

IN THE MATTER OF SECTION 222 OF THE LOCAL GOVERNMENT ACT 1972
AND SECTION 187B OF THE TOWN AND COUNTRY PLANNING ACT 1990

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) BRIDGET CASEY
(3) SIMON DOHERTY
(4) KATHLEEN 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.

(6) Tom Doherty
(7) Thomas Casey
(8) Michael Casey Junior

Defendants

DETAILS OF CLAIM (Part 8 Claim Form)

1. This is an application by the Royal Borough of Kingston upon Thames Council (“the **Council**”) for an injunction pursuant to s 187B of the Town and Country Planning Act 1990 (“the **1990 Act**”) and section 222 of the Local Government Act 1972 (“the **1972 Act**”) prohibiting the Defendants from carrying out further works on, or occupying the caravans/ mobile homes stationed on land known as Three Birches, at the side and rear of Kenwood, Green Lane, Chessington (registered under Title No SY263578) (“the **Land**”) otherwise than in accordance with a valid grant of planning permission.
2. The Defendants are Michael Casey, Bridgett Casey, Simon Doherty, Kathleen Doherty and persons unknown, being those persons causing or permitting works to be undertaken and/or caravans/ mobile homes to be stationed on the Land, or intending to occupy such caravans/ mobile homes other than in accordance with a valid grant of planning permission.

3. As set out in the Witness Statement of Toby Feltham, the First Defendant is the registered owner of the Land. The Council has sought information, including through the exercise of its statutory powers under section 16 of the Local Government (Miscellaneous Provisions) Act 1986, to identify the owners and occupiers of the Land, without success. From its inquiries, it understands that all four named Defendants are owners or intended occupiers of the Land. There are, however, seven caravans/ mobile homes stationed on the Land. The clear inference is that the named Defendants are not the only owners/ intended occupiers of the Land. Despite its efforts, the Council has been unable to identify the other owners/ intended occupiers and it therefore seeks an injunction against Persons Unknown.
4. An interim order is sought prohibiting the Defendants from:
 - a. Carrying out any further works or operations on the land otherwise than in accordance with a valid grant of planning permission; and/or
 - b. Occupying more than four of the caravans stationed on the Land.
5. A final order is sought:
 - a. Requiring the Defendants to comply with the Breach of Condition Notice served on 24 May 2019 by:
 - i. Ensuring that no more than four caravans, as defined in the Caravans Sites and Control of Development Act 1960 and Caravans Act 1968 (of which no more than two shall be a static caravan) shall be stationed on the Land at any time;
 - ii. Undertaking such works on site as are necessary to ensure adherence to the details approved on 2nd May 2014 under application reference 14/10021/COND

The Planning Regime

6. This injunction application concerns actual and/or anticipated breaches of planning control under the 1990 Act. A brief introduction to the relevant legal principles is included below.

The Requirement for Planning Permission

7. Section 57 of the TCPA 1990 requires planning permission for development to be carried out on land. Absent planning permission development is unlawful.

Development

8. Development is defined in section 55 of the Town and Country Planning Act 1990. Section 55(1) defines development as meaning the carrying out of building, engineering, mining or other operations in, on, over or under land (commonly referred to as operational development) **or** the material change of use of any buildings or other land. A material change of use does not involve the physical alteration of the relevant land/ building. Rather it involves changing the way that land/ building is used. What constitutes a material change of use is a matter of planning judgment (subject to the test of *Wednesbury* unreasonableness).

Enforcement Powers

9. S 171E of the 1990 Act grants LPAs the power to issue temporary stop notices. A stop notice may be served against an actual or apprehended breach of planning control. However, a stop notice only has effect for a period of 28 days after which it expires.
10. Section 181 of the 1990 Act enables a local planning authority to issue an enforcement notice requiring the remediation of a breach of planning control. An enforcement notice may only be issued against a breach of planning control that has already taken place. The enforcement notice must specify the time-period within which the steps required to remedy the breach of planning control must take place. Breach of an enforcement notice is a criminal offence.
11. Section 187A of the 1990 Act empowers a local planning authority to issue a notice requiring a person to secure compliance with conditions imposed on a grant of planning permission. breach of a breach of condition notice is a criminal offence.

