

ENGLAND AND WALES / JUDGMENT

Test Valley Borough Council & Anor v Albert Bowers & Ors

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- (1) TEST VALLEY BOROUGH COUNCIL
- (2) HAMPSHIRE COUNTY COUNCIL (LHA) Claimants
- and -
- (1) ALBERT BOWERS
- (2) - (89) OTHER NAMED DEFENDANTS
- (90) PERSONS UNKNOWN FORMING UNAUTHORISED ENCAMPMENTS WITHIN THE BOROUGH OF TEST VALLEY
- (91) - (137) OTHER NAMED DEFENDANTS s Defendant

MISS C. BOLTON appeared on behalf of the Claimants. THE DEFENDANTS did not appear and were not represented.

J U D G M E N T (Transcript prepared from poor quality recording and without the aid of documentation) HIS HONOUR JUDGE DIGHT CBE: This is the trial of a claim by a borough and a county council, who are the first and second claimants respectively, in the exercise of their powers under s.222 of the Local Government Act 1972 to bring proceedings to protect the interests of the inhabitants of their areas under, among other provisions, s.187B of the Town and

Country Planning Act 1970 by restraining what are alleged to be actual or apprehended breaches of planning control in relation to a significant number of unauthorised encampments by gypsies and travellers and the alleged dumping of controlled waste by them within the areas for which the claimants are responsible. The first claimant is the local planning authority for the Borough of Test Valley and is responsible for the enforcement of planning control in the area. The second claimant is the Local Highway Authority and is responsible for the maintenance and repair of the highway and is also the owner of some of the parcels of land which are the subject matter of this claim. The claim form named a large number of defendants but also included, as a separate defendant or defendants, the category of “persons unknown”. On 18 June 2020, Robin Knowles J granted permission for alternative service of the claim form and the application for an interim injunction. On 20 July 2020, His Hon Judge Bird (sitting as a judge of the High Court) granted an interim injunction against the named defendants and against persons unknown, with a power of arrest, until further order. That interim injunction, in essence, prevented the named defendants and persons unknown from setting up encampments on any land identified in the claim without the permission of the local planning authority or planning permission granted by the Secretary of State or without permission of the owner of the land. It also prohibited the defendants and persons unknown from entering and occupying the land OPUS 2 DIGITAL TRANSCRIPTION for residential purposes, including the stationing of caravans and mobile homes. It also prohibited the depositing of controlled waste on the land unless a waste management licence or environmental permit was in force and the terms of those permissions were complied with. His Hon Judge Bird relied on the detailed and comprehensive evidence of Karen Louise Dunn, a senior officer employed by the first claimant, set out in a 31 page witness statement dated 15 June 2020. Mrs Dunn gave live oral evidence before me during the course of the trial in the course of which she verified this witness statement and answered a number of questions, most of which came from me. I accept her written and oral evidence without hesitation. She sets out the context in which the proceedings were brought in paras.6 to 11 of the witness statement in the following terms: “6. In making the decision in my capacity as Head of Legal and Democratic Services to make an application to (inaudible) the court for an injunction order under the above powers, I have considered and given due weight to the substantial evidence compiled in support of this application. This includes evidence of nuisance and alarm to local residents and business, the prevalence of fly-tipping and other unlawful activity associated with the encampments, the risk to health posed by human waste which is often a feature of unauthorised encampments and with the view that the actions of those setting up unlawful encampments within the borough and the behaviour exhibited once a camp is established is having a detrimental impact on the settled community. I ask (inaudible) to note that the geographical area which is the subject of this application is limited, and is limited to the area where the most problematic unlawful encampments have occurred and where the negative impact of the encampments are most regularly and intensely experienced. 7. As will be seen from the evidence supporting this application, many of the problematic encampments occur with the Andover area often on community green spaces, sports facilities or recreation grounds. A further small parcel of land is included in the application in Romsey in the south of the borough comprising the Test Valley Borough Council owned Alma Road carpark which, from time-to- time, attracts encampments.

