Neutral Citation Number: [2020] EWHC 3382 (QB)

Case No: QB-2020-004209

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 December 2020

Before :

MR JUSTICE FOXTON

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Between :

BASILDON DISTRICT COUNCIL	**Claimant**
- and -	
(1) THOMAS ANDERSON **(2) WILLIAM THOMAS ANDERSON** **(3) CHARLIE ANDERSON** **(4) BRIAN McGINLEY** **(5) FREDDIE ANDERSON** **(6) GERRY (JERRY) ANDERSON** **(7) LEAH ELLA MAY FOLEY** **(8) BRIDGET MCDONAGH** **(9) JOHN MCDONAGH** **(10) PATRICK COLLINS** **(11) THOMAS CLEARY** **(12) PERSONS UNKNOWN (UNDERTAKING DEVELOPMENT ON THE LAND SOUTH OF REDLANDS, HOVEFIELDS DRIVE, WICKFORD, 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 **Paula Harvey, solicitor**) for the **Claimant**
Gary Grant (instructed by **Claas Solicitors**) for the **Third to Eleventh Defendants**

Hearing date: **8 December 2020**

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JUDGMENT

MR JUSTICE FOXTON :

INTRODUCTION

1. This is an application by the claimant, Basildon District Council ("the Council") for the continuation of two interim injunctions, and by the Third to Eleventh Defendants, who I shall refer to as the Defendants, to vary the second of those injunctions.

2. The first injunction, which I shall refer to as the First Order, is a prohibitory injunction granted "without notice" by Garnham J on 29 November 2020. It restrained the First to Twelfth Defendants from taking certain steps on land south of Redlands, Hovefields Drive, Wickford, Essex, which I shall refer to "the Land", and the effect of the injunction was to prevent development or use of the Land in a way which it is said would constitute breaches of planning control, including preventing the bringing of mobile homes or caravans onto the Land.

3. The second injunction, which I shall refer to as the Second Order, was an interim mandatory injunction granted "without notice" by Cutts J on 30 November 2020. The Second Order required the First to Twelfth Defendants to remove any static caravans, mobile homes and touring caravans from the Land, and to refrain from causing any such mobile homes or similar structures from being placed on the Land.

4. The Council was represented before me by Wayne Beglan and the Defendants by Gary Grant. I am grateful to both of them for their clear, concise and committed submissions.

5. As I have indicated, Mr Grant on behalf of the Defendants did not seek to resist the continuation of the First Order, but sought to vary the Second Order so as to allow the Defendants to continue to reside on the Land, pending the final determination of planning applications they have issued. However, as the First Order also takes effect against defendants not represented by Mr Grant, it has been necessary for me to consider whether that Order should continue.

THE EVIDENCE

6. The Council adduced witness statements from:

   i) Mr Finn and Mr Cummings who are Planning Enforcement Officers;

   ii) Ms Lyons who is the Head of Planning; and

   iii) PC Hadlow and PS Shelton, both police officers.

7. The Defendants adduced witness statements from:

   i) Ms Larissa Jennings of Prideaux Planning Ltd, who acted as the 3rd to 11th Defendants' Planning Adviser;

   ii) the 3rd to 11th Defendants. To an appreciable extent, those statements follow a common template, but I do not regard that as a matter of particular significance here. The statements were prepared with great urgency, by Defendants who share a common position, and who required assistance in preparing the

statements. In those circumstances, I do not see anything untoward in their similarity; and

iii) a statement from Mr Peter Scott, the solicitor who acted for the 3rd to 11th Defendants when they acquired their interests in the Land.

INTERIM DETERMINATIONS ON THE FACTS

8. This is an interim hearing, and therefore it has not been necessary or appropriate for me to reach final conclusions of fact. However, I have set out my provisional conclusions on the basis of the evidence presented to me, to the extent material to the decisions which I am required to make.

The dispute in summary

9. The Council is the local planning authority for the administrative area in which the Land is located. The Land is registered at the land registry as title EX710339 and the First/Second Defendant, Mr Thomas Anderson (who appear to be the same person) was (at least until recently) the registered owner. The Land forms the south side of Hovefields Drive.

