IN THE HIGH COURT OF JUSTICE **CLAIM NO KB-2025-004667**
KINGS BENCH DIVISION

BETWEEN

WEST BERKSHIRE DISTRICT COUNCIL

Claimant

-and-

(1) (1) UK LAND HOLDINGS 1 LTD
(2) CAROLINE BERRY
(3) NORA CONNORS
(4) PATRICK FAGAN CONNORS
(5) JIMMY O'CONNORS
(6) JOHNNY WALL
(7) PATRICK JAMES CONNORS
(8) JOHN JUDE O'BRIEN
(9) MICHAEL WALL
(10) JERRY GROGAN
(11) RICHARD O'BRIEN
(12) JOSEPH DOYLE
(13) NOREEN FLYN
(14) PATRICK STOKES
(15) BERNARD STOKES
(16) TOMMY STOKES
(17) VINCENT CRUMLISH
(18) HUGHIE STOKES
(19) BENJIT SINGH DHESI
(20) THOMAS FLYNN
(21) MARTIN STOKES
(22) PERSONS UNKNOWN
(THOSE WITH AN INTEREST IN OR INTENDING TO UNDERTAKE WORKSOR INTENDING TO OCCUPY THE LAND KNOWN AS "LAND SOUTH OF READING ROAD, ALDERMASTON, READING")
(23) GHEORGHE GHEORGE
(24) RODICA GHEORGHE
(25) OWEN STOKES
(26) THOMAS STOKES
(27) PATRICK CRUMLISH
(28) CHRISTOPHER RYAN
(29) CHRISTOPHER STOKES
(30) JAMES FLYNN
(31) SERGU CACUI
(32) NICOLE FILIPOPILSCHI

Defendants

SKELETON ARGUMENT

This skeleton argument is filed on behalf of Defendants 2,3, 4, 8, 10, 12, 13 and 22 (hereinafter referred for the purposes of this skeleton as the defendants).

Relevant Background

1. Prior to November 2025 the Defendants purchased a number of plots on land south of Reading Road, Aldermaston, Reading, RG7 4PR (hereinafter referred to as the land). At all material times from the 1st November the Defendants owned and occupied the land in caravans.

2. From their statement it can be seen that occupation of the land commenced on the 1st of November 2025 and all were in occupation of the land long before the obtaining of the ex parte injunction granted by Mr Justice Cotter on the 18th of December. This is confirmed in the statement by Reverend John Chadwick who visited the site on the 14th of December 2025 and blessed the households of more than a dozen families he personally knew[1]. The Council do not dispute the occupation of the land by the caravans. On the 4th of November Mrs Fennella Woods notes in her first statement that there were at least 2 static mobile homes and 9 other caravans, and physical occupation of one of the mobile homes was documented. Other signs of residence were also noted i.e. gas bottles, generators etc. Further the Council had received a planning application for 13 pitches on the 3rd of November 2025 from the Defendants Agent, that planning application identified the 13 defendants.

3. The land is in the Countryside and has no other special protection in terms of its status such as Green Belt or National Landscape. However, the land is opposite the Atomic Weapons Establishment site at Aldermaston (AWEA) and within the inner zone of Core Strategy Policy CS 8 which seeks to protect public safety and to restrict development close to AWEA in certain circumstances. It should be stressed however that the risk involved is noted to be very low, see the recent appeal at Brimpton Lane exhibited by the council at par 53, where the inspector finds that: "*a radiation emergency*

1 Variation bundle statement page 205 par 8-10

at AWE A is very unlikely, and even if one did occur, the likely radiation doses that individuals at the appeal site or elsewhere in the DEPZ would experience would also be low. The requirements of the REPPIR19 regime are precautionary and seek to mitigate the remote risk of a nuclear incident and its potential to result in harm to the surrounding population".

4. Further and despite the wrong and unbalanced impression given by the Claimant and their witness Mrs Carolyne Richardson, the policy, does not operate to bar development, a point the council have sought to argue in the past and which was rejected by the Court of Appeal. A policy may in any given case be disregarded by the decision maker if the safety concerns can be overcome and/or where other factors weigh in its favour, see Decision of the Court of Appeal in Secretary of State for Communities and Local Government v West Berkshire District Council & Anor [2016] EWCA Civ 441 where Laws and Treacy LJJ rejected the council contentions and addressed the question of whether a policy expressed in mandatory terms unlawfully fetter the discretion of the decision maker and held that the expression of a planning policy in mandatory terms did not fetter the discretion of the decision maker.

5. Furthermore, the best recent practical example of this is by reference to three planning decisions in this District. First the appeal decision of Pelican Road, Pamber Heath attached to this skeleton, which I represented the Gypsies. This decision is not referred to in the evidence of Mrs Carolyn Richardson for the Council at all, which is surprising since she attended on behalf of the Council and where planning permission was granted despite the said policy objection. More recently the Council themselves granted planning permission for a change of use for their own gypsy site at Four Houses Corner site on the basis that the safety issues were accounted for by AWEA policy see recent Brampton Lane Decision exhibited to the Councils evidence at par 59. Lastly mention must be made of Hollies Decision, a bricks and mortar decision involving construction of 32 Dwellings in the District in which the Inspector rejected the Council safety concerns and found that there was easily enough capacity in the planned emergency procedures to cope with that increase, see par 57 of the Brampton Lane Decision.

