IN THE HIGH COURT OF JUSTICE Claim No.

KING’S BENCH DIVISION

IN THE MATTER OF SECTION 222 LOCAL GOVERNMENT ACT 1972

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

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 WUJECK**
6. **PERSONS UNKNOWN**

Defendants

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**SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT**

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**INTRODUCTION AND SUMMARY**

1. The Claimant local authority and freeholder, the Council of the London Borough of Enfield (‘**the Council**’) makes a Part 8 Claim for a prohibitory injunction preventing the named Defendants and Persons Unknown from trespassing in defined locations it owns on the River Lea. With that application, the Claimant applies for an interim injunction on a without notice basis due to its urgency, albeit that informal notice, through service of the draft claim form, the draft application notice, evidence in support and this skeleton argument, will be attempted. This skeleton argument is filed on behalf of the Claimant for its application for interim relief.
2. This application is brought on an urgent basis because the trespassers are preventing development work by Meridian Water (‘**Meridian**’), which has the consequence of weekly contractual penalties of around £142,000, about which Meridian gave the Council notice on 7 March 2024.
3. The background facts are set out in the witness statement of Karen Maguire, dated 18 April 2024 and a paginated bundle of exhibits, to which she refers directly throughout. A summary of the background is at paras 1-17. Ms Maguire sets out the areas to which the proposed injunction will apply (‘**the Areas**’) at para 8.
4. As Ms Maguire says at para 12:

The removal of the unauthorised occupiers and any unauthorised vehicles and/or boats is necessary as the Meridian Water works programme concerning in particular the land in question held under the Title Numbers referred to at paragraph 8 above has been contracted with Taylor Woodrow for essential preparatory works and development of the embankment and these works in line with its rights as outlined in the Lease of Airspace held under Title number AGL536978 commenced on 6 December 2023 (Exhibit KM7 – TW letter 5 March 2024) and were scheduled to clear the embankment of vegetation by a combination of mechanical and chemical clearance methods in preparation for engineering works to construct a new canal wall. The works also include surveys, construction of hoardings, fencing and positioning of plant and materials in the occupied areas. The nature of these works are a health and safety risk to occupiers in the vicinity of the works, namely, those on the embankment and/or the River Lee Navigation System adjacent to the Land.

1. Ms Maguire sets out the grounds on which the injunction is sought in the remainder of her statement, namely due to the following concerns:
	1. For the health and safety of local residents and businesses and to prevent the trespassers from obstructing work that is necessary for the preservation of the health and safety of the area (paras 18-28); and
	2. The risk of severe financial consequences due to the development contract, which also justifies the urgency of this application (paras 29-33).
2. This skeleton argument sets 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 does not enlarge further upon the factual background. It is submitted, on grounds set out in Ms Maguire’s witness statement and in the Conclusion of this skeleton argument, that the considerations in *American Cyanamid v Ethicon* are easily met and that the Court should grant an interim injunction in the terms sought.

**THE COUNCIL’S STATUTORY POWERS**

1. The Claimant is a local authority within the meaning of section 270(1) of the Local Government Act 1972 (‘**the 1972 Act**’). Section 222 of the 1972 Act 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 for such purposes to institute proceedings for the relief sought and to protect its land from trespass. In *Richmond LBC v Trotman* ([2024] EWHC 9 (KB)), HHJ 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 para 55).
2. Section 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 (‘**the 2014 Act**’) confers upon local authorities the ability to seek an injunction in cases where there is “anti-social behaviour” as defined in section 2 of that Act.
3. Section 111 of the 1972 Act confers upon local authorities a power to do anything which is calculated to "facilitate, or is conducive to or incidental to, the discharge of any of its functions". The Claimant considers it would be discharging its function by protecting its land from trespass.
4. Section 2 of the Local Government Act 2000 confers upon local authorities a power to do anything which it considers is likely to achieve the "promotion or improvement” of the economic, social or environmental well-being of its area". The Claimant considers that the relief sought is likely to achieve such objectives. The Claimant is the local authority with responsibilities for the riverbanks running through the London Borough of Enfield including the Areas.
5. The Claimant accordingly exercises its statutory powers and property rights to prosecute these proceedings.

