

TRANSCRIPT OF PROCEEDINGS

Ref. QB-2018-003983
[2018] EWHC 4076 (QB)

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

The Royal Courts of Justice
Strand
London

**Before:
MRS JUSTICE FARBEY**

LONDON BOROUGH OF REDBRIDGE

Claimant

-v-

**MARTIN STOKES AND 99 OTHER NAMED DEFENDANTS
AND PERSONS UNKNOWN FORMING OR INTENDING TO FORM UNAUTHORISED
ENCAMPMENTS IN LONDON BOROUGH OF REDBRIDGE**

Defendants

**MISS CAROLINE BOLTON appeared on behalf of the Claimant
THE DEFENDANTS did not appear and were not represented**

**JUDGMENT
23 NOVEMBER 2018**

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MRS JUSTICE FARBEY:

Introduction

1. This is the final hearing of a claim issued by the London Borough of Redbridge under CPR Part 8 for an injunction against known named defendants and against other persons unknown. Ms Caroline Bolton appears on behalf of the claimant. I am grateful to her for her succinct submissions. None of the defendants appears or is represented. The injunction is sought under either section 187B of the Town and Country Planning Act 1990 or section 1 of the Anti-Social Behaviour, Crime and Policing Act 2014.

2. On 6 June 2018, Yip J granted an interim injunction. The order was essentially in two parts. The first part applied to the 70 named defendants who are members of the travelling community. This part of the order was designed to have borough-wide effect. It prohibited each of the named defendants from setting up an encampment, occupying land (save with proper permission) or depositing waste within Redbridge.

3. The second part of the order applied to persons unknown. It made similar non-encampment provisions to the first part of the order but was not borough-wide, being limited to 240 mapped and listed sites within the borough. Those sites are principally car parks, business areas and green spaces.

4. The claimant seeks a final order in similar terms until further order or for a period of time that the court considers appropriate.

5. Injunctive relief against persons unknown has been granted by this court in a number of recent cases, which have raised similar issues to the present case. In *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch), Marcus Smith J referred at para 25 to the guidance given by Morrit V-C in *Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site* [2003] EWHC 1738 (Ch):

“(1) First, that the description of the defendant should not involve a legal conclusion, such as is implicit in the use of the word ‘trespass’.

(2) Secondly, that it is undesirable to use a description such as ‘intending to trespass’, because that depends on the subjective intention of the individual which is not necessarily known to the outside world, and in particular the claimant, and is susceptible of change.”

6. For that reason Miss Bolton agreed that it would be appropriate to amend the description of the unknown defendants in this case, to avoid references to intention to trespass and instead to refer to unknown persons entering or remaining on land without consent.

7. As none of the defendants has come to court today, I need to consider the question of whether they have had good notice of this hearing. On 19 October 2018, Goss J made an order dispensing with service of notice of hearing on the first to 70th defendants, having

accepted the claimant's undertaking that it would use reasonable endeavours to serve the papers by posting them to the last known address of each of them. The claimant also undertook to post notice of the hearing, and a copy of Goss J's order, on its website and Facebook page. Goss J ordered that the claimant should serve notice on persons unknown by affixing relevant papers in a prominent place at all 240 of the mapped sites. All the steps which Goss J envisaged have been taken. I am satisfied that all defendants have had good notice of today's hearing, and that it is just that I proceed to decide the issues in the case in their absence.

Background

8. With that introduction, I turn to the events which have given rise to this claim. In summary, the claimant has pursued these proceedings because of numerous unlawful encampments in Redbridge. There has been associated fly-tipping and waste. Regrettably, some of those living in the encampments have been a nuisance to local residents and businesses. Some have caused or threatened violence.

9. Ms Bolton properly made clear the claimant's view that this is no reflection on the travelling community as a whole, or others who wish or are forced to camp for temporary periods on the roadside. She also made plain that the claimant does not seek the injunction lightly, recognising the impact on traveller rights. However, the claimant has been compelled to seek relief from the court owing to the gravity of the situation.

10. I was provided with comprehensive witness statements and exhibits from numerous of the claimant's officers who have had to deal with the many different adverse consequences of the encampments. I have also considered the statement of a police officer who has collated numerous reports (via 999 or 101 calls) of complaints by members of the public about incidents relating to the encampments.