10. The Land lies within the Metropolitan Green Belt and, at all material times, there have been no planning consents for the Land. As a result, the Land has no permissible use save for default agricultural use, and planning permission is required to use the Land for residential purposes or to develop it in any way. There has been a long history of attempts to develop the Land (or major parts of it) for use as a gypsy/traveller caravan site, which the Council has restrained by injunctions and enforcement and stop notices. In particular, injunctions to this effect were granted:

    i) on 28 October 2004 by Mr Justice Mackay;

    ii) on 12 April 2006 by Mr Justice Butterfield; and

    iii) in relation to directly adjoining land, on 10 May 2007 by Mrs Justice Swift.

11. It is the evidence of the Defendants that Mr Thomas Anderson agreed to sell or give them plots on the Land, and that the relevant plots were signed over to them on 27 November 2020 (the date of the Land Registry TR1 forms).

12. In anticipation of the transfers, on or around 18 November 2020, the Defendants retained Ms Larissa Jennings of Prideaux Planning Ltd to prepare planning applications. Those applications – comprising a standard planning application form, a block plan and a location plan - were submitted through an online planning portal after hours, beginning at 17.37 on 27 November 2020, the same date that the Land Registry transfer forms were submitted. So-called “Gypsy-statements” in support of the applications were submitted by Ms Jennings electronically at 14.57 on Sunday 29 November.

13. There is no explanation as to why the applications were submitted after hours on a Friday. However, I have concluded that this may well have been because the Defendants intended to undertake very significant work on the Land over the weekend

before the Council offices opened on Monday, completing so far as possible the development work for which planning permission was being sought.

14. On Saturday 28 November 2020, the Council was contacted by Essex Police following reports of extensive work being undertaken on the Land. At 11.55, two police officers, PC Hadlow and PC Messenger, visited the Land. There they saw between 80 and 100 people working on the Land, with diggers and several large trucks in operation and numerous vehicles driving on and off the Land. Footage taken by an unmanned aerial vehicle operated by the police showed a substantial quantity of hardcore had been deposited on the Land, with several large trucks, numerous vans and an excavator in operation. The Land was in the process of being divided into plots (of which six had already been created). An access track had also been created from Hovefields Drive. PC Hadlow was told by one of those working on the Land that they were due to finish work on Sunday, and that those working had come "from all over the place".

15. At 8.30 am the following morning, Mr Ian Cummings, one of the Council's Planning Enforcement Officers, visited the Land. He saw a large HGV dumper truck leaving the Land, and the excavator in operation. There were a number of workmen (although fewer than 10) working, and a large-scale engineering operation appeared to be underway. However, no caravans or mobile homes were seen, nor are any to be seen in the photographs Mr Cummings took on this visit. Mr Cummings returned to the Land with a number of colleagues, including Ms Christine Lyons, at around 1pm that day to serve copies of an Enforcement Notice and a Stop Notice, issued following an emergency meeting of the Council's planning committee that morning. At the time of the visit, work was continuing on the Land, with about 30 men in attendance. As Mr Cummings sought to enter onto the Land to serve the Notices, an individual (now known to be Mr Patrick Collins, one of the Defendants) refused to allow entry, becoming agitated and aggressive. Mr Collins threatened to kick both Mr Cummings and Ms Lyons "between the legs" if they did not leave. The Council's party were required to leave, and Mr Cummins and Ms Lyons were followed by a large group of men as they did so. Mr Cummings left copies of the Notices stapled to a telephone pole, on a post near the entrance to the Land and across a fence line near the entrance to the Land. In the course of this visit, Mr Cummings did not see any mobile homes or caravans on the Land, and a number of photographs taken by him, which offer a wide view of the Land, do not show any mobile homes or caravans either. The Stop Notice was brought by the Council to the attention of Ms Jennings, and I was told at the hearing (and accept) that she advised the Defendants to comply with it.

16. "Before" and "after" photographs of the Land show the significant scale of the work and its impact on the appearance of the Land.