6. Further the Court is reminded that a judgment on the planning balance, is not an issue for this court, but for the appropriate decision maker to make in the planning

procedure. However, it is sufficient to point out that in *Porter* the Court made the point that the prospect of the Gypsies winning that argument should not be disregarded. Based on the Pelican Road Decision it is submitted that there is a reasonable prosect of success on the planning application. Although, it is conceded that the planning permission which has yet to be validated will need to be amended to include a brick-built day room of sufficient size with a telephone link to satisfy the AWEA Policy[2]

7. On this point the court should note that planning permission was submitted on 3rd November 2015. The Council argue that they have been hindered by non-cooperation by the Defendants and that the safety concerns are urgent. For the reasons explained above this is not correct, as seen from the quote above, the risk is low. Further, the Council could have served either compliance notices or requisitions for information under the 1990 Act enforceable by law to obtain whatever information they wished but have chosen not to do so.

8. Furthermore, if the Council think this is a hopeless breach of planning control, they could have served an enforcement notice once development had commenced on 1st November 2025, the result of which would have been that the Defendants would have had 28 days to appeal, and the matter would now be awaiting a planning decision by the Planning inspectorate. Instead, they have still nearly three months on, failed to validate the application so no determination or appeal can be made. It is the Council who are playing the system not the Defendants, why was there no mention in their evidence of the Pelican Road decision? Why have the council not served requisitions for information? Why have they not made inquiries through the Agent? Why have the still not validated the planning application? Why if the matter is urgent have, they not served an enforcement notice?

9. Whereas, the Defendants have lawfully sought retrospective planning permission to turn the land into a gypsy site. The Council has a need for gypsy sites. Although the argue they have a 5-year supply against their assessed need, the issue is how accurate that assessed need is bearing in mind the recent changes in the Planning Definition

2 See par 55 of recent Brimpton lane Decision where the inspector found the size of the day room was too small to meet this requirement

following a Court of Appeal finding that the previous Government definition was unlawful and had reduced the real need by some 2/3rds,see Smith v Secretary of State for Levelling Up, Housing and Communities *[2022] EWCA Civ 1391*. Indeed, the Council as a result of that ruling are updating their Gypsy and Traveller Need assessment GTAA as we speak. At the present time the Council have not identified or allocated any suitable available gypsy sites to meet any need in their District.

10. The Defendants purchased and moved to this site because they were in need of suitable land for a base to continue their gypsy culture, and the development is in line with national policy set out in Planning Policy for Gypsy Sites, subject to the issue of its location adjacent to the AWEA and as stated and illustrated that concern is something that in principle planning inspectors have found can be dealt with by condition. The Defendants want their chance to prove their case, they cannot do that until the application is validated and then if refused, they are happy to undertake to appeal immediately. If the Council serve an enforcement notice they will happily undertake to appeal that within day rather than wait the 28-day period.

11. The Article 8 rights to a home are not just engaged where the Gypsies own and live on the land,, but where there is interference in their lifestyle and the use of their caravan even if they are parked on land they do not own, which is not the case here, see Bromley v London Gypsy and Travellers and Liberty 2020 EWCA Civ 12.

12. The Council were fully aware on the 18th of December 2025 of the residential occupation of the land and the names of Defendants and that their Article 8 rights under the ECHR were engaged. The Council were aware also of the identify of their planning agent but sought an ex-parte injunction without making any welfare inquiries or carrying out any Human Rights balancing exercise and failed properly to bring that fact to the attention of the Court, though the Court should have been aware of that by perusing the evidence.

13. No note of what was said by the Claimants to the Judge has been disclosed and the Defendants will seek disclosure of this document in these proceedings to understand how the Court came to grant an eviction injunction and not just a status quo injunction without undertaking any human rights balance or welfare balance as required under

case law. By the time of the 18th of December the Defendants had been on the land for some 7 weeks, yet the Council sought an immediate injunction without making any enquiries of the Agent or serving any requisition of information. It is difficult to see if the matter was so urgent why there was such a delay and how they manage to convince the Court not to grant a status quo injunction?

14. The Claimant Council were fully aware of the presence of the caravans and should have been aware of the residence of the Defendants and their dependants on the land from the 1st of November and/or the interference with their article 8 right that would occur by an immediate order of eviction.

15. The dicta in Chapman v UK makes it quite clear that Article 8 is engaged to protect and recognise the gypsy's nomadic way of life, save for one caravan, the potential likelihood of occupation of the land by the other Defendants was not analysed in the one witness statement filed by Ms Fenella Woods in support of the injunction application. The complaint was one of preparatory engineering operations, singularly absent was any reference to the occupation or potential occupation of the other caravans since the 1st of November 2025. Yet the Claimants sought and obtained an order seeking the immediate eviction of the Defendants and their families from occupying the land they owned and/or continued to occupy. No welfare evidence was produced and nobody sought to explain why the Council had made no contract with the Agent or served any requisitions.

