

Claimant
Toby Feltham
First Statement
Exhibit: TF1
Date: 16 July 2024

IN THE HIGH COURT OF JUSTICE

CLAIM NO. KB-2024-002247

KING'S BENCH DIVISION

B E T W E E N :

**THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KINGSTON
UPON THAMES**

Claimant

-and-

- 1. MR MICHAEL CASEY**
- 2. MRS BRIDGET CASEY**
- 3. MR SIMON DOHERTY**
- 4. MRS KATHLEEN BERNADETTE DOHERTY**
- 5. PERSONS UNKNOWN, BEING THOSE PERSONS CAUSING OR PERMITTING WORKS TO BE UNDERTAKEN, OR WASTE OR OTHER MATERIAL TO BE DEPOSITED ON THE LAND, AND/OR BRINGING ONTO OR OCCUPYING CARAVANS OR MOBILE HOMES ON THE LAND OR INTENDING TO DO SO, OTHER THAN IN ACCORDANCE WITH A VALID GRANT OF PLANNING PERMISSION.**

Defendants

FIRST WITNESS STATEMENT OF TOBY FELTHAM

I, TOBY FELTHAM, Lead Officer (Planning Specialisms), of Royal Borough of Kingston upon Thames, Guildhall, High Street, Kingston upon Thames, KT1 1EU will say as follows:

1. I have been employed by the Royal Borough of Kingston upon Thames (the "Council") since May 2014. My current position within the Council is Lead Officer, (Planning Specialisms).
2. I am duly authorised to make this statement on behalf of the Council. The matters stated herein are within my own knowledge and from the examination of the Authorities files, books, records, registers etc. Such matters referred to that are not within my knowledge I believe them to be true.
3. I make this statement in support of the Council's application for an injunction against persons unknown, in relation to the land known as The Tree Birches, at the side and rear of Kenwood, Green Lane, Chessington (the "Site"). The Council is the Local Planning Authority for the area including the Site.
4. There is now produced and shown to me a paginated bundle of true copies of documents marked "TF1", to which I will refer.

Background

5. The Site is a former piggery within the designated Metropolitan Green Belt, comprising of a parcel of land approximately 1.12 hectares in size. The freehold of the land is registered at the Land Registry under Title No. SY263578. In addition, Mr Casey ("D1") and Mr Simon Docherty (who the Council believes to also be known as Simon Doherty, one of the named Defendants) ("D3") are also the registered proprietors of the freehold of a strip of land that runs parallel to the entrance driveway to the Site on its northern edge.
6. The Site has a wide access off Green Lane and extends to the rear of the residential properties known as Kenwood, Twin Elms and Kingswood. It shares a northern boundary with properties known as Paradise Park and The Cottage,

which are dwellings. To the south is Star Boarding Kennels and Cattery Wide View. The Site slopes down to the Bonesgate Stream to the southeast. The area to the south of the stream is farmland.

7. The Site, as it was prior to any clearance or development works taking place can be seen in the aerial photo taken at some point in 1998 (the "1998 Photo"), at page 2 of Exhibit TF1.
8. On 14 October 2002, the Council's Landscape & Arboricultural Manager attended the Site, and reported that *"the whole site has been raised to the ground with only some ramshackle buildings remaining. All vegetation has been cleared."*
9. On 17 October 2002, the Council received information from a member of the public, that the occupiers of the Site had dumped a considerable volume of soil, which appeared to form part of a clearance operation underway on the Site, on the land beyond the eastern boundary of the Site.
10. Land Registry Office Copy Entries obtained by the Council at the time, showed the Site to be owned by George Leonard Reginald Garrett. A copy of the Register as of 15 October 2002 is exhibited at pages 3-7 of Exhibit TF1.
11. The Council arranged with Mr Garrett, to visit the Site on 24 October 2002, and found that the land had been levelled off and largely cleared. A large pile of earth, trees, tyres and sundry items, the width of the Site and 2.5 - 3 metres high was found to the east of the Site, very close to the Bonesgate Stream. Mr Garrett said that he would aim to clear the large pile of earth within 2 weeks, and stated that he planned to let the Site go to grass and would graze horses on the land in the following year.
12. On 12 November 2002, the Council received information that further works were being undertaken at the Site. An officer from the Council called Mr Garrett, who stated that he had had contractors install water and electricity supplies, which would be used to supply stables that he planned to either build, or repurpose from

an existing building on the Site. A file note of the Council's call with Mr Garrett is exhibited at page 8 of Exhibit TF1.

13. On 13 November 2002, the Council received further information from a member of public, that lorries filled with hardcore were on Site, and it appeared the intention was to form a wider driveway. A file note of the Council's call from the member of the public is exhibited at page 9 of Exhibit TF1.
14. Later on 13 November 2002, an officer from the Council attended the Site. They spoke to a contractor, who confirmed that they were laying a driveway. An excavator was seen on the Site, levelling out hardcore material that appeared to have been brought onto the Site. The contractor confirmed that the intention was to tarmac the driveway in the future. A copy of a Council officer's handwritten note of the Site visit is exhibited and page 10-11 of Exhibit TF1.
15. On 26 November 2002, the Council received further information that an area of hardstanding at the Site had been extended by approximately 50 metres squared.
16. On 27 November 2002, the Council, via its in house legal department wrote to Mr Ricky Garrett, who was said to have recently inherited the Site from Mr George Garrett. The Council warned Mr R Garrett, that injunctive proceedings would be issued against him, requiring the removal of all imported loose, non-agricultural materials from the Site and the digging up and removal from the Site, all hard surfacing and other imported materials, unless he undertook to remove all such materials from the Site by 06 January 2003 in accordance with the relevant environmental protection legislation, and to refrain from carrying out any further activities in breach of planning control. A copy of the Council's letter is exhibited at pages 12-14 of Exhibit TF1.
17. On 02 December 2002, Mr R Garrett responded, denying that extensive areas of hardcore had been laid down, and that he had simply repaired the driveway. Mr Garrett further stated that a planning application for stables on the Site had been submitted and assured the Council that no further work whatsoever will be carried out and no materials would be brought onto the Site without the correct

permissions being granted. A copy of Mr Garrett's response is exhibited at pages 15-16 of Exhibit TF1.

