

**IN THE HIGH COURT OF JUSTICE Claim No:
KING'S BENCH DIVISION**

IN THE MATTER OF PROCEEDINGS

B E T W E E N:-

ASHFORD BOROUGH COUNCIL

Claimant

And

- (1) JOHN MATTHEWS**
- (2) SAILLUS LEE**
- (3) EUGENE LEE**
- (4) NATHAN LEE**
- (5) LEWIS LEE**
- (6) PERSONS UNKNOWN**

Defendants

**SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT
IN SUPPORT OF AN APPLICATION FOR AN INTERIM
INJUNCTION**

References are to Witness Statement paragraphs [WS/X]

Essential Reading:

- 1. Application Notice
- 2. Draft Order
- 3. Witness Statement of Joanne Alexander

INTRODUCTION

1. Ashford Borough Council (“the Claimant”) seeks an interim injunction in relation to the land known as “Land on the south side of Rosemary Lane, Smarden Ashford” registered under title number K803646 shown edged blue on the attached plan.
2. The Claimant is the Local Planning Authority within the meaning of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) for an area including the Land.
3. The First Defendant is the registered owner of the Land (see WS/JA §8). The Second -Fifth Defendants have an interest in the Land and are believed to now be owners although not registered.

Persons Unknown

4. The Sixth Defendant identified only as “Persons Unknown” refers to those persons who are not named Defendants to this Claim who have an interest in the land or in undertaking works to the Land or intending to undertake works to the Land or entering onto the Land intending to occupy the Land in breach of planning control. The Claimant relies upon paragraph 21.2 of the Practice Direction Part 49E and s.187B (3) of the 1990 Act in support of seeking an Order against “Persons Unknown”.
5. The Claimant is aware of the guidance of the Supreme Court in Wolverhampton City Council and Others v London Gypsies and Travellers and Others [2023] UKSC47. The Wolverhampton judgment of the Supreme Court provides that the granting of injunctions against “newcomers” is not constitutionally improper [170] and, in relation to breaches of public law,

including planning law, local authorities are empowered to seek injunctions by statutory provisions.

6. In section 5 of the judgment [187ff] the Supreme Court considered the practical application of the principles affecting an application for a newcomer injunction against Gypsies and Travellers and the safeguards and provided the guidance. It is submitted that the safeguards are met in this case:

- i. Compelling justification for the remedy. This includes consideration of the obligation/duty to provide sites for Gypsies and Travellers [190], Needs assessments, planning policy, other statutory powers available and byelaws. Ashford Borough Council has an up to date Local Plan which was adopted less than 5 years ago and contains policy HOU16 specifically for Traveller Accommodation. Planning applications should comply with policy HOU16 and the development on the Land is contrary to planning policy and other statutory powers are not effective;
- ii. Evidence of threat of abusive trespass or planning breach – it is submitted that there is more than a sufficiently real and imminent risk as evidence shows that works have already been undertaken (WS/32).
- iii. Identification or other definition of the intended respondents to the application - it is impossible to name the persons as (a) it is not known those undertaking works and (b) it is not known who future potential occupants may be but the Claimant has attempted to define them as precisely as possible;

- iv. The prohibited acts - the terms of the injunction correspond to breaches that are feared will take place if not restrained and it is submitted that the terms of the injunction order are clear and precise – furthermore, the terms simply tell those potentially affected not to do that which they are not allowed to do without express planning permission;
- v. Geographical and temporal limits - the injunction has clear geographical limits as outlined on the plan attached to it and has temporal limits in that it provides a Return date;
- vi. Effective notice of the order - it is possible to give effective notice by virtue of the Alternative Service provision;
- vii. Liberty to apply has been included;
- viii. Costs protection –_there is no evidence that this is appropriate in this matter;
- ix. Cross-undertaking - there is no cross-undertaking and it is submitted this is not appropriate in this case;

7. The Claimant is of the view that actual breaches of planning control have taken place, and there is a real risk of further breaches and it apprehends further operational development and material change of uses taking place in breach of planning control. The order simply holds the ring.

THE POWER TO GRANT AN INJUNCTION

8. Section 187B of the Town and Country Planning Act 1990 (as amended) ('the 1990 Act') provides as follows:

“(1) *Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.*

(2) *On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.*

(3) *Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.*

(4) *In this section "the court" means the High Court or the county court.”*

9. The leading authority on the exercise of the Court's discretion to grant injunctions pursuant to section 187B of the 1990 Act is the decision of the House of Lords in the combined appeals known as *South Bucks District Council v. Porter* [2003] UKHL 558; [2003] 2 AC 558 [**[20]**] approving the judgment of the Court of Appeal [2001] EWCA Civ 1549; [2002] 1 WLR 1359.

10. The decision of the House of Lords also confirms that the Court has an original jurisdiction in respect of its exercise of discretion to grant an injunction pursuant to section 187B of the 1990 Act **[27]**.

