IN THE HIGH COURT OF JUSTICE Claim No. KB-2024-001199

KING’S BENCH DIVISION

IN THE MATTER OF A CLAIM FOR A PROHIBITORY AND MANDATORY INJUNCTION

Hearing on 12th June 2024

B E T W E E N :

**THE MAYOR AND BURGESSES OF**

**THE LONDON BOROUGH OF ENFIELD**

Claimant

- and -

1. **CHARLES SNELL**
2. **DAVID SNELL**
3. **STEPHEN MAY**
4. **ABDELLAH TAYEB (A.K.A. CASTRO)**
5. **MICHAEL WUJEK**
6. **PERSONS UNKNOWN**

Defendants

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**SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT**

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*References to the hearing bundle are as, for example,* ***#35****.*

**INTRODUCTION AND SUMMARY**

1. This skeleton argument is filed on behalf of the Claimant local authority and freeholder, the Council of the London Borough of Enfield (‘**the Council**’), in support of its application for an interim injunction preventing Persons Unknown (‘**PUs**’) from trespassing on land it owns on the River Lea. This matter requires individual consideration as the order sought would apply not only to unidentified persons trespassing at the date of the order but also to newcomers who may be affected by it only after it is made. Consideration of this part of the Claimant’s application for interim relief has been adjourned until this hearing on 12th July 2024.
2. These proceedings were first issued on 21st April 2024 by a Part 8 Claim for a prohibitory injunction preventing the named Defendants and PUs from trespassing as set out above (**#3-5**). Filed with that claim was an application on a without notice basis (albeit on informal notice on the named Defendants) for an interim injunction to the same effect (**#6-9**). Rory Dunlop KC, sitting as a Deputy High Court Judge, did not grant that relief at the initial hearing on 1st May 2024 and adjourned consideration to a hearing on 14th May 2024 (Order at **#23-25**; judgment at **#26-33**). In that Order, DHCJ Dunlop KC provided that the claim form, application notice and evidence in support may be served on Persons Unknown by an alternative method, by affixing them on any vehicles, vessels and/or encampments on the Land identified on plans exhibited to Karen Maguire’s witness statement:
3. Following the hearing on 14th May 2024, for reasons set out in a reserved judgment, HHJ Auerbach, sitting as a Judge of the High Court, granted an interim injunction against the First, Second, Fourth and Fifth Defendants and adjourned consideration of further directions and interim relief against PUs to this hearing (Order at **#402-406**; judgment at **#407-419**). This was because (as the Claimant acknowledged on 14th May) service had not by then been affected on PUs in accordance with the first order (judgment of HHJ Auerbach, para 20, **#410**). It should be noted that relief against PUs was ‘no longer sought’ only at that hearing: the claim and application for that relief remain and have not been withdrawn and HHJ Auerbach made clear that the Claimant may ‘inform the court’ whether it is seeking ‘further relief against persons unknown’ for consideration at this hearing (para 81, **#418)**. This was the reason for a longer time limit, one which, it is respectfully submitted, is sufficient for consideration of interim relief against PUs.
4. The background facts are set out in the witness statement of Karen Maguire, dated 18th April 2024 (**#34-47**) and a paginated bundle of exhibits, to which she refers directly throughout (by reference to the internal exhibit pagination in the bottom right-hand corner, which remains visible in the hearing bundle **#48-325**).The claim and application had been brought on an urgent basis because the trespassers are preventing development work by Meridian Water (‘**Meridian**’), which puts the Claimant at risk of having to pay Meridian compensation of around £142,000 per week; and about which Meridian gave the Council notice on 7th March 2024. Ms Maguire sets out the areas to which the proposed injunction will apply (‘**the Areas**’) at para 8. Further evidence was served before the second hearing (on 14th May 2024) in the form of witness statements and exhibits by Ms Maguire dated 7th May (**#326-352**), addressing the steps that had been taken to address the housing needs of the named Defendants, and of Rauf Iqbal dated 7th May 2024 (**#353-389**), setting out further detail about the risk that the Council may have to pay contractual compensation to Meridian because of the trespassers.
