Neutral Citation Number: [2024] EWHC 2954 (KB)

Case No: KB-2024-001553

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20th November 2024

Before :

Mr James Healy-Pratt sitting as a Deputy High Court Judge

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Between :

BASILDON BOROUGH COUNCIL **Claimant**

- and -

(1) ELIZA SAUNDERS
(2) JOHN BURTON JNR
(3) JOHN BURTON SNR
(4) GEORGE COOK
(5) SHANNON GREAVES
(6) ELIZABETH COOPER
(7) WILLIAM HOMES
(8) ELIZABETH COYLE
(9) PERSONS UNKNOWN (UNDERTAKING OPERATIONAL DEVELOPMENT ON LAND KNOWN AS LAND TO THE REAR OF SUNNYSIDE, LOWER AVENUE, BOWERS GIFFORD, BASILDON, ESSEX WITHOUT A LAWFUL PLANNING CONSENT AND/OR SEEKING TO CHANGE THE USE OF THE LAND INCLUDING A CHANGE IN USE TO A CARAVAN SITE WITHOUT LAWFUL PLANNING CONSENT)

Defendants

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Wayne Beglan (instructed by **Basildon Borough Council**) for the **Claimant**
Stephen Cottle and Acland Bryant (instructed by **Public Interest Law Centre**) for the **Fifth Defendant**

Hearing dates: 21 and 22 October 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 20 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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JAMES HEALY-PRATT
(SITTING AS A DEPUTY HIGH COURT JUDGE)

Deputy High Court Judge Mr James Healy-Pratt:

Introduction

1. The claimant, Basildon Borough Council, seeks a final injunction against eight named defendants and persons unknown. The application is brought under s.187B of the Town and Country Planning Act 1990, in relation to Land known as "land to the rear of Sunnyside, Lower Avenue, Bowers Gifford, Basildon, Essex". The claimant seeks to prevent the Land being subject to any further breaches of planning control, either by the carrying out of operational development, or by the making of a material change of use for stationing caravans for human habitation; and for the Land to be restored to the condition it was in prior to the breaches of planning control. They also seek the removal of two defendants and their children from the Land.

2. Several of the named defendants were legally unrepresented, but some of them still attended the two-day hearing and two of them gave evidence in person. For that reason, I provide my decision in brief here: I have decided that the interim injunction granted on 4 June 2024 by Mr Simon Tinkler, sitting as a Deputy High Court Judge, should continue as against all defendants pending the outcome of the current planning appeal process on the Land. This means that the fifth and seventh defendants have the right to remain on the Land until the planning appeal process relating to the Land has been finalised. The claimant may well return to Court at a later stage for a further ruling, depending on the outcome of that planning appeal, or for other appropriate relief.

3. This judgment has 12 parts: Introduction, the parties, procedural history, planning history, claimant evidence, defendants' evidence, aerial surveillance evidence, personal circumstances of defendants, the law, the parties submissions, and analysis and conclusion.

The parties

4. The Land comprises title EX180826 registered at the land registry. The first defendant is the registered owner.

5. The second defendant is the owner of part of the adjacent land which has formed part of the access track used to develop the Land, known as the Homestead or Land South of Sunnyside. He is also the planning applicant in the planning application relating to the Homestead made on 31 May 2024. The third defendant is the father of the second defendant.

6. The fourth defendant is a contractor undertaking the works subject of this claim on the Land. The fifth defendant claims to be occupying the Land (Plot 1) on a full-time basis with her three young children. The sixth defendant has vacated the Land. The seventh defendant claims to be occupying the Land on a full-time basis with his wife and two young children. The eighth defendant has vacated the Land. The fifth to eight defendants are joint applicants for planning permission, and an appeal against refusal, in relation to the Land.

7. The claimant's evidence is contained within a series of witness statements of its Planning enforcement officers, Ryan Funnell, Ian Cummings, Paul Downes and Owen Stringer. Mr Funnell and Mr Cummings gave further evidence in person to the court, as did Ms Katie Ellis, Development Management Officer for the claimant.

8. The defendants' evidence is contained within a series of witness statements by John Burton Jnr (D2), Shannon Greaves (D5), Elizabeth Cooper (D6), William Holmes (D7) and Elizabeth Coyle (D8). Mr Burton Junior and Mr Holmes gave evidence in person to the court. I shall refer to the defendants by the number they have been given in these proceedings. No disrespect is intended.

The procedural history

9. The claim was issued under Part 8 CPR on 29 May 2024 against named defendants D1-D4 and persons unknown (D9). At a without notice hearing the claimant was granted an interim injunction on that same date against those defendants by Sweeting J. I shall refer to that as the First Order.

10. An application to vary or suspend that order was made by D5-D8 (inclusive) on 3 June 2024. At the return date hearing on 4 June 2024 before Mr Simon Tinkler sitting as a Deputy High Court Judge, D5-8 were all added as named defendants by consent. The injunction was continued as against all defendants including persons unknown with D5 and D7 being permitted to remain on the Land, together with directions for trial. I shall refer to that as the Second Order.

11. At the final hearing, Mr Beglan represented the claimant, and Mr Cottle represented D5. The remaining defendants were unrepresented, but attended except for D1, D3 and D4. The named defendants who did not attend the hearing have been served with the Claim Form and effective steps have been taken to ensure that they were aware of the hearing. I was satisfied that it was in the interests of justice to proceed on 21 and 22 October 2024.

The planning history of the Land

12. The site is a parcel of land which was previously grassland of nil authorised planning use. It is to the rear of an existing and unrelated residential plot known as Sunnyside, on the western side of Lower Avenue and north of Grange Road, Bowers Gifford, Basildon. The site has an area of 0.2 hectares and is a parcel of land roughly rectangular in shape, including an access track from a gate on Lower Avenue shared with the neighbouring property to the south known as Homestead. About one metre width of the access track is under Homestead ownership. The site is located within the North Benfield Plotland area which sits to the north of the A13 and south of the A127. It is a semi-rural part of the borough north of the urban settlement of Bowers Gifford. There is vegetation throughout the area which includes some large paddocks and fields. Development within this Plotland area is set out relatively sporadically along the roads with a mixture of detached bungalows and chalets interspersed with vacant undeveloped plots. The site is within the designated Green Belt on the Proposals Map retained as part of the Saved Basildon District Local Plan Policies.

13. None of the Land has been granted planning permission for residential use as a separate planning unit, use for the stationing of caravans for human habitation, or any other use which would explain the works which have been undertaken. The works undertaken are described below. The claimant apprehended that the purpose of those works was to facilitate a material change of use of the Land to stationing of caravans and/or mobile homes for the purposes of human habitation.

14. The works undertaken by 24 May 2024 included groundworks including the laying of hardcore and erection of internal fencing to mark out four pitches for Gypsy/Traveller occupation. The works appear to have commenced on or about Friday 24 May 2024 with the intention, of being carried on over the upcoming back holiday weekend. On Friday 24 May 2024 the claimant's officers attended the Land and observed works being undertaken. Later that day the claimant's officers returned to the Land. Works were still ongoing, and the claimant served a Temporary Stop Notice ("TSN") upon the Land for the following stated reasons:

> "The unauthorised operational development consisting of the laying of hardcore to form an area of hardstanding and the erection of internal fencing, which gives rise to significant concerns relating to the impacts upon the openness of the Green Belt, adverse ecological impacts, potential land drainage issues and seeks to undermine the rural plotland character of the area."

15. The TSN required the following steps:

    1. Cease any further unauthorised operational development within the area identified on the plan, including, but not limited to, the deposit of hardcore and other materials on the Land.
    2. Cease any works to connect to utilities, including water, sewerage and electricity on the Land.
    3. Do not undertake any works to erect any further internal fencing on the Land.
    4. Do not undertake any works to erect structures or buildings to facilitate residential use on the Land.
    5. Do not introduce any caravans intended to be used for residential occupation onto the Land.
    6. Do not undertake residential occupation of the Land.

16. The Defendants did not comply with those requirements. Further works took place over the bank holiday weekend including:
    a. Further groundworks including the laying of hardcore;
    b. Erection of further internal fencing to mark out pitches;
    c. A mobile home had been placed on one of the pitches;
    d. A touring caravan had been placed on another of the pitches; and
    e. A further mobile home was waiting to be placed on a third pitch.

17. D5-8 (inclusive) submitted a planning application 24/00599/FULL on 30 May 2024 relating to the Land, with a proposal for "Change of use of land for the creation of 4 Gypsy/Traveller pitches comprising the siting of 1 static caravan and 1 touring caravan per pitch, and a singular dayroom." D2 submitted a planning application 24/00604/FULL on 31 May 2024 relating to the land south of Sunnyside (i.e. the

Homestead plot) with a proposal for "Retention of existing mobile home and utility room for use by Gypsy/Travellers." The relevance of this latter planning application will become apparent later in this judgment.

18. The claimant refused the planning application (24/0599/FULL) relating to the Land on 16 September 2024. An appeal against that decision was made by D5-8 (inclusive) in October 2024. The outcome is pending.

19. An Enforcement Delegated report dated 3 June 2024 was provided after the conclusion of the claimant's evidence, having been raised by Mr Cummings when he gave evidence in person. Its recommendation, which was approved by the claimant, was to serve an enforcement notice in relation to the Land. Its scope is limited to the planning enforcement decision making, and not related to any injunctive relief. As to be expected it refers to relevant planning policy including the Planning Policy for Traveller Sites (PPTS 2015). Policy E states:

> "Traveller sites in the Green Belt recognises inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances."