The First Order

17. On Sunday evening, the Council applied for and obtained the First Order from Garnham J, which prohibited any development work on the Land save in accordance with planning permission, and prohibited the entry of mobile homes or caravans onto the Land. On the basis of advice from Essex Police, no attempt was made to serve the First Order that evening. Accordingly, a group of council officers, including Mr Cummings, together with a number of police officers, visited the Land on 30 November 2020. At this point, Mr Cummings saw a large static mobile home on the

Land, and one or more smaller caravans. Work was continuing on the Land. Interactions between the police and nearby residents led to reports that Mr Collins had threatened to damage some of the residents' houses with a bulldozer if they did not stop filming. In the presence of PS Shelton, one of those working on the Land told some residents "you'll be sorry". As Mr Cummings sought to serve the First Order, he was refused access to the Land, and prevented from fixing a copy to a fence. He then placed the First Order on the ground, at which point one of those present (since identified as Mr Patrick Collins) picked up the order and threw it in a hedge. As Mr Cummings and the police officers walked away, Mr Collins came after them and shouted at them that they should not seek to serve the order at a nearby travellers' site.

The Second Order

18. Given the presence of mobile homes on the Land, the Council applied for a further "without notice" injunction requiring those who had moved mobile homes or caravans onto the Land to remove them. Cutts J granted that relief in the form of the Second Order, requiring the mobiles homes and caravans on the Land to be removed by 4pm on 2 December 2020.

Events after the Second Order

19. A warrant was obtained by the Council to authorise entry on the Land on 1 December 2020, and an officer of the Council accompanied by the police entered onto the Land and displayed a copy of the First Order, the Second Order, the Enforcement Notice and the Stop Notice in a prominent position near the entrance to the Land. HGV vehicles were continuing to deliver hardcore to the site on 1 December 2020. A further Enforcement Notice and Stop Notice were served on the Land on 4 December 2020. On the same date, the Defendants issued their application to vary the Second Order.

20. At the hearing before me, Mr Grant produced a schedule which recorded the current conditions on the Land. This recorded the presence of:

    i) Eighteen touring caravans.

    ii) One static caravan.

    iii) Three mobile homes.

    iv) Two portacabins and one wooden shed for use as dayrooms.

    v) Seventeen motor vehicles.

THE LEGAL BACKGROUND

21. It is common ground that the decision whether to permit or deny a planning application, and on what terms, is one in the first instance for the Council as the democratically elected and accountable body entrusted with that decision-making power under the Town and Country Planning Act 1990. As a public body, the council must act lawfully in reaching such a decision. Under s78 of the Act, there is a right of appeal against any decision of the Council to the Secretary of State who determines the application "de novo".

22. The 1990 Act gives the local planning authority power to issue enforcement notices under s.172(1) of the Act and stop notices under s.171 and 183 of the Act. There is a right of appeal against an enforcement notice under s.174, and while there is no right of appeal against a stop notice as such, a stop notice is linked to the service of an enforcement notice. S.187 provides that breach of a stop notice after a site notice has been displayed is a criminal offence.

23. Pursuant to s187B of the Town and Country Planning Act 1990, the Council has the power to apply for injunctive relief to restrain any actual or apprehended breach of planning controls. The principles on which the power to grant such injunctions is to be exercised is the subject of well-known guidance given in South Buckinghamshire DC v Porter [2003] 2 AC 558. Lord Bingham stated the applicable principles in the following terms:

    i) The court exercises an original not a supervisory jurisdiction.

    ii) The court should have regard to all of the circumstances of the case.

    iii) The Judge is not entitled to reach his or her own independent view of the planning merits of the case.

    iv) The judge should not grant injunctive relief unless he or she would be prepared if necessary to contemplate committing the defendant to prison for breach of the order.

    v) The test for an injunction is whether it is just and proportionate to grant it.

    vi) That will involve considering the impact of such an injunction on the defendants, some of whom may wish to use the site as their home, including their rights to private and family life under Article 8 of the ECHR and their property rights under Article 1 Protocol 1.

    vii) It is also relevant, but not determinative, that the local authority, as the democratically elected and accountable body with principal responsible for planning control in their area, has decided to seek relief.