5. The Claimant relies on the summary of the above evidence in the judgment of HHJ Auerbach (which necessarily does not amount to findings of fact, being findings in support of the granting of interim relief only) and for his findings on the law. At the first and second hearings, the Claimant relied on its skeleton argument dated 18th April 2024 (**#14-22**). It continues to rely on those submissions; and this skeleton argument addresses only the additional considerations that the court must take into account in deciding whether to impose a ‘newcomer injunction’ on PUs.
6. Service of the claim form, application notice, witness statement in support and the two orders of 1st and 21st May was effected on PUs, in accordance with DHCJ Dunlop’s order, on 31st May 2024 (see statement of service of Jonathan Chatfield, dated 3rd June 2024, **#420-426**).
7. The first skeleton argument set out the legal framework for the powers exercised by the Council in seeking this injunctive relief, the navigational and mooring rights on the River Lea and recent caselaw establishing that injunctive relief may be granted notwithstanding that trespassers may live in boats or makeshift dwellings, as may be the case here. It was submitted that the considerations in *American Cyanamid v Ethicon* ([1975] A.C. 396) are easily met and that the Court should grant an interim injunction in the terms sought.
8. The Court is referred to those submissions, which continue to be relied upon in respect of PUs. This skeleton argument addresses the additional considerations that the Court must take into account in deciding whether to impose newcomer injunctions, before addressing each of them by reference also to the *American Cyanamid* test.
9. In accordance with the guidance in recent caselaw (set out below) the Claimant has emailed a copy of the hearing bundle and this skeleton argument to the National Bargee Travellers’ Association (‘**the NBTA**’, <https://www.bargee-traveller.org.uk>) at [secretariat@bargee-traveller.org.uk](mailto:secretariat@bargee-traveller.org.uk), informing them of the hearing on 12th June 2024 and so allowing them an opportunity to make submissions on behalf of PUs potentially affected by the interim injunction sought. The Council suggests that the order directs the Council to advertise any injunction imposed on PUs, also in accordance with that guidance, by including a page on its website.
10. The Claimant will also seek the continuation of the interim injunction against all named Defendants save the Third Defendant, Stephen May, whom it understands has left the area.
11. For the avoidance of doubt, the Claimant does not seek to impose *on the named Defendants* the provisions of the draft injunction that were not imposed on the named Defendants by HHJ Auerbach, that is to say prohibitions on fly-tipping, anti-social behaviour and nuisance (compare the draft injunction sought at **#11** with the injunction imposed on 21st May 2024 at **#402-406**).Counsel to the Claimant agreed not to seek those provisions against the named Defendants at the hearing on 14th May only because that there was no reason to believe that they would engage in that behaviour once they had left the Area. However, the Claimant *does* seek those provisions against Persons Unknown, in summary: (a) in reliance on the evidence of considerable waste in the area left by unknown persons; (b) given the risk of confrontation between newcomers and contractors and others; and (c) because of the need to be able to enforce a prohibition on those specific activities and to do so against any person trespassing on that part of the river, whether or not they are mooring there or using other vehicles.