Test Valley Borough Council has been able to identify numerous individuals who have comprised unauthorised encampments within the borough, who are listed as named defendants to this application. However, there are other individuals who have set up unauthorised encampments whose identities are unknown. Accordingly, the orders sought include persons unknown. To this end, the court's attention is once again drawn to the geographic scope of the proposed order, which does not seek to cover the entire borough, but simply those areas where there is a known and repeated history of intolerable behaviour related to unauthorised encampments. 8. I put my mind to the requirements of s.222 of the Local Government Act 1972 and I am entirely satisfied that seeking an order in the terms attached to the application is expedient with the promotion and protection of the inhabitants of the Test Valley Borough Council area. In addition to the (inaudible) effect on the community, I have taken into account the financial cost, on which I expand later in this witness statement, of the clear-up costs which are incurred when an encampment moves on leaving fly-tipped waste and other waste and detritus, the cost of repairing the damage of an entry to the land that has forced, the cost of enhancing site fences and the costs of taking legal court action and, therefore, after enforcement. 9. As is described later in this statement, Test Valley Borough Council regularly has cause to serve notice and take court proceedings under ss.77 and 78 of the Criminal Justice and Public Order Act 1994 to move unauthorised encampments from its land. Community protection notices under s.43 of the Antisocial Behaviour, Crime and Policing Act 2014 have also been served and, on occasion, applications for seizure order under s.51 of the Act made. The police are regularly involved in liaising with encampments and, where justified, will use their powers under s.61 of the 1994 Act to move encampments on. None of these actions have had the effect of stopping or reducing the instances of unauthorised encampments. In fact, those setting up such encampments seem now to be familiar with the process for their removal and increasingly will expressly say that they will not move on until the court makes an order and/or measures are taken to enforce an order. There is no further action that could have been or could be taken to reduce or mitigate against the unlawful encampments. 10. It is apparent that nothing short of an injunction order will bring a stop to the unlawful encampments and their consequences. I understand that, if this court sees fit to grant an order, it will be on an interim basis in the first instance with later consideration of a final order. I can personally confirm that Test Valley Borough Council has engaged with Hampshire Constabulary, who are aware of and are fully supportive of the council's application for an order. The police have seen fit to provide substantial evidence to support this application. I am authorised and requested by the second claimant to include them in this claim." The evidence that was also before the judge who granted the interim injunction included witness statement made by local police officers and their superiors, by other council employees, including those involved in environmental health matters and clearing up the waste which remained on the sites, as described by Mrs Dunn in the passages I have referred to. The use of the powers under ss.77 and 78, which Mrs Dunn referred to, to issue directions to various occupiers to leave land and remove their vehicles followed by proceedings in the local magistrates' courts in order to enforce the directions was a process or a course of action which the claimants had been assisted in by the local police using their own powers under s.61 of the 1994 Act. The local authority and the police worked cooperatively as a team but, it was Mrs Dunn's evidence, which I accept, that this was not

an effective system for the reasons which she gave in paras.31 to 34 of her witness statement and which she explained to me when she gave live oral evidence at trial. At trial she was asked about the use of the powers under ss.77 and 78 of the Act and accepted that, while that might be a means of getting an order from the local magistrates court against those who had moved onto land unlawfully, the process was cumbersome and did not lead easily and effectively to removal of those against whom the order was sought. First the local authority would need to serve notice on the encampment and there would be a delay before the hearing at court. Notice of the hearing itself would have to be served and then the bailiffs would need to be instructed to evict the occupiers if they did not physically remove. She told me that it takes time and costs a considerable amount of money to pursue that particular process. She told me, and I accept, that the respondents to the applications know absolutely how the system works, and she said their practice was to remain on the site and wait until the bailiffs arrived with equipment to remove them at which point the respondents then tended to move on. Further, she added, that if they moved only a short distance away, the claimant could not rely on the existing order but had to start the whole process again. She was also asked about the efficacy of other enforcement powers available to the claimants (including the impact of an interim injunction which did not have a power of arrest attached to it) matters which I will come on to in due course. At the trial before me, the claimants were represented by counsel but no one appeared on behalf of the defendants, named or otherwise, to resist the claim Mrs Dunn has made 12 witness statements in this case, which she verified. Six of them are relevant to the issues which I have to determine. I read those before she went into the witness box. She gave careful, measured and reflective evidence, explaining the factual position from time-to-time as well as the current position and setting out in some detail the reasons why the claimants need the protection of the relief which they seek in this claim. Her written and oral evidence was supported by documentary evidence and statements of the other witnesses that I have mentioned, which together prove, in my judgment, in an overwhelming way, each of the factual matters on which the claimants rely, including the allegations contained in a Scott Schedule which identifies each of the named defendants and the particular acts alleged against them. I accept her evidence without hesitation and I find that the allegations made in the Scott Schedule prepared by the claimants are true. So far as the land is concerned, I have been provided with a number of detailed plans of the areas in respect of which the claimants seek final injunctions. The area covered by the interim injunction is shown edged red in the master plan, which is called the "Injunction Application Plan/North Andover". It is an urban area in the north of the borough. There is a separate plan in respect of the Alma Road carpark in Romsey. The larger North Andover area is then broken into four quadrants, each of which is shown on a separate plan on a larger scale. Those plans are known as the "Grid Sections for A1 to A4". In addition, the claimants seek an extension of the injunction to two smaller parcels of land further south in the borough called the Romsey Rapids Sports Centre, which is owned by the first claimant, and Nursling and Rownhams Hall and Recreation Ground, which is south of the borough. Those two additional parcels of land are shown on two further separate plans on which the parcels are hatched red. Based on the written and oral evidence in respect of those two additional parcels of land, I am satisfied that they have experienced significant unauthorised encampments in the period since the grant of the interim injunction and should be

