Neutral Citation Number: [2024] EWHC 2064 (KB)

Case No: KB-2024-001199

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/08/2024

Before :

DUNCAN ATKINSON KC (Sitting as a Deputy High Court Judge)

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Between :

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD	**Claimant**
- and -	
(1) CHARLES SNELL	**Defendant**
(2) DAVID SNELL	
(3) STEPHEN MAY	
(4) ABDELLAH TAYEB (AKA CASTRO)	
(5) PERSONS UNKNOWN	

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Francis Hoar (instructed by **London Borough of Enfield**) for the **Claimant**
The defendants were not represented

Hearing date: 12 JUNE 2024

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Approved Judgment

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DUNCAN ATKINSON KC

Duncan Atkinson KC (Sitting as a Deputy High Court Judge):

INTRODUCTION

1. The Claimant is a London local authority and the freehold owner of land, traversed by a stretch of the River Lea, which is the subject of the Merdian Water Regeneration Project. The Claimant has a contract with Vinci Construction UK Limited, which operates through Taylor Woodrow, for what are described as essential preparatory works and development of the river embankment for the purposes of the Meridian Water Regeneration Project. This includes the clearing of the embankment and related construction works abutting the river. These particular works had a contractual commencement date of 6 December 2023.

2. On 18 April 2024 the Claimant filed a Part 8 claim in trespass and nuisance and to prevent alleged anti-social behaviour. There were five named Defendants. The Sixth Defendant was persons unknown. In terms of the named Defendants:

   (a) The Second Defendant, David Snell, is the father of the First Defendant, Charles Snell. David is 64. Charles is 29. They have been living on a narrow long boat on the relevant stretch of the River Lea for several years.
   (b) The Third Defendant, Steven May, was said by the Claimant to have had a narrow long boat moored on the relevant stretch of river. However, relief is no longer sought against him, as it is accepted that he is no longer in residence.
   (c) The Fourth Defendant, Abdellah Tayeb (or Castro) also has a boat which the Claimant says is currently moored on the relevant stretch of river. He has a number of dogs.
   (d) The Fifth Defendant, Michal Wujek, is living in a structure on the relevant land which he calls a shed. He has been doing so for at least eight months. He too has a number of dogs.

3. On 21 May 2024, Hir Honour Judge Auerbach, sitting as a Judge of the High Court, granted the interim relief sought against the four named Defendants in respect of whom it was at that time sought (namely David and Charles Snell, Abdellah Tayeb and Michal Wujek). Each was required to give up their occupation of the Claimant's land by the end of 12 June 2024. The case of the named Defendants was listed before me on 12 June 2024 to address an application for a further injunction order in the same terms, effectively in renewal of the order made on 21 May, as the named Defendants have not ended their occupancy of the Claimant's property.

4. On 21 May His Honour Judge Auerbach did not make any order against persons unknown because at that time it was accepted by the Claimant that service had not been affected in accordance with the Court's earlier direction, to which I will return. The case in this regard was listed before me on 12 June to consider the Claimant's application for interim relief against persons unknown, including not only unidentified persons already occupying the Claimant's land but also newcomers who might be affected by the Order sought at a subsequent date.

5. At the conclusion of the hearing on 12 June I granted the applications both to renew the existing interim injunction order against the named Defendants and to grant an

interim order against persons unknown. I said that I would reserve judgement as to the reasons for that decision. This is that reserved judgement.

THE BACKGROUND

6. The Claimant's land to which these applications relate is demarcated on a plan annexed to the interim injunction order. The Claimant provided a statement from Karen Maguire, dated 18 April 2024, to accompany their claim and application. Karen Maguire is the lead officer for trespass and encampment who thus has had dealings with the Meridian Water Regeneration Project. She records that the project has a gross development value of £6billion and will involve the building of 10,000 new homes. The named Defendants have all residing in the area that is to be cleared by Taylor Woodrow as part of, and in preparation for, these works. On 11 January 2024 she asked for letters and notices to be served on the named Defendants and on 2 February 2024 the Canal and River Trust ('CRT') placed a mooring suspension notice on the relevant part of the River Lea.

7. On 18 April 2024 the Claimant filed a Part 8 claim in trespass and nuisance and to prevent alleged anti-social behaviour. There were five named Defendants (including Stephen May, who is no longer a party to these proceedings). The Sixth Defendant was persons unknown.

8. There was a hearing in respect of that application, before Rory Dunlop KC, sitting as a Deputy High Court Judge, on 1 May 2024. There was by that time before the Court also a further statement from a process server, Aron Graves, of 25 April 2024, indicating what steps had been taken with a view to bringing documents relating to the claim to the attention of the Defendants. Mr Hoar of counsel appeared at that hearing for the Claimant, as he did on 12 June. The Second and Fifth Defendants appeared in person. There was no attendance by, or appearance for, the other Defendants on that occasion, although Mr David Snell spoke on behalf of his son, Charles, as well as for himself.

9. The judge announced that he was adjourning the application part heard to a date between 14 and 17 May 2024. A reserved judgment was handed down on 3 May 2024 and the judge's associated order , which included further directions for the adjourned hearing, was sealed on 7 May 2024. The reasons for the adjournment are relevant to the present applications.