18. In light of Mr R Garrett's response, and a further inspection appearing to show that additional substantial works had not taken place, I understand from the file that the Council decided to take no further action for the time being.
19. The Council was then informed that ownership of the Site had been transferred from Mr R Garrett, to his wife, Mrs Barbara Garrett, before the Site was eventually acquired by D1 on 14 April 2003. His interest was registered with the Land Registry on 28 April 2003.
20. Although there is some ongoing dispute as to who currently owns the Site, the Land Registry still shows D1 as the registered proprietor of the freehold. Up to date Office Copy Entries of the Land Register and Title Plan (Title No. SY263578) are within Exhibit TF1 at pages 18-22. In addition, D1 and D3 are also the registered proprietors of the freehold of a strip of land that runs parallel to the entrance driveway to the Site on its northern edge. Up to date Office Copy Entries of the Land Register and Title Plan (Title No. SGL643997) are within Exhibit TF at pages 24-28.
21. On or around 18 April 2003, the Council were made aware that the Site was being cleared by D1 and his servants and agents. Substantial excavation, importation of hardcore and levelling were undertaken to form areas of hard standing, covering roughly half the Site. 4 caravans were then stationed on the Site for residential occupation, and other associated trailers and vehicles followed. The works and stationing of caravans required planning permission, which D1 did not have. Photos exhibited at page 68 of Exhibit TF1 show the site as of 22 April 2003, and were later provided to the Council by D1 and D3's planning agent. Photos on pages 29-30 of Exhibit TF1, taken of the Site by the Council on 09 June 2003, show the wider state of the Site following works.
22. In an attempt to restrain the unauthorised development, the Council secured a pre-issue out of hours interim injunction against D1 and D3 on the evening of 18

April 2003 under Section 187B Town and Country Planning Act 1990 (the “Act”) (the “Out of Hours Injunction”).

23. The Out of Hours Injunction was reconsidered at an on notice hearing on 30 April 2003 before Mr Justice Pitchers, when all parties were represented by counsel. In accordance with undertakings given by D1 and D3, the interim injunction was refined and an updated injunction, with a penal notice attached, was eventually sealed on 18 June 2003 (the “Injunction”). A copy of the Injunction is exhibited within Exhibit TF1 at pages 32-37.

24. The Injunction states that:

“IT IS ORDERED that until trial or further order:

1. In relation to land known as land to the side and rear of Kenwood, Green Lane, Chessington Surrey (“the Land”) upon which there are currently stationed four caravans the Defendants whether by themselves or by instructing, encouraging or permitting any other person must not utilise the land in breach of planning control and, in particular must not:

(1) Bring onto the Land any further caravans and/or mobile homes (either as replacement or otherwise without the written permission of the (Council) for the purpose of residential occupation or any other purpose in breach of planning control;

(2) Bring onto the Land any portable structures including portable toilets and any other items and paraphernalia for purposes associated with residential occupation or any other purpose in breach of planning control, save for those structures already on the Land;

(3) Bring on the Land any waste materials and/or hardcore for any purpose including the creating of hardstandings or hard surfaces in association with the use of the Land for the stationing of caravans and/or mobile homes for the purpose of residential occupation or for any other purpose in breach of planning control;

(4) Carry out any further works to the Land associated with or in preparation for its use for siting caravans and/or mobile homes for residential occupation or any other purpose in breach of planning control save for connection of pipework to the existing cesspit”.

25. The Injunction was served on D1 and D3 by hand by Mr Douglas O’Connor, a Process Server, on 22 July 2003. A copy of Mr O’Connor’s Statement of Service, affixed with a Statement of Truth is exhibited at pages 38-40 of Exhibit TF1.
26. On 22 April 2003, D1, via his then planning agent, submitted an application for planning permission, reference 03/10113/FUL, for ‘the use of the Site as a private gypsy caravan site’. The application was dated 17 April 2003, but only received after the aforementioned unauthorised works had taken place, and D1, his associate D3, and their families had taken up residential occupation on the Site.
27. On 09 May 2003, the Council issued a Claim Form under Section 187B of the Act in compliance with an undertaking it had given the Court following the Out of Hours Injunction, seeking “...*a permanent injunction in similar terms to the extant interim injunction, restraining the Defendants from committing further breaches of planning control on the Land*”.
28. On 15 June 2003, solicitors for D1 and D3 filed a Defence and Counterclaim.
29. On 02 July 2003, D1’s application for planning for permission was refused. A copy of the decision notice is exhibited within Exhibit TF1 at page 41. It states the following as reasons for refusal:

“1. The proposed residential development would be inappropriate in the Green Belt detracting from its openness, adversely affecting its visual amenity and contributing to the coalescence of nearby urban areas. It would therefore be contrary to PPG2 ‘Green Belts’ and Policies STR7, OL1 and CD5 of the [Council].

2. Without the required education contribution, the proposed development would be contrary to Policy RES8 of the [Council's] Unitary Development Plan."

30. In anticipation of an appeal by D1 and D3 under Section 78 of the Act, a Consent Order was agreed between the parties, to stay the claim pending the determination or withdrawal of the proposed appeal.
31. An appeal was duly made against the Council's refusal and following a 10 day public inquiry, on 30 June 2005, the Secretary of State dismissed D1 and D3's Section 78 appeal. A copy of the decision letter is within Exhibit TF1 and pages 42 – 48.
32. D1 then appealed against the dismissal to the High Court pursuant to Section 288 of the Act.
33. In light of the appeal, a further stay of proceedings was agreed between the Council's solicitors and solicitors acting for D1 and D3. As a condition of agreeing to a further stay, the Council requested that D1 and D3 undertake to abide by the Injunction and not to carry out any further activities on the Site in breach of planning control. An exchange of 4 letters between Mr David Fellows, solicitor for the Council and Bramwell Brown Odedra, solicitors for D1 and D3, detailing the negotiation of the stay and provision of the undertakings is exhibited at pages 49-52 of Exhibit TF1.
34. A Consent Order of Master Foster agreeing the stay and recording the undertakings given was sealed on 26 October 2005 (the "Consent Order"). A copy of this Order is within Exhibit TF1 at pages 53 –55.
35. As can be seen, the undertakings state that D1 and D3, until trial or further order, undertook:

1. *Not to breach the terms of the Injunction Order granted by the Court on 30 April 2003 [i.e the Injunction]; and*
 2. *Not to carry out any activities in breach of planning control as defined under the terms Part VII of the Town and Country Planning Act 1990 (as amended).*
36. Copies of the Consent Order were served by hand on D1 and D3 on 02 November 2005 and 05 November 2005 respectively by Mr Timothy Richards, a Process Server. Copies of Mr Richards' Affidavits of Service are exhibited at pages 56-57 of Exhibit TF1.
37. A copy of the Consent Order was also served by DX on the solicitors for D1 and D3 on 01 November 2005. A copy of the letter of service is exhibited at page 58 of Exhibit TF1.
38. The Consent Order ordered at Paragraph 2, that D1 and D3 must apply to the Court of further directions in relation to the Council's Claim and their Counterclaim, within 14 days of the determination or withdrawal of their Section 288 appeal.
39. On 09 November 2006, the Administrative Court dismissed the Section 288 appeal. A copy of the Order of Mr Justice Sullivan is exhibited at pages 59-61 of Exhibit TF1.
40. To date, neither D1 nor D3 have applied to the court for further directions as required by the Consent Order, nor have they applied to vary or discharge the Injunction Order, which therefore remains in force.
41. On 12 December 2006, D1 submitted a further planning application, reference 06/10340/FUL, for continued use of land as a private gypsy caravan site for 2 families for a temporary period of three years including provision of a new utility/toilet block. However, the application was never decided and was ultimately disposed of in October 2017. Owing to the lack of alternative available Gypsy and Traveller sites within the Borough, the Council decided at the time, that it would not be expedient to pursue enforcement action.