24. The following matters are also clear:

    i) The local authority must take into account the best interests of children who may be effected either by the exercise of enforcement powers, or the obtaining of an injunction: see Flintshire County Council v The Queen [2018] EWCA Civ 1089.

    ii) The local authority must take account of their obligations under the Equality Act 2010 having regard to the fact that members of the gypsy, Romany and traveller communities are a protected minority: Moore v SSCLG [2015] EWHC 44 (Admin).

    iii) I accept that these are also important considerations for the court in determining whether to grant an injunction or not.

25. At the interim stage, the applicable test for prohibitory relief under s187B is, broadly, the familiar American Cyanamid test: Basingstoke & Deane BC v Loveridge [2018] EWHC 2228 (QB). However, I accept Mr Grant's submission that that test must, to some degree, be adjusted to allow for the specific context of applications of this kind.

26. In addition to these legal authorities, I was helpfully referred by Mr Grant to the NPPG guidance issued to local authorities on 6 March 2014. That guidance reminds local authorities to take account of relevant circumstances, including the personal circumstances of those affected, before seeking injunctive relief.

THE APPLICATION TO CONTINUE THE FIRST ORDER

The alleged breach of planning controls

27. As I have stated, the Defendants represented by Mr Grant do not resist the continuation of the First Order, but for the reasons I have set out above, I am satisfied that I should consider the decision whether or not to make such an order de novo.

28. On the basis of the evidence I have set out above, I am satisfied that the Council has shown a serious issue to be tried that works were undertaken on the Land which involved a serious and deliberate breach of planning controls. I am also satisfied that it is strongly arguable that the work was being done with a view to stationing caravans and mobile homes permanently on the Land so that the Land could be used for residential purposes, contrary to its current planning status.

29. Mr Grant invited the court to find that there is a realistic prospect of planning permission being granted to the Defendants upon the exercise of statutory rights of appeal to the Secretary of State for Housing, Communities and Local Government. In her witness evidence, Ms Jennings expressed the view that there is a realistic prospect of success on such an appeal.

30. I do not have sufficient information to form any view on the prospects of success of any appeal. The merits of the planning application are in the first instance a matter for the Council and not the Court. However, even assuming that there is a realistic prosect of obtaining permission, it must follow that there is also a realistic prospect of permission not being granted. Ms Jennings very properly and frankly accepts that a successful application would have to show "very special circumstances". The possibility of a successful appeal does not, therefore, affect my view that a serious issue has been shown as to a deliberate and flagrant breach of planning controls.

Would damages be an adequate remedy for the Council?

31. I accept that the harm and damage which the Council seeks to prevent by the First Order is of a kind which cannot adequately be compensated for in damages. The Land is situated in the Metropolitan Green Belt, and if the First Order is not continued, I am satisfied that there is a real risk of an acceleration of work which would involve substantial and lasting changes to the character of the Land which its Green Belt status is intended to prevent. As such, it would contravene Green Belt Planning Policy as set out in the National Policy Planning Framework, in particular at paragraphs 143 to 144. Further, the Council is acting to protect a public and local interest, something an award of damages will not do.

The balance of convenience

32. In this case, the relief which the Council seeks by renewing the First Order will hold the ring until trial. The injunction will require the Defendants to halt the work begun on 28 November 2020, unless and until planning permission is obtained. However, that will simply be to preserve, to the extent it can still be preserved, the status quo as it had existed for a long time until the sudden outbreak of major development work on 28 November 2020.

33. In these circumstances, I am satisfied that the balance of convenience favours the continuation of the First Order.

34. So far as the injunction against persons unknown is concerned, s.187B(3) of the 1990 Act creates a statutory right to obtain an injunction against such persons, which is given effect by CPR Part 8A and Practice Direction 20.1. I am satisfied that the requirements for making such an order in Canada Goose v Persons Unknown [2020] EWCA Civ 303 are met in the case of the First Order, because the reality is that this order will apply only to that small class of persons engaged in development works on the Land, each of whom will have had ample opportunity to become aware of the order from the steps taken to serve the First and Second Orders, and indeed this Order, on the Land.