‘**NEWCOMER’ INJUNCTIONS**

1. The Supreme Court considered circumstances in which ‘newcomer’ injunctions may be imposed in *Wolverhampton City Council and others London Gypsies and Travellers and others* ([2023] UKSC 47; [2024] 2 WLR). The following exposition of the law by their Lordships is of general application:
   1. That:

166. Tempting though the superficial similarities may be as between possession orders against squatters and injunctions against newcomers, they accord no relevant precedent for the following reasons. First, they are the creature of the common law rather than equity, being a modern form of the old action in ejectment which is at its heart an action *in rem* rather than *in personam*: see *Manchester Corpn v Connolly* [1970] Ch 420, 428—9 per Lord Diplock, *McPhail v Persons, Names Unknown* [1973] Ch 447, 457 per Lord Denning MR and more recently *Meier* [2009] 1 WLR 2780, paras 33—36 per Baroness Hale JSC. Secondly, possession orders of this kind are not truly injunctions. They authorise a court official to remove persons from land, but disobedience to the bailiff does not sound in contempt. Thirdly, 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.

* 1. That an injunction against newcomers is only likely to be justified as a novel exercise of an equitable discretionary power if (at para 167):

(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). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority’s boundaries.

(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 (see paras 226—231 below); 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.

* 1. Newcomer injunctions are 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.’ (Para 170)
  2. That (at para 172):

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. We say more about that in the next section of this judgment.

* 1. The Court set down the following considerations as guidance to court’s asked to consider imposing newcomer injunctions (as summarised in the headnote of the Weekly Law Report of the case, altering the numbering to improve clarity):

…such an injunction was only likely to be justified as a novel exercise of the court’s equitable discretionary power if the applicant:

(a) demonstrated a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other available remedies (including statutory remedies),

(b) built into the application and the injunction sought, procedural protection for the rights (including Convention rights) of those persons unknown who might be affected by it,

(c) complied in full with the disclosure duty which attached to the making of a without notice application and

(d) showed that, on the particular facts, it was just and convenient in all the circumstances that the injunction sought should be made;

(e) that, if so justified, any injunction made by the court had to

(i) spell out clearly and in everyday terms the full extent of the acts it was prohibiting, corresponding as closely as possible to the actual or threatened unlawful conduct,

(ii) extend no further than the minimum necessary to achieve the purpose for which it was granted,

(iii) be subject to strict temporal and territorial limits,

(iv) be actively publicised by the applicant so as to draw it to the attention of all actual and potential respondents and (v) include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the injunction; and that, accordingly, it followed that the challenge to the court’s power to grant the impugned injunctions at all failed

(post, paras 142—146, 150, 167, 170, 186, 188, 222, 225, 230, 232, 238).

1. In his judgment handed down on 24th May 2024 in *High Speed Two (HS2) Ltd and another v Persons Unknown and others* [‘***HS2***’] ([2024] EWHC 1277 (KB), at para 30), Ritchie J applied the test to be applied in applications for interim ‘newcomer’ injunctions that he had set out in *Valero Energy v Persons Unknown [‘****PUs****’] & Bencher & Ors* [‘***Valero Energy***’] ([2024] EWHC 134, at para 57, excluding the first four that apply only to applications for summary judgment), which in turn took into account :

**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.

1. Ritchie J extended the injunction against PUs, including newcomers, in *HS2*, albeit not in respect of some recently acquired land (see para 62).

**APPLICATION OF THE *AMERICAN CYNAMID* CONSIDERATIONS**

1. In summary and in general terms, the Claimant’s evidence establishes – at least on a *prima facie* basis pending trial or summary judgment – that:
   1. Unknown persons have trespassed on the Council’s land either by living or staying in boats or by leaving them in the River Lea and/or by leaving rubbish;
   2. The activity of the named Defendants and other trespassers establish the likelihood that newcomers will also seek to trespass by mooring in the defined Areas;
   3. No persons have the right to moor on this part of the river without the permission of the Council (as landowner), even for the purposes of the public right of navigation that does not apply on this non-tidal stretch of the River Lea;
   4. The mooring of boats and other forms of trespass in the Areas will create the likelihood of further delays in the important infrastructure work being conducted by Meridian in collaboration with the Council; and will risk its 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, as set out in Mr Iqbal’s statement and exhibits;
   5. The trespassers have caused serious risks to public health by the accumulation of large quantities of waste and there is a likelihood that newcomers would do the same in the absence of an interim injunction preventing them from mooring; and
   6. Applying the Claimant’s submissions on this issue in its skeleton argument of 21st April 2024, there can be no question of Article 8 rights being engaged by persons in boats whose connection with the Areas is so slight that (if newcomers) they would only have moored in it after the injunction was imposed;
   7. For completeness, there is no evidence that any of the trespassers in the defined Areas are assembling or protesting about political or related matters; or (for example) of protests against the development that might be likely to lead to trespass. Thus, on the face of it there is no likelihood that the rights of newcomers under Article 10 and/or 11 of the Convention are even arguably engaged (unlike in *Ziegler*, cited in *HS2*, both *supra*). Further and alternatively, barring trespassers who might be protesting against the development would be proportionate given that: (a) 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; (b) the development is for the benefit of the local community; (c) the Council has a contractual duty to deliver the development and to prevent it from being delayed by preventing trespassers from causing that delay; and (d) were the development delayed, the Council would be likely to face severe financial consequences that would affect its ability to deliver public services.