10. First, the judge was not satisfied that the Defendants had had sufficient notice of the application to provide a fair chance to be heard, where there was sufficient justification for proceeding without proper notice. There was a letter before the judge from the Community Law Partnership ('CLP') referring to the Second Defendant, David Snell, as their client and indicating that legal aid funding was being sought. The Fifth Defendant, Michal Wujek indicated that he was also considering instructing CLP. Both Defendants sought an adjournment.

11. The judge made specific direction in his order setting out the means by which service was to affected on persons unknown, pursuant to CPR 6.15(1). In short, he directed that the application and evidence bundle be affixed to any vehicle, vessel and/or encampment on the relevant part of the Claimant's land. It was in part because this

direction had not been complied with in relation to service on persons unknown that His Honour Judge Auerbach did not consider the application relating to such persons at the adjourned hearing on 14 May.

12. Secondly, Rory Dunlop KC adjourned the case on 1 May because he sought clarification and explanation of the figures given in Ms Maguire's witness statement. At paragraph 3 Ms Maguire stated that abridgment of time for service was necessary because of a fear "*that if this application is not proceeded with immediately there will be at least 21 days before the Claimant is able to obtain the relief they seek against the Defendants and in that time the Council will face financial penalties of around £142,000 per week and there is a risk of significant damage could be sustained to the locations that the proposed Order seeks to protect* …". She also provided a breakdown of those figures at paragraph 32. At paragraphs 40 and 41 of his judgment ([[2024] EWHC 1061 (KB)) the judge noted that he had been told that the Claimant had not yet incurred any financial penalties, as the mitigation, by way of fencing that had been put in place by Taylor Woodrow around the area being occupied by the Defendants, had so far been effective. The judge said that he was very troubled by this, as he could have been misled into believing that the Claimant had already been paying penalties at the rate of £142,000 since the issuing of the claim.

13. He gave directions for further evidence to be produced about this aspect for the adjourned hearing. That further evidence was served before the hearing on 14 May, before His Honour Judge Auerbach. It included a second witness statement of Ms Maguire, dated 7 May 2024, and a statement of Rauf Iqbal, Strategic Infrastructure Works Construction Programme Manager, also of 7 May 2024. The further statement of Ms Maguire addressed the steps that the Claimant had taken to address the housing needs of the named Defendants, and the statement of Mr Iqbal provided the sought clarification and explanation of the figures set out in Ms Maguire's first statement. Mr Iqbal's statement, and the exhibits thereto set out further detail about the risk that the Claimant may have to pay contractual compensation in the terms she had set out. This further evidence was found by His Honour Judge Auerbach to be important to the issue of the impact to the Claimant if the relief sought was not granted.

14. At the hearing before His Honour Judge Auerbach on 14 May Mr Hoar of counsel once again appeared for the Claimant. The Second Defendant, David Snell, and the Fifth Defendant, Michal Wujek, each again appeared in person. David Snell was again also appearing on behalf of his son, Charles Snell. Mr Snell, who was still unrepresented, did not apply for an adjournment. Mr Wujek did, both because he was still unrepresented and because of issues that he had with English not being his first language. In that regard, the judge found (at paragraph 23 of his judgment) "*I considered that Mr Wujek had, taking account of the first postponement, now had a fair opportunity to obtain legal representation. His command of English is excellent – he had expressed himself fluently and articulately to me. Any issues about service could be considered by me as part of my overall consideration. His being a litigant in person was not, as such, a reason not to proceed. I would make appropriate allowances for that. He could put in any documents he had brought with him on which he wished to rely. If I granted an injunction I would allow time to comply.*"

15. Following that hearing, for reasons set out in his reserved judgment ([2024] EWHC 1206 (KB)), the judge granted the interim junction sought against the named

Defendants, and adjourned consideration of any further direction in relation to those defendants and interim relief sought against persons unknown. It is those adjourned matters that were aired before me on 12 June. Given that the evidence and law relevant to the further interim injunction sought against the named Defendants before me is the same as that considered by His Honour Judge Auerbach I shall refer to his findings as I address the relevant issues below. I should made clear that I have not taken his consideration of the evidence, being findings in support of the granting of interim relief only, as definitive findings of fact. Rather, I have re-considered the evidence for myself and the decision I have reached is based on my own assessment of the evidence, albeit informed by his review of that same material.

SERVICE

16. Statements as to service were provided by Aron Graves dated 25 April 2024, Frederick Chatfield dated 10 May 2024, Jonathan Chatfield, dated 3June 2024, and David Shaw, dated 6 June 2024. By reference to those statements, and the exbibits attached thereto, I am satisfied that sufficient steps have been taken to affect service both on the named Defendants and persons unknown of the claim form, application notice, witness statements in support and the orders made on 1 and 21 May 2024. In particular, the directions as to service by the alternative method specified by Rory Dunlop KC in his order of 1 May have been complied with. In addition, the Claimant confirmed that they had emailed a copy of the hearing bundle and the skeleton argument for the hearing on 12 June to the National Bargee Travellers' Association ('NBTA'). An email had been sent from the NBTA to Ms Maguire of 9 February 2024 written expressly on behalf of Mr Snell, referring to the suspension notice that had been delivered to his boat in relation to the suspension of mooring on the relevant stretch by the CRT from 7 February 2024. This suggested that the NBTA had an interest in the application, and they were thus afforded the opportunity to attend to assist the named Defendants and/or to make submissions on behalf of persons unknown if that considered that appropriate.