THE SECOND ORDER

The alleged breach of planning controls

35. I am satisfied that:

    i) in the evening on 29 November 2020, some of the Defendants began moving into occupation of the land, with one large static mobile home and a few smaller caravans being brought onto the Land by 30 November;

    ii) a significant number of additional caravans, vehicles and structures have been brought onto the Land on and after 30 November 2020; and

    iii) there is a strong prima facie case that the presence of those vehicles and structures on the Land involves a breach of the currently applicable planning controls.

    As I have stated, I do not feel able to form my own view of the merits of a successful appeal to the Secretary of State, but the possibility of such a successful appeal does not change my assessment that the Council has shown a strong prima facie case of such a breach.

36. I am also satisfied that there is a strong prima facie case:

    i) that all of the vehicles and structures were brought onto the Land after the Enforcement and Stop Notice had been posted near the Land on 29 November 2020, with which the Defendants' planning agents advised the Defendants to comply;

ii) that all bar one mobile home and two to three tourers had been brought onto the Land after attempts were made to serve the First Order on 30 November 2020; and

iii) that a good proportion of the vehicles and structures were brought onto the Land after service of the Second Order.

37. I have considered carefully what provisional conclusions I should draw as to the Defendants' knowledge of the legal prohibitions which attached to the development and use of the Land. I am willing to accept, on the basis of the evidence of Ms Jennings, Mr Scott and the Defendants, that they may well have been unaware of the injunctions granted between 2004 and 2007. However, I think it likely that all of the Defendants were aware that Land was in the Green Belt, and that this presented a very substantial legal obstacle to the lawful development and occupation of the Land. The rapid and co-ordinated nature of the work begun on a Saturday is suggestive of an attempt to achieve a *fait accompli* before anticipated legal countermeasures might be deployed. I am also satisfied that the Defendants are likely to have been aware of the Enforcement and Stop Notices, which were displayed prominently on 29 November and with which Ms Jennings advised them to comply. Mr Collins was aware that a court order (the First Order) had been made and that the Council was attempting to serve it on 30 November. I do not feel able to find that the other Defendants were aware of the terms of the First Order, but it seems to me likely that there was a general awareness within the Defendants that the Council had obtained or was seeking orders to prevent the work on the Land continuing. I am satisfied that the Defendants are likely to have been aware of the Second Order, both because it was served on the Land on 1 December 2020, and because an unsealed copy was sent to the Defendants' planning agent Ms Jennings on that date.

38. In the light of my provisional conclusions in [35-37] above, it follows that it is likely that to a significant extent, the vehicles and structures on the Land were brought onto the Land in knowing or calculated contravention of legal prohibitions.

39. Sensibly, Mr Grant did not attempt to defend the circumstances and timing of the development work on the Land, nor to argue that all or substantially all of the vehicles and structures on the Land had been brought onto the Land in ignorance of any legal prohibitions which might apply. His principal ground of opposition to the continuation of the Second Order was not to suggest that the cause of action merits threshold was not satisfied, but that the Council had failed to, and the Court was required to, give proper consideration to the personal circumstances of the Defendants, which themselves provided a very powerful reason for the Council not to seek, and the Court not to grant, the Second Order.

40. This important issue is one which does not readily fit into the conventional <u>American Cyanamid</u> framework, and it is capable of being considered at more than one stage. I have decided to consider it as a factor on its own right. Before doing so, I will first consider the effect of not continuing the Second Order on the Council.

The consequences for the Council if the Second Order is not continued

41. I have concluded that the continued occupation of the Land, certainly on the scale on which the Defendants wish to continue to occupy it, will involve prejudice which cannot be compensated for by an award of damages.

42. I have reached this conclusion for the following reasons.

43. First, I am satisfied that the degree of residence which the Defendants have established on the Land involves the significant and continuing use of Green Belt land for residential purposes, in a manner which is likely to have significant effects on the character of the Land. I accept Mr Beglan's submission that such a use of Green Belt Land is "definitional harm" when considered in the context of the Green Belt policy.