There is thus a likelihood that newcomers may:

* 1. Cause substantial financial harm to the Council and so damage its ability to provide public services within the London Borough of Enfield;
  2. Be responsible for anti-social behaviour and a public health hazard; and
  3. Cause a public nuisance.

1. It is submitted that the court can be confident that the Claimant can easily establish a serious issue to be tried. Indeed, no PUs could have any arguable defence to a claim for the tort of trespass were they to do so on the Council’s land, albeit it is accepted that the Council must surmount a more onerous test if it is to persuade the Court to impose an injunction on newcomers.
2. It is submitted that the narrow balance of convenience justifies an injunction against the current trespassers and against newcomers for a short period before the return date. Addressing and applying the tests set out in the guidance in *Wolverhampton*.
   1. A compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other available remedies.

*The Council has a lawful right to control those mooring on or adjacent to its land, to remove those barring that access, and to prevent the build-up of rubbish that risks public health; and a pressing need to prevent any further delay to the infrastructure work and the onerous financial consequences that they cause; and it could not enforce that right other than by the injunction sought.*

* 1. Built into the application and the injunction sought, procedural protection for the rights (including Convention rights) of those persons unknown who might be affected by it.

*The Court is asked to make an order that would require the Council to 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: (i) the four corners of the Areas affected; and (ii) a page of the Council’s website, the link to which must be advertised on the said notification published at the entrances.*

* 1. Complied in full with the disclosure duty which attached to the making of a without notice application.

*Insofar as it might be relevant to the Court’s assessment of proportionality or otherwise, the Council’s evidence sets out its legal ownership of the land, the relevant parts of its contractual relationship with Meridian and others relating to the development of the land, the purpose of that development and the steps that it has taken to engage with occupiers and attempt to find them alternative accommodation. The Council is unaware of any other disclosure that may affect the Court’s assessment of the tests to be applied in applications for newcomer injunctions.*

* 1. Showed that, on the particular facts, it was just and convenient in all the circumstances that the injunction sought should be made.

*See para 16 above.*

* 1. That, if so justified, any injunction made by the court had to:

1. Spell out clearly and in everyday terms the full extent of the acts it was prohibiting, corresponding as closely as possible to the actual or threatened unlawful conduct.

*The injunction sought is set out in clear English and will relate to the same defined area as in the present Order (made on 21st April 2024), also annexing the plan; and it correspondence to the actual conduct and conduct that the evidence suggests is likely to recur without this injunction being in place;*

(ii) Extend no further than the minimum necessary to achieve the purpose for which it was granted.

*In the first instance, the Court will be asked to impose the injunction on newcomers, and extend it on the existing Defendants, for the period before the matter can be heard at trial. Thereafter, the Court would be asked to maintain the injunction with a review date one year thereafter or to a period shortly after the anticipated completion of the infrastructure work, if earlier.*

(iii) Be subject to strict temporal and territorial limits.

*The injunction will, if granted, be restricted to the defined Areas.*

(iv) Be actively publicised by the applicant so as to draw it to the attention of all actual and potential respondents.

*See para 18(2), above.*

(v) Include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the injunction; and that, accordingly, it followed that the challenge to the court’s power to grant the impugned injunctions at all failed.

*The proposed order would allow an application to vary and discharge provided that it was on two working day’s notice, which it is submitted is a reasonable period.*

1. As a London Borough Council, the Council will be able to satisfy any damages awarded to the Defendants should these injunctions be set aside or not granted on a final basis. Further and in any event, Whipple J (as she then was) found, in *Cambridge City Council v Traditional Cambridge Tours Ltd* [2018] EWHC 1304 (QB), that it was unnecessary for cross-undertakings in damages to be made where an interim injunction was imposed on the application of a claimant local authority.
2. In the premises, the Court is invited to grant the Council the interim injunction sought and to make directions leading to trial. Draft directions will be filed in advance of the hearing.

6th June, 2024

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