20. The report contains an assessment of various factors including, but not confined to, the following:

> "The development is unauthorised and had been undertaken without prior application for planning permission. The Council has repeatedly tried to engage with the developers on the land asking them to provide details of who is responsible for the development and why it is taking place in breach of Green Belt policy. However, officers have been met with unwillingness to cooperate, aggression and refusal to provide any reasonable details to identify those involved or their personal circumstances."

21. In relation to supply and delivery of sites:

> "As it stands, the Council is unable to demonstrate a 5-year supply of pitches, neither is there an identified alternative site which are suitable, available, affordable and acceptable…. Policy H of the PPTS at paragraph 27 states that if a local planning authority cannot demonstrate an up to date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering application for the grant of temporary planning permission. The exception is where the proposal is on land designated as Green Belt.
>
> Ordinarily, the absence of a 5-year supply of homes warrants very significant weight in accordance with the National Planning and Policy

> Framework (NPPF) and the PPTS, the NPPF and the PPTS makes clear that the exception is where the proposal is on land designated as Green Belt. Most recently the Planning Inspectorate, via planning and enforcement appeals, has allowed a number of Gypsy and Traveller sites in the borough, especially sites in the Green Belt whereby significant weight has been applied to the absence of a 5-year supply of homes. However, the Inspectors have considered this matter alongside policy failure and the lack of an up-to-date local plan. Whilst Officers acknowledge the Council's current policy position, it is also demonstrated through recently granted planning permissions that the Council is trying to remedy the situation in a plan led way."

22. In relation to availability of alternative sites, I note that Mr Cummings comments in that report that:

> "It has not been demonstrated by the applicant's (sic) that the site needs to be sited in this location or that it would not be feasible to find a suitable site elsewhere. Whilst there has been no information forthcoming from the developer(s) regarding their needs and the availability of pitches in the borough, the Council is not aware of any Gypsy and Travellers existing on the roadside in the Borough. The Council is unaware of where the developer(s) currently live".

23. Mr Cummings also states in the report that :

> "There are no equality issues arising from taking the recommended action. The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning law of the land and harm caused to the Green Belt and public amenity values ".

There is no mention in his report about the ethnicity of the applicants or any mention of children.

24. An enforcement notice was issue by the claimant to the named defendants on 3 June 2024 relating to the Land. The breach of planning control was stated as the laying of hardcore and associated materials onto the Land forming an area of hardstanding. This notice was the subject of an appeal by D5-8 (inclusive) on 2 July 2024, and its outcome is pending.

Claimant's evidence in person

Evidence of Ryan Funnell

25. Mr Funnell was a planning enforcement officer for the claimant. He had produced five witness statements in 2024 – 28 May, 31 May, 3 June, 23 July and 10 October. On a pre-hearing application I gave an *ex-tempore* ruling that his fifth and late served

witness statement would not be granted relief from sanctions under *Denton v TH White EWCA 2014 Civ 9076*. Hence that fifth witness statement was not admissible.

26. I considered that Mr Funnell was a credible and reliable witness. He was willing and able to give clear evidence from matters of his own knowledge and was wholly candid when he was not able to give evidence on a matter due to a lack of knowledge.

27. He was asked by Mr Beglan about a reference in his first witness statement to a Sharon Burton. He explained he had no direct evidence but had relied upon an internal site visit note dated 12 September 2022 made by his planning enforcement colleague Mr Paul Downes. That note had been made in relation to a separate and pending planning enforcement investigation for "Land South of Sunnyside" the plot of land known as the Homestead and owned by D2. It stated that a site visit had been conducted and Mrs Sharon Burton was seen. She lives at the address with her husband Mr John Burton and their three children aged 7,5 and 4. Mrs Burton reported that they have lived on site since 2015 when they lived in a caravan and moved into the mobile home in 2018. Upon reflection, Mr Funnell considered that this reference to Sharon Burton was wrong as there was no one by that name, and that it was in fact Shannon Greaves (D5) who was the subject of that file note.

28. Mr Funnell was aware that D5 had spent time away from the land when she went to live with her mother. He did not know about the relationship breakdown between D5 and D2, and he did not dispute that the parents of D5 had moved to a three-bedroom bungalow in Fobbing. He was referred to an aerial surveillance picture from the claimant in January 2024 that showed a touring caravan on Plot 1 on the Land. He agreed he had no evidence to contradict that the touring caravan had remained on Plot 1 between January 2024 and the commencement of unauthorised works on 24 May 2024. He was not aware of either the enforcement policy or any policy not to prosecute by his employer, the claimant.

29. Mr Cottle referred him to the planning permission approval dated 13 March 2017 for Sunnyside, that was immediately adjacent to the Land. It was noted that approval had been given for the demolition of the current bungalow and replacement by a detached dwelling, detached double garage and stable block. Further, that the replacement chalet was 172% above that of the original size of the bungalow but would not be out of character in the locality and would not have a detrimental impact on neighbouring occupiers or the general street scene.

30. Mr Cottle then referred him to a report commissioned by the claimant of March 2018 relating to a Gypsy, Travellers and Travelling Showpeople Site provision study. Appendix I detailed Green Belt sites with potential at stage 2. One site known as Grange Road was immediately opposite the Land subject to this hearing, with 0.85 Hectares of open land and adjacent pasture to the east and undeveloped land to the west. The report concluded that the northern end of the site was considered to be a suitable location for a small Gypsy and Traveller development, as long as it did not extend further south. Mr Funnell noted this.

31. Mr Cottle then referred Mr Funnell to Appendix A of that March 2018 report that contained draft policy on accommodation strategy, new Gypsy and Traveller site provision and, at H31, the location of such new sites. Mr Funnell agreed that these

should be policies but that that have not yet been adopted. He also observed that H31 would not really be considered a departure from the current position in relation to Green Belt, were it to be adopted.

32. Mr Funnell was then referred to a letter dated 19 December 2023 from the Secretary of State for the Department of Levelling Up, Housing and Communities to the Leader of the claimant Council. Mr Funnell noted the observations by Rt Hon Michael Gove that the claimant was one of only 12 local planning authorities that had failed to adopt a local plan, that the claimant had made a lack of progress towards adopting such a plan over the last 19 years and that the claimant was the only Council in the Country who have not adopted a plan in the current system and who do not anticipate meeting the deadline for submission in the system.

33. Mr Funnell also confirmed that he was aware that there were some unauthorised Gypsy and traveller sites within the Borough of the claimant that were tolerated, some of which were in the Green Belt. Mr Funnell reiterated his assessment that up to the first half of 2024 there was no positive evidence that the touring caravan on Plot 1 had been occupied by D5 and her children.

Evidence of Ms Katie Ellis

34. Ms Katie Ellis attended the hearing, had not provided a prior witness statement, but was the author, as Development Management Officer, of the refusal for planning permission brought by D5-D8 (inclusive) in relation to the Land.

35. I considered Ms Ellis to be a credible and reliable witness, also candid in giving her evidence, particularly as it had not been foreseen that she was to be a witness. It is important not to conflate the evidence around the assessment made by Ms Ellis on planning grounds in relation to a specific planning application, with the separate assessment made by the claimant in relation to enforcement and related legal action relating to the defendants and the Land.

36. Ms Ellis was referred to her Delegated Report refusal letter dated 16 September 2024 that confirmed the refusal of planning permission based on it being inappropriate development in the Green Belt, by definition harmful, and not approved unless in very special circumstances. Very limited weight had been applied to the personal circumstances and the best interests of the child (sic) of the applicants as their circumstances have not been sufficiently evidenced. Contributing factors such as need and supply weighed in favour of the development but not to outweigh the harm identified in the Green Belt. Limited weight had been attached to the lack of alternative sites given the limited evidence available on personal need. The proposed development would appear to be at odds with the character of the site and its surrounding, and it was considered that this would have a significant visual impact on the character of the area. There was also concern about biodiversity net gain and the Essex Coastal Recreation Avoidance and Mitigation Strategy ("RAMS").

37. Continuing with the issue of the availability of alternative sites, Ms Ellis was questioned by Mr Cottle on her familiarity with the Hillview and Hovefield sites. Ms Ellis stated that she was aware that there were private pitches on sites within the Borough to rent for £800 pcm that had been advertised on Facebook Marketplace. Mr

Cottle challenged Ms Ellis on the accuracy of that assertion, but Ms Ellis stood by her evidence on that point. I note that no documentary evidence was produced to verify the advertisement. Mr Cottle suggested that Hillview was privately owned without any spare sites, and that there was a long waiting list for Hovefield. Ms Ellis responded by saying that may be the case, but such does not equate to very special circumstances. Ms Ellis further stated that the claimant expected applicants to demonstrate they had applied for alternative accommodation.

38. Expanding on the issue of personal circumstances, Ms Ellis explained that it was for the applicants to substantiate Gypsy and Traveller status, but that these applicants had not provided any supporting statement to validate their claim. Ms Ellis had asked the applicants' agent for further details in relation to their ethnicity, and the agent had declined to provide any further information. Hence her comment that made it challenging to ascertain if they met the definition of 'Gypsies and Travellers' in Annex 1 to PPTS or the expanded definition following *Lisa Smith v SSLUHC & Ors [2022] EWCA Civ 1391*. Ms Ellis also commented that they had not been provided with evidence of occupancy. Ms Ellis also stated that she was not required to consider race equality implications when recommending a refusal of planning permission. Ms Ellis also stated that she had not considered either the Land or Plot 1 to be previously developed land.