MATTERS RELATING TO THE NAMED DEFENDANTS

17. At the hearing on 12 June, there was no attendance by or on behalf of the NBTA. The only named defendant to attend was Mr Wujek, the Fifth Defendant. I was informed by Mr Wujek, and accepted, that the Second Defendant, David Snell, was unwell and thus unable to attend, as he had on previous occasions, to speak on behalf of both himself and his son, the First Defendant. He also informed me that the Third Defendant, Abdellah Tayeb, was unwell. I therefore considered the submissions that had been made by or on behalf of the other Defendants at the earlier hearings, and especially that on 14th May, in approaching the Claimant's application for a further or renewed interim injunction against the named Defendants.

18. At the hearing, Mr Wujek informed me that he was still in the process of obtaining representation from the Community Law Partnership ('CLP') but that there had been issues in relation to paperwork which had delayed this. He also said that the lawyer that he was liaising with had told him that he was too busy at present to deal with the case before the hearing on 12. I did not understand Mr Wujek to be seeking to adjourn the hearing on this basis. Had he done so, in accordance with the approach adopted by His Honour Judge Auerbach (at paragraph 23 of his judgment), I would have refused the application. I am satisfied that Mr Wujek has had a fair opportunity to obtain legal

representation, indeed the period since 14 May has represented a further such opportunity since that already identified by His Honour Judge Auerbach at that time.

19. The lawyer at CLP with whom Mr Wujek had spoken had also informed Mr Wujek that he was entitled to the services on an interpreter and Mr Wujek made an application for the hearing to be adjourned for that purpose. He explained that he had a good understanding of English, and the ability to communicate well in English, but that legal terminology was beyond him, and it was in that regard that he considered that an interpreter would assist. I considered this application with care. It is clearly important that any defendant, and in particular an unrepresented one, both understands the proceedings and is able to make any representations or submissions to the Court that they wish both fully and to their best advantage. I share Judge Auerbach's assessment that Mr Wujek has an excellent command of English, and he was able to express himself fluently and articulately to me, as he was on 14 May. Moreover, I note that his reason for wanting an interpreter was to assist him with legal terminology and its implications. That is properly the role of a lawyer not an interpreter, and I have already explained why I would not have adjourned the hearing for a lawyer to represent Mr Wujek. In my discussions with Mr Wujek at the hearing, I was confident that no terminology obscured his ability to understand and address the issues that fell to be decided on 12 June.

20. The evidence from Ms Maguire (in her second statement and the correspondence that she exhibits thereto) shows, and Mr Wujek agreed, that he has been referred to the Claimant's STEPS programme, which provides support for obtaining training and employment. He has also made an application for Universal Credit. He has three adult dogs and at least one puppy. Mr Wujek explained to me, as he had at previous hearings, that he has depression and bipolar disorder and wants to keep his dogs because he says they are essential to his mental well-being. Ms Maguire states that Mr Wujek has been advised that he can make a homeless application but has so far not done so, because he is concerned that he will be parted from his dogs. Her evidence outlines her efforts to find an organisation that is willing to take the dogs. There are ongoing enquiries being made to find a social landlord who might take him with the adult dogs. At the hearing on 14 May, a further email of 8 May was provided which indicated that a flat had been found which could accommodate the dogs, Mr Wujek reported that he had rejected the offered flat because it involved a move to South London and the garden attached to the flat, and the flat itself, were too small for the dogs. In this regard, Mr Hoar submitted, and I accept, that the local authority was required to assist Mr Wujek with accommodation but this did not have to be located within their Borough, and that whilst efforts were made also to accommodate the dogs this was beyond the ambit of their legal obligations.

21. Mr Wujek had told the Claimant at one point that if possible he would wish to return with the dogs to live in Poland. Ms Maguire says that the Claimant looked into this but ascertained that transporting the dogs would not be possible. Mr Wujek explained to me that he had a house in Poland to which he could move with the dogs, but that the necessary preliminary steps for such a move, such as vaccinations for the dogs, had not been completed. Indeed, it became clear that he had not started on such steps because he considered the move to Poland a last resort. He wanted to remain in the UK, and had work here. Mr Wujek made a number of wider ranging criticisms of the Claimant and of the way that the site was being secured. In this context, he described the activities of unknown third parties who were fly tipping at the location, and to others who had also lived there in the past, for example a gentleman called Martin who had lived both in a

tent and a boat on the site, the latter having sunk more recently.

22. By reference to the evidence provided by Ms Maguire, and the representations made at earlier hearings by David Snell, it is clear that the Claimant has agreed with the CRT's proposal to move the boat occupied by the First and Second Defendants (the Snells) to any of three proposed designated mooring locations elsewhere on the River Lea Navigation System, at the Claimant's cost. They were advised of the latest position in an email of 15 April 2024 and asked which of the three options they preferred. In an email of 20 April 2024 David Snell described his and his son's health conditions and set out their particular reasons for objecting to the new locations to which the Claimant had proposed that their boat be moved. He referred to an email that he had sent to a Councillor in February 2023. He stated that they are willing to move to housing but set out their particular requirements and referred to reasonable adjustments under the Equality Act 2010. I have considered, and agree with the analysis of the application of that Act by His Honour Judge Auerbach (at paragraphs 72-74 of his judgement).

