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Case No: QB-2021-002721

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand,
London,
WC2A 2LL

Date: Friday, 25 August 2023

Before:

KAREN RIDGE SITTING AS A DEPUTY HIGH COURT JUDGE

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Between:

Waverley Borough Council	**Claimant**
-and-	
(1) Anthony Martin Gray **(2) Philip Martin Gray** **(3) Mathew Doherty** **(4) Mary Doherty** **(5) Mark Doherty** **(6) Allana Doherty** **(7) Barney Doherty** **(8) Theresa Doherty** **(9) John Doherty** **(10) Mary Anne Doherty** **(11) Wisdom Penfold** **(12) Persons Unknown** **(13) Thomas Doherty** **(14) Simon Doherty**	**Defendants**

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Wayne Beglan (instructed by **Waverley Borough Council**) for the **Claimant**
Stephen Cottle (instructed by **Public Interest Law Centre**) for the **Second**, **Fifth**, **Sixth** and **Fourteenth Defendants**
Felicity Thomas (instructed by **Community Law Partnership**) for the **Seventh Defendant**
Michael Fry (instructed by **Brilliance Solicitors**) for the **Thirteenth Defendant**

Hearing dates: 27, 28 and 29 June 2023

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APPROVED JUDGMENT

This judgment was handed down remotely at 12PM on 25th August 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archive.

Deputy High Court Judge Karen Ridge

Introduction

1. This is the hearing of an application for a final injunction by the claimant, Waverley Borough Council, against 13 named defendants and persons unknown. The application is brought under s.187B of the Town and Country Planning Act 1990, in relation to land at Lydia Park, Waverley.

2. The Claimant's evidence is contained within a series of witness statements of its officers, William Gibb, John Bennett and Victoria Choularton. Mr Bennett gave further oral evidence to the court. When discussing the chronology of the proceedings I shall refer to the defendants by the number they have been given in these proceedings. No disrespect is intended.

Background

3. Cranleigh is a small settlement in the administrative district of the claimant, with Dunsfold Road, a minor road, running through the north of the settlement. The land which is the subject of these proceedings comprises land off Dunsfold Road at Lydia Park, Waverley ("the Land") which is outside any settlement boundary and is in the open countryside. It is subject to a local plan policy designation as an Area of Great Landscape Value.

4. In the Council's documentation the Land has been sub-divided into five areas or sites (areas 1 to 5) which reflects the basis on which the land is owned or occupied by the named defendants.

> **Site 1:** (subdivided into three sections)- occupied by D3 and D4 (middle section), D5 and D6 (top section) and D7 and D8 and family (bottom section).
>
> **Site 2**: not occupied but subject of a prospective planning application and appeal following refusal. The appeal was dismissed following a hearing.
>
> **Site 3:** is occupied by D13 and his family.
>
> **Site 4**: contains two caravans which appear to be unoccupied. There is further unauthorised operational development in the form on hardstanding on this site.
>
> **Site 5:** occupied by D14 and his family.

5. Following complaints in May 2021 that works had been undertaken to facilitate a change of use for the stationing of caravans, the local authority began its investigations. Land Registry records confirmed that D1 and D2 were the registered owners of the Land, and a temporary stop notice was served requiring

cessation of works. This was followed by a series of temporary injunctions prohibiting further unauthorised works.

Terms of Final Injunction Sought

6. The terms of the injunction are set out in the draft order. The first clause is prohibitory in nature, preventing any unauthorised development or occupation of the land. Clauses 2 and 3 set out deadlines by which the defendants shall have vacated the Land. There are separate provisions in relation to D13 and D14 given that their circumstances are different. The remaining clauses are mandatory as well and provide for reinstatement of the Land to its former condition.

Procedural History

7. The claim was issued under Part 8 CPR on 14 July 2021 against named defendants D1–D11 and against persons unknown (D12). At a without notice hearing, the claimant was granted an interim injunction on that date, against the 11 named defendants and persons unknown. The interim injunction was extended further, on notice, at a hearing on 21 July 2021. It was again extended at a hearing on the 14 September 2021, save that 'persons unknown' were removed as defendants.

8. At a hearing on 11 November 2022, before HHJ Pearce sitting as a judge of the High Court the thirteenth and fourteenth defendants (D13 and D14), were added as named defendants by consent. They each gave personal undertakings to the Court, but no order was made prohibiting them from continuing to reside on the Land. At the hearing the interim injunction was also extended against D1-D12 and was further made against 'persons unknown' (D12).

9. All interim injunctions addressed the same essential actual, or apprehended breaches of planning control, namely the change of use of the land to that for the stationing of caravans for human occupation.

10. On 9 December 2022, D13 made an application to vary the Order in relation to the directions for trial and D7 made a further application to suspend the effect of the injunction to permit his family continued occupation of the Land. On 22nd December 2022 D3, D4, D5 and D 14 also made an application to vary the injunction. The application to suspend/vary by D7 was refused. The remaining applications were adjourned to this trial by the order of Deputy High Court Judge Healey-Pratt dated 21 March 2023 and the injunction continued.