16. The Defendant will rely on the case of *Porter* and *Waverley* to show that the Council have a continuing duty to make welfare inquires and those are required prior to any injunction application. Case law in *stevens* on the best interests of the children demand that real efforts of substance are made and not just going through the process. The circumstances here clearly warranted the court being properly informed of the housing and welfare circumstance surrounding this alleged breach of planning control, before an interim injunction was obtained that sought immediate eviction.

17. At all material times the Council had a duty to carry out welfare inquiries in respect of the family's resident on site and a <u>continuing duty</u> to do so throughout the process,

see South Bucks District Council v Porter (No. 1) [2003] 2 AC 558 and the recent case of Waverley and others 2023] EWHC 2161 (KB), copy attached to this skeleton where the High Court refused a final injunction because of the failure of the Council to consider this duty.

18. Here the evidence will disclose serous welfare issues involving those children resident on site. There are at the present day, a considerable number of children on site under the age of 18. Absent from the evidence in any reference to the best interests of the children on site as required under their primary duty set out in case law, see H v Lord Advocate 2012 SC (UKSC) 308 and H(H) v Deputy Prosecutor of the Italian Republic [2013] 1 AC 338 and Zoumbas v Secretary of State for the Home Department [2013] UKSC 74. The key principals of which were set out by the Supreme Court and are helpfully repeated at par 56 if the attached *Waverley judgement.*

19. Neither is there any evidence of suitable alternative accommodation to which these families could go to if evicted. Again, singularly absent is any evidence of this before this court; see the case of Brentwood v Ball [2009] EWHC 2433 (QB), where in similar circumstance Mr Justice Stadlen found that due to the lack of alternative accommodation it was not proportionate to uphold the injunction sought by the Council and refused to continue the injunction.

20. It is accepted that the development was unauthorised, but an application for retrospective planning permission was lawfully made and has yet to be validated, let alone determined by the Council. It is often, not understood that it is not unlawful to start development without planning permission and seek retrospective planning permission. The 1990 Town and Country Planning Act allows for this; unauthorised Development is not unlawful where there has been no history of breaches of earlier enforcement notices that may constitute an offence. The Council rely on an alleged breach of a stop notice, but this is not a criminal offence unless and until there is a conviction and the Council have made not such prosecution and there had been therefore no conviction.

Article 8 and a full porter inquiry.

21. Those instructing me have only just been instructed and have had little time to prepare a full defence to this injunction. The Defendants argue that this matter needs to be adjourned for a full Porter Human Rights inquiry, that the Defendants will need time to submit evidence relating to welfare and personal circumstance, further witness statements from the defendants challenging the evidence presented and expert evidence relating to the proximity to the AWEA as was served in the Pelican Road Decision to demonstrate how those is concern can be overcome, namely by the provision a suitable sized day room and telephone link; In the meantime a status quo injunction restricting any further development on the land but allowing the Defendants to continue to reside on the land with their dependant children is the proportionate course that the court should order.

22. Case law denotes that where the High Court orders that residential occupation should cease in circumstances were the human rights balance has not been considered that the Defendants should make an application to vary, see South Cambridgeshire DC v Gammel and others 2005 EWCA Ca Civ 1429. The Court has not yet made such a final order, nor has any human rights balance been considered by the Court. Such a balancing exercise is required at each stage of the process.

23. It is submitted that any order restricting any of those residing on the land at the time of the injunction could not be proportionate in the absence of a human rights balancing exercise as proposed in Porter and would fail to take into account and facilitate the gypsy way of life as set out in the principal case of Chapman v UK.

24. Even if the caravans were not physically occupied at the time the Council witnesses attended (which is denied) it was clearly the home of the Defendants, just the same way that a house remains someone's home even if they are absent from it. Due to the way of life, gypsies are often away travelling from their mobile homes and/or base, but it still remains their home. The Council at all material times under Article 8 has a duty to facilitate the gypsy way of life and the Court is required to take this fact into account when considering whether it is and was proportionate to grant the injunction, see the principles set down the in the leading case of South Bucks District Council v

Porter 2003 2 AC. It is submitted that the correct approach would have been to have issued a status quo injunction allowing the defendant to remain on the land but not to carry out any further work of development until the planning merits had been determined.

25. Moreover, in this case there was no history of breaches of planning control and that an eviction injunction was not necessary and that a status quo injunction and the serving of the enforcement notice would have been more than adequate to deal with the breaches alleged. The Defendants are more than happy to give an undertaking that if they lose their Planning or Enforcement Appeals, they will vacate the land and return it to the condition it was before the breach and merely seek a status quo injunction until the determination of either there planning application or enforcement appeal if an enforcement notice is served.

