Borough Council, the Council will be able to satisfy any damages awarded to the Defendants should these injunctions be set aside or not granted on a final basis. Further and in any event, Whipple J (as she then was) found, in *Cambridge Tours*, that it was unnecessary for cross-undertakings in damages to be made where an interim injunction was imposed on the application of a claimant local authority.

30. In the premises, the Court is invited to grant the Council the interim injunction sought and to list this matter for a further hearing on a return date.

30th May, 2024

FRANCIS HOAR

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