23. Ms Maguire's evidence demonstrates that the Snells have been told what they need to do to make a homelessness application, and there is an email of 2 May from Ms Maguire to her colleagues in the Housing Advice Service raising their case as a housing application, identifying in summary their health issues, and providing the contact email that she has for David Snell. She also recorded that by the date of her second statement no formal application or supporting evidence can be found on the Claimant's systems. That accords with David Snell's representations on 14 May, to the effect that he had not made an application, with the necessary supporting information and evidence, so as to enable the Claimant's relevant team to assess their need including whether they have a priority need. He said at that hearing that he did not believe that the Claimant would be able to offer suitable housing for him and his son. The statement of David Shaw relating to the service of the order of 14 May on the First Defendant, and the accompanying photograph, suggest that he has returned to live in the boat shared with his father.

24. On the information before me, confirmed by Mr Wujek at the hearing, it appears that the Fourth Defendant, Abdellah Tayeb (or Castro) also still has a boat currently moored at the site. He owns a number of dogs which are with him. Mr Maguire in her first statement described him as compliant with requests to move, although he had not done so by the time of the hearing on 14 May and it was the agreed position of the Claimant and Mr Wujek that by the time of the hearing on 12 June that he had still not done so.

25. Mr Wujek told me that those who are working on site were not doing any work where his shed, or for that matter the boats occupied by the other named Defendants, were located. I note David Snell made a similar observation on 14 May. However, the evidence before me plainly shows that the Meridian Water project covers this location, and the evidence makes clear that clearance and construction works need to take place along the relevant stretch of the waterway.

THE CLAIMANT'S STANDING AND THE STRENGTH OF ITS CASE

26. I have been provided with a draft injunction order which addresses both the named Defendants and persons unknown. In relation to the named Defendants, the focus of the application and evidence presented is on the basis that the Defendants are trespassing and/or that there is nuisance deriving from the trespass. In relation to persons unknown,

the application and evidence also seek to establish that additional relief through a prohibition on fly tipping, anti-social behaviour and nuisance. There are other considerations that are specific to the latter injunction directed to persons unknown to which I will return.

27. Before I can entertain either application of interim injunctive relief, I must first be satisfied that the Claimant has the power to institute the application that it makes and I should evaluate the strength of the evidence in support of the Claimant's case, applying a higher standard than that of "serious question to be tried" deriving from *American Cyanamid v Ethicon Limited* [1975] UKHL 1; [1975] AC 396.

28. Section 222 of the Local Government Act 1972 confers upon a local authority the power to institute civil proceedings in its own name, where the authority considers it 'expedient for the promotion or protection of the interests of the inhabitants of their area'. The Claimant considers it expedient here for such purposes to institute proceedings for the relief sought and to protect its land from trespass. In *Richmond London Borough Council v Trotman* ([2024] EWHC 9 (KB)), His Honour Judge Blair KC, sitting as a judge of the High Court, found that a local authority that owns the riverbank '*has the necessary legal standing to bring proceedings in its own name for the protection of the interests of the inhabitants of its area in a claim for an injunction to prevent a public nuisance'* (at paragraph 55). I am satisfied that the Claimant has the necessary legal standing to institute this claim, and, on the evidence, is doing so because it considered it expedient to promote or protect the interests of the inhabitants of the area.

29. Moreover, in accordance with the approach in *Trotman,* the evidence provided demonstrates the Claimant also to have standing to bring this claim as a landowner. The land in question extends to parts of the River Lea abutting the Claimant's land on the banks of the river. The River Lea is a non-tidal river. As such, the riparian owner of both banks of a relevant stretch of the river owns the river bed, and has the right of access to and egress from the water.

30. In *Ackerman v London Borough of Richmond* [2017] EWHC 84 (Admin), it was held that the permanent mooring of a boat which obstructed free access from the land to the river constitutes both a private and a public nuisance. There, Beatson LJ found (paragraph 28) that '*in my judgment it was legitimate for the respondent to regulate the way in which the appellant and others occupy the river bank, land held for the benefit of the whole community, to the detriment of other uses of the land and river bank*'. In the recent judgment of *Royal Borough of Kingston v Salzer* [2022] EWHC 3081 (KB), which concerned repeated breaches of mooring byelaws and trespass on a local authority's land abutting the River Thames, Jeremy Hyam KC, sitting as a Judge of the High Court, set out, at paragraph 20, that the claimant local authority had the proprietary right, through its leasehold and other interests, to prevent mooring by land in which it held those interests.

31. As His Honour Judge Auerbach found (at paragraph 41 of his judgement): "*A distinction must be drawn between boats which may stop temporarily in the course of navigating along the river, and those which are not just, as it were, passing through. In relation to the latter, the unauthorised attachment of a boat by mooring to the Claimant's land will constitute a trespass, as will a material stationing of the boat, even if not by physical mooring to the land (such as by mooring to a post standing on the river bed)."*

32. Ms Maguire's evidence shows that the Claimant became aware of the occupation of the boats and land by the named Defendants during the course of the clearance works for the Meridian Water Regeneration Project. None had sought or obtained permission to reside there. Mooring on the relevant stretch of the river was suspended by the CRT on 7 February 2024, and notices to that effect were posted. The email from the NBTA of 9 February 2024, to which I have already referred, makes clear that this notice was drawn specifically to the attention of the First and Second Defendants. The CRT deems the continued presence of the unauthorised vessels on this stretch of the river to be a nuisance. I am satisfied that the evidence before me, taking fully into account that which was said by Mr Wujek on 12 June and what had been said both by him and by the Second Defendant, David Snell, at earlier hearings, establishes that the named Defendants were, and are properly characterised as trespassers.