11. I have before me a large number of statements from business owners and members of the public who have been threatened or put in danger. I mean no disrespect to any of those officials or members of the public who have provided statements by not referring to them individually. They present, in my judgment, a uniform and troubling picture.

12. The overall picture is clearly set out in the witness statement of Mr Richard Bond who is now employed by the claimant as an Enforcement Officer. He is tasked with investigating and managing unlawful encampments within Redbridge. In general terms, he says that, since 1 January 2016, the claimant has recorded 50 incidents of unlawful encampments by travellers on both public and private sites. A number of these have been repeat incursions. An additional six encampments have been noted by the police and others.

13. Mr Bond's evidence is that the size of the encampments can be significant. Rather than experiencing a small temporary encampment, which the claimant would normally expect where a family is stopping during their travels, the claimant has experienced in the region of 20 to 30 or even more caravans and associated vehicles which take control of an entire or significant proportion of a site to support other activities, such as fly-tipping, crime and door to door calling. Some sites can remain in place for up to a month, rendering entire community assets unusable during that period. The number of people involved in any one encampment can be in excess of 60, with associated animals. The unlawful encampments are

formed on both public and private sites, including sports clubs, school grounds, parks, open land and business plots.

14. The sites have been used for unlawful fly-tipping of commercial trade waste and their personal waste. This waste is then left behind for disposal by the council, landowners or tenants at considerable cost. Unlawful encampments have a significant impact on local authority and police resources, taking away the local authority and the police from their normal and core duties. The cost associated with the unlawful encampments has been assessed at £350,839.16.

15. At most of the sites, significant amounts of human excrement, litter and domestic waste have been left behind. The public has access to these areas, and this has the potential to cause serious health risks to members of the public and adverse effects on the environment. Other risks to human health and the environment have included the dumping of asbestos and other waste hazards on sites.

16. The unauthorised encampments have caused considerable stress, nuisance, disruption and serious financial loss to residents and business premises within the borough. The claimant has received numerous complaints and allegations of intimidation, damage and threats.

17. That is the general factual background as set out in Mr Bond's statement, and as comprehensively evidenced in the bundles which have been submitted to the court. It would however not give a full flavour unless I were to describe some of the specific incidents.

18. There are a number of incidents where the perpetrators of the encampments have sought to extort money from landowners in order to vacate the land. A local businessman saw that there were about six caravans and 10 or so vehicles on his land. A lot of trade waste had already been dumped on site. One of those who had intruded onto his land told him that everyone would go if he paid £3,000. Four skip loads of rubbish were left behind by the perpetrators when they eventually left, costing £3,000 to dispose of. It was also the case that one landowner was told that if £500 per caravan was paid in cash, the site would be vacated in an hour. At one site the travellers departed but left rubbish and waste behind, much of which constituted a biological hazard. The waste included dirty nappies, soiled toilet paper and wipes.

19. On another occasion, the claimant's officials were making an inspection of land from which travellers had recently been evicted. They could see waste consisting of white goods, cardboard and domestic waste. Leading down to the River Roding, they could see human excrement and used baby wipes all along the riverbank, caught in the foliage.

20. A number of incursions have regrettably included assaults by members of the encampments on security officers, residents, businesses and local authority staff. On at least two occasions, those who were part of the encampment drove at members of the public or landowners in a very dangerous manner.

21. In relation to the named defendants, statutory welfare checks were undertaken at all encampments. None of the named defendants came forward with any requests for assistance with housing or other needs. The proposed order would not prohibit the named defendants

from entering Redbridge and encamping lawfully, such as on an authorised traveller site or with the permission of a landowner.

22. In relation to the unnamed defendants, it is obvious that it will be impossible to ascertain or be certain of their welfare needs either now or in the future. The claimant therefore accepts that it would not be appropriate to prohibit persons unknown from forming unauthorised encampments on a borough-wide basis. A balance must be struck between the unknown needs of those who may encamp in the future, and the need to protect land and people from the harmful effects of future encampments of the sort that have already caused significant damage and harm.

23. The claimant has specifically assessed which sites need protection from persons unknown. The sites fall into two categories. First, there are those sites which are particularly vulnerable to incursion. Secondly, there are those sites which are particularly sensitive, such as sites that are near schools. I am satisfied that the claimant has adopted a reasonable and proportionate approach to the selection of sites to be covered by injunctive relief.