11. On 15 February 2023, D5, D6 and D14 made an application for relief from sanctions and for permission to rely upon expert evidence at trial. By order of Wall J. dated 21 February 2023, relief from sanctions was refused and

permission for expert evidence was refused. Mr Cottle confirms that an appeal has been made against this Order and is pending. I shall return to this matter if necessary.

12. A separate application dated 9 March 2023, for committal proceedings against some of the original defendants has been issued but it is not pursued at this time.

13. At the final hearing, Mr Beglan represented the claimant, Mr Cottle represented D3, D5, D6 and D14, Ms Thomas represented D7, and Mr Fry represented D13. The remaining defendants did not attend the hearing and nor were they represented. The named defendants who did not attend the hearing have been served with the Claim Form and effective steps have been taken to ensure that they were aware of the hearing. I was satisfied that it was in the interests of justice to proceed on the 27 June 2023.

Planning History of the Land

14. The claimant is the local planning authority for the administrative district containing the Land. The lawful use of the land is as an undeveloped green field for agricultural purposes. It is in the open countryside in an Area of Great Landscape Character where, recently adopted Local Plan policy RE1 seeks to protect the intrinsic character and beauty of the countryside.

15. Within the immediate area there is an established Gypsy and Traveller community. The western side of Stovolds Hill has established Gypsy and Traveller sites containing approximately 100 pitches in an area known as 'Lydia Park'. Four planning applications have been granted for Gypsy and Traveller sites since 2016 on the Land to the North of Lydia with a total of 20 additional pitches. Two of the applications were granted on appeal.

16. The claimant has consistently refused planning permission for Gypsy and Traveller provision on the Land. The established Lydia Park sites are all located on one side of a track road and the injuncted land is on the other side, in an area of otherwise uninterrupted agricultural land.

17. The reasons for refusing permission for these defendants include that further Gypsy and Traveller provision in this area would cause dominance of Gypsy and Traveller occupation in terms of the Stovolds Hill settlement. The reasons also state that this unauthorised development is contrary to development plan and national policy in Planning Policy Traveller Sites, because the site is in open countryside; it is not allocated in the development plan, and it is away from the Cranleigh settlement.

18. The claimant published its Gypsy and Traveller Accommodation Assessment (GTAA) in 2018. That document assessed the need for additional sites. The claimant says that the identified need between 2017 and 2020 was met by the grant of planning permissions and that the need has been fully met. The appeal

decision (APP/R3650/W/22/3297332) of Inspector Gilbert dated 31 August 2022 records that there is no shortfall in deliverable sites for Gypsies and Travellers in the borough. However, the Inspector clearly went on to conclude that there is a lack of alternative available sites given that the permissions were granted on Lydia Park where the presence of other families means that any available pitches are likely to be taken up by existing families intensifying the use or extending the families.

19. The witness statements of three Council officers set out the chronology of events in relation to the site since the first complaint of unauthorised development. The statements detail the site visits undertaken by various officers, interactions with site occupants and service of statutory notices.

20. Initial complaints about a substantial area of new hardstanding were received on 26 May 2021. A few days later five caravans were placed on the Land. The Council served a temporary stop notice and emergency tree preservation order on 4 June 2021. At that point there was an area of hardstanding on the Land, on which five caravans and two box trailers had been placed. An aerial image of the hardstanding was produced by Mr Gibb dated 9 June 2021 depicting a large area of hardstanding surrounded by agricultural land on the north of the road.

21. On 5 July 2021 a planning application for four pitches (WA/2021/02407) was submitted, in relation to site 1. This applicant was D3. This application was refused on 4 January 2022. An appeal was not submitted but a resubmitted application was received (PP/2022/72780) on 17 October 2022. That application was not validated and did not progress.

22. The July 2021 planning application referred to D11 having an interest in the site. Two days later, in response to a statutory notice, the registered landowner D1 informed the claimant that he had sold the land to D14. Photographs of the Land dated 15 July 2021 depict large areas of hardcore deposited on the green field, the presence of hardcore mounds and caravans.

23. Throughout 2021 and 2022 the claimant continued to make site visits and document further unauthorised development on the Land.

24. In August 2022 the claimant became aware that site 3 had become occupied by D13 and the enforcement officer was further informed that site 4 was being occupied by D14. A planning application for site 2 was refused permission on 4 January 2022 and a subsequent appeal against that refusal was dismissed on 16 September 2022.

25. On 9 August 2022 the claimant's officers visited the Land and found that further operations had been carried out on site 1 and site 3. Four additional touring caravans were on site 1 which had been divided into four distinct pitches. D5 and D5 were occupying one of the pitches with their two children, Mr Bennett

spoke to D5 who told him that D3 and his wife and six children occupied the middle pitch and D7 and his family occupied the lower pitch. A touring caravan had been brought onto site 3 and was occupied by D13.

26. On 9 August 2022 the council officers were further informed that site 4 was to be occupied by D14 and his children. D14 telephoned the claimant's officer on 16 September 2022 and confirmed that he was intending to move on to the Land (site 5), that he had sought legal advice and had been informed that this would not be in breach of the injunction. D12 and D13 were not parties to the injunction proceedings at that date. They were joined as parties in November 2022.

27. Following complaints about further development, the claimant issued a further temporary stop notice on 28 September 2022.