added to the other areas of land in respect of which final relief is granted. 12 Mrs Dunn explained to me in the course of her evidence what the plans, in particular these two additional plans showed and why it was important that they be added. She told me about the encampments there and the trouble that the local authority had seen, witnessed or had reported to it. 13 As to the preparation of these plans, Mrs Dunn explained that she caused each of them to be created by her own GIS, the geographic information system department, and she either marked the relevant areas herself or caused them to be marked up to reflect the evidence in her witness statements made throughout the course of proceedings as matters evolved. I am satisfied that the plans accurately represent the areas of land which have been the subject of the unlawful activity complained of in this case and that, unless restrained, would again be used in the same or similar ways. The borough covers 242.4 square miles. When added together, all the parcels of land in respect of which relief is sought amount to approximately 17 square miles, which is just short of 7 per cent of the total area of the borough. This is not a case where a blanket borough-wide ban is sought. The relief sought by the claimants is, in my judgment, focused on the areas of the borough where they assert and have proved that there has been unlawful activity in the past and where they say there are good grounds to believe that there is a real risk of recurrence of those activities by these defenants if they are not restrained. 16 As to the defendants, their number has fluctuated, at one point reaching 137 named defendants, including one category of persons unknown. The evidence demonstrates that the acts of which the claimants complain have been committed in part by persons whom they have been able to identify, but also, unsurprisingly given the nature of the acts, by people whom the claimants cannot identify. None of the defendants have filed acknowledgments of service, defences or evidence, although some have made representations to the claimants' lawyers, but no submissions to the court. The defendants fall effectively into four groups; firstly, identified defendants with addresses against whom relief is still sought, secondly, defendants with addresses against whom relief is no longer sought and against whom proceedings have been discontinued, most recently by virtue of an order which I granted on Monday of this week, thirdly, persons unknown who have been onto the land but who have not been identified and, fourthly, persons unknown in the sense that they are potential newcomers whom it is sought to dissuade, by the grant of pre-emptive injunctive relief, from committing the acts which have been alleged against the other defendants to the claim. I am told that permission was granted to various third party bodies and organisations to intervene and to take part in the proceedings if they wished, but none has chosen to do so. 18 As I mention above, at trial none of the defendants and none of the intervenors appeared, although I am satisfied from the evidence that I heard and from documents which I have been shown in the form of a number of witness statements and their exhibits and a number of certificates of service, together comprising approximately 100 pages, that the defendants have been properly served with notice of this trial, either by post to the addresses on the claim form, as amended from time-to-time, or, where they fall into categories of persons unknown, by inserting the relevant documents into clear plastic waterproof wallets and attaching them in approximately 50 equidistant positions around the perimeter of the land and at each junction between the land and the public highways leading into or onto the land. Photographs have been taken at each of these locations and exhibited to the witness statements before me showing the wallets attached to a variety of road