33. In *Salzer*, Jeremy Hyam KC considered (at paragraph 35) "…*whether, in defence to injunctive proceedings brought by the Council he was, through his evidence essentially arguing that the Council had acquiesced in his past conduct such that it would now be unconscionable for the Council to insist on its strict rights of enforcement against him*." He concluded (at paragraph 57) that "*Given the long history of overstaying, or more colloquially "squatting" on council moorings I consider that the grant of injunctive relief to restrain future repetition, in circumstances where it has been sought by the Council as a remedy of last resort, is an entirely proper exercise of discretion for the Court*." Adopting a similar approach here, given that the Claimant took steps to address the occupancy of the named Defendants when it became aware of it, and the steps that it has taken since including the obtaining of injunctive relief on 14 May which has not resulted in the named Defendants relinquishing occupation, I am satisfied that there is no basis for concluding that there has been anything that would amount to acquiescence by the Claimant with respect to the continuing presence of any of the Defendants.

34. I have considered whether those conclusions are undermined or affected by the fact that some of the trespassers in issue lived on boats, or through the application of Article 8 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR').

35. The circumstances in which the occupier of a boat may defend a claim for an injunction preventing its mooring by a riverbank on the grounds that it was his home and that the injunction would be a disproportionate breach of his right to a private life pursuant to Article 8 were considered in *Salzer*. Express reliance was there placed (at paragraph 45) on the observations of Lord Neuberger as to the application of Article 8 in *Manchester City Council v Pinnock [2011] UKSC 45* ; *[2011] 2 AC 104* , which concerned possession proceedings against a local authority tenant, Lord Neuberger, for the Court, concluded at paragraph [61]: "*First, it is only where a person's "home" is under threat that article 8 comes into play, and there may be cases where it is open to argument whether the premises involved are the defendant's home (e.g. where very short-term accommodation has been provided). Secondly, as a general rule, article 8 need only be considered by the court if it is raised in the proceedings by or on behalf of the residential occupier. Thirdly, if an article 8 point is raised, the court should initially consider it summarily, and if, as will no doubt often be the case, the court is satisfied that, even if the facts relied on are made out, the point would not succeed, it should be dismissed. Only if the court is satisfied that it could affect the order that the court might make*

should the point be further entertained."

36. Against that background here, my conclusions are as follows:

(a) For the purposes of the present application, the boats occupied by the First, Second and Fourth Defendants (the Snells and Mr Tayeb) are their current homes, and the structure in which the Fifth Defendant, Mr Wujek, is living is also his current home. The combination of what was said by the Second and Fifth Defendants on 14 May and what was said by Mr Wujek on 12 June has raised an Article 8 issue, and I proceed on the basis that granting the relief sought would interfere with their Article 8 rights.

(b) That interference is to be viewed in the context that the Snells' boat can be moved. Alternative moorings have been identified and the Claimant will support the process.

(c) In the case of the Fifth Defendant, I accept Mr Hoar's submissions that Mr Wujek has long known that he did not have permission to live on the site, and the Claimant has sought to work with him to rehouse both himself and his dogs. In that context, and especially by reference to a relocation to Poland, Mr Wujek has not taken advantage of any of a series of opportunities to make arrangements.

(d) In the cases of each of the named Defendants, the Claimant has a statutory housing duty and has been encouraging them to engage with that process. While I appreciate that David Snell and Michal Wujek has each expressed concerns, I agree with His Honour Judge Auerbach (at paragraph 69) that "…*the statutory homelessness regime provides a fair and adequate mechanism, designated by Parliament, for evaluating and accommodating their particular needs and circumstances; and there would be other redress available to them, if, having for their part followed that process, they considered that the Claimant had not properly met its duties to them*."

(e) The Claimant is acting so as to vindicate its rights both as local authority and as property owner. There is a very strong, if not unanswerable, case that these Defendants are trespassers. Further, if I am satisfied that there is a significant risk of harm to the Claimant if relief is not granted (which I address below), it will be demonstrated that, in terms of the balancing exercise required for Article 8(2) purposes, the interference with their Article 8(1) rights in this case, by the granting of the relief sought, would be justified and not disproportionate.

37. Taking account of this analysis, and also very much taking into account the fact that the named Defendants have not abided by the requirements of the Interim Injunction Order made on 14th May, which I am satisfied was served on each of them, I am satisfied that the Claimant has a very strong, if not unanswerable, case that the continuing presence of all of the Defendants against whom it seeks interim relief, within the area in respect of which that relief is sought, is an actionable trespass, as well as a nuisance. Subject to the particular considerations that arise in relation to persons unknown, these conclusions also have implications for the injunctive relief sought against them.

THE IMPACT OF NOT GRANTING RELIEF

38. In relation both to the grant of interim injunctive relief, and the application of Article 8 in doing so, it is necessary to consider the prejudice to the various parties if the relied sought is or is not granted. In the case of the named Defendants, this will mean the loss of their present homes or the locations in which their homes are presently situated. I have already set out my conclusions in that regard.