28. On 30 September 2022, D14 made an application for planning permission (retrospectively) under reference WA/2022/02766. This application was refused on 7 December 2022. An appeal against that decision was submitted on 10 January 2023 and a hearing date has been set for 6 September 2023.

29. On 14 October 2022, D13 made an application for planning permission (retrospectively) under reference WA/2022/02625. This application was refused on 9 December 2022 and an appeal was submitted on 28 December 2022. The appeal remains pending. D14 and D13 were joined as parties on 11 November 2022 and provided undertakings to the court.

30. As set out above, on 17 October 2022 a second planning application was submitted in relation to site 1.

31. On 3 February 2023 D5 and D6 submitted a planning application (WA/2023/00371) in relation to the top section of site 1. This application was refused on 6 April 2023.

32. On 16 February 2023 D3 submitted a planning application (WA/2023/00470) in relation to the middle portion of site 1. This application was refused on 17 April 2023

Oral Evidence of Mr Bennett

33. Mr Bennett confirmed that, in making the decision to apply for an injunction, there had been discussions with heads of service at the claimant authority. He said that the personal circumstances of the defendants had been kept at the forefront of deliberations. Mr Bennett accepted that further information about the personal circumstances of the defendants had come to light during the court proceedings but said that the matter had been kept under review at each juncture.

34. When asked about welfare enquiries in relation to D13 and D14, Mr Bennett accepted that there were no pro forma welfare forms, but he had understood that planning applications were to be submitted and that personal circumstances would be detailed within those applications. Mr Bennett acknowledged that he had seen a statement in January 2023 outlining the constant supervision required by the child dependent of D14. He acknowledged being informed that the family of D7 were in and out of hospital with a child with a brain injury. Mr Bennett's evidence was that he made further site visits to make enquiries but that no one was present. He accepted that these matters were undocumented.

35. Mr Fry put it to Mr Bennett that there was a failure to keep the children's interests "centre stage". Mr Bennett did not accept this and went on to say "*for a long time it was not clear that the site was actually occupied*". He said that there had been discussions with a team leader whenever they received new information and conceded that there was no record of those discussions.

36. When asked by Mr Cottle for evidence of an impact assessment or best interest assessment, Mr Bennet confirmed that one did not exist. He said that matters had been under constant review but that was not in the evidence. Mr Bennett referred the court to the pro forma welfare check forms appended to the statement of Mr Gibb carried out in June 2021 but accepted that there was no similar documentation for D13 and D14.

37. Mr Bennett confirmed that the Council has one public Gypsy and Traveller site, The Willows. When asked about available pitches Mr Bennett made reference to there being a lot of empty pitches on Lydia Park.

38. In terms of the assessment of need and the supply of sites, Mr Bennett acknowledged that the Court of Appeal finding in the case of *Smith v SSLUHC [2022] EWCA Civ 1391* that the PPTS definition of Gypsies and Travellers was unlawfully discriminatory. He acknowledged that this could make a difference to the numbers in terms of need given that it constituted the PPTS definition was narrower. It followed that he accepted that, on appeal, an Inspector would have to take account of the Smith judgment and extrapolate it to findings of need which could result in a materially different balancing exercise.

Personal Circumstances of the Defendants

39. I have read the witness statements of Matthew Doherty (D3), Simon Doherty (D14), Allana Doherty (D6), Mark Doherty (D5), Thomas Doherty (D13), Barney Doherty (D7) and Elizabeth Theresa Doherty (D8). The statements set out a chronology of events, personal and family circumstances, healthcare issues and the hardship which would be suffered if the application is granted.

40. None of the Defendants gave oral evidence at the hearing and the written evidence in that regard is untested. Mr Beglan described that as extraordinary given that the claimant has provided clear indications that central parts of the

defendant's cases are not accepted. Many of the defendants have low literacy skills and giving evidence in any court setting can be an intimidating experience. I bear in mind that the written evidence of the defendants has not been tested by cross-examination, however, much of it is supported by documentary and other evidence. Where it is not so supported, I shall examine the evidence in the round and apply appropriate weight to it.

41. The difficulties in obtaining a permanent pitch are set out by various defendants and I accept that is a particular difficulty of the Gypsy and Traveller community generally. Some defendants have contested the claimant's suggestion that pitches on the Lydia Park sites may be available. I understand these to be private sites, in the hands of individuals and it is to be expected that those individuals would want to keep any empty pitches for use by their own families. I conclude that it is unlikely that private pitches held by other unconnected individuals would be available to any of the defendants as alternative sites. That conclusion is one which Inspector Gilbert came to in the appeal at Stovolds Hill in August 2022, when dismissing the appeal, she concluded that this lack of suitable and alternative sites attracted significant weight.

42. Matthew Doherty (D3) is currently separated from the mother of his 7 children, 6 of whom are living. He is a Gypsy and has followed a traditional Romani lifestyle, having found the short period living in bricks and mortar accommodation very difficult. His former partner confirms he is a loving and committed father, but she is reluctant to allow the children to stay with him for longer periods due to him not having a settled base, amenities and ready access to medical assistance. Matthew Doherty has nowhere else to go and moved on to the land because he had no other options and wanted stability to enable him to see his children.