Legal Principles

Planning Injunctions

12. The leading case on the approach to injunctive relief pursuant to s 187B TCPA is *South Bucks DC v Porter (No1)* [2003] 2 AC 558. The applicable legal principles were set out by Lord Bingham at [27]-[37] and include the following:

- a. The Court's jurisdiction to grant an injunction is original (as opposed to supervisory as in judicial review) and discretionary. The Court must determine whether in all the circumstances it is just and convenient to grant relief.
- b. Issues of planning policy and judgment remain solely within the exclusive purview of the local planning authority but the court may have regard to the likelihood that planning permission would be granted.
- c. The court may be reluctant to use its powers to grant injunctive relief where enforcement action had never been taken. However, there may be some urgency in a situation sufficient to justify pre-emptive avoidance of an anticipated breach
- d. Previous planning decisions will always be a relevant material consideration. The weight to be given to them may be affected by:
 - i. How recent they are
 - ii. The extent to which the same relevant material considerations were taken into account
 - iii. The strength of the conclusions reached on land use and environmental issues
 - iv. Whether the defendant had and properly took the opportunity to make his case for planning permission
- e. The local authority's decision to seek injunctive relief is itself a relevant material consideration as they are the democratically elected and accountable body principally responsible for planning control in the area. The weight to be given to their decision depends on the extent to which they can be shown to have had regard to all the material considerations
- f. The court is bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency of bringing it to an end.
- g. The grant of injunctive relief must be proportionate. The legitimate aim of safeguarding the environment in the public interest must be weighed against the burden imposed on the individual whose private interests are affected.

Persons Unknown

13. The Court's power to grant an injunction against persons unknown has recently been considered by the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47 (dismissing an appeal against *London Borough of Barking & Dagenham v Persons Unknown* [2022] EWCA Civ 13). From those cases, the following principles emerge:

- a. Local authorities seeking to prevent breaches of public law, including planning law, are empowered to seek injunctions by statutory provisions and can invoke the equitable jurisdiction of the court, which extends to the granting of newcomer injunctions. The possibility of an alternative non-judicial remedy does not deprive the courts of jurisdiction (see *Wolverhampton CC* at para. 170);
- b. The applicant must describe any persons unknown in the claim form by reference to photographs, things belonging to them, or any other evidence, and that description must be sufficiently clear to enable persons unknown to be served with the proceedings, whilst acknowledging that the court retains the power in appropriate cases to dispense with service or to permit service by an alternative method or at an alternative place (see *Barking & Dagenham* at para. 117);
- c. Any local authority applying for an injunction against persons unknown must satisfy the court by full and detailed evidence that there is a compelling justification for the order sought. There must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. Further, the threat must be real and imminent (*Wolverhampton CC* at para. 218).
- d. Whilst it would be impossible for a local authority to give effective notice to all newcomers of its intention to make an application for an injunction to prevent unauthorised encampments on land, in the interests of procedural fairness, any local authority intending to make an application for an injunction must take reasonable steps to draw the application to the attention of persons likely to be affected by the injunction sought, or with some other genuine and proper interest in the application (*Wolverhampton CC* at para. 226).
- e. When considering whether to grant an injunction against Persons Unknown in the context of breaches of planning control by Travellers, the Court will likely require the applicant to demonstrate a compelling need for the enforcement of public law not adequately met by any other remedies (including statutory remedies) available to the applicant (*Wolverhampton CC* at para. 238)

Factors Weighing in Favour of Granting an Injunction

The Decision to Apply for an Injunction

14. The fact that the Council has made this application for an injunction is itself a relevant material consideration weighing in favour of granting an injunction. The Council is the democratically elected body charged with ensuring the proper planning of development in its administrative area. It has carefully balanced the relevant considerations in a reasoned officers report and reached the conclusion that it is appropriate to make this application. As such, the Council's decision to apply for an injunction should be given considerable weight.

Enforcement of Planning Regime

15. As the House of Lords in *South Bucks* made clear (affirming the decision of Simon-Brown LJ) the need to enforce planning control in the general interest weighs in favour of the grant of an injunction, In particular, the more flagrant the postulated breach of control, the greater the weight to be afforded. In this case the postulated breach is flagrant and involves environmental damage arising from the harm to the openness of the Green Belt and to the character and appearance of the countryside. An injunction is necessary in the public interest to restrain this breach and prevent the planning/environmental harm that would result from such a breach.