39. In the case of the Claimant, this relates to the financial implications if the Meridian Water Regeneration Scheme is delayed or disrupted. It was this issue that particularly concerned the Court on 1 May, in the context of the potentially misleading aspects of Ms Maguire's statement. Like His Honour Judge Auerbach before me (from paragraph 58 of his judgement), I have therefore considered with care the evidence as to the consequences for the Claimant of the ongoing situation and the impact if the relief sought, and granted by the injunction order of 14 May, is now withheld. Again, these considerations are of direct relevance not only against the named Defendants but against persons unknown.

40. First, the evidence shows the timetable for the Meridian Water Regeneration Project to be as follows. The documents show that the start date was in December 2023. Access to the waterfront for works to make ready for the bridge construction was required from 28 February 2024. On 29 January 2024 Taylor Woodrow served an early warning notice under the contract referring to the presence of boaters and encampments on the bank. On 5 March 2024, the notification of compensation event was served. The steps hitherto taken by Taylor Woodrow are plainly by way only of partial mitigation to enable progress to be made pending full access being enabled. I am satisfied, against that chronology, that the continued presence of the named Defendants concerned, and for that matter the similar presence of other persons unknown, is disrupting, and will continue to disrupt, the progress of the works, and in particular the projected timetable.

41. Regarding compensation, the second statement of Ms Maguire, and in particular the witness statement of Mr Iqbal, shows that Taylor Woodrow had not by the time of the grant of injunctive relief on 14 May, claimed compensation in any specific amount. But the terms of the contract, and the 5 March 2024 notice, mean that the Claimant is on risk of such a claim. The figures given in Ms Maguire's first witness statement relating to the payment of financial penalties of around £142,000 per week, were an estimate of the potential weekly exposure provided by the project supervisor, AECOM. In addition, the Claimant faces the risk of other potential significant financial consequences in the longer term relating to funding arrangements, if this phase of the project does not progress or complete to the time. By way of example, if the project could not go ahead as planned, monies provided by central government might have to be reimbursed. I also accept that delays to the completion of the project would have a wider impact on the Claimant's citizens.

42. It is in that context that I have concluded that the Claimant is acting so as to vindicate its rights both as local authority and as property owner against those properly construed as trespassers. There is a significant risk of the harms that I have described if relief is not granted, and accordingly, in terms of the balancing exercise required for Article 8(2) purposes, the interference with their Article 8(1) rights by the granting of the relief sought is justified and is not disproportionate.

NEWCOMERS AND PERSONS UNKNOWN

43. The conclusions I have reached as to the Claimant's standing, the strength of its case, the impact on the Claimant were relief not to be granted and as to the balancing exercise under Article 8, ECHR all inform the approach to the further injunctive relief sought by

the Claimant against persons unknown. As Mr Hoar accepted this relates both to persons who may also have been trespassing on the site as at 12 June and newcomers who arrived on site after that date. This further relief was not addressed in detail on 14 May, because service had not yet been addressed. That position has now been remedied.

44. In *Wolverhampton City Council and others London Gypsies and Travellers and others* [2023] UKSC 47; [2024] 2 WLR, the Supreme Court considered whether and, if so. the circumstances in which 'newcomer' injunctions may be imposed. After a detailed and careful consideration of the competing arguments, potential issues and justifications for such orders, he Court concluded (at paragraph 167) that " …*there is no immoveable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case."* The Court also made clear (at paragraph 170) that such newcomer injunctions were not "constitutionally improper" and '*so far as the local authorities are seeking to prevent the commission of civil wrongs such as trespass, they are entitled to apply to the civil courts for any relief allowed by law*.'

45. In terms of alternative remedies, the Supreme Court specifically addressed the alternatives of possession orders against squatters (at paragraph 166), and the use of byelaws (at paragraph 172). In relation to the former, the Court observed that "…*the possession order works once and for all by a form of execution which puts the owner of the land back in possession, but it has no ongoing effect in prohibiting entry by newcomers wishing to camp upon it after the order has been executed. Its shortcomings in the Traveller context are one of the reasons prayed in aid by local authorities seeking injunctions against newcomers as the only practicable solution to their difficulties*." In relation to the latter, the Court said "*In our view the theoretical availability of byelaws or other measures or powers available to local authorities as a potential alternative remedy is not shown to be a reason why newcomer injunctions should never be granted against Travellers. Rather, the question whether byelaws or other such measures or powers represent a workable alternative is one which should be addressed on a case by case basis".*

46. The Court set out (at paragraph 167) that the granting of a newcomer injunction was "*only likely to be justified as a novel exercise of an equitable discretionary power*" in the following circumstances (referred to hereafter as the *Wolverhampton* principles):

    (i) *There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). …*

    (ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it …; and the most generous

provision for liberty (ie permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.

(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.

(iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.

(v) It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries."