43. Simon Doherty (D14) lives on the Land with his wife and three sons. His 8-year-old son has Downs Syndrome and requires assistance with walking and is currently awaiting further surgeries. He requires a high degree of care, and medical and educational supervision and support. Having attempted to live in bricks and mortar housing unsuccessfully and to the detriment of his mental health, he bought part of the Land in question. After doubling up with his cousin for four months on another site, he moved on to the Land. At that point, there was no injunction in force against him, a matter he took legal advice upon. He thereafter submitted a planning application.

44. Mark Doherty (D5) is an Irish Traveller married to Allana Doherty (D6) and they have three young children, the third child was born in May 2023. He confirms that he purchased the Land in early 2021 but believes the Land Registry records have not been updated. Mark and Allana Doherty and their children, lived with his parents for a while until relations became strained and they had to leave. Mark Doherty bought the Land because it was close to his extended family. He moved on to the land and when he was served with the

Injunction Order of 14 September 2021, he moved off the land and on to his brother's property.

45. Mr Doherty and his family had to leave that site due to overcrowding issues, the family stopped at another friend's site until March 2022 but again had to leave due to complaints from other residents. These were all temporary, ad hoc arrangements which demonstrate the limited options available to the pair. After their caravan was damaged whilst staying in a layby, the couple felt they had no option other than to move back on to the injuncted land in May 2022. The witness evidence contains photographs of the damaged caravan.

46. Mr Mark Doherty confirmed that he had visited the Council offices to ask for a pitch for his family and was informed that they did not hold information as to available pitches. A letter to the Council Housing Options Team sent by his solicitor asking about pitches has not received a response.

47. Thomas Doherty (D13) lives in a family unit with his wife, child, disabled brother aged 20 years and his father. His interest in the Land was purchased for £10,000 with help from his mother and brother. Thomas Doherty and his family moved onto the Land in April 2022 when faced with homelessness and when his wife was pregnant. At the time of the move, he had been doubling up on a site opposite the Land and for 15 years prior to that, the family had lived on a rented pitch but was evicted after not being able to afford the rent. Thomas Doherty suffers from cystic fibrosis and other conditions which affect his ability to work. He takes care of his brother who has Downs Syndrome and his father who has been diagnosed with skin cancer. The family have nowhere else to go if evicted from the Land.

48. Barney Doherty (D7) lives with his wife, Elizabeth Theresa Doherty (D8) and their two teenage children. Barney Doherty has provided three witness statements to the court. The first statement was prepared by his previous legal representative. The second and third witness statements explain how and why this statement is factually incorrect in several significant respects. The explanation given as to how the statement was prepared, the lack of literacy skills of Mr Doherty is a compelling and persuasive account. It is supported by the witness statement of Elizabeth Theresa Doherty (D8) of 5 June 2023 which explains why aspects of her earlier witness statement were incorrect.

49. The 17-year-old son of Barney and Lizzie Doherty has cystic fibrosis and developmental delay and requires round the clock care with daily physiotherapy and nebulisers. He sleeps with a bi-pac machine which requires a constant electricity supply. If evicted from the site, the family would have to resort to a roadside existence since they have no other financial means available and no savings. Barney Doherty explains that he wishes to apply for planning permission for which he would need public funding. His solicitor tells him that she may be able to secure discretionary Exceptional Case Funding but the planning agent she has discussed the case with, is not able to look at any of the

papers until September 2023. He has limited literacy skills and would need professional representation to submit an application.

The Law

50. An application for injunctive relief may be sought in circumstances where a Local Planning Authority considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction. The power to apply for an injunction is available irrespective of whether the authority has chosen to exercise any other enforcement powers. On such an application the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

51. The leading case providing guidance on the exercise of the power is *South Bucks District Council v Porter (No. 1) [2003] 2 AC 55*8. A summary of the key principles which can be derived from the speech of Lord Bingham can be stated as follows:

- the court's jurisdiction is an original one and not a supervisory one, but it will not normally investigate the planning merits of the local planning authority's decisions, save that a broad view about the level of environmental harm is relevant.

- the court has a discretion and should decide for itself whether to grant the injunction and should not do so automatically just because a local planning authority seeks one. This discretion must be exercised having regard to all the circumstances of the case and with due regard to the purpose for which the power was conferred.

- the Court must not only be satisfied that the defendants intend to breach planning law but also that, in all the circumstances, it is proportionate and just for the court to grant an injunction, taking account, amongst other things, of the impact that such an injunction will have on the defendants, including their rights to private and family life under Article 8 of the European Convention on Human Rights.

- The degree and flagrancy of the actual or apprehended breach of planning control is an important consideration.

- because the facts of different cases are infinitely various, no single test can be prescribed to distinguish cases in which the court's discretion could be exercised in favour of granting an injunction from those in which it should not.