44. Second, I have concluded that if residence is permitted to continue, there is a very real risk that development of the Land will continue:

    i) It strongly appears that the events over the weekend of 28 and 29 November formed part of a carefully co-ordinated attempt involving up to 100 people and extensive heavy equipment to make substantial and irreversible changes to the Land before the Council could respond.

    ii) These circumstances provide strong grounds for apprehending that the continued occupation of the Land by the Defendants will encourage or facilitate further development work. Those concerns are exacerbated by the fact that those who did enter on the Land on 29 November 2020 and thereafter did not leave the land as they were required to by Cutts J's order, and there is evidence that deliveries of construction supplies to the Land continued after Garnham J's order.

    iii) As matters stand, the Land has no utilities: no electricity, no sewage and no water provision. In circumstances in which any final resolution of the planning dispute is likely to take many months, it seems to me unlikely that if the Defendants are allowed to remain in continued occupation of the Land, there will not be attempts to improve the habitability of the Land over that period.

    iv) As I have stated, on the evidence before me, it is likely that to a significant extent, the vehicles and structures on the Land were brought onto the Land in knowing or calculated contravention of legal prohibitions. That raises a further risk that continued occupation of the Land will encourage further occupation by others.

45. In these circumstances, there is in my view a high risk that if the Second Order is not renewed, there will be irreversible changes to the Land which and not capable of being compensated in damages. However, that of itself is not determinative in the Council's favour. It provides evidence of a strong public interest which the Court must take into account, but the Court must balance that interest with the Defendants' competing interests.

The personal circumstances of the Defendants

46. The evidence of the Defendants is that there are a number of children currently residing on the Land, and that a number of adults who currently reside there suffer

from poor health. I will not set out the personal details of each of the Defendants or their families but in summary:

i) One Defendant suffers from illness and was recently admitted to hospital. Her father, who lives with her, is also seriously ill. She has five children aged 5 to 17, one of whom has asthma.

ii) Another Defendant is ill and cannot look after himself. His daughter, lives with him, together with three grandchildren. His daughter has poor health, as does one of his grandchildren.

iii) Another Defendant is in poor health, and lives with his partner and five children aged 9 to 19, and his goddaughter (who has poor health).

iv) Another Defendant lives with four children aged 7 to 17, one of whom is in poor health.

v) Another Defendant has children aged 7 months to 11 years, one of whom requires 24-hour care.

vi) Another Defendant lives with three young children, ages 3 to 14.

47. In addition, the Defendants have given evidence that before moving onto the Land, they were living "roadside", and suggested that the consequences of renewing the Second Order will be to force them to do so again. In summary:

i) Three Defendant are currently on another site which is over-crowded.

ii) Six of the Defendants have been living roadside or on friends' sites or unauthorised sites.

iii) One Defendant had been staying on a temporary site which was over-crowded.

iv) One Defendant has been staying at a plot in Hovefields Lane.

48. In this context, the Defendants point to the risks during the pandemic of staying at over-crowded sites.

49. The Defendants submit that in its rush to prevent development on the Land, the Council has not provided adequate information to the Court as to any consideration of relevant matters, and in particular:

i) The level of unmet need for such sites in its area.

ii) The extent to which policy may have changed since the last injunction was granted in respect of the Land in 2006.

iii) The availability of alternative accommodation for the Defendants.

iv) The consideration of the interests of the children who are currently living on or intend to resort to the site, or other vulnerable individuals in this category.

50. I have considered this submission carefully. However, it is necessary to keep two things in mind:

    i) First, the speed and scale of the Defendants' actions with regard to the Land has required the Council to act at great speed in order to preserve the status quo during a period in which the planning applications now filed will fall to be considered.

    ii) Second, the Defendants have done little to assist the Council in making an informed decision. The Council has been refused access to the Land without a warrant, and effectively chased off the Land on one occasion. The Defendants have provided almost no information to the Council outside of that served in the course of the injunction proceedings. Although those statements were prepared on 4 December 2020, they were only served on the Council in the afternoon of 7 December 2020, the day before this hearing.