signs, posts, poles and fences. I was told in live oral evidence that the wallets can be opened so that the documents can be removed, read and replaced. In addition, all the documents relating to the interim injunction can be found on the first claimant's website. I am satisfied that the defendants and the persons intended to be affected by this claim and the relief sought have been given due notice and have had a proper opportunity to understand what the allegations are against them and how to respond to them. So far as the law is concerned the local authority has the power under s.222 of the Local Government Act 1972 to seek relief in respect of breaches of planning control under s.187B of the Town and Country Planning Act 1990, subsection (1) of which provides: "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." Subsection (2) provides: "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." The court, therefore, has a wide discretionary jurisdiction which has been considered in the decisions of the higher courts from time-to-time. 20 As against the named defendants, the only case I need to refer to is the decision of the House of Lords in *South Buckinghamshire District Council & Anor v Porter* [2003] 2 AC 558, which was a series of conjoined appeals where injunctions had been sought in the Queen's Bench Division of the High Court (as it then was) against members of the travelling community who it was alleged had used sites in breach of planning control. The House of Lords gave comprehensive guidance as to the approach that a court should take in considering whether to grant an injunction to restrain breaches of planning control, principally focused on interim relief, but also taking into account the balance to be undertaken when final relief was sought. In essence, the House of Lords held, first, that the jurisdiction of the court is original and discretionary and not supervisory, secondly, that the court in deciding how to exercise its discretion should take account of all of the circumstances, thirdly, that all the circumstances, included the personal circumstances of those who are facing the application for an injunction, fourthly, that the planning policy and the judgment of the local authority as to planning issues is not a matter for the court and, fifthly, standing back, the real question for the court was whether, in all the circumstances, the grant of an injunction was just and proportionate. The House of Lords expressly approved the judgment of Simon Brown LJ (as he then was) in the Court of Appeal which had led to the appeal in the Lords and, in particular, paras.38 to 42 of his judgment, which were cited by Lord Bingham of Cornhill (then the Senior Law Lord) at para.20 of his speech with approval. In the Court of Appeal, Simon Brown LJ had said, under the heading "The Approach to Section 187B", how he would deal with the matter: "I have regard to the following: first, that a judge is not entitled to reach his own independent view of the planning merits of the position of the respondents; second, that, in looking at whether or not to grant an injunction, I have to consider the question of hardship to the defendants, including their family, health and the availability of other sites; third, there is a need to enforce planning control; fourth, in that context, the court is entitled to take account of the planning history of these sites; fifth, the degree of flagrancy of the breach of planning control may well prove critical; sixth, the court should have regard to the urgency of the matter and the length of occupation by the defendants; seventh, bearing in mind that they are

the democratically elected local body whose duty it is to look at these matters and control the local planning environment, one has to take account of the fact that the decision of the local authority was to enforce the breached planning control; eighth, environmental damage has to be placed in the balance; ninth, the court need not shut its mind to the possibility of the planning authority itself reaching a different planning judgment, a factor which does not arise in the present case.” 23 As against persons unknown, the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47 reviewed the relevant principles and gave detailed guidance to first instance judges about how to approach applications for the form of relief sought in this case against persons unknown, who are, in essence, what are referred to as newcomers. The conclusion of the Supreme Court, in a judgment which three of their Lordships contributed to and with which the others agreed, is to be found in para.238 under the heading “Outcome”: “For the reasons given above we would dismiss this appeal. Those reasons differ significantly from those given by the Court of Appeal, but we consider that the orders which they made were correct. There follows a short summary of our conclusions:

- (i) The court has jurisdiction (in the sense of power) to grant an injunction against ‘newcomers’, that is, persons who at the time of the grant of the injunction are neither defendants nor identifiable, and who are described in the order only as persons unknown. The injunction may be granted on an interim or final basis, necessarily on an application without notice. (ii) Such an injunction (a ‘newcomer injunction’) will be effective to bind anyone who has notice of it while it remains in force, even though that person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action. It is inherently an order with effect contra mundum, and is not to be justified on the basis that those who disobey it automatically become defendants. (iii) In deciding whether to grant a newcomer injunction and, if so, upon what terms, the court will be guided by principles of justice and equity and, in particular:
 - (a) that equity provides a remedy where the others available under the law are inadequate to vindicate or protect the rights in issue.
 - (b) That equity looks to the substance rather than to the form.
 - (c) That equity takes an essentially flexible approach to the formulation of a remedy.
 - (d) That equity has not been constrained by hard rules or procedure in fashioning a remedy to suit new circumstances. These principles may be discerned in action in the remarkable development of the injunction as a remedy during the last 50 years. (iv) In deciding whether to grant a newcomer injunction, the application of those principles in the context of trespass and breach of planning control by Travellers will be likely to require an applicant: (a) (b) to demonstrate a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other remedies (including statutory remedies) available to the applicant. to build into the application and into the order sought procedural protection for the rights (including Convention rights) of the newcomers affected by the