The Law

24. Section 222(1) of the Local Government Act 1972 provides as follows:

“Where a local authority considers it expedient for the promotion of the interests of the inhabitants of their area –

(a) They may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name...”.

25. It follows that a local authority has a general power to institute civil proceedings to promote or protect the interests of its inhabitants. In the present case, the claimant seeks relief both in relation to public sites which it owns, and also in relation to private sites, such as local businesses. I accept Ms Bolton’s submission that section 222(1) enables a local authority to bring proceedings in relation to sites that it does not own but that fall within its boundaries.

26. The power in section 222(1) is cast in wide terms. A local authority is in a good position to take a borough-wide approach and to act in the interests of the public as a whole (*Stoke on Trent City Council v B&Q (Retail) Limited* [1984] (Ch) 1). Any other interpretation would mean that individuals would be bound to take multiple sets of proceedings in order to achieve the result of a single claim by the local authority. In my judgment the court has power to grant relief in relation to all 240 listed sites.

27. Section 187(1)(B) of the Town and Country Planning Act 1990 gives power to a local authority to apply for an injunction to restrain an apprehended breach of planning control and, by section 187(B)(2), a court has power to grant such injunction as it considers appropriate. Section 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 provides that a court may grant an injunction against a person aged 10 or over if it is satisfied on the balance of probabilities that the person has engaged or threatened to engage in anti-social behaviour, and the court considers it just and convenient to grant the injunction for the

purpose of preventing a person from engaging in such behaviour. I do not think that, in the present case, there is any real difference of approach which I must apply under those two different statutory causes of action.

28. As I have mentioned, a borough-wide injunction is sought as against the named defendants. Such an order was granted at an interim stage in *Harlow District Council and Anor v Stokes and Ors* [2015] EWHC 953 QB in which Patterson J held at paras 16-18:

“16. The submission made by the claimants is that, in these circumstances, it is expedient to grant a district wide injunction. Harlow District is small; it is some 11.69 square miles. A plan before the court showing the previous encampments illustrates them scattered across the district.

17. It is, of course, a matter of fact and degree as to whether a district wide order, as is sought, is proportionate. I have no doubt, as a result of the circumstances which I have set out, that the order sought is both necessary and proportionate. First, there has been a clear breach of planning control for some 17 months and it is reasonable to apprehend further breaches should no further action be taken. Second, persistent efforts by the public authorities to deal with the problem by other means have failed. Third, the approach of the local authority hitherto has been expensive to the public purse, both in terms of money, but more significantly in terms of time spent without any visible change to the behaviour on behalf of the defendants. Third, the consequences of the unlawful behaviour and breach of planning control are not conducive to the best interest of the other law abiding residents within the district.

18. It is clear from the evidence before the court that there are no children with particular needs, nor any other circumstances on behalf of the defendants that could outweigh the necessity for the order which is sought. As I have indicated, in my judgment the order sought is both necessary and proportionate.”

29. The case later came before Jay J as *Harlow District Council v McGinley and Ors* [2017] EWHC 1851 (QB) on an application to vary the final order which had been made by Mr James Goudie QC. Jay J continued the district-wide order. He observed at para 28: “It might be argued that all that an injunction is doing is creating difficulties for districts, boroughs and county councils elsewhere.” Nevertheless, he held that the balance of convenience was overwhelmingly in favour of a district-wide order.

30. I agree with the approach of both Patterson J and Jay J. The fact that other local authorities in adjacent or other areas may need to seek similar orders is not a factor in my judgment against the grant of borough-wide relief in this case. The discretion exercised by the court as to whether or not to grant relief will be fact-sensitive in every particular case. The court must decide whether in all the circumstances it is just to grant the relief sought, and

whether it is proportionate to do so, having regard amongst other factors to the Convention rights of those who are either encamped or who may encamp now or in the future.

Discussion

31. In exercising my discretion in this case I have regard to a number of factors, which are conveniently set out in Ms Bolton's skeleton argument. Many of the sites that have been encamped upon have been fly-tipped. The defendants deposit waste material onto sites including rubble, asbestos, household items, felled trees and general rubbish.

32. There is a risk to public health. The defendants defecate on sites. As most of these sites are either business premises or areas accessed by the public (such as schools or sportsgrounds), this has been deemed by the claimant's officials to be a risk to public health.