51. Having done so little to assist the Council in making an informed assessment, and refrained from offering any explanation until the eleventh hour, the Defendants are not well-placed to invite the Court to be sceptical as to the quality of the Claimant's decision-making. The Council's position, on instructions before me, was that the relevant officials have considered the statements, and having done so, remain of the view that it is appropriate to seek the continuation of the Second Order. On the material available before me, I am not in a position to say that that decision, which is one for the Council, can at this stage be said to fall outside the range of reasonable decisions.

52. However, while it is for the Council to decide whether to seek to continue the Second Order, it is for the Court alone, exercising its original jurisdiction, to decide whether or not to grant it. I am concerned by the Defendants' evidence as to the number of children living on the Land, the health issues facing a number of those in occupation, and the risk that continuing the Second Order may force them into a "roadside existence". However, I should also record the following matters:

    i) It is far from clear that the Land is capable of providing the stable base which the Defendants say they want for their children. As I have indicated, any occupation of the Land is highly legally precarious, and must have been known to be so when the Defendants moved in.

    ii) The conditions on the Land in terms of utilities and amenities is very poor and will remain so if the First Order is complied with. While Mr Grant said on the instructions that the Defendants regard the Land in its current condition as preferable to the other alternatives, I must approach that statement with caution, given that the context in which the issue was raised would have provided a strong incentive to that answer.

    iii) The evidence that the Defendants would be forced to live a "roadside" existence is not wholly compelling, given the recognition that there are other sites, or friends' sites, where the Defendants have lived or in some cases are currently living.

iv) There was no real evidence linking residence on the Land with the health or education needs referred to, or to explain why (considerations of over-crowding apart) living at the Land as opposed to elsewhere would materially assist on those issues.

53. In summary, I accept that being forced to leave the Land will involve prejudice to the Defendants, but the evidence as to the extent and duration of that prejudice is less clear.

The exercise of my discretion

54. The prior planning history of the Land, and in particular the steps consistently taken by the Council over time to preserve its Green Belt character, are one factor which points in favour of an injunction (Porter, [20] citing Simon Brown LJ in the Court of Appeal at [38]).

55. Another relevant factor, identified in the same passage in Porter, is the fact that "preventing a gipsy moving onto the site might … involve him in less hardship than moving him out after a long period of occupation". In his submissions, Mr Grant accepted that if the Defendants had yet to occupy the Land, then their interest in doing so was unlikely to be sufficient to outweigh the public interest which the Council is seeking to protect through the Second Order. However, he submitted that it made all the difference in this case that the continuation of the Second Order seeks to reverse the status quo as it existed at the return date.

56. I accept that it is often relevant when determining whether to grant an interim injunction to consider whether the injunction will preserve, or alter, the status quo pending trial. However, in this case, the status quo which the Defendants seek to preserve is not that which existed when the First Order was obtained on a "without notice" basis from Garnham J and served at the Land (at which stage I have concluded that, at best, there were two to three caravans on the Land), still less when the Second Order was obtained on a "without notice" basis from Cutts J. Further, I am satisfied that all of the mobiles homes were moved onto the Land after the Defendants were aware of the Enforcement and Stop Notices and been advised to obey them, and that the Defendants deliberately sought to effect permanent changes to the Land to turn it into a residential caravan site before the Council had an opportunity to respond. In these circumstances, I have concluded that little, if any, weight can be accorded to the state of occupation at the return date, which resulted from a combination of deliberate contravention of the Council's notices and the Court's orders.

57. In the course of his oral submissions, Mr Grant appeared to be suggesting that the "without notice" orders had been improperly obtained, and therefore the Council could not rely upon them in the context of an argument as what the appropriate status quo was. This argument had not featured in Mr Grant's skeleton argument. When pressed, Mr Grant submitted that the Council had wrongly closed its mind to any planning application by the Defendants, by reason of irrelevant and/or improper considerations. He relied in this regard on a message which the leader of the Council had posted on a personal social media page, after both the First and Second Orders had been obtained, which commented on the legal steps the Council had taken, and included language which the Defendants say insulted and upset them, and in which certain stereotypical assertions about the traveller community featured.