39. Mr Cottle then asked Ms Ellis to consider the elements contained at 9.3 of a letter of October 2024 by Mr Brian Woods, a planning consultant and agent of WS Planning & Architecture, on behalf of D5-D8 (inclusive), where certain "*appeals demonstrate similar scenarios within the Green Belt where there is an absence of alternative sites, an inevitability for sites to fall within the Green Belt, an unmet need and lack of supply, and a failure of policy*". Ms Ellis agreed that these were material questions and factors to which weight was attached as appropriate.

40. Mr Cottle referred Ms Ellis to two recent successful Planning Inspectorate appeals relating to prior refusals by the claimant. One was land at Maitland Lodge (November 2022) for the construction of 47 new homes on Green Belt land, the other was land South of Dunton Road (December 2023) for the construction of 269 dwellings again on Green Belt land. Ms Ellis noted that biodiversity net gain and RAMS related issues were considered to be achievable in both developments. Ms Ellis acknowledged that both those environmental issues might not be insuperable subject to various conditions and undertakings in relation to the Land at issue.

41. Mr Cottle then referred Ms Ellis to the planning appeal document prepared by Mr Woods of October 2024 on behalf of D5-D8 (inclusive) in response to the refusal by the claimant of planning permission. In particular, Ms Ellis was referred to the Need Assessment For Gypsy and Traveller Sites. The Gypsy Traveller Accommodation Assessment (GTAA) Update June 2020 was the most up to date of those needs within the claimant borough. From April 2019 to March 2025 the total undersupply would increase to 25 pitches. "The Council is aware that it cannot demonstrate a 5-year supply of deliverable pitches in line with national planning policy requirements and is seeking to address this though its emerging Local Plan." This was not disputed by Ms Ellis.

42. Mr Beglan drew Ms Ellis back to sections of her Delegated Report relating to Gypsy and Traveller status. Ms Ellis reiterated her view that due to lack of evidence, she believed that the applicants may not have a Gypsy and Traveller status within the PPTS due to the scant information available. Mr Beglan then drew Ms Ellis to the Human Rights and Equality Impact Assessment section. Ms Ellis confirmed that she had regard for the Human Rights Act 1988 and rights under Article 8 in respect of private and family life and the home and the rights of children, and that the best interests of the child were relevant to this application. Also relevant in her view was due regard for the Public Sector Equality Duty where race constitutes a relevant protected characteristic for the purposes of PSED, and that Romany Gypsies and Irish Travellers are ethnic minorities and have protected characteristics of race. Ms Ellis confirmed that she had regard for the applicant's circumstances, insofar as they were known to the Council. As to where the children should reside, there is limited information available about the applicant's circumstances. Ms Ellis had taken the view that the site was not occupied, and it was assumed the applicant (sic) has a settled base elsewhere. Accordingly, no interference with Article 8 rights would result from a refusal of planning permission.

Evidence of Ian Cummings

43. Mr Cummings was a planning enforcement officer for the claimant. He was both credible and reliable as a witness. Mr Beglan asked Mr Cummings about one of his return visits to the Land on 28 May 2024 after the TSN had been served. Mr Cummings recalled that he was accompanied by Mr Funnell and that they asked a female occupier of a caravan on the Homestead site about continuing unauthorised works. That had led to a mobile phone conversation with her male partner who identified himself as John Burton. Mr Burton claimed to know nothing about the unauthorised development but admitted that about one metre of the access track was on his land and it had been agreed with his neighbours that he would be able to use it. Mr Cummings confirmed that he did not enter any of the caravans on site and didn't know whether or not they were lived in. This was because he did not have powers of entry. Mr Cummings confirmed he had no personal knowledge of D5's personal life.

44. Mr Cottle asked about how enforcement action happens within the claimant organisation. Mr Cummings stated that the decision maker on enforcement was delegated to the Head of Planning Services, Ms Christine Lyons. This was also the case for injunctions. Mr Cummings had prepared a Delegated Officer Report dealing with the alleged breaches. This was later provided to the Court, dated 3 June 2024.

45. Mr Cummings stated that an initial attempt to stop the works had been made through the use of a TSN. This was used with the expectation of compliance. However, it was not complied with, therefore an injunction was required. Mr Cummings noted that the injunction had proved to be effective, on a continuing basis. Mr Cottle asked that since the injunction had been effective, and if the Council had been also informed of children on the Land, why was their decision not revisited? Mr Cummings stated that he was not aware of any evidence that children had ever been seen on the injuncted Land. Mr Cummings was not aware of the situations relating to the parents of D5 and their move to Fobbing, nor was he aware of any enforcement file relating to the site earlier than May 2024.

Defendant evidence in person

Mr John Burton Junior (D2)

46. D2 was unrepresented but attended both days of the hearing. He was the owner of part of the adjacent land, known as the Homestead, which has formed part of the access track used to develop the land. At his request, he gave evidence in person, in addition to the written evidence contained in his brief witness statement of 3 June 2024. D2 was a Romani Gypsy. He explained that he had not had the benefit of a formal education, hence I took appropriate steps to ensure that he was able to give evidence as fairly as possible. In relation to his credibility as a witness, I was not persuaded that he was being untruthful, or dishonest. However, in relation to his reliability as a witness, I considered that he could have been more candid and forthcoming about certain key events that had occurred six months prior to this hearing. It appeared to me that his approach to giving evidence was minimalist and that general statements were preferable to specific detail on most factual issues in dispute. In general, I considered his evidence at the hearing to be underwhelming, as it tended to confirm in rather binary form certain key assertions supportive to the position of his former partner D5 and their three young children. The claimant was very clear in its position that the evidence from D2 was at best misleading and at worst untrue.

47. The mother of his children D5, and his three children, lived across him on the Land at Plot 1, opposite his home known as the Homestead. His mother D1 sold the land which is identified as plots 1-4 to D5-D8 (inclusive). She still owns the land at the western end of the site which his cousin D7 and his family live on in their caravan. His father D2, had no interest in the Land. He had produced as an exhibit a photograph from 24 December 2016 that purported to be D5 living on the Land at Plot 1 with the children in a caravan. In fact I note that photograph is of Ms Shannon Burton, the sister of Mr Burton, with one of his children at that same location, as it also appears as Exhibit SG2 to the witness statement of D5 dated 19 June 2024. He stated he had a wide range of family and friends in the area.

48. Mr Burton explained that his relationship with D5 had broken down two to three years ago. D5 and her children did use some of the facilities at his home, the Homestead, as it was across the access track from Plot 1 where their caravan was situated. He explained that an extra caravan had been put on the Land in 2024, but that caravans had been off and on the Land since 2016. He believed that the concrete hardstanding for Plot1 had been there since the 1970's. He did not believe that D5 and her children had anywhere else to go. He was aware the parents of D5 had a three-bedroom bungalow in Fobbing, but that there was not enough space for D5 and her three young children.

49. He was asked by Mr Beglan whether the first witness statement of D5, where she claimed to have lived at Plot 1 since 2015 with their three children in a touring caravan was misleading. This was because Mr Beglan asserted that D5 had been living with him at the Homestead. Mr Burton did not agree and stated that D5 had been living on Plot 1 for the last three to four years. The relationship had broken down in 2021/2022 although they had a prior break down in 2018, which later reconciled for a period of time and that D5 had been living on Plot 1. When it came to the unauthorised works in May 2024, Mr Burton stated he gave no instruction to D4 to do the works. It was not his business, the access path was used by him, but he did

not regard it as his. He knew nothing about the planning application by D5, he saw some people come down on the May Bank holiday but had not been involved.

50. Mr Beglan asked him specifically about events on the 28 May 2024, and referred him to the witness statement dated 28 May 2024 of Mr Ian Cummings, Planning Enforcement Officer for the claimant. Mr Cummings had stated that he had encountered a female at the Homestead that resulted in a phone conversation with her partner who identified himself as John Burton, who in turn claimed he knew nothing about the unauthorised development. Mr Burton was not able to recall that phone call with any degree of certainty.

51. He explained that D5 was in and out of the Homestead all the time, D5 did not have a key as there was always a key there that D5 could access freely. Mr Beglan referred him to a series of aerial and satellite imagery taken by the claimant of the Land, at various points since June 2018, March 2020, August 2021, January 2022, March 2022, March 2023 and January 2024. I will refer to this significant aerial imagery later in this judgment, in the context of evidential veracity, in more detail. Mr Beglan asked why no touring caravan appeared on the hardstanding at Plot 1 until January 2024. Mr Burton stated that there had been caravans on Plot 1, a million per cent, then that he was one thousand per cent sure that caravans had been off and on the Land since 2014. He stated that at least three months of the year they would travel away from the Land. That was part of his nomadic life as a Gypsy, where D5 was sometimes with him, sometimes not.

52. In relation to planning permission, he was aware that the Homestead was on Green Belt land, and that it was difficult to get permission. He had applied for planning permission, which was made alongside the separate planning permission for the Land. He never had a conversation with D5 about her planning application but was aware of its existence. It was not his business whom D5 was going to live with on Plot 1 and he had no clue about whether planning permission would have been needed prior to the unauthorised carrying out of works at the Land on the May Bank Holiday in 2024.

53. There had been some confusion about the identity of D5 and that of Shannon Burton, the latter being the sister of Mr Burton. Both D5 and Shannon Burton had three young children. On 12 September 2022 the claimant, through Mr Paul Downes, a Planning Enforcement Officer, had compiled a brief computer note referring to the occupants of the Homestead, that included a Sharon Burton with three children. This was in the context of a separate earlier and ongoing investigation into the Homestead itself. The note stated:

> "Site visit conducted and Mrs Sharon Burton seen. She lives at the address with her husband, Mr John Burton and their three children, aged 7, 5 and 4….Mrs Burton reports that they have lived on site since 2015 when they lived in a caravan and moved into the mobile home in 2018."