47. In *Valero Energy v Persons Unknown & Bencher & Ors* [2024] EWHC 134, Ritchie J summarised the Supreme Court's guidance in *Wolverhampton City Council* in relation to the granting of injunctive relief against persons unknown and/or newcomers on either an interim or final basis, from paragraph 57. He endorsed that approach, by reference to that summary, in *High Speed Two (HS2) Ltd and another v Persons Unknown and others* [2024] EWHC 1277 (KB), (at paragraph 30). Ritchie J's summary of the guidance as to the matters that must be demonstrated, excluding the first four paragraphs which apply only to applications for summary judgment, is as follows:

Balance of convenience - compelling justification

(5) In interim injunction hearings, pursuant to American Cyanamid v Ethicon [1975] AC 396, for the Court to grant an interim injunction against a defendant the balance of convenience and/or justice must weigh in favour of granting the injunction. However, in PU cases, pursuant to Wolverhampton, this balance is angled against the applicant to a greater extent than is required usually, so that there must be a "compelling justification" for the injunction against PUs to protect the claimant's civil rights. In my judgment this also applies when there are PUs and named defendants.

(6) The Court must take into account the balancing exercise required by the Supreme Court in DPP v Ziegler [2021] UK.SC 23, if the PUs' rights under the European Convention on Human Rights (for instance under Articles 10(2) and 11(2)) are engaged and restricted by the proposed injunction. The injunction must be necessary and proportionate to the need to protect the Claimants' right.

Damages not an adequate remedy

(7) For the Court to grant a final injunction against PUs the claimant must show that damages would not be an adequate remedy.

(B) Procedural Requirements - Identifying PUs

(8) The PUs must be clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the Claim Form), and (b) clearly defined geographical boundaries, if that is possible.

The terms of the injunction

(9) The prohibitions must be set out in clear words and should not be framed in legal technical terms (like "tortious" for instance). Further, if and in so far as it seeks to prohibit any conduct which is lawful viewed on its own, this must also be made absolutely clear and the claimant must satisfy the Court that there is no other more proportionate way of protecting its rights or those of others.

The prohibitions must match the claim

(10) The prohibitions in the final injunctions must mirror the torts claimed (or feared) in the Claim Form.

Geographic boundaries

(11) The prohibitions in the final injunctions must be defined by clear geographic boundaries, if that is possible.

APPLICATION OF THE *WOLVERHAMPTON* PRINCIPLES

48. From the evidence served in support of the application, and taking into account all that I have heard and read from the earlier rulings of Rory Dunlop KC and His Honour Judge Auerbach sitting as Judges of the High Court, I am satisfied that the Claimant has standing as both local authority and landowner in relation to what can strongly be argued to be trespass on their land by persons unknown. Such persons have either occupied boats moored in the relevant part of the River Lea or have resided on the Claimant's land adjacent to the relevant part of the river. No such persons had any right to moor on the part of the river owned by the Claimant without its permission as landowner. No public right of navigation alters that position in respect of this non-tidal stretch of the river. Such persons have also, like those of the named Defendants occupying boats, interfered with that public right of navigation, and have prevented the Claimant, as riparian owner, from accessing its land. I am satisfied that the Claimant has a very strong, if not unanswerable, case that such persons are indeed trespassing, and causing a nuisance. The same analysis of the balancing exercise required for Article 8(2) purposes that I addressed in the context of the named Defendants would apply in relation to persons unknown who had occupied the site before the granting of interim injunctive relief. Such relief would be justified and not disproportionate.

49. The evidence, most graphically in the photographs exhibited by Ms Maguire, demonstrates that such persons have deposited large quantities of rubbish. This was, incidentally, confirmed by Mr Wujek by reference to certain of the photographs to which he took me. I am satisfied that the accumulation of large quantities of such waste has caused, and would continue to cause, a serious risk to public health, which the Claimant as local authority has a duty to address. The evidence further establishes that such persons have been responsible for anti-social behaviour.

50. The evidence of persons unknown occupying the site, and the activities of the named Defendants in having done so, establish a proper basis for concluding that newcomers are likely to seek to establish similar occupancy in the future, and to cause serious risk to public health through the further accumulation of waste. Similarly, by reference to the evidence of behaviour by persons unknown in the past, there is a proper basis for concluding that newcomers would be likely to cause a public nuisance, and be responsible for anti-social behaviour. By reference to the approach of the Supreme Court in *Manchester City Council v Pinnock*, there is no proper basis to assert that the Article 8 rights of any such newcomer would be engaged if they sought to establish occupation after the granting of any interim injunctive relief. Their connection with the area would

be fleeting, and their status as trespassers unanswerable.

51. As enjoined by reference to decision of the Supreme Court in *DPP v Ziegler* [2021] UKSC 23 (as referred to by Ritchie J in *Valero Energy* at para.57, paragraph 5), I have considered whether there is any likelihood that the rights of any newcomer under Article 11, ECHR might be engaged. I have seen no evidence that any of the trespassers in the defined Areas have been assembling or protesting about political or related matters; or for that matter protesting against the development itself. I am satisfied that those rights are not here engaged.

52. Moreover, I accept Mr Hoar's submission that barring trespassers who might be protesting against the development could be argued to be proportionate where the development has the planning consent of the local planning authority, which has thus gone through the required consultation and democratic exercise within the planning process. The balancing exercise that would be required under Article 11(2) would necessarily take into account the Claimant's contractual duty to deliver the development for the benefit of local residents and to prevent it from being delayed where the Claimant would be likely to face severe financial consequences that would affect its ability to deliver public services if such delay occurred.