order, sufficient to overcome the potential for injustice arising from the fact that, as against newcomers, the application will necessarily be made without notice to them. Those protections are likely to include advertisement of an intended application so as to alert potentially affected Travellers and bodies which may be able to represent their interests at the hearing of the application, full provision for liberty to persons affected to apply to vary or discharge the order without having to show a change of circumstances, together with temporal and geographical limits on the scope of the order so as to ensure that it is proportional to the rights and interests sought to be protected. (c) to comply in full with the disclosure duty which attaches to the making of a without notice application, including bringing to the attention of the court any matter which (after due research) the applicant considers that a newcomer might wish to raise by way of opposition to the making of the order. (d) to show that it is just and convenient in all the circumstances that the order sought should be made. (v) If those considerations are adhered to, there is no reason in principle why newcomer injunctions should not be granted.” The Supreme Court set out from para.167 a series of factors that ought to be taken into consideration or questions which the court ought to ask itself before exercising its equitable discretionary power, namely whether: “(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights. (ii) There is procedural protection for the 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. (iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application. (iv) [As I have already mentioned] 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.” Further, the Supreme Court held that any injunction would have to spell out to the defendants in a clear and readily understandable way what it is that they are to be prevented from doing; it is to extend no further than the minimum necessary to prevent the behaviour complained of; it must be subject to strict limits temporally and territorially; it must be actively publicised and it must include generous liberty to apply to vary or discharge its provisions. In the course of the evidence before me, each of those factors and conditions has been addressed. There is lots of evidence, much of it in documentary form verified by Mrs Dunn, who is the only witness to give live oral evidence. The claimants’ allegations are supported by documentary evidence in the form of police and other reports and logs which demonstrate the breaches of planning control asserted by the claimants, the adverse effect on the local community, the involvement of other public bodies and the expenditure by the local authorities of significant sums to deal with the problems caused by the acts of the defendants. I have also seen a number of photographs which graphically demonstrate the impact of the unauthorised encampments and the harm and expenditure which they have led to. In paras.24 to 36 of her first witness statement, Mrs Dunn set out the scale and number of unauthorised encampments in the Test Valley Borough Council area between 2018 and May

2020. In total, there 82 unauthorised encampments, which she gives particulars of in a table. She stated that in 2020 there had been four encampments, all in Andover. In paras.37 to 64 of her witness statement, she gave details of the fly-tipping at the various sites in the areas shown on the plans which she produced, during the course of the establishment of the encampments. She said, for example, in paras.54 and 55 of her witness statement: “On 25 and 28 May 2019, this council received reports of unlawful deposits of waste at land in the vicinity of Saxon Heights, Andover. The report records rubbish, tree branches and a gas cannister has been tipped. The council’s street cleaning team records removing a tipper load of garden waste, a wheelbarrow, gas bottle, a large gazebo and bags of household waste. As a result of the witness evidence of this fly-tipping, Test Valley Borough Council was able to bring a successful prosecution against a Mr Henry Loveridge.” Mrs Dunn also gave evidence about prosecutions brought against others. She gave evidence in her witness statement about threats made to and intimidation of local residents. As an example, she said in para.83 of her witness statement: “On 6 September 2019, a complaint was received by Test Valley Borough Council that there is a group of travellers that have parked themselves up in a field at Saxon Fields, Andover, and are impacting on the dog walkers that rely on that field to walk their and my own dog around. Not only that, but they have generators which are creating a lot of noise. Police reports also record theft from the local café, rocks being catapulted into the café and into the lake and that two ducks have been killed.” 27 A report was made to the police the following day of an allegedly dangerous dog belonging to a traveller which was said to have been barking at the son and daughter of a member of the public. It was reported that the member of the public had then to pick up their own dog and carry it, while the other dog pulled at the son’s trousers and tried to bite him. The son described it as being a scary situation and said that his younger sister was also scared. 28 Mrs Dunn gave evidence in paras.101 to 115 of the risk to public health through the leaving of untreated human waste in public areas, evidence which is supported by a witness statement of Lorraine Cooper of the Environment Services Department of the local authority, who gave specific evidence of people on encampments defecating in public places and/or on land belonging to others and unlawfully depositing controlled waste. 29 Mrs Dunn gives evidence in paras.116 to 128 of damage to property. By way of example, she said in para.127: “On 29 September 2019, unlawful occupiers, including members of the McDonagh family, moved on to the Charlton Athletics Track in Andover. Damage was sustained to the pipe and to the running track and a set of stairs was thrown over the barrier. Members of the public turned up to use the track and left. A group training also left the track due to the encampment. Police described substantial damage to the running track. Police officer notes that children from the encampment were being encouraged to damage the white and the ring of the running track.” She produced relevant photographs and added: “This damage was sustained during a number of hours and we have photographs which clearly show the lack of respect and disregard which the occupiers had to this local sports facility. A member of the public also reported to the police that members of the encampment were trashing the running track.” She gave evidence in para.129 of nuisance and smoke caused on the encampments and of the considerable cost