54. Mr Burton stated that he was not married, it was a figure of speech, he pointed out that the contact telephone numbers on the note, (which I have purposely redacted) were wrong as there was no landline at the home, and he was not able to identify if

the reference to children were his as he was not good at maths. He did confirm he had lived at the Homestead site since 2015, then on the mobile home at the Homestead since 2018. There was no one called Sharon Burton, and this was a mistake. He said that D5 was not living with him at the Homestead at that time. He was aware that D5 and their children had spent time with her mother at her home in Wickford, prior to her mother moving to a bungalow in Fobbing. The bungalow in Fobbing had three bedrooms and was full since the younger sister of D5 was living there together with their grandmother as well as her parents. Mr Burton stated that his sister Shannon Burton was now living at the Homestead with her three children, whose ages he recalled were 7,6 and 5 years. but without any evidence about the date his sister and nieces had moved in.

55. Objectively, it appears that the ages of the children referred to in the claimant's computer note were consistent with that of D5 rather than that of Shannon Burton. Mr Burton remained unsure about that issue.

56. Additionally, he reaffirmed that he and D5 had lived on site since 2014, with a caravan at Homestead and a touring caravan on Plot 1. He pointed to photographs of the touring caravan having a power extension lead that went to an electric box at the rear of Plot 1.

57. Mr Burton was then asked to look at the written evidence of his former partner D5 in her second witness statement dated 19 June 2024. He agreed with the description of their domestic arrangements with the facilities of the Homestead being used for the children, including laundry for him. He did not share a bedroom with D5 since their breakup two or three years ago, which was why she was in the touring caravan on Plot 1. Mr Burton was not able to explain why there were no photos of his children living in the touring caravan on Plot 1, such as joyous occasions like parties, which he agreed had taken place. He also knew nothing about whether D5 had made a specific request for information about alternative sites.

58. Mr Cottle asked if Mr Burton could be more specific about certain dates. Mr Burton explained that his relationship had broken down after the birth of their third child Arabella, who was now 6 years old, and despite a reconciliation with D5, neither D5 nor his children were living with him, but living on Plot 1. Mr Burton also explained that the Homestead only had three bedrooms, and that he could not share a bedroom with D5 in the current circumstances. He was referred to further aerial imagery that showed that the mobile home had been on Plot 1, together with a camper van in March 2020. In August 2021, the mobile home had been repositioned onto the site known as the Homestead.

59. Mr Burton was challenged on several occasions, fairly and fully, by Mr Beglan about the truthfulness of his responses. Nevertheless, Mr Burton stood by his evidence.

Evidence of Mr William Holmes (D7)

60. Mr Holmes was unrepresented but attended both days of the hearing. At his request, he gave evidence in person, again in addition to his written evidence contained in his brief witness statement dated 3 June 2024. Attached to that statement were contemporary photos of his caravan with food and provisions. Mr Holmes was a

Romani Gypsy, married and with two young children Grace (two years old) and William (a five-week-old baby). In relation to his credibility as a witness, again I was not persuaded that he was being untruthful, or dishonest. In comparison to Mr Burton, he was a marginally more forthcoming in his recollection of some events around the time of the enforcement action at the Land in late May 2024. Again, the claimant contends that his evidence was at best improbable, and at worst untrue.

61. His evidence was that he had lived in a caravan at the western side of the Land since late 2021. Prior to that he had lived in Cambridge, followed by a roadside existence for three months. He had purchased plot 3 from D1 but did not live on that plot. He believed he became the owner in April 2024. He was aware that he together with D5,6 & 8 had made a planning application to the claimant on 30 May 2024 for change of use of the Land for the creation of 4 Gypsy/Traveller pitches comprising the siting of 1 Static Caravan and 1 Touring Caravan per pitch and a singular dayroom.

62. He was not sure if the Land was green or brown belt, and he did not know the difference between the two. He was referred to his joint planning application that referred to the Land being "*previous residential garden grass land*". He was also referred to the 30 May 2024 letter in support of his joint planning application by Mr Brian Woods of WS Planning &Architecture, where it acknowledges that the application site "*is situated within the Green Belt, and as per the PPTS, the material change of use of land for residential purposes is inappropriate development which is harmful by definition*." Mr Holmes maintained he did not know the difference between the two.

63. He was asked about discussions he had with D5,6 & 8 in preparation for the planning application. He recalled at least one meeting, perhaps a day or so, as distinct from weeks of meetings. On the issue of the works to the Land on May 2024 bank holiday weekend, he disagreed with the suggestion that a bank holiday had been chosen deliberately to thwart or slow the response from the claimant. He knew about the works but did not know the main contractor Mr William Cook D4 and had not instructed him. He was aware that there would be materials provided to the site for all plots, but he did the ground works and fence to Plot 3, with friends over that weekend. D5, 6 & 8 organised their work without any involvement from him.

64. He was asked about the TSN of 24 May 2024 and said that he did not look at the notice attached to the front fence of the Land at the time. He had continued the works but stopped once the claimant had obtained the High Court interim injunction. No work has continued since then. When asked about alternative accommodation, Mr Holmes stated that he had not made any applications to public or private sites, he was not on any waiting list, and had not made any application to the claimant for emergency housing assistance. This was because he was a Gypsy. He had never dealt with the Council and had never enquired about another place to live. Mr Holmes was asked why he had not been seen by the claimant on their various visits to the Land. His response was that he worked, and that he had been there when the Claimant's enforcement team turned up over the Bank Holiday weekend. He was vague in his recollection about having seen them at other times on site at the Land.

Aerial surveillance

65. The claimant clearly had "eyes on" the Land well in advance and more than four years prior to the unauthorised works that started on 24 May 2024. The claimant has provided aerial imagery evidence that it obtained through private aircraft charter flights on March 2020, August 2021, November 2021, January 2022, March 2022, June 2022, January 2023, Summer 2023 and January 2024. I accept the veracity of that aerial surveillance as being accurate snapshots of the Land on the occasions they were taken. Clearly it is possible that caravans were on the Land at times in between the aerial surveillance footage. From that evidence, it was possible to note that the mobile home on the Homestead, was repositioned onto Plot 1 on the Land for a period of time in 2020 together with a campervan, before being moved back prior to August 2021. In 2020, it seems that there was both a derelict caravan as well as a smaller caravan at the western side of the Land. There was also evidence of a small hut on Plot 1 for a period. By January 2022, Plot 1 is empty except for a vehicle, and there is no caravan on the western side of the Land. This appears to be the case in late June 2022. By January 2023, there is a caravan again at the western side of the Land, whilst the hard standing on Plot 1 is occupied by a builder's truck. In January 2024, a caravan can be seen on the northern end of Plot 1, and the caravan to the western side of the Land is still in position.

66. The claimant also provided evidence of Google earth satellite imagery from July 2013, April 2017, May 2017, June 2018, April 2020, March 2022, June 2022 and June 2023. The imagery from 2013 shows the existence of the hard standing on Plot 1, with an indeterminate vehicle. The imagery from 2017 shows a new area of hard standing to the north on Plot 1, as well as a small hut on Plot 1, as well as two indeterminate vehicles on the hard standing. The 2018 imagery suggests a camper van on Plot 1. Up to that time, the Homestead seemingly had no caravan, campervan or mobile home on its plot and the first imagery to show the mobile home is from 2020, together with what appears to be a camper van adjacent to it. Imagery from March 2022 appears to depict a caravan to the western side of the Land, and an indeterminate vehicle on Plot 1. In June 2022, the caravan does not appear to the western side of the Land, and again there is an indeterminate vehicle on Plot 1. In June 2023, a caravan has reappeared to the western side of the Land, and again there is an indeterminate vehicle on Plot 1.

67. It was not explained by the claimant why this aerial surveillance was being carried out over a four-year period prior to the unauthorised works in May 2024. Tangentially, it did emerge in evidence from the claimant that there was a pending planning investigation into the Homestead owned by D2. Mr Funnell said in his first witness statement;

> "The land to the west of this has a residentially occupied mobile home stationed on it which is known to be occupied by John Burton, Sharon Burton and their children. This piece of land is known as "The Homestead". This is a separate land parcel under separate ownership, although it is accessed via the same access point from Lower Avenue as Land Rear of Sunnyside. This plot does not benefit from formal planning permission and is currently undergoing a separate investigation."

68. I reasonably infer that the aerial surveillance was in relation to that prior pending investigation, as there was no evidence before May 24, 2024, that the claimant was aware of unauthorised works on the Land subject to this hearing. In my view this was not prescience on the part of the claimant.

69. No other evidence was offered by the claimant in relation to the pending planning investigation into the Homestead and how that might affect the outcome of the final injunctive relief sought for the Land here against all the defendants. It is a relevant contextual factor to be weighed in the circumstances, since a material part of the claimant's case is that D5 and her children were not resident on Plot 1 but living in the Homestead. Hence forcing them off Plot 1 was less of an issue as they would have alternative accommodation at the Homestead.

70. In my view, it is clearly possible and logical that the claimant could embark, at any time, on enforcement action against the Homestead on the basis of very similar planning objections that it has made in this matter. No assurances were or have been made by the claimant to this court or D5 and her children that the Homestead would be safe from enforcement action. The claimant does not seem to have considered the potentially harmful domino effect of two related enforcement investigations on D5 and her children. This is a factor that I am entitled to weigh in favour of D5 and her children.