42. In July 2008, the Council received reports that quantities of hardcore were being brought onto the Site in breach of Injunction, despite the Council visiting the Site and reminded D3 of its terms. The Council therefore instructed its in house legal department, to write to D1 and D3's then planning agents, requiring cessation in accordance with the Injunction, and the removal of all waste materials/hardcore imported in breach of the Injunction accordingly. A copy of this letter, dated 31 July 2008 is exhibited at Pages 62-64 of Exhibit TF1.
43. On 07 August 2008, D1 and D3's then planning agent, Mr Cox, replied to the Council's legal department enclosing a sketch plan of the Site, stating that a quantity of hardcore would be removed from the Site, so as to return it to the position as required by the Injunction. A copy of this letter is exhibited at pages 65-68 of Exhibit TF1.
44. The Council's agreement to these proposals was communicated to Mr Cox by way of a letter from the Council's legal department dated 13 August 2008, and Mr Cox later relayed by reply that the hardcore had been removed from the Site as agreed.
45. The Council's legal department then wrote to Mr Cox on 01 October 2008, stating that a Planning Officer had attended the Site and confirmed that the hardcore had been removed as agreed. The letter also relayed to Mr Cox, that the Council will continue to monitor the situation and provided a final reminder of the terms of the Injunction. A copy of this letter is exhibited at pages 69-70 of Exhibit TF1.
46. From October 2008 onwards, for a number of years, there was little to no involvement by the Council in regard to the Site, and no reports of breaches of the Injunction were received.
47. On 16 April 2012, an application for planning permission, reference 12/10099/FUL, was received by the Council from Mr Green, D1's then planning agent. The application sought permission for "*Continued use of land for 2 no. gypsy pitches together with the formation of additional hard standing and utility/dayrooms ancillary to that use*".

48. Permission (the "Permission") was granted on 12 October 2012, and a copy of the Decision Notice is exhibited at Pages 71-75 of Exhibit TF1.

49. The Permission was granted subject to 7 conditions, including:

"1 The use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all materials and equipment brought onto the land in connection with the use shall be removed, and the land restored to its [sic] former condition in accordance with a scheme previously submitted to and approved in writing by [the Council]"

2 The development hereby permitted shall be carried out in accordance with the following approved plans:....110459-003A Proposed site plan..."

...

4 There shall be no more than two pitches on the site and on each of the two pitches hereby approved no more than two caravans shall be stationed at anytime, of which only one shall be a static caravan or mobile home.

5 No commercial activities shall take place on the land, including the storage of materials. No vehicles over 3.5 tonnes shall be stationed, parked or stored on the site

6 Within 3 months of the date of this decision a scheme shall be submitted in writing to the [Council] for:

a) Boundary treatment, trees, hedges and shrubs to be retained and proposed tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities;

b) A schedule of maintenance for a period of three years of the boundary treatments and planting, including and replacement of any tree, hedge or shrub that is removed, uprooted, destroyed or dies or becomes seriously damaged or defective

c) The provision for foul and surface water drainage for the site

d) The provision of any external lighting

e) measures to enhance the biodiversity of the site;

f) A timetable for the implementation of each of the elements of the scheme

ii) the approved scheme shall be carried out and completed in accordance with the approved timetable..."

50. On 11 March 2013, D1, via Mr Cox, submitted an application for approval of details reserved by condition, reference 13/10064/COND, following granting of the Permission. The application sought to discharge, amongst others, conditions 1 and 6 of the Permission. The application was refused on 08 August 2013.
51. On 15 January 2014, D1, via Mr Cox, submitted a further application for approval of details reserved by condition, reference 14/10021/COND, in relation to the conditions of the Permission. On this occasion, the application related to, amongst other things, the site development scheme required by condition 6 of the Permission. The application included, amongst others, drawings titled Site Development Scheme 11_459_012 and 11_459_013, which detailed the proposed development scheme and timetable for implementation. Copies of these drawings are exhibited at pages 76-77 of Exhibit TF1 respectively.
52. The Council considered that these proposals were satisfactory, and the application was approved on 02 May 2014, discharging, amongst others, condition 6 of the Permission.
53. Site Development Scheme drawing 11_459_012 (the "Drawing"), one of the drawings relied upon by D1 in his application of 15 January 2014, and upon which

the Council based their approval of the application, sets out the permitted layout and extent of the Site. In particular, the Drawing details the permitted areas of hardstanding, the siting of the caravans and an extensive scheme of tree and hedge planting, as well as provisions for replacement planting. At paragraph 8 of the Notes to the Drawing, it is stated that all permitted schemes and measures as detailed within the Drawing, will be completed within 12 months of approval.

54. As the Permission ceased on 12 October 2015 in line with Condition 1 of the Permission, and the Site continued to be used as two gypsy pitches in breach of planning control, the Council wrote to D1 and D3 on 09 January 2017, making it clear that absent any planning application to regularise the position, they would consider enforcement action. A copy of this letter is exhibited at pages 78-79 of Exhibit TF1.
55. On 16 February 2017, D1, via his then planning agent, Mr Matthew Green, then applied to remove condition 1 of the Permission (period of use of 3 years), reference 17/10080/FUL. The application was eventually allowed on appeal by the Planning Inspectorate under Section 78 of the Act on 05 October 2018. A copy of Appeal Decision is exhibited at pages 80-90 of Exhibit TF1
56. The appeal was allowed, and permission granted, subject to 7 conditions (the "Conditions"):

"1) The residential occupation of the land hereby permitted shall be carried on by Michael Casey [D1], Irene Casey, Michael Casey (junior), Ann Casey, Margaret Casey, Simon Doherty [D3], Ann Doherty, and their resident dependents and for no other persons without the prior approval, in writing of [the Council].

2) When the land ceases to be occupied by those named in condition 1) above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development too place, in accordance with a Site Restoration

Scheme which shall have been submitted for approval in writing within 3 months of the date of this decision.

3) No more than four caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravans Sites Act 1968 (of which no more than two shall be a static caravan) shall be stationed on the site at any time

4) No commercial activities shall take place on the land, including the storage of materials

5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site

6) The caravans shall be sited in accordance with drawing number 11_459_12 and no hardstanding or siting of caravans shall be carried out further to the south east of the site than the present extent of hardstanding.

7) Further to the grant of approval reference 14/10021 to discharge condition 6) attached to permission reference 12/10099/FUL, any works remaining are to be carried out within 6 months of the date of this decision, or in accordance with revised details or timescales to be agreed in writing by [the Council].”