incurred by the local authority in clearing up the damage and nuisance caused by these encampments, saying: “In 2019, the council spent £62,100 repairing and reinforcing fences, gates and barriers at Saxon Fields and Picket Twenty, Andover and fencing (inaudible) at Smannell Road and Saxon Fields in Andover.” It is apparent from the evidence that I have seen in writing that the involvement of the police prior to the granting of the interim injunction by His Hon Judge Bird had a limited effect, as did the use of other powers available to the claimants. However, following issue of the claim on 18 June 2020 and grant of the interim injunction with a power of arrest by His Hon Judge Bird on 28 July there appears to be a significant (and positive) impact on the behaviour of which the claimants complain. In the course of her evidence before me Mrs Dunn said that the power of arrest made a difference in quite a stark way. She said that when His Hon Judge Bird made the order in July 2020 there were initial teething problems, but afterwards she was able to put in place a really good system whereby “If an encampment was found, we would call the police and we would speak to the police to arrange a joint visit to the site by me or a colleague and the police and show the campers a copy of the order and, if we acted quickly, they did not settle. We would give them two or three hours and tell them that they would be arrested.” Two big encampments, she said, arrived shortly after the injunction and the system worked well. It worked well until 2021 when Nicklin J discharged the power of arrest attached to Judge Bird’s order as against persons unknown. 34 Mrs Dunn added that the people who are engaged in the activities which the local authority seek to restrain are well aware of the systems deployed by the local authority and the measures in place to deal with them and that initially word of the order made by Judge Bird spread quickly and resulted in a reduction of the type of behaviour that the local authority wanted to restrain. She said “The police are very supportive because, when the encampments are set up in an urban area, it means they have to go out on patrol and this system which we deploy saves resources.” It also minimised harm because the encampments could not get going. However, word then spread of the fact that Nicklin J had discharged the power of arrest as against persons unknown, which Mrs Dunn said had a significant detrimental impact on the control of the unauthorised encampments and depositing of waste: “After the discharge of the power of arrest, it meant that you could not take up a joint powerful visit informing the campers of the risk of arrest and that they should move on.” The other remedies, she told me, were not effective. The possibility of using ss.77 and 78 seeking a possession order or seeking committal of those who were in breach of the injunction was time-consuming and expensive and ultimately ineffective as a system of controlling the acts which the claimants complain of. 35 Mrs Dunn gave further detail in writing in her ninth witness statement about the increase in difficulty in managing these sites after the discharge of the injunction. Although I was sceptical at first, I accept, having heard her give evidence and having asked probing questions of her, that there really was a very significant difference in the attitude of those who might breach the injunctions and the ability of the local authority to control them after the power of arrest had been discharged, and that alone has persuaded me that, if I grant relief, which I intend to do, a power of arrest should be reattached so that the very effective system which the local authority had formerly