**PROPRIETORY, NAVIGATIONAL AND MOORING RIGHTS**

1. The Council, as the landowner of the Area, which extends to parts of the river abutting land it owns, is the riparian owner and, as such, the owner of the entirety of the soil of the river between two river banks it owns or of half the river where it owns only one river bank: *Lamb v Newbiggin* (1844) 1 Car & Kir 549; *Central London Rly Co v City of London Land Tax Comrs* [1911] 2 Ch 467 at 473–474, CA. (This is contrary to the position in tidal rivers, where the Crown owns the riverbed.) As the riparian owner, it is entitled in the natural course of things to access to and regress from water, including a non-tidal river such as the River Lea, where it is in contact with its frontage: *Hindson v Ashby* [1896] 2 Ch 1, CA; *North Shore Rly Co v Pion* (1889) 14 App Cas 612, PC. Interference with the right of access of a riparian owner is actionable without proof of special damage: *Lyon v Fishmongers' Co* (1876) 1 App Cas 662, HL
2. While the riparian owner may moor vessels by its land, it may not interfere with the public rights of navigation of other river users: *Macey v Metropolitan Board of Works* (1864) 3 New Rep 669; *Original Hartlepool Collieries Co v Gibb* (1877) 5 ChD 713.
3. The public right of navigation that exists on tidal waters does not apply to non-tidal waters and in consequence, there is no general common law right of public navigation either in non-tidal rivers: *Hargreaves v Diddams* (1875) LR 10 QB 582. It may, however, arise from immemorial usage, Act of Parliament or express grant: *Orr Ewing v Colquhoun* (1877) 2 App Cas 839; *R v Betts* (1850) 16 QB 1022.
4. 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 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’ (para 28).
5. In *Cambridge City Council v Traditional Cambridge Tours Ltd* [2018] EWHC 1304 (QB), Whipple J (as she then was) held (at para 54) that ‘[t]he Council is obviously entitled to take action to prevent a trespass of land belonging to it, whether or not that trespass happens to be connected with or a prelude to unlawful activity on the River Cam, which falls under the jurisdiction of a different authority.’ It is notable that that injunction was granted on an interim basis.
6. In the recent judgment of *RBK 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, Deputy High Court Judge Jeremy Hyam KC set out, at para 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 (paras 20 and 29).
7. In *Trotman* (*supra*)the defendant had placed a vessel he controlled adjacent to the riverside and secured it by means of polls driven into the riverbed of a non-tidal section of the River Thames, just upstream from Teddington Lock (in statute, the end of the tidal Thames). At para 20, HHJ Blair KC relied on the findings of Arnold J, in *Couper and others v Albion Properties Ltd, Port of London Authority and Hutchison Whampoa Properties (Europe) Ltd* [2013] EWHC 2993 (Ch.), that there is no right to obstruct the river. Arnold J had drawn from the authorities that:

‘…it is necessary to distinguish between the exercise of the public right of navigation, which includes a reasonable right to stop and moor temporarily, and obstruction of the river. If there is a permanent and material interference with navigation on the river, that amounts to obstruction and a public nuisance…

1. While HHJ Blair did not find that Mr Trotman was trespassing (because of insufficient evidence that his vessels were attached to the land on the riverbed, see para 51), he did find that his vessel affected ‘the ability of other river users to moor their boats on that stretch of the Thames in accordance with the byelaws’ (para 52); and that it was causing a public nuisance preventing other river users from accessing the river bank (para 54). In this index case, the trespassers also interfere with the right of the Council to access its own land.

**ACQUIESCENCE**

1. This possibility was considered in *Salzer*.

35. Although not expressly raised by him (Mr Salzer was acting in person) I also considered 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.

36. If that was what he intended to argue, it is not an argument I can accept. The doctrine of acquiescence is summarised by Thesiger LJ in *De Bussche v Alt* (1878) 8 Ch. D. 286 at 314.):-

“If a person having a right, and seeing another person about to commit, or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. This … is the proper sense of the term ‘acquiescence’.”

37. The doctrine has been further illuminated by the Privy Council in *Singh v Rainbow Court Townhouses* [2018] UKPC 19approving the dicta in *Chatsworth Estates Co v Fewell* [1931] 1 Ch. 224:

“It is in all cases a question of degree. It is in many ways analogous to the doctrine of estoppel, and I think it is a fair test to treat it in that way and ask, ‘Have the plaintiffs by their acts and omissions represented to the defendant that the covenants are no longer enforceable…?’”

38. In the light of those authorities Sir David Bean in Injunctions 14th Edtn. summarises the relevant principle thus:

“A claimant who has acquiesced is only debarred from relief altogether where it would be dishonest or unconscionable for him, after the delay, to seek to enforce his rights.”

39. Given that the Council has been serving notices on the Defendant since at least 2017, and that throughout the relevant period clear notices have been displayed at all moorings indicating that any free mooring is limited to the period of 24 hours, after which there is no return for another 48 hours, it is my view that if Mr Salzer was seeking to raise acquiescence as a defence to these injunctive proceedings it clearly fails. In my view, given the history demonstrated in the evidence of Mr Hyde and Mr Kingstone for the Claimant it would not be unconscionable for the Claimant to seek to protect their possession rights by way of injunction.