26. For the avoidance of doubt, the Defendants do not seek to resist the imposition of an injunction against any further persons residing on the land or any further development. All that is sought is a status quo approach pending the determination of the planning process so that their rights to a home, the need to have a settled base and for the best interests of the children on site can be properly considered.

27. As already stated, save for the AWEA issue, the site is in an area suitable for permission as a Gypsy caravan site both under National Policy (NPPF2024), Planning Policy for Gypsy Sites (PPTS 2024) and local Plan Policy. Further it is likely that any new gypsy site in this District will be in the Countryside. A countryside location is by itself no bar to approval. Indeed, all the gypsy sites in West Berkshire are in the Countryside and some including the Councils own site at Four Horse Corner and the Pelican Road site and others, are located within the prescribed areas identified by the AWEA.

28. Whilst it is accepted that the Defendants moved on and occupied this site in advance of planning permission being granted, they had very little choice due to the lack of any suitable available lawful alternative accommodation in the district. Indeed, up to now the council have not proposed or identified any suitable lawful alternative sites or any

alternative accommodation for them to go to. This is a housing issue not a criminal issue, and clearly the children resident on site, are best served for the moment by a status quo approach particularly since the planning merits have not yet been properly considered.

29. Further, this this is clearly not a case of a persistent or flagrant breach of planning control. In *Porter* the House of Lords found that it was less likely to use it powers where enforcement action had never been taken, see para 20 the Court quoting from the Judgment of Lord Justice Simon Brown in the Court of Appeal.

> "*But so too, of course, will countervailing considerations such as the need to enforce planning control in the general interest and, importantly therefore, the planning history of the site. The degree and flagrancy of the postulated breach of planning control may well prove critical. If conventional enforcement measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be the readier to use its own, more coercive powers.*
>
> *Conversely, however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gipsy moving onto the site might, indeed, involve him in less hardship than moving him out after a long period of occupation.*
>
> *Previous planning decisions will always be relevant; how relevant, however, will inevitably depend on a variety of matters, including not least how recent they are, the extent to which considerations of hardship and availability of alternative sites were taken into account, the strength of the conclusions reached on land use and environmental issues, and whether the defendant had and properly took the opportunity to make his case for at least a temporary personal planning permission.*

30. Moreover, crucially at the time that the defendants occupied the land as their home on the 1st November 2025 and thereafter but long before 18th December , there was no injunction and no court order restricting them from such occupation and therefore this is not a case where they have "cocked a snook" at the system, see *Mid-Bedfordshire District Council v Brown* [2004] EWCA Civ 1709, and other referred to below.

31. The Defendants are Gypsies and Travellers within the Definition under the current relevant Policy (PPTS). The Defendants sought to live on their land because they had nowhere suitable to live and bring up their children.

32. Further the Council have not addressed alternatives, and it is submitted that there are certainly no suitable available alternative sites in the District for them to go to immediately if evicted. The Council have a statutory duty to take this into account and to assist them to find suitable accommodation for their needs in the District but have not sought to advise them in respect or to identify any alternative to the Court. The Council have not identified any suitable available alternative accommodation for them to go to in their District, simply because none exists. The Defendants have a right to culturally suitable lawful accommodation which in their case is a caravan site suitable for their use. They have properly made a lawful planning application in order to achieve this in respect of the land they own.

Planning Merits

33. In terms of planning merits, they have very good prospects of success due to the Councils failure to have properly assessed need and have a sufficient supply of sites to meet that need. The Council are awaiting an up-to-date Assessment that has yet to be published. So, the issue of need and the failure to have suitable available alternative site to need will be centre stage in the upcoming assessment of the planning merits. Fuhrer if it can be demonstrated that the Council have no current 5-year supply of sites then there will be a presumption in favour of development.

Lack of welfare inquiries

34. Further again, the Council have failed to comply with their common law, humanitarian and human rights duties and obligations before issuing injunction proceedings. No evidence has been presented that such duties have been complied with. It is clear that when the injunction was granted on the 18th December 2025 the Court was **not** provided with such evidence, particularly as to the housing needs, health and welfare circumstances of the Defendants, or evidence relating to the best interest of the Children. Indeed, to date, unbelievably the Council have still not done that exercise.

35. Indeed, this lack of information is surprising since the Council must have been aware that merely requiring the resident to vacate without any lawful alternative to go to, would mean them being on the roadside with all the problems that entail from the Council and other neighbouring councils.

Lack of Proper Inquiries

36. Complaint is taken that the Claimant have made no attempts to make proper inquiries, or to propose suitable available alternative accommodation, prior to taking action or in continuing to take action. The Defendants case is that no welfare inquiries or any other inquires in the form of requisition or information or planning contravention notices were made. The Council had the name of the Claimants planning agent but at no time have made any attempt to make any welfare inquires, serve any requisition of information on the Agent about welfare issues. Not only have those inquiries not been made, no suitable impact assessment has been undertaken based on that evidence and/or the lack of alternative appropriate accommodation. These are basic requirements that should have been undertaken at the very start when the land was occupied.