Personal circumstances of the Defendants

71. I have read the witness statements of D2, D5, D6, D7 and D8. Only D5 and D7 and their families remain on the land – although I note this is disputed by the claimant. D2 and D7 gave evidence in person at the hearing which I have addressed above. D5 declined to give evidence in person, in the words of her Counsel Mr Cottle, she was "terrified at the prospect".

72. At this point it is relevant to consider a letter dated 16 October 2024 from the Public Interest Law Centre, as solicitors of record for D5, D6 and D8. They wrote to the court and confirmed that D6 and D8 had moved off the site as provided in the Second Order and agreed to submit to the interim injunction being continued as they are no longer on the site and withdrew from the application to vary. In relation to D5, they confirmed that should the Second Order of 4 June 20024 be continued, with liberty to apply, then this would be acceptable. D6 and D8 were not represented at the hearing, due to delays in obtaining exceptional funding for legal representation. However, I have no reason to believe their position had changed from that stated by their solicitor.

73. In relation to D5, her evidence was untested. This was a significant matter from Mr Beglan's perspective since the claimant did not accept the central part of her case that she had lived on the land since 2015. Mr Beglan would have liked to ask D5 about the extent of her obvious ability to use the Homestead, the likely reality of her and her children spending time there rather than in a touring caravan, the improbability of her claim of occupancy dating back to 2015 given the aerial surveillance evidence, and evidence of her traveling capacity and nomadic way of life. Mr Beglan did have the

opportunity to cross-examine D2 on many of these issues, as father of their three children and former partner to D5.

74. I bear in mind that many of the defendants have low literacy skills, and giving evidence in court can be an intimidating experience. I bear in mind that much of the defendants' evidence has not been tested by cross-examination. However, some of it is supported by documentary and other evidence. Where it is not supported, I shall examine the evidence in the round and apply appropriate weight to it.

75. Shannon Greaves (D5) provided two witness statements – 3 and 19 June 2024. In my view her evidence was not dispositive that she had been living on the Land since 2015.

76. D5 stated that she has lived on the Land since around July or August 2015. She was a Romani Gypsy and had never lived in a house. She lives there with her three children: John Frederick Burton, aged 9, William Edward Burton aged 7 and Arabella Shannon Burton aged 6. John Burton Jnr is their father. They were never married, but in a relationship between 2011 and 2018. They separated after the birth of Arabella. D5 moved onto the land at Plot 1 in 2015, in a trailer, whilst John lived in the mobile home which is now the Homestead. D5 moved into the mobile home in 2017 and lived there for two years before separating. D5 then went with her two children and new-born baby to stay with mother after the relationship breakdown. She returned after a few weeks to Plot 1 on the Land.

77. She has been living on Plot 1 since 2018, there have been brief periods off the land, such as trips to Newquay, and Appleby. Some pictures were provided of her children on the Land at various dates. D5 says that she and her former partner look after the children separately, with her looking after them in the week including sleeping in the caravan with me each night, but weekends are usually with John. She still uses the facilities in the Homestead to bathe the kids and cook for them. She does the washing in the shed behind the Homestead and there is also a toilet there. D5 mentioned that D2 has a sister, Shannon Burton, who sometimes comes to stay at the Homestead. D5 states that all three of her children have lived on the Land for their whole lives, this is their home. All three go to Corringham Primary School, and attendance certificates were provided for them. They are happy there and doing well. D5 says there is nowhere else for her to go, there is no room with her parents. D5 grew up in a caravan as did her children, and she could never live in a house. Various letters of support from friends confirmed her good character.

78. She provided a few photos as exhibits, one dating from 2016 which showed her son and Shannon Burton inside her caravan, positioned along the back fence of Plot 1, facing towards the mobile home before the Homestead was built in 2018. Other photos from April and May 2020 showed her son on the hard standing at Plot 1 whilst some construction was going on as well as playing in the general area. Other photos are more contemporary and from June/July 2024 showing a caravan on Plot 1, with a paddling pool and an external electricity supply. Also provided as exhibits were a series of grocery delivery receipts from April and June 2024 which D5 stated were for her family and confirm the delivery address as Grange Road and Lower Avenue, as she is unable to put the Land as a delivery address since it is not recognised. I note the

22 April 2024 receipt from Uber Eats/Co-Op has a delivery address of Claremont, Grange Road, North Benfleet, and not as described by D5.

79. In my view, her occupation on the Land has been sporadic since 2015 up until early 2024. I am satisfied that she also spent considerable time at the Homestead from 2018 and continues to use some of its facilities for the benefit of her children. There is a touring caravan on Plot 1 currently, which I accept she occupies, and note that it has been consistently on Plot 1 since January 2024.

80. I have already addressed the position of D6 and D8 as represented by their solicitors in a letter to the court dated 16 October 2024. Their position is clear, that they will not return onto the Land and are content to agree for a continuation of the Second Order. However, in both their witness statements there is helpful evidence in relation to the availability of alternative accommodation:

81. D6 stated that she had looked into other sites available in the area, but there was no space on any of them. She had asked if there were any pitches available in Hovefield Avenue, Basildon but was told that they were full. One person informed her that they had been on the waiting list there for 3 years. She had also asked in Colchester, Chelmsford and Maldon. Again, she was told that they were full with no pitches available. The waiting lists are apparently around 2-3 years. D8 stated that since the 4 June 2024, she had looked at all of the sites in Basildon, but there was no space. Some of them have waiting lists that are several years long.

The Law

82. An application for injunctive relief may be sought in circumstances where a Local Planning Authority considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction. The power to apply for an injunction is available irrespective of whether the authority has chosen to exercise any other enforcement powers. On such an application the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

83. The leading case providing guidance on the exercise of the power is South Bucks District Council v Porter (No. 1) [2003] 2 AC 558. A summary of the key principles derived from the speech of Lord Bingham is stated as follows:

- the court's jurisdiction is an original one and not a supervisory one, but it will not normally investigate the planning merits of the local planning authority's decisions, save that a broad view about the level of environmental harm is relevant.

- the court has a discretion and should decide for itself whether to grant the injunction and should not do so automatically just because a local planning authority seeks one. This discretion must be exercised having regard to all the circumstances of the case and with due regard to the purpose for which the power was conferred.

- the Court must not only be satisfied that the defendants intend to breach planning law but also that, in all the circumstances, it is proportionate and just for the court to grant an injunction, taking account, amongst other things, of the impact that such an

injunction will have on the defendants, including their rights to private and family life under Article 8 of the European Convention on Human Rights.

- the degree and flagrancy of the actual or apprehended breach of planning control is an important consideration.

- because the facts of different cases are infinitely various, no single test can be prescribed to distinguish cases in which the court's discretion could be exercised in favour of granting an injunction from those in which it should not.

84. Seminal guidance on the relevant factors to be considered can be found in paragraphs 38-42 of the judgment of Simon Brown LJ in the Court of Appeal in South Bucks v Porter which was later quoted by Lord Bingham:

> "38. I would unhesitatingly reject the more extreme submissions made on either side. It seems to me perfectly clear that the judge on a section 187B application is not required, nor even entitled, to reach his own independent view of the planning merits of the case. These he is required to take as decided within the planning process, the actual or anticipated breach of planning control being a given when he comes to exercise his discretion. But it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for himself all questions of hardship for the defendant and his family if required to move, necessarily including, therefore, the availability of suitable alternative sites. I cannot accept that the consideration of those matters is, as Burton J suggested was the case in the pre-1998 Act era, 'entirely foreclosed' at the injunction stage. Questions of the family's health and education will inevitably be of relevance. But so too, of course, will countervailing considerations such as the need to enforce planning control in the general interest and, importantly therefore, the planning history of the site. The degree and flagrancy of the postulated breach of planning control may well prove critical. If conventional enforcement measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be the readier to use its own, more coercive powers. Conversely, however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gipsy moving onto the site might, indeed, involve him in less hardship than moving him out after a long period of occupation. Previous planning decisions will always be relevant; how relevant, however, will inevitably depend on a variety of matters,

including not least how recent they are, the extent to which considerations of hardship and availability of alternative sites were taken into account, the strength of the conclusions reached on land use and environmental issues, and whether the defendant had and properly took the opportunity to make his case for at least a temporary personal planning permission.

39. Relevant too will be the local authority's decision under section 187B(1) to seek injunctive relief. They, after all, are the democratically elected and accountable body principally responsible for planning control in their area. Again, however, the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

40. Whilst it is not for the court to question the correctness of the existing planning status of the land, the court in deciding whether or not to grant an injunction (and, if so, whether and for how long to suspend it) is bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end. In this regard the court need not shut its mind to the possibility of the planning authority itself coming to reach a different planning judgment in the case.