53. I am satisfied, by reference to the evidence of Ms Maguire and Mr Iqbal, that the mooring of boats and other forms of trespass on the Claimant's land and/or in the relevant part of the river will create the likelihood of further delays in the infrastructure work being conducted pursuant to the Meridian Water Regeneration Project. Such delays, I am satisfied, would risk liability for hundreds of thousands of pounds per month in compensation and damages of tens of millions of pounds should the delay put the completion project in jeopardy. Such delays and such financial consequences would have a wider impact on the community for which the Claimant is responsible.

54. Applying the principles set out by the Supreme Court in *Wolverhampton City Council*, to those findings, I am satisfied that the narrow balance of convenience justifies an interim injunction against the current trespassers and against newcomers, and that it is just and convenient to do so. By reference to those principles, I should also make clear that:

    (1) I am satisfied that the Claimant has demonstrated, as at least strongly arguable a compelling need for the protection of civil rights in the locality which is not adequately met by any other available remedies. The Claimant has a lawful right to control those occupying on, or mooring adjacent to its land, to remove those barring that access, and to prevent the build-up of rubbish that risks public health. The Claimant has demonstrated a pressing need to prevent any further delay to the infrastructure work, thereby avoiding the onerous financial consequences that would otherwise flow. I am satisfied that no other remedy could provide the necessary protection for the engaged rights. I am also satisfied that the Article 8 and 11 rights of any newcomer are not engaged, and that, even if they were, the balance required would weigh overwhelmingly in favour of permitting the interference consequent on the relief sought by the Claimant. The injunction order is constrained by both territorial and temporal limitations in that the area to which it relates is clearly defined, and is an area within the scope of the Meridian Water Regeneration Project's works. The interim order will last until the trial hearing in this matter, but the order provides for application to vary and discharge on two

working day's notice.

(2) Procedural protection for the rights (including Convention rights) of those persons unknown who might be affected by the interim order are achieved not only through the provision for variation or discharge of the order on application, but by requiring that the Claimant publish the order, claim form, application notice, evidence in support, notification of the return date and notification of the right of any person affected to apply to set aside or vary the order on the four corners of the areas affected; and through a page of the Claimant's website. I have also directed that the order be drawn to the attention of the NBTA. I am also satisfied that the injunction order is set out in clear English and that the areas to which it relates are defined by the plan that was annexed to the interim injunction of 14 May and which I direct be annexed to this interim order.

(3) I am satisfied that the Claimant has complied in full with the disclosure duty which attaches to the making of a without notice application. In particular, despite the issues that had been raised on 1 May in relation to Ms Maguire's first statement, the evidence relied on by the Claimant does now address its legal ownership of the land, its relevant contractual relationships relating to the development of the land, the purpose of that development and the steps that it has taken to engage with identified occupiers and attempt to find them alternative accommodation. Having tested the matter with Mr Hoar, I have not identified any other disclosure that might affect the Court's assessment of the tests to be applied in applications for newcomer injunctions.

55. For all of these reasons, I am satisfied that it is just and convenient to renew the grant of the relief sought against the named Defendants and to grant the relief sought against persons unknown, including newcomers.

THE TERMS OF THE ORDER

56. At the hearing on 12 June, the terms of the draft interim injunction were considered. The order addresses first the named Defendants and then persons unknown. In relation to the named Defendants given that this is in effect a renewal of the interim order granted on 14 May, I do not consider it necessary to include a new delayed date by which the order should come into effect. The Defendants have now had, in my judgment, ample time to make arrangements for their onward movement given that the order made on 14 May did not come out of the blue. As His Honour Judge Auerbach observed, each had been aware "*for some weeks now that this day may well be coming."* They have also had the further time granted between the making of the order on 14 May and its prohibitions coming into effect. The Claimant will wish to consider how the prohibitions within the order are to be brought into effect as against any Defendant who is ill, or require further time to make arrangements to depart.

57. When the interim order was made on 14 May, His Honour Judge Auerbach removed the requirements included in the draft (paragraphs (d)-(f)), which related to fly tipping, anti-social behaviour and the causing of nuisance. He considered, rightly in my view that those sub-paragraphs were unnecessary "*as, on the evidence, they essentially address matters consequent upon occupation*". On the evidence, I am satisfied that those prohibitions are justified in relation to persons unknown and newcomers. There is

evidence that persons unknown have left considerable rubbish in the past, and there is real scope for newcomers leaving such waste, causing such nuisance or engaging in such anti-social behaviour even if they are on site only transiently. They may confront contractors and others working on site, or dump rubbish at the site whether or not they moor a boat there, for example.

58. The order includes directions to prepare for and secure the further and final hearing of the Claimant's application for an injunction going forward. The Court is able to accommodate a hearing in February 2025, and I have made directions for the service of any defence evidence, and any further evidence by the Claimant, with that date in mind. Such a timetable will also allow for any named Defendant to secure legal representations. Mr Wujek agreed that the timetable would give him sufficient time for these purposes. The order also addresses errors that had been made by the Claimant in the spelling of Mr Wujek's name.

59. Following the hearing on 12 June, at my request the Claimant produced a revised draft order with the relevant plan attached to it. The final wording of the order has, of course, been determined by me; and the finalised order, approved by me, has been sealed by the Court. The Claimant is responsible for its personal service.

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