37. Paragraph 13 of the PPTS set out these Local planning authorities should ensure that Traveller sites are sustainable economically, socially and environmentally. Local planning authorities should, therefore, ensure that their policies:

i) promote peaceful and integrated co-existence between the site and the local community

ii) promote, in collaboration with commissioners of health services, access to appropriate health services

iii) ensure that children can attend school on a regular basis

iv) provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment

v) provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development

vi) avoid placing undue pressure on local infrastructure and services

vii) do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans

viii) reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to such

38. Singularly absent from any evidence of the Council is the extent to which they have complied with their duties and/or their policies comply with the PPTS, and particularly whether these factors were considered at the time of issuing these proceedings. The Supreme Court in *Porter* found that a failure to make these inquiries at the time of the taking of injunction and eviction proceedings was a key factor against the grant of such proceedings.

39. It is submitted that it follows that both Article 8 of the Convention and Article 3.1 of The United Nations Convention on the Rights of the Child 1989 were engaged and that the Council and the Court were obliged to consider the Human Rights balancing Act before granting and or confirming the Injunction, see the House of Lords decision in *Porter* , this has not been done.

40. I will now set out a full summary of the relevant law.

THE LAW UNDER SECTION 187 B - Injunction action

41. The binding authority in this case is the House of Lords decision South Bucks District Council v Porter 2003 2 AC. The Court made it quite clear that any court considering injunctions or committal powers under Section 187 must consider the issue of proportionality and demonstrate that the balancing exercise required under the Human Rights Act 1998 has been undertaken see the Judgment of Lord Bingham in Porter at page 574 B where he states as follows:

> *Whatever the position before the Human Rights Act 1998, the court must now address the issues arising under article 8 (2) of the European Convention on Human Rights and reach its own decision on whether the gypsies removal from*

the site is proportionate as to the public interest in preserving the environment"

"But it is still open for the court to reach its own independent conclusion on the proportionality of the relief sought to the object to be attained."

42. This is a holistic approach and should be undertaken each time the court considers any applications under section 187B; this would include applications for the injunction in the first place and any application thereafter. It is contended that neither the Council nor the Learned Judge properly approached the case in this way.

43. Further in *Porter,* the House of Lords made it clear that it was for the Council to satisfy it on evidence that the local authority has placed before the Court all the necessary evidence that went to the issue of proportionality, see in particular the judgement of Lord Justice Bingham at page 580 par 28 E-F where he states as follows:

"*When application is made to the Courts under section 187B the evidence will usually make clear whether, and to what extent, the local planning authority has taken account of the personal circumstances of the defendant and any hardship an injunction may cause. If it appears that these aspects have been neglected and on examination, they weigh against relief the Court will be readier to refuse it"*

44. In the *Porter* decision, Lord Bingham also approved the judgement of Simon Browne in the Court of Appeal which he quotes in full at page 574, par 20 of the decision. It is worth repeating part of that passage where Lord Justice Simon Brown states the following:

It seems to me perfectly clear that a judge on a Section 187B application is not required, nor even entitled, to reach his own independent view of the planning merits of the case. But it seems to me no less plain that the judge should not grant injunctive relief unless he is prepared to contemplate committing the

defendants to prison for breach of the order, and that he will not be of that mind unless he has considered himself all questions of hardship for the defendant and his family if required to move, including therefore the availability of suitable alternative sites.

45. Further in regard to the relevance of a planning application/planning appeal. The House of Lords have accepted that in circumstances where an injunction is sought under Section 187B it is relevant to consider whether a new planning application may succeed, see the Judgment of Lord Bingham in South Bucks District Council v Porter 2003 2 AC 558 at page 579 f:

> *"Nor should the court refuse to consider the possibility that a pending or prospective planning application may succeed, since there may be material to suggest that a previously unsuccessful party may succeed…. But all will depend on the particular facts and the Courts must always, of course, act on evidence"*

46. The Court should note that there is a difference between unauthorised development where Gypsies seek to develop their own land and unauthorised camping where Gypsies camp on the roadside or on other people's land. However, in both cases the Courts have consistently found that Article 8 is engaged and there is a need to facilitate the Gypsy way of life. See for instance **Bromley v London Gypsy and Travellers and Liberty 2020 EWCA Civ 12 where** the Court of Appeal recently affirmed the principles set out in ***Porter*** in relation to the practice of Councils seeking county wide injunctions to remove Gypsies entirely from their district.