41. True it is, as Mr McCracken points out, that, once the planning decision is taken as final, the legitimate aim of preserving the environment is only achievable by removing the gipsies from site. That is not to say, however, that the achievement of that aim must always be accepted by the court to outweigh whatever countervailing rights the gipsies may have, still less that the court is bound to grant injunctive (least of all immediate injunctive) relief. Rather I prefer the approach suggested by the 1991 Circular: the court's discretion is absolute and injunctive relief is unlikely unless properly thought to be ‘commensurate’ — in today's language, proportionate. The approach in the Hambleton case [1995] 3 PLR 8 seems to me difficult to reconcile with that circular. However, whatever view one takes of the correctness of the Hambleton approach in the period prior to the coming into force of the Human Rights Act 1998, to my mind it cannot be thought consistent with the court's duty under section 6(1) to act compatibly with convention rights. Proportionality requires not only that the injunction be appropriate and necessary for the attainment of the public interest objective sought — here the safeguarding of the environment — but also that it does not impose an excessive burden on the individual whose private

> interests — here the gipsy's private life and home and the retention of his ethnic identity — are at stake.
>
> 42. I do not pretend that it will always be easy in any particular case to strike the necessary balance between these competing interests, interests of so different a character that weighing one against the other must inevitably be problematic. This, however, is the task to be undertaken by the court and, provided it is undertaken in a structured and articulated way, the appropriate conclusion should emerge"

85. Personal circumstances and consideration of the hardship which may result from final injunctive relief was addressed by Simon Brown LJ and endorsed by Lord Bingham at paragraph 31:

> "When application is made to the court under s.187B, the evidence will usually make clear whether, and to what extent, the local planning authority has taken account of the personal circumstances of the defendant and any hardship an injunction may cause. If it appears that these aspects have been neglected and on examination they weigh against the grant of relief, the court will be readier to refuse it. If it appears that the local planning authority has fully considered them and none the less resolved that it is necessary or expedient to seek relief, this will ordinarily weigh heavily in favour of granting relief, since the court must accord respect to the balance which the local planning authority has struck between public and private interests. It is, however, ultimately for the court to decide whether the remedy sought is just and proportionate in all the circumstances"

86. The best interests of the children are relevant considerations when assessing factors in a proportionality exercise. The approach enunciated in *R (SC) v SoS Work and Pensions [2022] AC 223* was summarised by Steyn J.in *R (Devonhurst Investments Ltd) v. Luton BC [2023] EWHC 978 (Admin)*:

> "96. In my judgment, the claimant's submissions do not reflect the law. In ZH (Tanzania), the Supreme Court did not hold that article 3.1 of the UNCRC has been incorporated into the law of England and Wales by s.11(1) of the Children Act 2004. What was said was that the spirit of it has been translated into our national law. The UNCRC is an unincorporated treaty: R (SC) v Secretary of State for Work and Pensions [2022] AC 223, Lord Reed PSC (with whom the six other Justices agreed), [75]. As Lord Reed observed in SC at [77], "it is a fundamental principle of our constitutional law that an unincorporated treaty does not form part of the law of the United Kingdom.

> 97. This constitutional principle continues to hold good in the context of the Human Rights Act: SC, [84]. In a matter concerning a child, when assessing the proportionality of an interference with article 8 rights, the proper approach is to treat the best interests of the child as a relevant consideration, rather than treating the UNCRC as directly applicable.."

87. The Supreme Court in *Zoumbas v Secretary of State for the Home Department [2013] UKSC 74* sets out the key principles derived from *ZH (Tanzania) (above)*, *H v Lord Advocate 2012 SC (UKSC) 308* and *H(H) v Deputy Prosecutor of the Italian Republic [2013] 1 AC 338* include the following:

> "The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;
>
> In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;
>
> Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;
>
> While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;
>
> It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;
>
> To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent."

88. Lord Justice Simon Brown in the Porter case stated clearly that issues of planning policy and judgment are within the exclusive purview of local authorities. However, I note that he goes on to state that:

> "But the court is not precluded from entertaining issues not related to planning policy or judgment, such as the visibility of a development from a given position or the width of a road. Nor need the court refuse to consider (per Hambleton) the

> possibility that a pending or prospective application for planning permission may succeed, since there may be material to suggest that a party previously unsuccessful may yet succeed, as the cases of Mr Berry and Mrs Porter show. But all will depend on the particular facts, and the court must always, of course, act on evidence"

89. I was referred by Mr Beglan to the relatively recent decision of Kerr J in *Brentwood Borough Council v Buckley and Ors [2021] EWHC 2477 (QB)* as being analogous with the evidence in this matter. That was a decision granting the continuation of an interim injunction where the evidence strongly supported the likelihood that the defendants and others had relocated from Hope Farm to Horseman's Side at or around the time of the initial without notice order. I distinguish that decision based on the differing evidence here of some degree of prior occupation by some of the defendants, as well as the unavailability of Homestead for D5 to move back into, together with the agreed fact that the interim order was successful at halting all work as well as moving off those defendants that had taken up occupation after service of the TSN. On the differing material evidence, I consider that the position at Hope Farm is not analogous to that at the Homestead.

90. In relation to recent guidance from the Supreme Court relevant for persons unknown: I remind myself of *Wolverhampton v. London Gypsies and Travellers [2024] 2 WLR 45* that there was no immoveable obstacle of jurisdiction or principle in the way of granting injunctions prohibiting unauthorised encampments by Gypsies or Travellers who were newcomers on an essentially without notice basis, subject to various safeguards.

Submissions from the parties

The Claimant

91. The claimant seeks final injunctive relief in relation to the Land to prevent the Land being subject to any further breaches of planning control, either by the carrying out of operational development, or by the making of a material change of use to use for stationing caravans for human habitation, and for the Land to be restored to the condition it was in prior to the breaches of planning control. D6 and D8 do not resist a negative order in the same terms as the interim order, and do not seek any variation to allow their occupation of the land. D5 seeks to maintain her ability to occupy the land but does not otherwise resist a negative order, and D7 is in a similar position. The claimant does not accept the Land is residentially occupied. They assert that to the extent that any persons have occupied the Land, they have probably done so in the face of the TSN and/or injunction order. The claimant specifically does not accept the totality of the evidence provided by D2, D5 and D7 that there was any residential occupation. Equally, the works undertaken by 24 May 2024 were done in a concerted effort to frustrate the abilities of the Council to take appropriate responsive action. It was improbable that D5-D8 (inclusive) were unaware of the TSN, and it took the First Order to halt works that were continuing in violation of the TSN.

92. I agree with the claimant that the breaches by way of operational development can be regarded as flagrant. I further agree that the breaches were committed in a co-

ordinated way, timed over a bank holiday, and that the works continued despite the service of a TSN. The breaches occurred on land in the Green Belt. The operational development was being undertaken to facilitate a material change of use to the land which would also be in clear breach of planning control. No proactive justification for the extent of the operational development has been advanced, nor any proactive planning application. No attempts had been made by the active defendants either to seek alternative accommodation or to assert an inevitable roadside existence in the event that they were evicted.

93. That the claimant has reached a concluded view that the development should not take place based on a detailed consideration of the planning issues, and that it has taken into account its duties under the Equality Act 2010 on the limited information provided, and remains of the view that it is proportionate to seek relief. There is no detailed evidence regarding the best interests of any children and no substantial evidence that granting relief would lead to a roadside existence for either D5 or D7. There had been no evidence demonstrating that vacating the Land had done so for D6 or D8. There was a clear inference that D5 was residing at the Homestead and not at the caravan on Plot 1.

94. The claimant finally asserts that this case had many of the features of the interim injunction decision in *Basildon Borough Council v Anderson [2020] EWHC 3382 (KB)*. Mr Beglan invited me to note their similarity, including plotlands development for Gypsy and Traveller provision, the nature of the breaches, the risk of further development despite undertaking offered, the personal circumstances of the occupiers, the risk of a roadside existence and the importance of occupation after steps are taken by the local planning authority. In my view, the features in *Anderson* were in the upper quartile of severity in cases of this type; Land with a long history of injunctive relief, the requirement for two without notice injunctions (one prohibitory, one mandatory) within 24 hours of each other, 100 people on site with extensive heavy equipment conducting unauthorised works, and clearly no-one in occupation prior to those unauthorised works. Not surprisingly in *Anderson*, consequential committal proceedings ensued against various individuals. I distinguish the facts of this current case as being in the lower quartile of severity: Land with no prior injunctive relief, a small-scale site with a few people conducting unauthorised works, and the presence of children on the land prior to the commencement of any unauthorised works.

The Defendants

95. D1, D3 and D4 have not appeared and were not represented. D2 suggests that he has no interest in the Land and should be removed from the Second Order. He also suggests that his mother and father (D1 & D3) should similarly be released from the Second Order as they have no interest. D6 and D8 do not resist a negative order being made in same terms as the Second Order and do not seek variation to allow their occupation. D5 seeks to maintain her ability to occupy the land but does not otherwise resist a negative order. D7 seeks the same treatment as D5.

96. Mr Cottle made a series of points on behalf of D5. Generally, it was agreed that the interim injunction had stopped all work and had achieved its objective. D5 had no issue with the continuance of the negative aspects of that Second Order. However, there were children on the Land, and no assessment had been conducted by the

claimant in relation to their best interests. There were current appeals pending against both the enforcement notice as well as the refusal of planning permission for the Land. In the context of other local successful appeals and grants of permission, there was real potential for the planning appeal to succeed. D5 was in no way cocking a snook at the court, given her history of occupancy and her compliance with the negative aspects of the Second Order. Finally, that it was proportionate to continue the Second Order on its current terms with D5 and D7 remaining on the land until the outcome of the planning appeal had become final.

97. Relying on *Brentwood BC v Ball [2009] EWHC 2433 QB*, Mr Cottle sought a continuation of the Second Order but to dismiss the claim for an order that D5 leaves the land and remedial works are carried out because "*the court considers that one of the factors outweighing the detriment to the environment and/or the rule of law inherent in refusing an injunction is the hardship or detriment which might flow from requiring the defendant and his family to leave the site with all the consequent disruption to.. family life in circumstances where the outcome for an application for planning permission or an appeal against its refusal might hold him entitled to reside on the site and/or carry on the conduct sought to be restrained*." Mr Cottle highlighted the realistic prospects of a successful planning appeal and invites this court to properly conclude that there is no ruling out the fact that an appeal may well succeed.