11. In *Davis v Tonbridge & Malling Borough Council* [2004] EWCA Civ 194, the Court of Appeal summarised the conclusion of the House of Lords in *South Bucks District Council v Porter* as follows **[34]**:

1) Section 187B confers on the courts an original and discretionary, not a supervisory, jurisdiction, so that a defendant seeking to resist injunctive relief is not restricted to judicial review grounds;

2) it is questionable whether Article 8 adds anything to the existing equitable duty of a court in the exercise of its discretion under section 187B;

3) the jurisdiction is to be exercised with due regard to the purpose for which was conferred, namely to restrain breaches of planning control, and flagrant and prolonged defiance by a defendant of the relevant planning controls and procedures may weigh heavily in favour of injunctive relief;

4) however, it is inherent in the injunctive remedy that its grant depends on a court's judgment of all the circumstances of the case;

5) although a court would not examine matters of planning policy and judgment, since those lay within the exclusive purview of the responsible local planning authority, it will consider whether, and the extent to which, the local planning authority has taken account of the personal circumstances of the defendant and any hardship that injunctive relief might cause, and it is not obliged to grant relief simply because a planning authority considered it necessary or expedient to restrain a planning breach;

6) having had regard to all the circumstances of the case, the court will only grant an injunction where it is just and proportionate to do so, taking account, inter alia, of the rights of the person or persons against whom injunctive relief is sought, and of whether it is relief with which that person or persons can and reasonably ought to comply.

12. The well-known principles laid down by the House of Lords in *American Cyanamid Co. v. Ethicon Limited* [1975] AC 396 apply to the Court's exercise of discretion (see 406F, 407G, 408F).

13. It is to be noted that each of the appeals in *Porter* concerned cases where the Local Planning Authority were seeking mandatory injunction orders to remove persons who had taken up occupation of their land in breach of planning control. This application does not seek any mandatory steps. This application for an interim injunction seeks only to preserve the status quo at this point.

BREACHES OF PLANNING CONTROL

14. The evidence available to date clearly demonstrates that, short of breaches of planning control, there have been works undertaken including significant unauthorised ground works, operational development and engineering operations. Extensive hardsurfacing has been laid and four touring caravans are on the Land (WS/32). Ms Alexander sets out that planning permission is required for such works (WS/33) and it is unlikely that planning permission would be granted if a planning application was made [WS/46].

THE NEED FOR AN INJUNCTION

15. At WS para 37, Ms Alexander sets out why other enforcement options are not appropriate in this case. Firstly, an Enforcement Notice cannot attack an anticipated breach of planning control of which further breaches are expected. Secondly, the process is lengthy. Thirdly, the ultimate sanction for breaching an enforcement notice or a stop notice is criminal proceedings but the penalty is a fine. By the time the Council waits for further breaches to take place, even more harm will have been caused. Furthermore, if residential occupation is the goal of those doing the works,

it can be taken up very quickly and once occupants are on site it is a very lengthy process to remove them.

16. Applying the approach in *American Cyanamid* the Claimant submits that:
 - i. There is a compelling case that works which have taken place will lead to breaches of planning control and Ms Alexander has been told as much (WS/28). In other words, there is a serious question to be tried; and
 - ii. The Local Planning Authority cannot adequately be compensated in damages for a breach of planning control.
17. In the premises, the balance of convenience lies in preserving the lawful use of the land and enforcing proper planning control in the public interest.

CONCLUSIONS

18. In the circumstances of the present case, the Claimant submits that an injunction in the terms sought will not involve an interference with the Defendants' Human Rights (as it is not clear they are yet in occupation) or, alternatively, any such interference is necessary and proportionate having regard to all the circumstances known to the Claimant at present and the public interest in protecting the environs.
19. In the premises, the Claimant submits that it is appropriate for an injunction to be granted in the terms of the draft Order.
20. The Claimant also seeks an Order for alternative service of any injunction order granted to ensure the earliest possible compliance with proper planning control. In the circumstances, the Court can be satisfied that

service by way of the alternative method proposed will come to the attention of the Defendants and will assist in preserving the lawful use of the Land.

21. The Claimant is willing to give the undertakings listed in the draft Order. There is no undertaking as to damages. From *Kirklees MBC v Wickes Building Supplies Ltd* [1993] A.C. 227, the court may exercise its discretion not to require such an undertaking, taking into account the circumstances of the case and that the claimant is a local authority with the function of enforcing the law in its district in the public interest. This has more recently been considered in the context of s.187B in the cases of *Basingstoke & Deane BC v Loveridge* [2018] EWHC 2228 (QB) [16] and *South Downs National Park Authority v Daroubaix* [2018] EWHC 1903 (QB) [16].

EMMALINE LAMBERT
CORNERSTONE BARRISTERS
2-3 GRAY'S INN SQUARE
LONDON
29th March 2024