58. I fully understand the Defendants' reaction to the language in that communication. However, it was sent after both orders had been made. It was a communication by the political leader of the Council. There is no material before me which suggests that the attitudes referred to in the communication were in any way shared by the officers of the Council who are and have been responsible for the exercise of the Council's planning powers and responsibilities in relation to the Land, or in any way influenced their decision-making, and Mr Beglan assured me on instructions that they had not. In these circumstances, I see no grounds for impugning either of the First or Second Orders on this basis. I would note that the Defendants do not oppose the continuation of the First Order, something inconsistent with the belated suggestion that those Orders should not have been sought (or perhaps made).

59. For these reasons, I have concluded that it is the continuation of the Second Order which would best protect the status quo as it prevailed before the accelerated and extensive programme of unlawful development work began on 28 November 2020. In any event, even if I had accepted Mr Grant's submission, the duration of occupation of the Land would have been minimal, and it was at all times legally precarious. These are significant factors when considering the Defendants' Article 8 rights, as Freedman J noted in Surrey Heath BC v Robb [2020] EWHC 2014 (QB), [31].

60. In addition, I cannot ignore the fact that the current occupation of the Land appears to have formed part of a particularly flagrant breach of planning controls, and an attempt to flout the planning control system through the large scale operations which began over the weekend, and continued in breach of court orders the following week. It is clear that the flagrancy of the breach is something which the court can take into account in determining whether injunctive relief is appropriate. In Porter, [20] Lord Bingham cited with approval Simon Brown LJ's statement in the Court of Appeal at [38] that the "flagrancy of the postulated breach of planning control may well be critical".

61. In these circumstances, it would take a particularly compelling case of prejudice to the Defendants from the making of the order before the Court could even begin to countenance a decision which would permit the Defendants to retain the advantages they had impermissibly obtained in this way, and the Court would have to be mindful of the message which such a decision might send to those with strong feelings of dissatisfaction as to the operating of planning controls by their locally elected bodies. However, as I have explained, this is not such a compelling case.

62. For these reasons, having regard to the competing public and personal interests in play, I have concluded that it would be proportionate on the facts of this case to continue the Second Order. I will hear from the parties as to the precise terms of the Order.

POWER OF ARREST

63. The Council seeks to attach a power of arrest to the First and Second Orders. Under s.27 of the Police and Justice Act 2006, a power of arrest may be attached to any provision of an injunction which prohibits conduct which is capable of causing a nuisance if the court considers that the conduct includes the use or threatened use of violence and there is a significant risk of harm to a relevant person.

64. In this case, the Council complains of conduct which is capable of causing a nuisance or annoyance (which includes the work on and unlawful occupation of the Land) and complains of threats of violence. I have referred to the evidence of Mr Cummins, Ms Lyons, PC Hadlow and PS Shelton when setting out my provisional findings above.

65. With the exception of Mr Collins, the Defendants all deny making any threats and say they were not involved in any behaviour of this kind. Mr Collins admits he became angry during the Council's visits to the Land. He has offered, through Mr Grant, an undertaking not to engage in threatening, abusive or harassing behaviour. I would note, however, that that is simply an undertaking to comply with obligations which arise in any event under the general law, and any attempt to enforce that undertaking would require proceedings for committal for contempt, something which would take some time.

66. Against the background of the prior threats and aggressive behaviour, and in a dispute in which feelings understandably run very high, I am satisfied that there is a significant risk of harm to the officers of the Council or the police service in discharging their functions in relation to the Land, including enforcing the First and Second Orders, and that this makes the inclusion of a power of arrest within the Orders necessary.

CONCLUSION

67. I am conscious that this decision will come as a blow to the Defendants. If the Land is to become a stable base for the Defendants and their families, that will need to be achieved through the proper operation of the planning control procedures. The Council will now need to consider the Defendants' planning applications, in accordance with the legal duties referred to above, and informed by the evidence the Defendants have filed in these proceedings. If the applications do not succeed, the Defendants have made it clear that they will exercise their right of appeal to the Secretary of State.