57. Thereafter, the Council has been informed of various breaches the Conditions and has taken action accordingly.

58. In May 2019, the Council were made aware that breaches of the Conditions were taking place at the Site. In particular, the Council had reason to believe that more than the permitted number of caravans had been taken on to the Site and works in relation to the Site Development Schemes approved on 02 May 2014 had not been completed within the agreed time frames. Accordingly, the Council instructed the South London Legal Partnership ('SLLP'), their in-house legal service, to serve a Breach of Condition Notice on D1 on 24 May 2019, requiring the compliance with Conditions 3 and 7 within 6 months of service pursuant to Section 187A of the Act.

59. The Breach of Condition Notice stated that D1 and D3 must:

“(1) Ensure that no more than four caravans, as defined in the Caravans Sites and Control of Development Act 1960 and the Caravans Act 1968 (of which no more than two shall be a static caravan) shall be stationed on the site at any time

(2) Undertake such works on site as are necessary to ensure adherence to the details approved on the 2nd May 2014 under application reference 14/10021/COND

Time for compliance: within 6 months after this notice is served on you.”

A copy of this notice and accompanying documentation is exhibited at pages 91-130 of Exhibit TF1.

60. Following service of the aforementioned Notice, the numbers of caravans on the site appeared to have varied, but works have not been completed in accordance with Condition 7.

61. On 12 March 2020, the Council received an application for approval of details reserved by condition, relating to Conditions 2 and 7 of the Conditions, reference 20/00641/CLC. The application was eventually refused on 07 July 2023, on the basis that information submitted in relation to Condition 7 was insufficient for approval. The Decision Notice did however note that the Site Restoration Scheme submitted in relation to Condition 2, could in theory be approved, albeit the Condition was not discharged as part of that application. A copy of the Decision Notice is exhibited at pages 131-134 of Exhibit TF1.

62. On 29 April 2020, the Council received information that led them to believe that significant amounts of hardcore and waste were being imported onto and spread across the Site, in breach of the Conditions the Injunction and the Consent Order.

63. On 01 May 2020, SLLP served D1 with a Temporary Stop Notice, pursuant to Section 171E of the Act and sent an accompanying letter, warning him that committal proceedings would be commenced should he not immediately cease importing further waste/hardcore materials, and provide an undertaking to the

Council by 4pm 12 May 2020, that he would not commit any further breaches of the Injunction and remove all waste/hardcore material imported in breach of the Injunction by 05 June 2020. A copy of this letter and Temporary Stop Notice are exhibited within Exhibit TF1 at pages 135-140. The Temporary Stop Notice was personally served by Mr Kevin Howard, a process server. A copy of Mr Howard's witness statement of service is exhibited at pages 141-147 of Exhibit TF1.

64. On 11 May 2020, Mr Matthew Green of Green Planning Studio Ltd, D1's then planning agent, called David Fellows, a solicitor with conduct of the matter at SLLP, in response to the letter and Temporary Stop Notice. During the telephone call, Mr Green accepted that his client had brought material onto the Site, but stated it was top soil, and not waste. He further submitted that D1 was acting in accordance with the Permission and the Conditions, as he was carrying out landscaping, repair, and maintenance works, which were permitted. He then accepted that a number of lorries had imported materials onto the Site, a minority of which was "some harder material", which he alleged was deposited on a grassed area which was damp and would be returned to grass, once the affected area had been covered in topsoil. A copy of Mr Fellows' attendance note of the call is within Exhibit TF1 at pages 151 to 153.
65. Following this exchange, further importation of hardcore onto the Site ceased, and a further period of observance of the Injunction, the Consent Order and Conditions ensued.
66. On 13 December 2021, the Council were made aware that several piles and pallets of materials were being stored on the Site, in an apparent contravention of Condition 4 of the Conditions. The Council wrote to Mr Nat Green, also of Green Planning Studio Ltd, D1's then planning agent, who replied on 15 December 2021, to state that D1 would contact the person that deposited the materials, and request that they be removed. On 31 January 2022, the Council further contacted Mr N Green, and informed them that the Council were of the opinion that the materials had not been removed, and in fact, more material was now being stored.

67. Mr N Green responded on 01 February 2022, stating that the materials belonged to D3, and that he would remove them as soon as reasonably possible. Mr Green also said that the rear half of the Site had been informally sold by D1 to D3, and that he had encouraged them to register the sale with the Land Registry. To date, no such transfer has been registered.
68. Following an inspection of the Site, the Council wrote further to Mr N Green on 04 February 2022, to relay that works that Mr Doherty was proposing to undertake at the Site were likely to require planning permission, and that in breach of the Conditions, the Consent Order and the Injunction, up to six caravans/mobile homes were present on the Site, as well as a number of unauthorised buildings and dumped/tipped materials.
69. Mr N Green responded on 04 February 2022, stating that D1 planned to reduce the footprint of the unauthorised building and move its siting, and remove a further shed entirely.
70. On 31 March 2022, the Council, acting on reports received in relation to 10 lorries' worth of hardcore being brought onto the Site, once again wrote to Mr N Green, asking him to address the breaches of the Conditions and Injunction, to prevent the Council needing to take enforcement action.
71. It would appear that a telephone conversation then took place between the Council and Mr N Green, and the Council followed this up with a further email to Mr N Green to confirm the content of their conversation: that Mr N Green had spoken to D1, and he had informed Mr N Green that he would not be bringing any further hardcore onto the Site or undertaking any unauthorised work. A copy of the email thread described in the previous 6 paragraphs is exhibited at pages 154-156 of Exhibit TF1.
72. As a result of this further breach of the Conditions, the Consent Order, the Injunction, and as the matter was not urgently resolved to the satisfaction of the Council, SLLP were instructed to serve a further a Temporary Stop Notice on D1, and did so on 01 April 2022. SLLP also sent a letter to D1, warning him he was in

breach of the Injunction, and committal proceedings would be pursued, should he not cease important further waste/hardcore materials immediately, and give an undertaking to the Council that he would not further breach the Injunction and remove all waste/hardcore materials imported onto the Site in breach of the injunction by 4pm on 16 May 2022. Copies of the Temporary Stop Notice, accompanying letter and letter in relation to the Injunction are exhibited at pages 158 - 164 of Exhibit TF1. Copies were also served on D1's then planning agent.