33. A number of the encampments have been on or near business premises. This has caused complaints from businesses, and businesses have threatened to relocate outside the borough. As I have mentioned, it is very regrettable that there have been threats and intimidation against members of the public.

34. There has been an impact on sports and recreational clubs and facilities, including cancellation of events and damage to land.

35. There has been an impact on open green space and significant damage to land on numerous occasions as evidenced in Mr Bond's witness statement.

36. Finally, there has been community tension. That tension confirms the level of fear, stress and concern experienced by the local community, and it is proper for the local authority to take it into account.

37. I do however have to consider the rights of those travellers who may wish to live in Redbridge. Article 8 of the European Convention on Human Rights protects the right to respect for private family life and the home. It is plainly engaged in this case, so the question for me to determine is whether the interference is proportionate under Article 8(2). The claimant has given the court significant reassurance that injunctive relief in the terms sought would be proportionate. Ms Bolton emphasised a number of strands of the evidence. The decision to launch proceedings was taken only after careful consideration of the local authority's public sector equality duty, and only after the local authority had on proper evidence satisfied itself that it would be expedient for residents of Redbridge to seek relief from the court. A decision was taken at director level that unless an order were obtained, the problems of unlawful encampments would continue.

38. Ms Bolton directed me to the detailed Equality Impact Assessment ("EIA") in relation to whether or not to commence proceedings in relation to the named defendants. There is no statutory duty to produce an EIA in cases such as the present. Ms Bolton told me that there is no guidance from the courts on the circumstances in which they should be produced to the court.

39. The process of undertaking an EIA and its production to the court has assisted me considerably. The rigorous EIA has provided assurance to the court that the local authority

has considered the full scope of its obligations to the named defendants. Those obligations arise in relation to all named defendants under the Human Rights Act 1998, to vulnerable named defendants under the Children Act 1989 and the National Assistance Act 1948, and to all named defendants under the Equality Act 2010.

40. In its EIA, the claimant has demonstrated its awareness that its human rights and welfare obligations will continue for the life of the proposed injunction. That strikes me as particularly important in this case in which a borough-wide injunction may well have greater impact on the travelling community than orders limited to listed sites.

41. An EIA may also (as in this case) provide evidence of the local authority's data-gathering processes that will have underpinned the local authority's decision-making process. The claimant's EIA has set out the breadth and depth of consultation with residents, businesses and other affected interests. It has set out the claimant's plan and policy for mitigating the effect of orders on the travelling community or anyone else, such as assisting them to make contact with appropriate support and welfare agencies. It has set out internal policies for reasonable toleration of behaviour by vulnerable persons and those with characteristics which are protected by law. The EIA in the present case has assisted me in considering all those matters, and I am satisfied that the claimant has weighed all its different obligations.

42. In addition, Ms Bolton told me that the claimant has a named and designated officer to deal with any welfare issues that may arise from further incursions. The effect of any injunction would be explained in simple terms and in full cognisance of travellers' protected characteristics in equality law. Travellers will be given time to leave and will be offered any appropriate welfare services. Enforcement would be a last resort.

43. In respect of the borough-wide portion of the proposed order, I was provided with helpful mapping which shows that previous encampments have been scattered across the borough. I accept that it would not be practicable or effective to sever any part of the borough from the terms of the injunction. Severance would add disproportionate complexity to understanding the precise reach of the order. Redbridge is a fully residential borough. If forced out of selected areas only, the named defendants may simply relocate to other parts of the borough with shops and communal facilities, which would not be fair on residents living there.

44. Finally, in weighing the proportionality of the borough-wide portion of the order, I take into account the gravity of past incursions and the very considerable damage done. The claimant is entitled to balance the safety of all those who live and work in the borough as against the actions of those who are intent on causing considerable damage to the land and harm to people. I am satisfied that the terms of the proposed injunction are proportionate and that the balance should be struck in favour of the injunction. I have no doubt that the claimant will keep in mind its continuing obligations to strike a balance between competing rights.

Conclusion

45. I therefore conclude that the proposed injunction is appropriate, proportionate and necessary. I am satisfied that an injunction would be just and convenient. I am not prepared

to make an open-ended order. The period of three years strikes the appropriate balance between the rights of the claimant and its residents, and the rights of the defendants. The order will therefore run until 23 November 2021.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the Judge