98. Mr Cottle sought to persuade me that D5 and her three young children should not be evicted from Plot 1 without anywhere else to go because the Green Belt harm that would ensure until the outcome of the planning process is not sufficiently weighty to outweigh the weight and strength of the combination of what he asserts are very powerful considerations relied on by D5 for being allowed to stay put until then. Mr Cottle submits that the claimant's resort to Section 187 B of the Town and Country Planning Act 1990 can easily be justified, but that removal of D5 from the land cannot. This particular submission resonates with me. The failure by the claimant to update its aged 1998 local plan and failure to have a policy for meeting the accommodation needs of Romany Gypsies in Basildon are significant issues, amplified by the lack of a five-year supply of sites. That 267 houses can be granted permission on the Green Belt by the claimant since they merit very special circumstances is also relevant. It was also suggested that definitional harm cannot be affected by a planning condition save in relation to time limiting a permission until site allocations have been put in place that would be available to move to.

99. Mr Cottle reminds me of Section 6 of the Human Rights Act 1998 in the context that since the most draconian remedy is being sought, coercing a young woman and three children off the Land on pain of imprisonment, the burden is squarely on the claimant to persuade the court that even on breach of such an order it would be right to imprison D5 because of the minimal harm to openness to the Green Belt that her caravan might cause pending the planning appeal. Further that there is no degree of urgency as anticipated in *Brentwood v Ball*.

100. Further, it was submitted that under S11(2) of the Children Act 2004, there has been no assessment at any time by the claimant on the effects of eviction on the three children of D5. Further, that under the Equality Act 2010 the claimant has not shown that they have properly considered the race and equalities implications of their

policies and actions in relation to unauthorised encampments and unauthorised development by Gypsies. In relation to welfare assessments, Mr Cottle asserts that the claimant did not look to see if there were any welfare issues that needed to be addressed before taking enforcement action against the defendants because they were not aware of anyone being in residence. Since receipt of the defendants' evidence, that stance is no longer sustainable – hence the need for a fresh proportionality assessment that has not yet taken place.

Analysis

101. One of the hallmarks of cases of this type is, in the words of Stadlen J in *Brentwood BC v Ball* (above)

> "a peculiar difficulty of the task of striking the necessary balance between the public interest in protecting the environment and upholding planning law and the private interest of Gypsies to maintain their private life and ethnic identity and avoid hardship flows from the very different character of the two competing interests."

Not surprisingly in this case there are two differing polarized narratives that diverge between those public and private interests. The claimant does not accept the truthfulness of any of the defendants' evidence. They suggest a concerted attempt by certain of the defendants to play the planning system, engage in unauthorised development with a view to a change in material use of the Land, enabled by a fictious smokescreen of long-standing occupation on the Land. The alternative view is that vulnerable Romani children and their parents face eviction from the Land, on pain of significant disruption to their lives and potential imprisonment, due to the abject long-standing failure by the claimant to provide sufficient sites for Gypsies within their borough or to assess their welfare needs. On the evidence, in my view there are elements of truth in both those narratives.

102. The discretion of the court in granting a final injunction should be exercised with care and have regard to the spectrum of elements particular to each individual case. The elements referred to by Brown LJ in paragraphs 38-42 of *Porter* (above) are the starting point for the exercise of that discretion.

Personal Circumstances

103. The personal circumstances and welfare needs of the family of D5 are less opaque than those of D7. This is probably because legal representation was obtained by D5 to enable a full second witness statement to be prepared. D7 has not had the benefit of legal representation. D5 is a single mother with three children aged 9, 7 and 5. I accept that her relationship broke down several years ago with D2. I accept that she is occupying a touring caravan on Plot 1, and that caravan has been on that plot since January 2024. I also accept that she uses the facilities across from Plot 1 at the Homestead but that she does not sleep there. I accept that neither D5 nor D2 consider it appropriate to share a bedroom. I also accept that having the father of her children in close proximity is beneficial for those children. I accept that D5 and D2 tend to look after the children separately, with D5 looking after them during the week where they

sleep with her in the touring caravan on Plot 1, and that they usually spend the weekends with D5, which may entail using the Homestead. I also note that the children are doing well at Corringham Primary School. I accept that despite the relationship breakdown between D5 and D2, both parents are making positive attempts to sustain a stable way of life for their three children. I accept that there is no space available at the home of D5's parents in Fobbing available as alternative accommodation. The claimant has not conducted any welfare assessment for D5 and her children because the claimant believes that they live at the Homestead. In my view the evidence is clearly more nuanced in that regard. The claimant should reconsider the position with a view to undertaking a welfare assessment. D5 would be well-advised to fully assist the claimant in the event that a welfare assessment is conducted.

104. In relation to D7, I accept that his touring caravan has been on land to the western side of the Land since January 2023 based on the aerial surveillance evidence, and that he was the purchaser of plot 3 on the Land. He has a wife, a two-year-old child and a new-born baby. There has been no evidence provided in relation to the more detailed personal circumstances and welfare needs of him and his family. I note that D7 was not legally represented at any stage of these proceedings. This is the probable reason for the dearth of evidence from him and lack of active involvement. Accordingly, that reasonably explains why the claimant had not conducted any welfare assessment given their view that his caravan was not occupied. I note that D7 had not made any applications to public or private sites for alternative accommodation. In that regard, I accept the evidence contained within the witness statements of D6 and D8 that there is currently no space at sites in the borough, as well as the Essex County Council site at Hovefields and that there are waiting lists for sites within the borough. I also note that D7 had not applied for emergency housing assistance because he was a Gypsy. In my view, given that D7 gave evidence in person at the hearing, there is now evidence to support the reasonable need for a welfare assessment to be undertaken by the claimant. Again, D7 would be well-advised to fully assist the claimant in the event that a welfare assessment is conducted.

Exercise of claimant's powers to seek injunction

105. When applying for the First Order, the witness statement of Mr Funnell of 28 May 2024 records the unauthorised development, the service of a temporary stop notice, and the view that none of the plots on the Land appeared to be in residential occupation. There is no mention of the touring caravan of D7 to the western side of the Land, possibly because his focus was on area of the Land where unauthorised works were being carried out to create four pitches. Mr Funnell assumed that D5 was living at the Homestead, by reference to the September 2022 site visit note referring to a John and Sharon Burton and two conversations he had with her in the vicinity of the Homestead. In the details of Claim of 28 May 2024, drafted by Mr Beglan, accompanied by a Statement of Truth by Mr Chris Irwin for the Claimant, it is stated that:

> "The Council has taken into account its duties under the Equality Act 2010 but is of the view that it is proportionate to seek relief in this case. The proposed occupier of the Land and their personal circumstances are not known, despite repeated

> requests having been made for that information… In this case, there is no evidence regarding the best interests of any children."

106. In Mr Funnell's second witness statement dated 31 May 2024 he states;

> "as a result of local intelligence, and our last visit… the Council do not believe that the site is residentially occupied. This is because we have no seen anyone residentially occupying the Land on our visits so far, and the most recent aerial flight images confirm almost no change to the four plots since our site visits. Also, it does not appear that any of the four newly created plots have been supplied with drainage or other utilities."

There is still no reference to the caravan of D7 on the western side of the Land. It is the claimant's case that as at the time of the application for the First Order the Land had not been occupied. Given the fast pace of events over the weekend of 24 May 2024, that view was a reasonable assumption, and explains why the claimant had little if any evidence to consider in relation to either the Equality Act 2010 or Children Act 2004.

107. Subsequent to the initial grant by Sweeting J of the First Order of 29 May and the Second order of 4 June 2024, more detailed evidence was disclosed by D5 that asserted that she and her children were resident on the Land. Further, there was evidence of an admittedly late planning application in relation to the Land as well as an appeal against the Enforcement Notice. In Mr Funnell's fourth witness statement of 23 July 2024, he comments on that evidence:

> "There is no evidence available that suggests that this land has been her settled base at any time… The Council have no evidence to contradict Ms Greaves' claim to have been in occupation of the Land since January 2024, but maintain that this is unauthorised, and is not immune from enforcement action." In relation to D7 he states "During previous site visits to the land, the Council have not encountered Mr Holmes and there is no evidence of his day-to-day occupation of the Land. In any case, if William Holmes is in residential use of this caravan, it is without planning permission and is not immune from enforcement action. It is his clear intention to occupy one of the four unlawful plots full time."

108. Since becoming aware of the more detailed evidence from D5 in relation to her children and daily existence, the claimant has not seemingly re-assessed its initial decision to pursue injunctive relief, save to push for a final injunction. There has been no mention of welfare checks or questionnaires being sent to the D5 or D7 families to ascertain their needs. Enquiries should have been made regarding these matters and questions asked about the proportionality of continuing to pursue a final injunction. It is agreed that the interim injunction order of 4 June 2024 preserved the status quo and has prevented further works taking place. In short, it achieved its aims. An alternative available path was that suggested by the Public Interest Law Centre on 16 October

2024 whereby the claimant consent to the continuation of the status quo order without prejudice to further applying to vary the injunction, contingent on the conclusion of the planning process. This was rejected by the claimant.

109. I conclude that there has been a failure by the claimant to undertake a welfare assessment on the needs of the children of D5 and D7 on the Land since they became aware of relevant evidence in late June/ early July 2024. Those assessments should have taken place and have been factored into an updated assessment seeking to test the proportionality of continuing to push on for final injunctive relief.