73. Although neither the Council nor SLLP received a response from D1 or his then planning agents in response to the Notice and letters, unauthorised works appeared to cease, and no further action was taken by the Council.
74. On 24 June 2022, the D1 and D3, via their then planning agent, Mr Peter Brownjohn, submitted an application for planning permission, reference 22/02087/FUL, for *“Continued use of land for 2 no. Gypsy/Traveller pitches, comprising 1 mobile home, 1 touring caravan each, and the erection of 2no. dayrooms, stables building, and kennels alongside engineering operation”*.
75. The application was refused on 15 September 2022, on the basis that, amongst other things, the *“development is inappropriate in the Green Belt and would have an adverse impact on openness due to the discordant raised site levels, additional buildings and hardstanding. No considerations exist which would clearly outweigh the harm to the Green Belt and other identified harms so as to account to a very special circumstance.”* A copy of the Decision Notice is exhibited at pages 165-168 of Exhibit TF1. The decision to refuse permission has was not appealed.
76. On 21 December 2022, the Council received an Application for a Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of planning conditions, reference 22/03931/CEU, for the *“Continued use of 2no. buildings used as Kennels/Kitchen and rest room”*, from D1, via his new then planning agent, Mrs R Ali.
77. The Council refused to issue a certificate of lawful use or development on 13 February 2023, on the basis that operations subject to the application constituted

a contravention of the requirements of the Breach of Conditions Noticed served on D1 on 24 May 2019, as set out in paragraph 59 above. A copy of the Decision Notice is exhibited at page 169-172 of Exhibit TF1.

78. An appeal of this refusal was lodged by D1 via his then planning agent, Ms L Jennings, on 29 March 2023 and has yet to be determined.

Current Position and Breaches

79. In spite of the efforts of the Council, both informal via discussions with the occupants and their planning agents, and formal via legal letters, the Breach of Condition Notice and the Temporary Stop Notices, the occupants of the Site continue to be in significant breach of the Conditions, the Consent Order and the Injunction. Therefore, the Council feels they have no choice other than to pursue further action to curtail the behaviour and prevent further breaches.
80. Following the submission on 01 February 2022 from Mr Green, the then planning agent for D1, that ownership of the rear half of the Site had been transferred by D1 to D3, as detailed in paragraph 67 above, the Council decided to conduct further investigations into the position as to the ownership of the Site.
81. As the Land Register continued to record D1 as the sole proprietor of the Site, and D1 and D3 as the proprietors of the strip of land that runs parallel to the entrance driveway to the Site on its northern edge, it was decided that the Council would serve notices under Section 16 of Local Government (Miscellaneous Provisions) Act 1976 ("LGMPA"), on D1, D3 and the owners and occupiers of the Site, requiring them to provide the nature of their interest in the Site and the names and addresses of any other person that they knew to have an interest in the Site. Failure to provide the information sought in full is a criminal offence under Section 16(2) LGMPA. On 26 September 2023, these notices were served by recorded delivery on D1 at the Site and at 61 Worton Road, Isleworth, TW7 6HL, D1's address according to the Land Register entries for the Site, and D3 at the Site and at 93 Ruxley Lane, Epsom, Surrey, KT19 9HB, an address associated with him. Simultaneously, notices addressed to the owners and occupiers were also served

by recorded delivery. No responses were received by the Council, and all but 1 of the notices were returned blank.

82. A further Section 16 notice was served on D1 was served on 03 November 2023 by email and by leaving it at the Site.
83. On 22 November 2023, the Council received a partially completed response to the aforementioned notice from D1. The response simply listed D1, D3, Mr Tom Doherty and Ms Bridget Quinn as occupiers of the Site. No information was provided as to ownership and as such, D1 had committed an offence under Section 16(2) LGMPA. A copy of this partially completed response is exhibited at pages 174-180 of Exhibit TF1.
84. Instead of pursuing a prosecution for failing to provide the information sought, the Council instead took the pragmatic step of serving further Section 16 Notices on all 4 of the occupiers identified in D1's previous response. These were served on the occupiers on 22 January 2024, and on Prideaux Planning, D1 and D3's then planning agent, on 08 February 2024. Copies of these notices are exhibited at page 182 - 210 of Exhibit TF1, together with the covering letter to D1.
85. The Council's file records that on or around 16 February 2024, the Council received responses to the 4 notices from Prideaux Planning. The responses confirmed that D1 and D3 were freeholders of the Site, and that there was no one else with a formal interest in it, or control over it. Despite my best efforts, I have been unable to access the responses themselves, which are thought to be locked within my predecessor's Google Drive.
86. Whilst enquiries as to the ownership of the Site continued, the Council received information to suggest that further hardcore had been brought onto the Site, and that an extensive area of hardstanding had been created to the south east of the permitted development as per the Drawing, in breach of the Injunction, the Consent Order and the Conditions.

87. An anonymous member of the public took 4 photos of the Site using an aerial drone, which were then passed to the Council (the "January Photos"). Neither the drone pilot, who remains unidentified, nor the individual who passed the photos to the Council wish to give evidence in support of this application.
88. The Council believes that the January Photos were taken on 24 January 2024, and copies are exhibited at pages 211-214 of Exhibit TF1.
89. To assist the Court, the Council have produced an annotated site plan (the "Site Plan"), showing the positions of the 4 plots the occupiers have divided the Site up in to. A copy of the Site Plan is exhibited at page 215 of Exhibit TF1.
90. The first of the January Photos at page 211 of Exhibit TF1, shows plots 2-4. The second photo, at page 212 of Exhibit TF1, shows plot 4 and the majority of plot 3. The third photo, at page 213 of Exhibit TF1, shows plot 4, and a small section of plot 3, and photo 4, at page 214 of Exhibit TF1, shows plot 3 and a small section of plot 2.
91. The January Photos show that an extensive area of elevated hardstanding, surrounded by a retaining wall on 3 sides, has been created on plot 3 of the Site in a clear breach of the Injunction, the Consent Order and the Conditions. In order to create such an area of hardstanding, the Council infers that a significant amount of hardcore must have been brought on the Site, in a further breach of the Injunction, the Consent Order and the Conditions. Indeed, it appears that a vehicle can be seen in the process of depositing material in the 4th photo, at page 214 of Exhibit TF1, and at least 3 diggers, presumably used to spread material around the Site are visible as well.
92. It is also immediately apparent from review of the January Photos, that the Site is substantially different in appearance from that dictated by the Drawing and therefore represents a breach of Condition 7 of the Permission granted on 05 October 2018 (Ref: 17/10080/FUL) and detailed at paragraphs 55 and 56 above. Amongst other things, as per the Drawing, there should be an extensive residential garden, including areas of hedge row and tree planting, to the southeast of the

Site. Instead, those areas are now occupied by plots 3 and 4, and as per the January Photos at pages 211-214 of Exhibit TF1, consist almost entirely of hardstanding, with no areas of residential garden, tree planting or hedgerow visible on the Site whatsoever.