47. The Article 8 rights to a home are not just engaged where the Gypsies own and live on the land, but where there is interference in their lifestyle and the use of their caravan even if they are parked on land they do not own. In *Bromley* the Court looked again at the relevant binding case law and noted at Para 44 that:

> *"In **Chapman v United Kingdom (2001)** (referred to by Lord Bingham at [38] of his judgment), the European Court of Human Rights made a series of important observations:*

a) *The occupation of a caravan by a member of the Gypsy and Traveller community was an "integral part of her ethnic identity" and her removal from the site interfered with her Article 8 rights not only because it interfered with her home, but also because it affected her ability to maintain her identity as a Gypsy [73];*

b) *There was an emerging international consensus amongst Council of Europe States recognising the special needs of minority communities and an obligation to protect their security, identity, and lifestyle [93];*

c) *Members of the Gypsy and Traveller community were in a vulnerable position as a minority, with the result that "special consideration should be given to their needs and their different lifestyle"; to that extent there was a positive obligation on States to facilitate the Gypsy way of life [96];*

d) *The fact that a home had been established unlawfully was highly relevant [102];*

e) If no alternative accommodation is available, the interference was more serious than where such accommodation is available [103];

f) *Individuals affected by an enforcement notice ought to have a full and fair opportunity to put any relevant material before the decision-maker before enforcement action was taken [106]."*

48. Further on the specific duty of the Council to facilitate the Gypsy way of life the Court referred to Connors v UK 40 EHRR 9, at Paragraph 45:

> *"In Connors v United Kingdom (2005) 40 EHRR 9, the ECtHR again emphasised the vulnerable position of Gypsies and Travellers as a minority, reiterating that "some special consideration should be given to their needs and their different lifestyle" to the extent that there is a positive obligation on the State to "facilitate the gypsy way of life" [84]. The Court distilled three further principles of importance:*
>
> *a) Given that the applicant was rendered homeless by the decision under challenge, "particularly weighty reasons of public interest" were required by way of justification [86];*
>
> *b) The mere fact that anti-social behaviour occurred on local authority Gypsy and Traveller sites could not, in itself, justify a summary power of eviction [89];*

c) *Judicial review was not a satisfactory safeguard as it did not establish the facts [92] and because there was no means of testing the individual proportionality of the decision to evict [95].*

49. And in terms of the loss of their home as a result of an injunction, the Court referred to Buckland v UK (2013) 56 EHRR 16 at 47:

> *In Buckland v United Kingdom (2013) 56 EHRR 16, the Court built upon the principle set out at [95] of Connors, namely that the absence of any measure enabling a member of the Gypsy and Traveller community to challenge the proportionality of a possession order was a violation of Article 8. At [65] the court held that:*
>
> *"As the Court has previously emphasised, the loss of one's home is the most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right to occupation has come to an end.*

50. Of note also is what the Court said at Paragraph 108 as to the need for Councils to engage with the Gypsies in regard to matters such as welfare and housing information and the best interests of children:

> *"Whilst I do not accept the written submissions produced on behalf of the third intervener, to the general effect that this kind of injunction should never be granted, the following summary of the points noted above may be a useful guide:*
>
> a) *When injunction orders are sought against the Gypsy and Traveller community, the evidence should include what other suitable and secure alternative housing or transit sites are reasonably available. This is necessary if the nomadic lifestyle of the Gypsy and Traveller community is to have effective protection under article 8 and the Equality Act.*
>
> b) *If there is no alternative or transit site, no proposal for such a site, and no support for the provision of such a site, then that may weigh significantly against the proportionality of any injunction order.*

c) *The submission that the Gypsy and Traveller community can "go elsewhere" or occupy private land is not a sufficient response, particularly when an injunction is imposed in circumstances where multiple nearby authorities are taking similar action.*

d) *There should be a proper engagement with the Gypsy and Traveller community and an assessment of the impact of an injunction might have, taking into account their specific needs, vulnerabilities and different lifestyle. To this end, the carrying out of a substantive EIA, so far as the needs of the affected community can be identified, should be considered good practice, as is the carrying out of welfare assessments of individual members of the community (especially children) prior to the initiation of any enforcement action.*

e) *Special consideration is to be given to the timing and manner of approaches to dealing with any unlawful settlement and as regards the arrangements for alternative pitches or housing."*

51. Although the *Bromley* was about unauthorised encampments it can be seen that Article 8 was engaged, the duty is clearly greater where Councils are seeking to evict Gypsies from land they own, the need for a proper assessment of their housing and welfare needs prior to the initiation of eviction proceedings is clear. This has not been done in this case. Clearly in this case there can be no argument that the Article 8 rights of these Defendants are engaged, yet no human rights balance has been undertaken by the Court.

Cocking a Snook

52. Further this case must be distinguished the extreme situation that occurred in the case of Mid-Bedfordshire District Council v Brown [2004] EWCA Civ 1709 where the Defendants had knowledge of the injunction before moving onto the land and in disobedience of the injunction order occupied the land nevertheless, in effect therefore cocking a snook at the system. See par 25 of the Judgement:

"*In our judgment, the judge's decision to suspend the injunction pending the determination of the planning application did not take proper account of the vital role of the court in upholding the important principle that the orders of the court are meant to be obeyed and not to be ignored with impunity. The*

order itself indicated to the defendants the correct way in which to challenge the injunction. It contained an express provision giving the defendants liberty to apply, on prior notice, to discharge or modify the order. The proper course for the defendants to take, if they wished to challenge the order, was to apply to the court to discharge or vary it. If that failed, the proper course was to seek to appeal. Instead of even attempting to follow the correct procedure, the defendants decided to press on as originally planned and as if no court order had ever been made. They cocked a snook at the court. They did so in order to steal a march on the Council and to achieve the very state of affairs which the order was designed to prevent. No explanation or apology for the breaches of the court order was offered to the judge or to this court."