Other Harm

16. In determining that it is expedient to apply for an injunction, the Council has identified the following matters, in addition to the harm to the Green Belt (which carries substantial weight) and the harm to the character of the area:
 - a. The deposit of waste has taken place without an environmental permit (which is a criminal offence). In those circumstances: (1) there has been a failure to drive the use of waste further up the waste hierarchy by encouraging its reuse (including on site), with obvious environmental consequences; and/or (2) the Council does not have adequate information regarding the source of the material and/or the extent to which it is or may be contaminated.
 - b. The planning regime is intended to play 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 would cause damage to neighbouring properties.

- c. Surface water/ flooding, 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.

17. These additional factors weigh in favour of the grant of injunctive relief, and in particular demonstrate the imminent risks resulting from the unlawful development which the Council seeks to restrain.

The Likelihood of Planning Permission Being Granted

18. The development is in the green belt where development is only permitted in very special circumstances. It conflicts with the Development Plan and in accordance with s 38(6) of the Planning and Compulsory Purchase Act 2004 there is a statutory presumption that planning permission will be refused, unless there are material considerations outweighing that conflict. Whilst the Council recognises that the personal circumstances of the Defendants (having regard to Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights, as well as section 149 of the Equality Act and Article 3 of the UN Convention on the Rights of the Child) may weigh in their favour, the Council's position is that those personal circumstances are firmly outweighed by other material considerations, especially when viewed in the context of the relevant planning history. Moreover, those personal circumstances could never properly justify the development which has in fact taken place, given the obvious harms arising from it.

Prejudice to the Defendants

19. The First and Third Defendants are already subject to injunctions and/or have given Undertakings to the Court. The development targeted by the injunctive relief sought in these proceedings is in breach of those previous Orders/ Undertakings.

20. In addition, the final order sought by the Council seeks only to secure compliance with a breach of condition notice served on 24 May 2019.

21. Any alleged prejudice to the Defendants must be seen in that context and is very limited.

22. Moreover, for the purposes of interim relief, the Council's submission is that the best interests of the child are served by preventing the children in question from being brought onto the Land, given the disruption that is likely to be caused to them if they are brought onto the land before the issues relating to the enforcement of the breaches of planning control are resolved.

Urgency

23. Urgent enforcement of the development control regime is required. The Defendants have carried out substantial operational development on the Land but the additional caravans stationed on the Land are not understood yet to be occupied. Given the planning history, there appears to be a real and imminent risk of additional material being brought onto the Land and/or additional works being carried out, as well as the occupation of the additional caravans. If an injunction is not granted, subsequent enforcement action will have to be retrospective. If the Land is further occupied for residential purposes such enforcement action is likely to be protracted and extremely costly. There is thus the potential for further harm to the Green Belt that would prove difficult and potentially costly to the public purse to remove.

Balance

24. For these reasons the legitimate public interest in protecting the environment urgently from environmental damage outweighs the private interests affected. It is just, reasonable and proportionate to grant an injunction restraining the unlawful use of the land.

Persons Unknown

25. The Council seeks an order against persons unknown, being those persons causing or permitting works to be undertaken and/or caravans/ mobile homes to be stationed on the Land, or intending to occupy such caravans/ mobile homes other than in accordance with a valid grant of planning permission.
26. That description is sufficiently clear to enable those persons to be served, albeit with service being by an alternative method.
27. The evidence set out in the witness statement of Toby Feltham is sufficiently full and detailed to demonstrate a compelling justification for the order sought. There has been a breach of planning control and there is a real and imminent threat of further breaches resulting in serious harm to the public interest.

28. Attempts have been made to draw the application to the attention of persons likely to be affected by the injunction sought, including in correspondence with the agents for the named Defendants, such that the making of an order against persons unknown would not be procedurally unfair.
29. In light of the planning history, the Council has demonstrated a compelling need for the enforcement of public law that has not been adequately met by the other remedies available to the applicant.

Conclusion

30. The Claimant therefore claims:
- a. An interim injunction in the terms of the draft order appended to this claim
 - b. A final injunction requiring the Defendants to comply with the Breach of Condition Notice served on 24 May 2019 by:
 - i. Ensuring that no more than four caravans, as defined in the Caravans Sites and Control of Development Act 1960 and Caravans Act 1968 (of which no more than two shall be a static caravan) shall be stationed on the Land at any time;
 - ii. Undertaking such works on site as are necessary to ensure adherence to the details approved on 2nd May 2014 under application reference 14/10021/COND
 - c. A final injunction requiring or prohibiting the named Defendants and/or Persons Unknown undertaking specified activities as may be necessary to address the actual or intended breaches of planning control in such terms as the Court may think fit
 - d. Further or other relief
 - e. Costs

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