Consequences of a final injunction

110. The claimant in these proceedings does not seek to dispute the ethnicity of D5 or D7. They are Romani Gypsies whose defining characteristic is living in caravans. Curiously, on the planning team side of the claimant, there was apparent confusion about the ethnicity of the applicants (including D5) as evidenced by Ms Ellis and her Delegated Report refusal letter of 16 September 2024 refusing planning permission. This was explained away by Ms Ellis as it being incumbent on the applicants to establish their Gypsy status, and that this had not been done despite the matter being raised with the planning agent Mr Brian Woods. However, I note that the enforcement team at the claimant were fully aware of the detailed evidence that had emerged in late June/ early July 2024 from D5 and other defendants that included explicit reference to their Gypsy ethnicity. That evidence, in the context of the Enforcement report of Mr Cummings dated 3 June 2024, was arguably sufficient for Ms Ellis not to regard herself as being challenged in establishing the ethnicity of the applicants.

111. D5 and D7 have an aversion to living in bricks and mortar accommodation. D5 stated that she had grown up in a caravan and had always lived that way, and could never live in a house, it's not how she lives or how she or her children are used to living. Similarly, D7 stated that as a Gypsy he would never consider emergency housing assistance in bricks and mortar from the claimant. In my view, that alternative is not culturally appropriate.

112. The availability of alternative pitches was raised by both parties. It is agreed that the claimant cannot demonstrate a 5-year supply of deliverable pitches in line with national planning policy requirement. The claimant suggested that private pitches were available at £800 pcm at Land west of Hillview within the Borough, and Essex County Council operated a Gypsy and Traveller site at Hovefields. Whilst D5 and D7 had not demonstrated evidence of their attempts to locate alternative sites, evidence from D6 and D8 establishes that there is currently no space at sites in the borough, as well as the site at Hovefields and that there are waiting lists for sites within the borough. I conclude that there are no other alternative sites available to these defendants in the event they are required to leave the land.

113. One of the main themes of the claimant's position is that D5 can return to live across from the Land at the Homestead. This is based on the claimant's belief that she and her children really live there. Whilst I have made findings based on the evidence that runs contrary to the claimant's belief, it is still significant that the claimant sought a final injunction to move D5 from the land, whilst there was a pending prior planning enforcement investigation against the Homestead. I am conscious of the potential of

D5 and her children being placed in double jeopardy because she and her children routinely use some of the facilities of the Homestead. The claimant has at no time provided any assurances to D2 or D5 in relation to the planning position of the Homestead. Logically, the claimant could adopt an identical position to that which it has taken in relation to the Land, which would place D5 and her children in a potentially perilous domestic situation. In my view, this is a further significant factor which also merits a welfare assessment.

Planning Harm

114. Unauthorised works to the Land included the deposit of hardcore for hardstanding and erection of fences to create four plots for the stationing each of a mobile home and a touring caravan. Under Para 152 of the NPPF, those works on Green Belt land constituted definitional harm, were inappropriate and should not be approved except in very special circumstances. A mobile home had been moved onto plot 2. I agree with the claimant that the removal of natural vegetation and the extensive spreading of hard-core represents a significant intrusion, and although not immediately visible from the wider area, an urbanisation of the site that impacts the spatial and visual openness of the area.

Breaches of Planning control, and Court Orders

115. There is a clear public interest in planning procedures being adhered to. The court plays a vital role in upholding the key principle that court orders should be obeyed and should not be ignored. The TSN was ignored by those conducting unauthorised works on the Land, which prompted the reasonable need for an Enforcement Notice as well as injunctive relief. Here, following the First Order on 29 May 2024, the unauthorised works ceased and they have not resumed. Following the Second Order on 4 June 2024, D6 and D8 moved off the land and did not return. There is no evidence to suggest that the current position will change - where D5 and D7 continue to occupy touring caravans on the Land, and no further unauthorised works have taken place.

Planning Applications and Appeals

116. The Application 24/00599/FULL for 4 Gypsy/Traveller pitches comprising the siting of 1 static and 1 touring caravan per pitch was refused on 16 September 2024. There were four reasons: Inappropriate development in the Green Belt, significant visual impact, lack of evidence of biodiversity net gain and insufficient information relating to the effect on protected and priority species within the Essex Coastal Recreational Avoidance and Mitigation Strategy. The last two are potentially capable of being overcome by conditions. The first two matters are issues of planning judgment which the claimant has made and are matters properly for them.

117. The balancing exercise to be undertaken between any harm and other relevant considerations, including personal circumstances, is one which would come before the Inspector at appeal. I am satisfied there is sufficient evidence in relation to various matters which may mean an Inspector would come to a view different to that of the claimant.

118. In my view there is considerable force in the material considerations which D5 can rely on at the forthcoming planning appeal for demonstrating very special

circumstances sufficient to outweigh the substantial weight that must be given to the definitional harm to the Green Belt. These considerations are:

- The overall general unmet need for more pitches,
- 16 of the 32 recent permissions were won on appeal,
- The claimant has failed to implement successive government policy that the land use requirements of Gypsies should be met by an assessment of their accommodation needs and policies which identify locations where an application for planning permission would succeed,
- Meeting need will require use of Green Belt locations because pitches inside settlement boundaries cannot compete with the pressure and price of new housing and all areas in Basildon outside those boundaries is Green Belt, hence all existing sites are in the Green Belt,
- There will be an emerging policy at some point. The planning authority had a set of draft criteria in the last attempt to adopt a new local plan for judging new traveller caravan sites that are arguably representative of its current thinking. A planning inspector may conclude that all of them are met in this case,
- D5 and her children's need for a pitch and the fact that there is no alternative site that the household could move to,
- The race equality implications under s.149 of the Equality Act 2010 of an inferior level of service provision for meeting the assessed existing and future accommodation needs of the settled population, and Romany Gypsies and Irish Travellers,
- The interference with article 8 rights of D5 that is occasioned by a refusal of planning permission,
- The fact that the Inspector should as a starting point regard achieving the outcome that would be in the best interests of the child which are a primary consideration, as no less important than the importance attached to protecting the Green Belt,
- The site is located amidst plot land and adjoined by residential development is in an area that has been actively considered for future residential development,
- The fact that the objective of protecting the Green Belt is not achieved when if evicted, all other places for D5 to put her caravan in Basildon where she has grown up, are in the Green Belt.

119. In addition, I have found that the claimant should have conducted a re-evaluation and balancing exercise once it became aware of the detailed evidence relating to the personal circumstances of D5 and her children. Those matters would also feature in any planning appeal. In my view, for reasons provided above, the planning status of the Land is not therefore final.

Conclusion

120. The claimant decided to seek injunctive relief at a point where there was unauthorised development on the land, a TSN had not been effective, and matters were fast moving. The claimant had little or no information about the identity of some of the defendants or their personal circumstances. The application proceeded on the basis that the site was unoccupied at that time. That position was entirely reasonable.

121. The claimant declined to investigate the welfare position of D5 and D7 as further information came to light. This was because they retained the belief that no one was in

occupation of either of the touring caravans on the Land. I also remain conscious of the duty to uphold lawful decisions made by planning authorities. I must also bear in mind the consequences of a final injunction when there are no alternative sites available. There are significant factors mitigating against the grant of a final injunction on the facts of this case. As the emergence of evidence (certainly in relation of D5) occurred, the claimant should have investigated matters and re-assessed the balance of factors considering that information. The proportionality of the decision should have been revisited when the claimant became aware of these matters.

122. Section 187B gives the court an original jurisdiction which it is to exercise as it thinks right, and subsection (2) states that the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach. The court must exercise its discretion appropriately.

123. I remind myself of *Waverley Borough Council v Gray and Ors [2023] EWHC 2161 (KB)* in the context of emerging evidential welfare factors and balance that against the use of personal circumstances to outflank previous court orders as per *Brentwood BC v. Buckley [2021] EWHC 2477 (QB)*. So too with Simon Brown LJ in *Porter* when discussing the relevance of the local authority's decision to seek injunctive relief. The relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

124. Here the defendants accept that there has been a breach of planning control which the court should seek to address. They also consent to a continuation of the Second Order pending the outcome of the planning appeal process. Given my finding that the claimant did not attempt to conduct a welfare assessment once evidence emerged from D5, I conclude that there has not been an evaluative exercise properly required before seeking final injunctive relief.

125. There is also my conclusion that the planning status is not yet final. I also must bear in mind the significant impact that a final injunction would have. Having regard to all matters, I am satisfied that it is appropriate for the court to decline to exercise its discretion to make the final injunction requested but to continue the Second Order on the same basis pending resolution of the current appeal process. I emphasise that this is a decision being made at this juncture, in view of the way the proceedings and the evidence has played out. That does not prevent the claimant from returning to court to seek relief from breaches of planning control or exercising other enforcement powers.

126. I consider a continuation of the Second Order as against all defendants is just, proportionate and appropriate, pending resolution of the current planning appeal process relating to the Land. Given the history, connections with the land and related families, I consider it just and proportionate that D1, D2, D3, and D4 remain as named defendants. So too in relation to D6 and D8. D5 and D7 retain the same right to remain on the land that they currently enjoy under the Second Order. As for persons unknown, the claim for injunctive relief has been carefully framed and limited with regard to the small site and area of Land covered, and the activities are limited and clearly defined. Accordingly, the injunction is also justified on a continuing basis in the terms of the Second Order.

127. I invite Counsel for the represented parties to draw up an appropriate Order reflecting the above. Costs in the case save between the parties who were represented at trial. If those represented parties cannot agree costs, then written submissions on costs should be only two pages and submitted together with the draft order.