This is not the situation here.

53. The Defendant and their dependants had occupied the land before the order was made. They are following the principles set out in South Cambridgeshire DC v Gammel and others 2005 EWCA Ca Civ 1429, where the Court emphasised that where Defendants become aware of the injunction that has been obtained without their knowledge and without the Court considering their side of the story, they should seek to apply to vary or discharge the injunction. The interim injunction having not yet to been confirmed so we are not at that stage yet, but the Defendants have been hampered in putting in an application to vary or discharge since the Defendants has declined to provide them with a case number in which to file any such application or evidence.

National Planning Guidance as to eviction injunctions

54. Further in this respect Planning Guidance in regard to injunction has stated the following;

> *"In these circumstances a local planning authority should generally only apply for an injunction as a last resort and only if there have been persistent breaches of planning control over long period* and/or other enforcement options have been, or would be, ineffective. *The Court is likely to expect the local planning authority to explain its reasons on this issue".*
>
> *Paragraph: 050 Reference ID: 17b-050-20140306 Revision date: 06 03 2014*

Welfare Inquires and the Best Interests of Children.

55. Therefore, it can be seen from the case law that both the Council and indeed the Court are required in deciding to take injunction action, to consider the protections set out under the Human Rights Act, the European Convention on Human Rights and the United Nations Charter on the Rights of Children.

56. Under Article 8 of the ECHR, the Courts duty had been clearly set out at paragraph 96 of *Chapman v United Kingdom* (2001) 33 EHRR 18:-,

> *"the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases..... To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life"*

57. It is submitted that the vulnerable position of these Defendants in the regulatory planning framework and the issue as to the non-availability of alternative suitable accommodation must be key issues before the Court. Complaint is taken that singularly absent from the Councils evidence is any consideration of these issues. The best interests of the children are served at this stage by allowing them to remain on to their own land and have access to health and facilities particularly necessary for a newborn baby until after the retrospective planning appeal has been determined.

Article 3.1 of the United Nations Convention on the Rights of the Child 1989

58. Further in bringing injunctions, the Council is clearly also required to consider and present evidence to the Court in regard to their obligations under Article 3.1 of the United Nations Convention on the Rights of the Child 1989 which was referred to in ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4; [2011] 2 AC 166 (ZH) at paragraph 23:

> *"For our purposes the most relevant national and international obligation of the United Kingdom is contained in article 3.1 of*

the UNCRC: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." This is a binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law.

59. The Council must also act consistently with Article 3 of the Guidelines on Determining the Best Interests of the Child, referred to in ZH at paragraph 25 that :-

> *"the best interests must be a primary (but not the sole) consideration for all other actions affecting children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies see article 3."*

60. This Court is accordingly required to act, as the headnote to ZH states, that "in all decisions directly or indirectly affecting a child's upbringing, national authorities were required to treat the best interests of the child as a primary consideration, by identifying what those best interests required and then assessing whether the strength of any other consideration, or the cumulative effect of other considerations, outweighed the child's best interests".

61. The principles of ZH have been held to be clearly applicable to these proceedings. Baroness Hale stated at paragraph 24 that

> *"Any decision which is taken without having regard to the need to safeguard and promote the welfare of any children involved will not be "in accordance with the law" for the purpose of article 8.2. Both the Secretary of State and the tribunal will therefore have to address this in their decisions".*

62. Baroness Hale said in terms in paragraph 25 on page 179 at letters G-H that decisions

which affect a child more indirectly, such as decisions where one or both parents are to live, are ones where the best interests must be a primary consideration.

63. The Court of Appeal has held that the decision in ZH applies to Planning and Injunctions cases: see for instance, the Judgement of Mr Justice Higginbottom in Stevens v SSCLG and Guildford Neutral Citation Number: [2013] EWHC 792 (Admin) at par 69 approved by the Court of Appeal in Collins v Secretary of State for Communities and Local Government and Fylde 2013 EWCA 1193

64. In Stevens at paragraph 69 vi, Mr Justice Higginbottom noted that

> "*Whether the decision-maker has properly performed this exercise is a question of substance, not form"*

65. The Court should note and take account of the fact that no evidence of substance has been presented by the Council in regard to the best interest of the children of the Defendants. Again, it is submitted that it was and would not be proportionate to evict these children onto the side of the road at this time.

Humanitarian duty

66. Indeed, the obligation is on the Council to place before the Court all the necessary information in order to discharge its functions, when seeking to evict Gypsies and Traveller from their land and especially their children from their home. This type of human rights information had been expressed as a duty to act with common humanity see Sedley J in R v Lincolnshire County Council and Wealden Council 1995 1QB 529. See also decision of Lord Justice Latham in Kerrier District Council v Uzell 71 P & /CR 566 at page 571, where he held that the consequences of failing to carry out the humanitarian duty could be to render the decisions taken to take injunctive or enforcement action null and void.