93. In addition, at least 6 caravans/mobile homes were on the Site at the time, which exceeds the 4 allowed as per the Injunction, the Consent Order and the Conditions. A stable building appears to have been erected on plot 4 and a portacabin type building appears to have been placed on plot 3 in breach of the Injunction, the Consent Order and Conditions. The buildings on plot 2, to the southwest of the Site, visible on the photo on page 211 of Exhibit TF1, are orientated in a way that does not accord with their approved positioning as per the Drawing.
94. Further, it would appear that the Site has been taken into the boundary on the southern side of plot 4 and is now trespassing on the land occupied by Star Boarding Kennels and Cattery ("Star Boarding") at the property known as Wide View. A review of the Land Register maintained by the Land Registry shows that the boundary to Star Boarding's land abuts the Site on the Site's southern boundary and extends as far east as the Site's most eastern edge. Star Boarding is owned by Datchet Pet Spa Limited ("DPSL"), who have no known links to any of the known occupants of the Site. A copy of the Office Copy Entries of the Land Register and Title Plan for rear section of Star Boarding (Title No. – SGL241842) is exhibited at page 216-219 of Exhibit TF1. The Council has made DPSL aware of the encroachment on their land but they maintain they had no knowledge of it. An email exchange between the Council and the Director of DPSL demonstrating this lack of knowledge is exhibited at pages 220-221 of Exhibit TF1.
95. In light of the array of apparent breaches, the Council instructed SLLP to serve D1 and D3 with cease and desist letters, requiring them to cease all activities on the Site which breach the Injunction and the Consent Order or are otherwise a breach of planning control. The letters were left in the Site's letter box on 26 April 2024 by process servers who were unable to meet with D1 or D3 when visiting the Site. Copies of these letters are exhibited at pages 222-231 of Exhibit TF1.

96. The Council was then provided with 4 further aerial drone images on the Site, taken by an anonymous member of the public (the “April Photos”). As with the January Photos, the aerial drone pilot is not willing to give evidence in support of this application. The Council believes that the drone images provided were taken on 29 April 2024, and are exhibited at Pages 232-234 of Exhibit TF1. The April Photos were taken above the Site, mainly showing plots 3 and 4, but the third photo shows all four plots, looking in a south easterly direction. When compared to the January Photos, it appears that a wooden fence has been added to the top of the retaining wall that surrounds plot 3. In addition, a further area of hardcore appears to have been laid down, that trespasses on Star Boarding’s land in the south eastern corner of the site.
97. On 30 April 2024, Mr Tony White, of White Planning & Enforcement Consultant, emailed SLLP to state that he had been instructed by the owners of plots 3 & 4 of the Site in relation to the cease and desist letters sent to D1 and D3. Mr White identified one of his clients as Kathleen Doherty (“D4”), the estranged daughter in law of D3, who had a disabled dependent, but did not initially identify his second client.
98. No planning permission was in place, and at the time of Mr White’s email, no application for permission had been submitted in relation to plots 3 and 4. It was the Council’s assumption that the additional areas of extensive hardstanding created in breach of planning control and visible in the January Photos, constituted plots 3 and 4.
99. Mr White requested that the Council withhold from pursuing court action against D1 and D3 for 28 days, as his clients had agreed to cease any and all works on the Site, and they wished to consider the implications of any works that may have been undertaken and the merits of any retrospective or future planning applications.
100. SLLP responded to Mr White on the same day, requesting copies of documentation to evidence the transfer of the land from D1 to Mr White’s clients,

and that Mr White reveal the identity of his second client. Mr White replied on 01 May 2024, stating that he would endeavour to provide the information requested by Friday 03 May.

101. Having heard no further from Mr White, on 07 May 2024, SLLP emailed him to chase a response, and also to seek general clarification as to who owns plots 3 and 4 and to identify their position on the Site, as well as details of D4's dependant to enable the best interests of the child to be considered in the context of further enforcement action.
102. Mr White responded on the same day, stating that an application for planning permission in relation to plots 3 and 4 had been submitted to the Council via the online planning portal. He confirmed his clients to be Mrs Bridget Casey ("D2") in relation to plot 3, who has a child aged 4, and D4 in relation to plot 4, who has a child aged 5 with additional medical needs. Mr White further submitted that he had prepared declarations for D1 and D3, presumably indicating some form of ownership, and that he was confident he would be in a position to provide these to SLLP by Monday 13 May, together with supporting Land Registry documents. He also reiterated that his clients were committed to ceasing any and all works under matters were resolved.
103. On 22 May 2024, SLLP emailed Mr White to chase him for copies of the declarations and supporting evidence, and enclosed updated Land Registry Office Copy Entries for the Site, showing that D1 remained the sole registered proprietor. A copy of the email exchanges described in paragraphs 97-103 is exhibited at pages 235-242 of Exhibit TF1.
104. On 19 June 2024, in response to further Notices served under Section 16 of the Act on D3, Thomas Doherty, D4, D1, D2 and Bridget Quinn on 06 June 2024, Mr White wrote to the Council. He stated that Plot 1, is owned and occupied by D3 and Ann Doherty, Plot 2 is owned and occupied with D1 and Irene Casey, Plot 3 is owned and occupied by D2, Irene Casey Jnr and Katie Casey and Plot 4 is owned and occupied by D4, an unnamed child, Ann Doherty and Tom Doherty. The letter further stated that Mr White had seen TR1 forms transferring ownership

of Plots 3 and 4 from D1 to those as listed above, copies of which would be forwarded to SLLP in due course. A copy of this letter is exhibited at pages 243-245 of Exhibit TF1.

105. At the time of making this statement, neither the Council nor SLLP have had sight of any TR1 forms, and up to date Office Copy Entries for the Site, exhibited at pages 18-22 of Exhibit TF1, still show D1 to be the freehold owner of the entirety of the Site.

106. As stated by Mr White, an application for planning permission, reference 24/01151/FUL, for the *“creation of 2 additional residential pitches for Gypsy/Travellers at an existing Gypsy/Traveller caravan site, each with 1 static caravan, 1 touring caravan and a brick built day room, and retrospective permission for the erection of a retaining wall together with land levelling engineering works”* was received by the Council on 07 May 2024.

107. Two plans, labelled ‘Plot 3’ and ‘Plot 4’, showing the proposed extent of the same, were submitted in support of the application. A review of the two plans in comparison to the Drawing, which details the permitted extent of development on the Site, confirmed what was already apparent to the Council having reviewed the January Photos and the April Photos - that the development works for which retrospective planning permission is being sought, extends substantially from what is currently permitted. Copies of the two plans are exhibited at pages 246-247 of Exhibit TF1.

108. On 17 May 2024, the applicants of this latest application for planning permission were informed that the application had been deemed invalid for an extensive list of reasons and had not therefore been validated. These include the failure to submit: scaled existing and proposed site plans showing the entire Site in sufficient detail; existing and proposed site sections and plans detailing the extent of the land levelling undertaken in creating the new areas of hardstanding including land levels prior and post the unauthorised works; structural details of materials used for the hardstanding land levelling and retaining wall; an ecological report; a biodiversity statement; a flood risk plan/statement; a daylight and sunlight

assessment; supporting time stamped photographs; a construction management plan/statement; a planning fire safety strategy; information as to the nature of the works taking place between the entrance to the Site and plots 3 and 4; a structural report in relation to the raising of land and the retaining walls; and information on the material/waste that has been imported onto the Site. A copy of the Council's letter to Mr White setting out the above, is exhibited at pages 248 to 251 of Exhibit TF1.