52. Important guidance on the relevant factors to be considered is to be found in paragraphs 38-42 of the judgment of Brown LJ in the Court of Appeal in *South*

Bucks v Porter which was later quoted by Lord Bingham. Due to its importance, I set it out fully here:

"38. I would unhesitatingly reject the more extreme submissions made on either side. It seems to me perfectly clear that the 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. These he is required to take as decided within the planning process, the actual or anticipated breach of planning control being a given when he comes to exercise his discretion. But it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for himself all questions of hardship for the defendant and his family if required to move, necessarily including, therefore, the availability of suitable alternative sites. I cannot accept that the consideration of those matters is, as Burton J suggested was the case in the pre-1998 Act era, 'entirely foreclosed' at the injunction stage. Questions of the family's health and education will inevitably be of relevance. 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.

39 Relevant too will be the local authority's decision under section 187B(1) to seek injunctive relief. They, after all, are the

democratically elected and accountable body principally responsible for planning control in their area. Again, however, the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

40 Whilst it is not for the court to question the correctness of the existing planning status of the land, the court in deciding whether or not to grant an injunction (and, if so, whether and for how long to suspend it) is bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end. In this regard the court need not shut its mind to the possibility of the planning authority itself coming to reach a different planning judgment in the case.

41 True it is, as Mr McCracken points out, that, once the planning decision is taken as final, the legitimate aim of preserving the environment is only achievable by removing the gipsies from site. That is not to say, however, that the achievement of that aim must always be accepted by the court to outweigh whatever countervailing rights the gipsies may have, still less that the court is bound to grant injunctive (least of all immediate injunctive) relief. Rather I prefer the approach suggested by the 1991 Circular: the court's discretion is absolute and injunctive relief is unlikely unless properly thought to be 'commensurate' — in today's language, proportionate. The approach in the Hambleton case [1995] 3 PLR 8 seems to me difficult to reconcile with that circular. However, whatever view one takes of the correctness of the Hambleton approach in the period prior to the coming into force of the Human Rights Act 1998, to my mind it cannot be thought consistent with the court's duty under section 6(1) to act compatibly with convention rights. Proportionality requires not only that the injunction be appropriate and necessary for the attainment of the public interest objective sought — here the safeguarding of the environment — but also that it does not impose an excessive burden on the individual whose private interests — here the gipsy's private life and home and the retention of his ethnic identity — are at stake.

42 I do not pretend that it will always be easy in any particular case to strike the necessary balance between these competing interests, interests of so different a character that weighing one against the other must inevitably be problematic." This, however, is the task to be undertaken by the court and, provided

> it is undertaken in a structured and articulated way, the appropriate conclusion should emerge"

53. The issue of personal circumstances and consideration of the hardship which may result from final injunctive relief was addressed by Brown LJ and endorsed by Lord Bingham at paragraph 31:

> "When application is made to the court under s.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 the grant of relief, the court will be readier to refuse it. If it appears that the local planning authority has fully considered them and none the less resolved that it is necessary or expedient to seek relief, this will ordinarily weigh heavily in favour of granting relief, since the court must accord respect to the balance which the local planning authority has struck between public and private interests. It is, however, ultimately for the court to decide whether the remedy sought is just and proportionate in all the circumstances"

54. In cases where development has taken place in breach of an existing court order, the importance of securing compliance with court orders and maintaining the rule of law was highlighted by Mummery LJ in *Mid-Bedfordshire District Council v Brown [2005] 1WLR 1460 CA*

> "26. The practical effect of suspending the injunction has been to allow the defendants to change the use of the land and to retain the benefit of occupation of the land with caravans for residential purposes. This was in defiance of a court order properly served on them and correctly explained to them. In those circumstances there is a real risk that the suspension of the injunction would be perceived as condoning the breach. This would send out the wrong signal, both to others tempted to do the same and to law−abiding members of the public. The message would be that the court is prepared to tolerate contempt of its orders and to permit those who break them to profit from their contempt"

55. The best interests of the children are relevant considerations when assessing factors in a proportionality exercise. The approach enunciated in *R (SC) v SoS Work and Pensions [2022] AC 223* was summarised by Steyn J.in *R (Devonhurst Investments Ltd) v. Luton BC [2023] EWHC 978 (Admin)*:

> "96. In my judgment, the claimant's submissions do not reflect the law. In ZH (Tanzania), the Supreme Court did not hold that article 3.1 of the UNCRC has been incorporated into the law of

> England and Wales by s.11(1) of the Children Act 2004. What was said was that the spirit of it has been translated into our national law. The UNCRC is an unincorporated treaty: R (SC) v Secretary of State for Work and Pensions [2022] AC 223, Lord Reed PSC (with whom the six other Justices agreed), [75]. As Lord Reed observed in SC at [77], "it is a fundamental principle of our constitutional law that an unincorporated treaty does not form part of the law of the United Kingdom".
>
> 97. This constitutional principle continues to hold good in the context of the Human Rights Act: SC, [84]. In a matter concerning a child, when assessing the proportionality of an interference with article 8 rights, the proper approach is to treat the best interests of the child as a relevant consideration, rather than treating the UNCRC as directly applicable.."

56. The Supreme Court in Zoumbas v Secretary of State for the Home Department [2013] UKSC 74 helpfully set out key principles derived from *ZH (Tanzania) (above), H v Lord Advocate 2012 SC (UKSC) 308 and H(H) v Deputy Prosecutor of the Italian Republic [2013] 1 AC 338* include the following:

- The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;
- In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;
- Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;
- While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;
- It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;
- To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and

- A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent.