operated in cooperation with the local police can be put back in place. 36 My understanding of the evidence and the submissions made to me is that the cooperative working of the local authority and the police meant that there had not, in fact, been a need to for many arrests to be made. There had not been many court hearings in the magistrates. There has not been a need to use formal enforcement procedures resulting from breaches or anticipated breaches of the interim order, and those who are prima facie in breach of the orders have been persuaded to move on in a relatively short timeframe with a great saving of time and cost to the local authorities and the police thereby preventing the harm, the risk to public health, damage to property, nuisance and other adverse consequences previously suffered by the inhabitants of the borough. There is no doubt that the unlawful encampments and the depositing of waste without planning consent described by the witnesses amounts to a breach of planning control, which the claimants are under a duty and entitled in principle to restrain. Whether it is a breach of planning control is a matter for the claimants. Whether to grant an injunction to restrain the behaviour which the claimants say is a breach of planning control is a matter for the court. 38 My conclusions are as follows. So far as the named defendants are concerned, there is, in my judgment, a clear and comprehensive compilation of evidence of wrongful conduct and breach of planning control on the land which requires a remedy against those who can be identified. I have already referred to the Scott Schedule, the details of which I find proved. The claimants are not entitled to judgment in default because of the lack of participation of the named defendants. The grant of relief remains a discretionary matter for the court governed by the principles in the South Buckinghamshire case that I have already referred to. I have had regard to the factors identified by Brown LJ (as he then was) cited with approval in the South Buckinghamshire case. I have balanced those out. 39 As I have already said, the questions of the grant of planning permission and breach of planning control are matters for the local authority. So far as the hardship of the injunction on the respondents is concerned, I will return in due course when I come to look at the unnamed defendants to the local authority's provision of stopping points for the defendants and other respondents, but there is no evidence before me of specific hardship to balance in favour of the defendants that there has been in other cases, such as the detrimental effects of the grant of an injunction on the health of family members and the impact perhaps on schooling and other aspects of their lives. The potential detrimental effect is an issue in respect of which I have no material that I can evaluate because of the defendants' decisions not to participate in these proceedings. I am entitled to take account of the fact that the local authority is entitled to make the decision to enforce the planning control in respect of this relatively small part of the total area of the borough in which, as Mrs Dunn's first witness statement graphically set out, there were 82 encampments in a short space of time which were, in the words of Brown LJ, "flagrant breaches of the planning control" in place at the time. The environmental damage resulting from the breach of planning control is well evidenced. In all the circumstances, balancing the competing factors, such as they are, in respect of the named defendants, it seems to me that it is just and equitable in all the circumstances to grant final injunctions in the terms

sought. So far as persons unknown are concerned and, in particular, the newcomers, having regard to the Wolverhampton case, the first question is whether the claimants have demonstrated a compelling need for the protection of their civil rights. I have had regard to the three preliminary questions posed by the Justices in that case. First, has the claimant complied with its obligations as a matter of law in providing lawful stopping points? In compliance with its duty of full and frank disclosure, I have been told that there are no transit sites available in the county of Hampshire, but Mrs Dunn gave evidence of four permanent traveller sites in the county and, perhaps more significantly, the policy that the first claimant has adopted for implementing a negotiated stopping and temporary transit agreement process, the details of which I have looked at. I accept the submission that a negotiated stopping policy is more flexible than a single transit site, that it is better suited to the needs of the travelling community and it provides a better mechanism for facilitating their way of life. What is of significance is that, notwithstanding the passing of approximately 4 years since that policy was adopted, and the inference I draw that it has become well-known to the travelling community through being on the local authority's website and through the small number of enquiries that have been made, no one has yet asked the local authority to operate the policy or sought to negotiate an agreement. Secondly, I am satisfied that the claimants have exhausted all reasonable alternatives before seeking final relief from the court. They have, as I have described in my brief review of the evidence, used other options available to them with limited effect. None of those other options, in my judgment, provide a suitable or proportionate permanent or even medium-term solution to the problems which the claimants and the inhabitants of the borough face. I have taken account of the ability of the local authority to use the ss.77 and 78 powers and procedure, but it is not nimble, it is not cheap, it is administratively cumbersome, it is not long-lasting and the evidence, I accept, is that it simply moves the problem on to another site or plot of land usually not very far away from the site where the current problem has arisen. I also bear in mind that, in the course of these proceedings, there has been very limited engagement by the defendants, so that the ability to put in place another plan has not been possible. By reason of the reference in the Wolverhampton case to the possibility of recourse to the byelaws, that is also something that has been considered by the local authority, but, in my judgment, they have rightly formed the view that potential reliance on the byelaws would not provide a suitable alternative to an injunction coupled with the power of arrest, which I am satisfied would be used with sensitivity. There is, in my judgment, no other realistic proportionate alternative to final injunctive relief, subject to the controls and limitations suggested by the Supreme Court. The steps taken by the claimants are, in my judgment, appropriate to control the unauthorised encampments and depositing of unlawfully deposited waste. The evidence, particularly the evidence of the lack of efficacy of the potential remedies other than use of an injunction, and the evidence as to what happened once the power of arrest was discharged, suggests to me that there is a very real risk that, unless restrained by an injunction coupled with a power of arrest, these acts would be repeated. The history is illuminating on this issue, and I find that an injunction is necessary against both the