109. At the time of making this statement, although some minor additional information has been provided to the Council, the vast majority of the reasons for not originally validating the application, as outlined in paragraph 108 above, have still not been actioned. As such, the Council still considers that the application is invalid and will not determine it until it has been validated. A letter from the Council sent to the applicant's planning agent, Mr White, on 28 June 2024, setting out the further additional steps required, is exhibited at pages 252-254 of Exhibit TF1.

110. Nonetheless, having received the plans for plots 3 and 4 and reviewing the January and April Photos, all showing an apparently extensive list of breaches of planning control, the Council agreed with Mr White, that the Council would be provided with voluntary access to the Site to carry out investigations as to its present state rather than exercising the Council's powers of entry under the Act.

111. The Site visit went ahead as planned on 15 May 2024. Sherece Gates, a Senior Enforcement Officer from the Council, and Toby Feltham, the Council's Enforcement Lead Officer, were in attendance on behalf of the Council, and took a number of photos. The Site visit once again confirmed that a significant number of flagrant breaches of the Injunction, the Consent Order and the Conditions have taken place on the Site.

112. The area on the Site that corresponds with the area identified as plot 3 on the relevant plan submitted with the latest planning application, as reflected on the Site Plan, has undergone substantial development. It is clear that a vast amount of hardcore has been imported onto the Site and laid down to create an extensive area of hardstanding, that has significantly raised the level of the Site. Industrial

machinery, presumably used to create the area of hardstanding, was also found at the Site. In addition, a large retaining wall topped with a wooden fence has been erected at the south eastern extent of the plot, a grey industrial portacabin type building and touring caravan are both present, and a quantity of bricks are being stored on the plot. Photos taken by the Council on 15 May 2024 showing the plot are exhibited at pages 255-275 of Exhibit TF1.

113. Upon review of the Drawing, it is clear that in accordance with the Conditions, the area of the Site that plot 3 occupies should consist of a small area of hardstanding to the south and south west of the plot, with the rest being residential garden to include a number of planted trees. As such, it is clear that the works undertaken and shown within the photos, represent significant breaches of the Injunction, the Consent Order and the Conditions.
114. The area of the Site that appears to correspond with plot 4 on the relevant plan has also undergone development. As with plot 3, it is clear that a vast amount of hardcore has been imported onto the Site and used to create an extensive area of level hardstanding extending to the south eastern most edge of the Site. It would appear that a wooden fence has also been erected to surround the neighbouring property, Star Boarding to the south/south west of the Site, and that the extent of the works is trespassing on the land over the southern boundary of the Site, owned by DPSL. A stable building has also been erected. A number of photos showing these works is exhibited at page 276-294 of Exhibit TF1.
115. Upon reviewing the Drawing, it is clear that in accordance with the Conditions, the area of the Site that plot 4 occupies should consist of residential garden, an area of tree planting and hedgerow and a large area of grassland to be left unmaintained for habitat and biodiversity purposes. Therefore, it is clear that the works undertaken and shown in the photographs, represent further significant breaches of the Injunction, the Consent Order and the Conditions.
116. Elsewhere on the Site, it is evident that other breaches of the Injunction, the Consent Order and the Conditions have taken place, as set out below.

117. As per the Conditions, the Drawing records the permitted siting of the 4 caravans/mobile homes permitted on the Site. The Drawing shows that they should be sited on plots 1 and 2, and broadly situated in a south western to north eastern aspect.
118. On plot 2, a mobile home has been built in the incorrect position. As shown in the photos exhibited at pages 311-313 of Exhibit TF1, the mobile home is incorrectly sited in a north western to south eastern aspect, along the southern boundary of the Site. In addition, the touring caravan is incorrectly sited to the south western edge of the plot, and 2 further, unpermitted touring caravans are also present on the north eastern extent of the plot. Further, an additional unpermitted kennel building has been erected to northern edge of the plot.
119. As per the Drawing, an area of tree plantation on a grassed roundabout should also be in place on north eastern edge of plot 1. However, this has not been installed. A photo showing a view down the driveway on the Site, which shows the current state of the area outside of plot 1 is exhibited at pages 300 of Exhibit TF1.
120. The vast majority of the north/north eastern boundary of the Site should consist of hedgerow, however, as per the photos at pages 316-319 of Exhibit TF1, at present it has simply been fenced.
121. In total, the Council found that 7 caravans/mobile homes were on the Site, which exceeds the 4 that are permitted in accordance with the Injunction and the Conditions.
122. On approach to the Site, it is also evident that there are ongoing landscaping works for which planning permission has not been granted taking place along the northern boundary, between the entrance to the Site and the entrance to plot 1, including the replacement of the boundary fence, which exceeds 2 metres in height, and the creation of a verge,

Waste and Contamination

123. Contaminated land has a specific definition as set out in Part 2A of the Environmental Protection Act 1990 (the “EPA”).
124. At present, limited information is available regarding the Site, in terms of potential contamination. However, it appears from the photographs, such as those taken during the 15 May 2024 Site visit, that waste material from the landscaping and construction industry has been brought to and deposited on the Site. However, without receiving further information to suggest the presence of contaminants, it is unlikely that the Council would assess the land ‘potentially contaminated’. However, should the circumstances change, or new information come to light, the Council will revisit the issue.
125. In addition, the Waste Management Plan for England (2013) sets out the Government’s ambition to work towards a more sustainable and efficient approach to resource use and the management of waste. To that effect, it encourages waste planning authorities to ‘drive waste up the waste hierarchy’.
126. The National Planning Policy Guidance (“NPPG”) states that *“Movement of waste up the Waste Hierarchy (see Appendix A of National planning policy for waste) is not just the responsibility of waste planning authorities. All local planning authorities, to the extent appropriate to their responsibilities, should look to drive waste management up the hierarchy. Paragraph: 009 Reference ID: 28-009-20141016”*
127. Policy SI 7 (Reducing waste and supporting the circular economy) of the London Plan 2021 directs that *“Resource conservation, waste reduction, increases in material reuse and recycling, and reductions in waste going for disposal will be achieved by the Mayor, waste planning authorities and industry working in collaboration to: inter alia 2) encourage waste minimisation and waste prevention through the reuse of materials and using fewer resources in the production and distribution of products... and 5) meet or exceed the targets for each of the following waste and material streams: a) construction and demolition – 95 per cent reuse/recycling/recovery”*

128. Policy SI 10 (Aggregates) of the London Plan 2021 *“An adequate supply of aggregates to support construction in London will be achieved by: 1) encouraging re-use and recycling of construction, demolition and excavation waste within London, including on-site”*.