1. DHCJ Hyam KC’s findings in *Salzer* about the possibility of disobedience to such an injunction (of which there is far more evidence in this case than there was in respect of Mr Salzer, who had at least removed some vessels in compliance with the interim injunction imposed on him) are of relevance here, where the same concern is amply justified:

55. The remedy of final injunctive relief is discretionary and once made the Court will expect that order to be obeyed. As Lord Bingham of Cornhill in *South Bucks DC v Porter* [2003] 2 A.C. 558 at [32]. observed:-

“When granting an injunction, the court does not contemplate the possibility that it will be disobeyed ... Apprehension that a party may disobey an order should not deter the court from making an order otherwise appropriate: there is not one law for the law-abiding and another for the lawless and truculent. When making an order, the court should ordinarily be willing to enforce it if necessary. The rule of law is not well served if orders are made and disobeyed with impunity. These propositions, however, rest on the assumption that the order made by the court is just in all the circumstances and one with which the defend- ant can and reasonably ought to comply, an assumption which ordinarily applies both when the order is made and when the time for enforcement arises ... The court should ordinarily be slow to make an order which it would not at that time be willing, if need be, to enforce by imprisonment. But imprisonment in this context is intended not to punish but to induce compliance, reinforcing the requirement that the order be one with which the defendant can and reasonably ought to comply.”

56.  *Prima facie* a Claimant who has proved trespass should be entitled to an injunction to protect its rights unless there are strong countervailing reasons why such an order should not be made. I do not consider, on the evidence that I have been presented with, that damages would be an adequate remedy or be likely to be an effective means of deterring future non-compliance by the Defendants.

 57. I have already considered the potential arguments which might be made by Mr Salzer on equitable grounds to defeat an injunction and consider none have any significant weight. 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.

**CIRCUMSTANCES WHERE A TRESPASSER LIVES ON A VESSEL**

1. DHCJ Hyam KC also considered, in *Salzer*, the circumstances in which the owner or 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 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms protected by s 6 of the Human Rights Act 1998. The learned judge reminded himself of paragraph [61] of the Supreme Court decision in *Manchester City Council v. Pinnock* ([2010] UKSC 45), an appeal concerning possessions proceedings with respect to a tenancy granted by a local authority. In respect of the engagement of Article 8, Lord Neuberger, giving the judgment of the Court explained:

“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.”

1. This finding followed that of the Court of Appeal in *Akerman* (at para 43).
2. DHCJ Hyam KC found that an injunction preventing Mr Salzer from mooring his vessel in Kingston would not be a disproportionate interference with his Article 8 rights on four grounds set out at para 52. The facts in that case were as follows:

(i) Mr Salzer appears to have used V2 or an equivalent houseboat as his home notwithstanding that it has no attached sanitation or electricity. This indicates a very temporary and intermittent link to any temporary mooring.

(ii) The boat V2 has never been moored in the same place for a very long period. Rather it has persistently overstayed in one place and then moved on to another.

(iii)Mr Salzer can have had no right to expect that he has any right to live and moor on the Gazebo landing stage or indeed any part of the Kingston riverside. The evidence suggests that has never done anything other than ‘squat’ on moorings until he has either voluntarily, or been requested to move on.

(iv)The local authority as the body responsible for the moorings in question, has a reasonable expectation that it may enforce its mooring policy.

**CONCLUSION AND *AMERICAN CYNAMID* CONSIDERATIONS**

1. In summary and in general terms, the evidence of Ms Maguire easily establishes – at least on a *prima facie* basis pending trial – that the Defendants and unknown trespassers have:
	1. Trespassed on the Council’s land;
	2. Prevented the Council, as riparian owner, from accessing its land;
	3. Interfered with the public rights of navigation;
	4. Been responsible for anti-social behaviour; and
	5. Caused a public nuisance
2. That is easily sufficient to establish a serious issue to be tried.
3. The narrow balance of convenience easily justifies an injunction given the considerable harm that the trespassers are causing the Council and other river users.
4. 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 found, in *Cambridge Tours*, that it was unnecessary for cross-undertakings in damages to be made in cases of trespass on a river.
5. Finally, given the loss of £140,000 to Council Tax payers and ratepayers in the London Borough of Enfield, the Council acted properly in seeking this injunction urgently on a without notice basis.
6. In the premises, the Court is invited to grant the Council the interim injunction sought and to list this matter for trial.

18th April, 2024

**FRANCIS HOAR**

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