named defendants and newcomers to prevent a return to what happened before, the pattern of behaviour that existed before His Hon Judge Bird granted interim relief and the pattern of behaviour that recurred once his order was discharged. I am satisfied that the claimants in the course of the vast amount of material that they put before the court have complied with their duty of disclosure. In all the circumstances, I have come to the conclusion that, as against persons unknown, it is just and convenient to grant an injunction. I will come to the form of relief shortly. The question of a cross-undertaking in damages has to be looked at. It is a discretionary matter for the court and I have reached the conclusion that there is no need in the circumstances of the present case for the local authority to give a cross-undertaking in damages, the local authority or the county council, for five reasons. First, this is not an interim injunction. It is a final order, even though, in respect of persons unknown, it may be viewed as interim in a sense and, although I have a discretion nevertheless to extract a cross-undertaking in damages, it is not appropriate. Second, the claimants are public authorities. Third, they are spending public money. Fourth, they are enforcing public rights for the benefit of the communities they serve rather for themselves and, fifth, it seems to me that there is a wide power to vary or discharge the injunctions prior to any potential breach being committed, thereby very significantly reducing the risk of any damage for which the respondents would need to be compensated. So far as the terms of the order are concerned, I have been handed a draft minute by counsel which I will consider in due course. It spells out, in my judgment, in clear and readily understandable terms precisely what it is that those who are enjoined not to act in breach of planning control are not to do. Secondly, in my judgment, it extends no further than the minimum necessary to protect the rights of the claimants. Thirdly, it is subject to strict temporal and territorial limits, being the areas on the plans forming a small part of the local authority and, in the case of the named defendants, it will last only for five years. In the case of the unnamed defendants, the persons unknown, it will be granted for a year, subject to potential for renewal. Fourth, the order is to be actively publicised. There are proposals made as to alternative service, which I am satisfied presents the optimum method of bringing the existence of the injunction to the defendants. It will continue to be on the local authority's website, accessible to anyone who has access to the internet and, lastly, it will include generous liberty to apply to vary or discharge. I think the only other matter that I need to deal with is the question of the power of arrest which is available pursuant to s.27 of the Police and Justice Act 2006 which, so far as material, provides as follows: "(1) This section applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972 (c. 70) (power of local authority to bring, defend or appear in proceedings for the promotion or protection of the interests of inhabitants of their area). (2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.

- (3) This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either – (a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or (b) there is a significant risk of harm to the person mentioned in that subsection. It seems to me that there is clear evidence in the material I have referred to that the conduct which I ordered not to be repeated is obviously capable of causing nuisance or annoyance to the inhabitants of the local authority for the very compelling reasons given by Mrs Dunn in her witness statements evidenced by the examples that she provides. That evidence also describes the use of and the threats of violence from those who have caused the nuisance and annoyance and it seems to me that there is significant risk of harm to the people who are subjected to the acts which are to be restrained. For those reasons, it seems to me that the statutory criteria are satisfied and, in the exercise of my discretion, I will grant the order sought. For all of those reasons, therefore, and subject to discussion with counsel about the format of the order, I am prepared to grant the claimants the final relief sought in this claim.

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