129. The material brought onto the Site, primarily for the laying down of extensive areas of hardstanding on plots 3 and 4, has been done so without an Environment Agency permit (as required by virtue of section 33 of the Environmental Protection Act 1990 and the Environmental Permitting (England and Wales) Regulations 2016). Such a permit would go towards ensuring that the materials are safe and free of contaminants, and importing waste without one is a criminal offence, as is failing to ensure that waste is moved up the waste hierarchy in accordance with national, regional and local planning policies.

Structural Stability

130. National planning policy is clear that the planning system has an important role in considering land stability, including by minimising the risks and effects of land stability on property, infrastructure and the public. The Council has not been given any information regarding the structural integrity of the land raising or the unauthorised retaining walls, and in the absence of such evidence is concerned that there is a real risk of land spillage, which could cause damage to neighbouring land and properties.

Surface Water/ Flooding

131. The effect of the development has been substantially to change the land levels and the consequential impact on surface water flows is unknown. This may increase flood risk off site, given that the site is close to Flood Zone 2 and Surface Water Flood Risk Areas.

Human Rights, Public Sector Equality Duty and Best Interest of the Child Considerations

132. The Council is aware of the requirement to take into consideration factors relating to the human rights of all in occupation at the Site and the best interests of the child.
133. The occupants of the Site have, in support of previous applications for planning permission, provided supporting statements that claim that the best interests of the child are of prime importance, and that the Site provides necessary facilities to promote a healthy lifestyle for those in occupation.
134. In the latest invalid planning application, the D2 and D4 have stated that they have children. The Council does not believe that the Site is the current home of either of the applicants or their children, and although the latest application for planning permission states that if the application was refused, the families, including the children, would be forced to live a roadside existence, the applicants have not discussed whether alternatives exist. It is the Council's position that the best interests of the children in question are unlikely to be served by moving them on to the Site. On the contrary, to do so would place them in an uncertain and unstable situation and would likely result in them being subjected to disruption when enforcement action is taken. Certainly, it would not be in the best interests of the children to move onto the Site pending final determination of this claim, and at the interim stage, the best interests of the child undoubtedly weigh in favour of holding the ring and preventing the children from being moved onto the Site until the matter has been finally determined.
135. Moreover, in support of the most recent application for planning permission (ref 24/01151/FUL), the applicants submitted a bundle of documents from a First Tier Tribunal Special Educational Needs and Disability Appeal involving D4 and her child, Anne Doherty. Within that bundle are witness statements of D4, one of the applicants, and her husband, Mr Thomas Jude Doherty, both dated 13 March 2024. Both statements assert that they reside at 93 Ruxley Lane, Epsom, KT9 9HB, which is a house. Copies of both statements are exhibited at pages 320 - 322 of Exhibit TF1.

136. The Council is also aware of its duty to act in accordance with its public sector equality duty under Section 149 of the Equality Act 2010. The Council considers that this duty is engaged here, as the occupiers of the Site are Travellers, and 'protected characteristics' are engaged for the purposes of the 2010 Act. As such, the Council must have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity and the fostering of good relations between those who do, and do not, share protected characteristics. The Council considers that by residing on the Site, the particular housing needs of those in occupation may not be being met, which could have adverse effects on their ability to access public services and facilities, and on their health and life chances.

137. Further, the Council considers that the repeated unauthorised extensive development of the Site has had and will continue to have, an adverse impact on the relations between those with and without the Traveller protected characteristic, namely the occupants and those that reside in close proximity to the Site. This, in addition to the clear damage the development of the Site is having on the Green Belt and general amenity of the area, the failure of those in occupation to enable the Council to move waste up the waste hierarchy, the persistent intentional abuse of the ordinary planning permission process and the risk of the development of the Site damaging neighbouring land or property or causing land spillage, leads the Council to find that any impacts on the best interests of the children present, or of the human rights of those in occupation, are significantly outweighed in favour of pursuing this injunction.

Conclusion


138. As has been set out and evidenced by the photos taken by the Council, the occupiers of the Site have committed an extensive number of flagrant breaches of the Injunction, the Consent Order, and the Conditions.

139. In addition, for the purposes of Section 187B of the Act, there have been multiple actual breaches of planning control.

140. Despite the Council's best efforts to engage with the occupants and their various planning agents, it has been impossible to ascertain the true ownership position of the Site and therefore who is ultimately responsible for the breaches.
141. By undertaking significant development works on the Site, and only applying for retrospective planning permission once the Council had caught wind of the works, the occupiers have shown total disregard for the planning process. Further, the Council's previous attempt at enforcement action by way of serving the May 2019 Breach of Condition Notice was met with total non-compliance, that continues to the present day. Therefore, the Council's efforts to deal with the matter without the need for recourse to the Court have been unsuccessful, and despite the assurances of their planning agent that works have ceased, the Council feels that they have no choice but to seek an injunction against the known occupiers of the Site and Persons Unknown, to prevent any further breaches of planning control.
142. In this regard, and in light of the evidence set out above, the Council's position is that there has self-evidently been a breach of planning control causing real harm, and that there is a real and imminent threat that, in the absence of an interim injunction there is a strong probability that that harm will be exacerbated.
143. As such, the honourable Court is invited to grant:
- a. An injunction against Mr Michael Casey [D1], Mrs Bridget Casey [D2], Mr Simon Doherty [D3], Mrs Kathleen Doherty [D4] and Persons Unknown [D5] being the intended occupants of the caravans/ mobile homes currently stationed unlawfully on the Site, as per the Draft Order, preventing any and all further works on the Site until further notice; and
 - b. An order for the Claimant's costs

Statement of Truth

I believe that the facts stated in this Witness Statement are true, or in context, true to the best of my knowledge, information and belief. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed 

Name: Toby Feltham

Position held: Lead Officer (Planning Specialisms)

Date: 16 July 2024

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
CLAIM NO. KB-2024-002247

B E T W E E N

THE MAYOR AND BURGESSES OF THE
ROYAL BOROUGH OF KINGSTON UPON
THAMES

Claimant

and

1. MICHAEL CASEY
2. SIMON DOHERTY
3. BRIDGET CASEY
4. KATHLEEN BERNADETTE DOHERTY
5. PERSONS UNKNOWN BEING THOSE
PERSONS CAUSING OR PERMITTING WORKS
TO BE UNDERTAKEN, OR WASTE OR OTHER
MATERIAL TO BE DEPOSITED ON THE LAND,
AND/OR BRINGING ONTO OR
OCCUPYING CARAVANS OR MOBILE HOMES
ON THE LAND OR INTENDING TO DO
SO, OTHER THAN IN ACCORDANCE WITH A
VALID GRANT OF PLANNING PERMISSION.

Defendants

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