57. Lord Justice Brown in the Porter case stated clearly that issues of planning policy and judgment are within the exclusive purview of local authorities. However, he goes on to state that

> "But the court is not precluded from entertaining issues not related to planning policy or judgment, such as the visibility of a development from a given position or the width of a road. Nor need the court refuse to consider (per Hambleton) the possibility that a pending or prospective application for planning permission may succeed, since there may be material to suggest that a party previously unsuccessful may yet succeed, as the cases of Mr Berry and Mrs Porter show. But all will depend on the particular facts, and the court must always, of course, act on evidence"

Submissions on behalf of the Claimant

58. The development comprises intentional unauthorised development which is a flagrant breach of planning control. A substantial number of the breaches have occurred in the face of the original injunction order.

59. The claimant has an up-to-date development plan and there is no policy support for the use of the Land as a caravan site. There is an over-supply of sites against 2017 need figures. All planning applications have been consistently refused. During those exercises the claimant considered information relating to the personal circumstances of the Defendants and has appropriately balanced those interests and issues of hardship against the need to control development of land and land use in the wider public interest. The court should be conscious of the factor that none of the defendants have needs which are tied to Waverley.

60. Substantial works of development have occurred on the site to facilitate the material change of use. That unauthorised development has caused, and continues to cause, environmental harm.

61. The Defendants have been aware of the injunction orders. In the case of D3-D7 the failures to comply with the orders are serious and longstanding. In the case of D13 and D14 they were aware of the orders before choosing to move onto the Land. The planning applications pursued by D13 and D14 have been refused and an appeal in relation to Site 2 has been dismissed. There is no real prospect of success of further applications or appeals. In these circumstances the overarching consideration must be upholding the proprietary of court orders.

62. The line of authorities following the Brown approach indicate that, even in cases where a roadside existence is likely, which is not accepted here, that is unlikely to be sufficient to overcome a failure to comply with court orders.

63. The claimant relies upon the following factors in support of the making of final orders: flagrant and continuing breaches of court orders; the breaches are taking place in an area under significant pressure from similar unauthorised development; the breaches continued in the face of assurances given by the defendants; the claimant has made satisfactory provision of Gypsy and Traveller accommodation.

Submissions on behalf of the Defendants

64. Mr Cottle made a series of points on behalf of D3, D5, D6 and D14. They were adopted by Ms Thomas and Mr Fry. Mr Cottle contends that events have occurred since the last hearing which go to a consideration as to the likely outcome of any planning application or appeal and the issue of the finality of the planning status of the land. D14 has now lodged a planning appeal.

65. The assessment of supply of allocated sites meeting need would be subject to a different balancing exercise by an appeal Inspector due to the dated nature of the GTAA, the Smith case and other factors. The allocations now adopted were based on need assessed in 2017, it is out of date. The claimant's contention that there is an oversupply of sites would be vigorously contested at any planning appeal.

66. Mr Cottle further complains that, in refusing planning permission the Claimant has assessed the site against local plan policy RE3 which wrongly applies AONB constraints to the AGLV and that insufficient regard has been had to policy AHN4 of the Local Plan.

67. All advocates on behalf of the represented defendants made submissions that there have been deficiencies in the claimant's assessment of the impact of any final injunction upon the families on the site and the claimants have failed to review the proportionality of the decision to pursue an injunction on a rolling basis throughout these proceedings. There have been no relevant assessments as to hardship recorded in the bundle.

68. There is a public law duty upon authorities to review the proportionality of the continuation of interim injunctions as information comes to light and circumstances change. The claimant has failed to do this, and this failure represents a continuing breach of the claimant's public sector equality duty. The Court should not sanction such a breach but should dismiss the claim pending lawful assessments as to impact.

69. Underpinning the claimant's application for a final injunction is the proposition that the defendants could move to empty pitches at Lydia Park if the injunction

is made final. That presumption is mistaken and underestimates the issue of the amount of hardship the families would suffer if the injunction were made final.

70. A child's rights analysis was absent in the line of authorities relied upon by the claimant, which includes Mid-Bedfordshire DC v Brown [2005] 1 WLR 1460. The Supreme Court in Zoumbas made it clear that a child must not be blamed for matters for which they are not responsible. In these circumstances the parents conduct in coming back onto the site should not be the over-arching consideration when considering whether a final injunction is incompatible with Article 8 rights.

71. The Claimant has not properly considered issues of human rights because it has failed to interview the defendants to ascertain where they would move to, if evicted from the site. The exercise of conducting a child's rights analysis and balancing that against an assessment of the environmental harm of waiting until an alternative pitch were found, has not been undertaken.

72. In relation to the application to vary, the defendants rely upon the material change in the personal circumstances of D3, D5 and D6. Their accommodation needs cannot be met by pitches on Lydia Park. The earlier injunctions were granted on the basis that this was the case. In these circumstances the court can properly vary the interim orders to permit residential occupation of the land.