67. The importance of the Council obtaining this information in advance of eviction is of course brought into clear perspective when children are involved as in this case. Complaint is taken that there is no indication that any of these duties has been properly discharged by the Council when obtaining the initial injunction or now when

seeking to continue it. Indeed, the Council do not suggest that this was done. It is submitted that this is in complete disregard to the Humanitarian and Human Rights duties referred to above.

68. Since the Defendants are willing to enter into an appropriate status quo injunction, the court can correct the Councils failure and vary the injunction until the final determination of the planning appeal. It is submitted that this is the proportionate approach, and little harm will be done in the short term by leaving them alone until the outcome of the planning process. Indeed, substantially greater harm will be done by forcing them back onto the road. Suitable alternative accommodation cannot include residence in the Garden of the 1st Defendant in breach of planning control

69. Further, in this context and generally the Court is invited to follow the approach explained by the House of Lords in the Porter case and identified in para 36 of the decision of Stadlen J in Brentwood BC v Ball [2009] EWHC 2433 (QB) at para 45 that

> *"prohibition against the granting of an injunction which a Judge would not at the time it is granted be prepared to enforce by imprisonment not only entitles but requires the judge in considering whether and how to exercise the discretion conferred on him by section 187 B to assess and weigh in the balance the hardship if any which would be occasioned to a defendant and his family if required to move, necessarily including therefore the availability of suitable alternative sites".*

Need for a full Porter Hearing

70. The Court is therefore required to carry out a full Porter hearing before ordering eviction. It is important to stress that in carrying out that exercise, a careful balancing exercise is required in respect of the planning merits and the harm to the environment that may be caused. In that regard a temporary consent or a temporary restraint rather than imposing a full injunction whilst the lack of suitable available alternative accommodation is dealt has been considered a powerful factor in the balance see, the

case of Michael *Linfoot v SSCLG & Chorley Borough Council 2012] EWHC 3514 (Admin).*

71. Furthermore, as already stated, this is not a case of a flagrant breach of planning control on behalf of the Defendants. They were resident on their land prior to the injunction being granted. They have applied for retrospective planning permission which they are entitled to do under the Planning Acts. They are willing to enter into an appropriate undertaking in regard to leaving the land once the planning merits of their application has been properly determined on appeal – on the basis that they are not granted permission to stay. If they win of course no harm would have occurred. The human rights balance and/or balance of convenience are therefore clearly in their favour of allowing them to stay until the outcome of the planning application.

THE BALANCING EXERCISE -Balance of convenience

72. In terms of the balance of convenience, further mention must be made to the test set out in the House of Lords Decision in American Cyanamid Co v Ethicon Limited [1975[AC 396 in regard to the exercise of the Courts discretion in injunction proceedings. It is submitted that in the circumstances here, the balance of convenience is clearly in favour of allowing these families to stay and return to the land, at least until their planning appeal. Further the same is true in regard to the test of proportionality. If a status quo injunction is granted there would be no need for a full Porter hearing.

73. The Government have long accepted in Circular and Gypsy and Traveller advice the difficult position of Gypsies and Travellers in regard to finding sites to reside. The need for sites is particularly important in terms of education and safety of children. The dangers of evicting Gypsies and Travellers back onto the road should be immediately apparent and all that is achieved is that the problem is transported too somewhere else. The defendants have done everything in their power to legitimise the unauthorised use of the land.

74. Reliance is also placed on the Court of Appeal decision in Guildford Borough Council v Smith (Valler) a committal case, where the court held that there was no automatic

right to enforcement of an injunction. The Judgement of Lord Justice Steyn in that case, the facts of which are wholly analogous to this case, states as follows:-

> "*Given that the defendants has done all in their power to seek an alternative site. And that compliance with the orders would not be within their reasonable capacity, it would be an affront to the civilised values of society to accede the local authorities' invitation. Here the family seek to regularise their position in the pending planning appeal process they should not be foreclosed of that chance"*

75. The discretion to take action on any breach is intrinsically a matter for the Court who should not just rubber stamp the Council requests. Reliance is placed on the decision of Deputy High Court Judge Timothy Straker QC in Guildford Borough Council v Cooper [2019] EWHC:

> *"Therefore, it is not for the court to act merely as a rubber stamp to endorse a decision of the Local Planning Authority to stop the user by the particular defendant in breach of planning control. Moreover, the court is as well placed as the Local Planning Authority to decide whether the considerations relating to the human factor outweigh purely planning considerations. The weight to be attached to the personal circumstances of a defendant in deciding whether a coercive order should be made against him is a task which is constantly performed by the courts."*

CONCLUSION

76. For the above reasons the Court is asked first to vary or amend the injunction in terms of the continuing occupation of the land by the Defendants and their families in order to facilitate their way of life at least until the planning merits have been determined. Further all the Defendants are happy to enter into a binding undertaking to leave the land should planning permission is not granted.

Alan B R Masters

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