73. On behalf of D7 and D8, Ms Thomas explained the chain of events in which the personal circumstances of these defendants had been misrepresented to the court previously by a representative in whom they had placed their trust. That representative did not go on the court record, she had had her practising certificate suspended and the defendants did not have their statements read to them. All of this was due to no fault of these defendants. The accounts are consistent and are supported by their current advisors.

74. Ms Thomas also questions the nature of the welfare checks said to have been carried out by Mr Gibb by telephone on 11 June 2021. There is no further information as to the content and form of those checks. Ms Thomas alleges that even a cursory check would have revealed the presence of D7's significantly disabled son on the site. This son has complex health needs but there is no further enquiry into the extent of health difficulties suffered by different family members, notwithstanding further information provided by D5 at the site visit on 9 August 2022. On that occasion the claimant's representative was told that D7 and his family sometimes occupied the site but that the family were frequently staying in and out of hospital because one of the children had a brain injury. These matters were not investigated.

75. Finally, Ms Thomas contends that it is of relevance that the claimants have not chosen to utilise their powers under s.24 Carvan Sites and Control of Development Act 1960 to provide alternative pitches in more acceptable locations.

76. D13 and D14 are in a different category, they were not in breach of the interim injunction in force when they moved on to the site. It is not proportionate to grant an injunction against these parties, given that planning processes are ongoing. The court will also want to know why enforcement proceedings were not commenced.

77. On behalf of D13, Mr Fry asked the court to refuse the final injunctions sought and instead to vary the interim injunction to maintain the present position to allow for resolution of D13's planning appeal. D13 accepts that he has breached planning control and accepts that it is necessary and expedient for any further breaches to be restrained. He has provided personal undertakings and has offered to continue those undertakings in the same form. His time on the site has been more limited and he has acted with alacrity in pursuing planning applications and appeals.

78. Mr Fry raises the same complaints about the adequacy of the claimant's assessment of D13's welfare and personal circumstances. The claimant has been in possession of information about D13's family and their medical conditions since March 2023 but there is no evidence of any welfare check or revisited assessment to demonstrate that the relief pursued remains necessary and proportionate.

79. The Order of Mr Justice Wall: a separate issue arises in relation to this order which is now subject to an appeal to the Court of Appeal. The order was a refusal to admit into evidence Mr Cottle invited this court to depart from that order and set out the basis upon which this court could depart from a non-binding High Court decision where there are powerful reasons for departing from it. This court has not had sight of the expert evidence relied upon and the Court of Appeal has been invited to stay the appeal pending the outcome of these proceedings. Mr Cottle reminds me that if the claim is dismissed the need for appeal would be otiose.

Discussion

80. The discretion of the court in granting a final injunction must be exercised carefully and having regard to the whole canvas of factors particular to each individual case. The factors referred to by Brown LJ in paragraphs 38-42 of the Porter case are the starting point for consideration of the exercise of that discretion.

Personal Circumstances

81. The personal circumstances and welfare needs of the families are extensive. D5 and D6 have three young children, one of whom is a few weeks old. D7 lives with his wife and two children, one of whom has cystic fibrosis and requires daily physiotherapy and supervision. D13 lives with his wife, young infant, disabled brother and father. His brother has Downs Syndrome, his father has

cancer and D13 has cystic fibrosis. D14 has an 8-year-old son with Downs Syndrome and complex health care needs requiring 24-hour care and supervision. In addition to this there are the educational needs of the children and the families' access to medical services. D3 has 7 children and seeks stability and a permanent base to enable his children to stay with him.

Exercise of the claimant's powers to seek injunction

82. When applying for the first without notice injunction, the witness statement of Mr Gibb of 14 July 2021 records the unauthorised development, the service of temporary stop notices and the absence of occupants, including females and children on the site. The statement goes on to record that the Council has met its need for pitches between 2017 and 2020 by granting permission for 29 additional pitches. At the point at which the initial decision was taken to seek injunctive relief, the claimant believed the site to be unoccupied. That was a reasonable assumption based on site visits and observations at that time.

83. In setting out the need for interim injunctive relief the statement confirms that the council has also considered the best interests of any children who may occupy that site in the future. These are all the considerations which were in the mind of the claimant when seeking to apply for injunctive relief. It was on this basis that emergency relief was given.

84. During a site visit on 24 June 2022 Mr Bennett met D5 who confirmed he was residing at the site with his wife and two young children. The purpose of the site visit was to assess what was on the land. Mr Bennet records his conversations with D5 who confirmed that he would be submitting an appeal following the refusal of planning permission. There does not appear to have been any questions or exchanges of information about the occupants on the site and their needs at this time.

85. At a further site visit on 9 August 2022, Mark Doherty (D5) confirmed again that he was living on the site with his wife and two children aged 1 and 2 years and that his cousin Matthew Doherty (D3) and wife and six children were also living on the site. He further gave information that Barney Doherty (D7) and his family sometimes occupied the most southerly pitch but were frequently staying in and out of hospital as one of their children had a brain injury.

86. On 25 September 2022 representatives of D14 emailed the claimant to explain that there was an urgent need for the family to move on to the site, they had nowhere else to go and their 8-year-old son Martin suffered from significant health problems and was awaiting surgery and could not be placed on a surgical list until he had a settled base. The email records that a planning application had recently been submitted.

87. The subsequent witness statements of Mr Bennett refer to checking the occupancy of the site, in terms of the establishing the identities of occupants, and what developments, if any, had taken place since the last visit. There is no specific mention of welfare checks or questionnaires being sent to the families to ascertain their needs.

88. Since becoming aware that there were occupants on the site, and since being put on notice as to some of their individual welfare needs, the claimant has failed to meaningfully re-assess its initial decision to pursue injunctive relief. The site visits of 24 June and 9 August are points at which the local authority had confirmation as to actual occupants on the site but there do not appear to have been even the most basic of enquiries as to names, dates of birth of occupants and any relevant healthcare and other needs.

89. At the visit on 9 August 2022 the local authority were put on notice that a family on the site had a child with such significant medical problems that they were 'in and out of hospital'. Enquiries should have been made regarding these matters and questions asked about the proportionality of continuing to pursue the injunction. It may have been that, with full information on needs, the local authority decided that it was proportionate to continue. However, there is no evidence as to those important enquiries or to any proper re-evaluation of the situation.

90. I therefore conclude that there has been a failure to consider the healthcare and educational needs of the children on the site and to factor these into an updated assessment seeking to test the proportionality of continuing to pursue injunctive relief. The words 'best interests of the children' do not feature in any of the witness statements (other than the first witness statement) or any other of the claimants' documents. Their interests do not appear to have been in contemplation of the claimants as proceedings progressed.

Consequences of a Final Injunction

91. I have not seen any dispute regarding the ethnicity of the defendants. They are Gypsies whose defining characteristic is living in caravans. They have an aversion to living in bricks and mortar accommodation, as described by D3, Matthew Doherty, when he found living in a house stressful and "like being in a prison". There can be no question therefore that a possible alternative or temporary option would be to live in bricks and mortar accommodation until more suitable accommodation could be found. That is not a culturally appropriate alternative.

92. The question of the availability of alternatives was raised by both parties. There are no available council pitches. The claimant suggests that sufficient provision of sites has been made and that there are spare pitches on Lydia Park. I accept that empty pitches on Lydia Park are in the hands of private individuals who

will seek to cater for their own families. That was also the conclusion of Inspector Gilbert.

93. It is also instructive that the council officer, in refusing planning permission on the land did so on the basis that the Council could demonstrate a 5-year supply of pitches and that "*the large number of pitches recently granted at Lydia Park itself, which gives the applicants options for alternative accommodation"*. This again points to the mindset of the local authority throughout their decision-making processes, they believed the defendants had somewhere else to go and a precarious roadside existence was not likely in the event of a final injunction.

94. Mr Beglan suggests that the onus of proof on the non-availability of alternative sites rests with the defendants. It is difficult of course to prove a negative. Other than the empty pitches on Lydia Park, the claimants are unable to point to any other available pitches. Some of the defendants have made enquiries of the claimant regarding the availability of pitches but to no avail. The defendants initially on the site moved off but subsequently moved back on to the Land when other options and the goodwill of family members and friends had been exhausted. I conclude that there are no other alternative sites available to these defendants in the event that they were required to leave the Land.

95. A roadside existence for these families, with all of its attendant difficulties would be the most likely consequence of final injunctive relief. That would lead to significant hardship for these families given their particular circumstances and healthcare needs.

96. Mr Cottle referred me to section 24 of the Caravan Sites and Control of Development Act 1960, which gives a local authority power to take steps to do anything desirable to make provision for sites. However, that is in circumstances where the local authority determines that they need sites in their area and that is not accepted by the Council. Mr Bennett confirmed that he was unaware of the provisions of section 24 and therefore had not applied his mind to using it. It remains an option open to the claimant.

Planning Harm

97. The initial complaint related to an area of hardstanding was some 1,950 square metres on greenfield land, together with five caravans, two box trailers. Further materials were imported on the site, fencing has been erected and a ditch has been partially filled in with hardcore. More caravans have moved on to the site, together with other vehicles.

98. The photographs from various vantage points depict the large areas of hardstanding, caravans, box trailers, fencing, horse boxes and building materials on the land. There can be no doubt that the unauthorised development has caused environmental harm in terms of the harm to the visual amenity of this part of the open countryside and that it continues to do so.

99. Of course, there must also be consideration of the planning harm which would arise from roadside encampments if the defendants were removed from the site and had nowhere to go. The Equality Act seeks to eliminate discrimination of protected groups. Given the clear public interest in avoiding such encampments, which are acknowledged to create negative views of, and antipathy towards, the Gypsy community, this is a factor to be considered.

Breaches of Planning Control and Court Orders

100. There is also a public interest in planning procedures being adhered to. The court plays a vital role in upholding a key principle that orders of the court should be obeyed and are to not to be ignored with impunity.

101. In this case, following the making of the interim order, the defendants complied with that order and moved off the site. They then moved back on to the site in August 2022 and subsequent weeks.

102. There is a clear inference to be drawn that moving back on to the site was driven by the change in personal circumstances. In effect the defendants had exhausted all other options, they had overstayed their welcome with various family and friends and had nowhere else to go. I am satisfied on the evidence that this is the more likely interpretation to be placed on events. As such I do not characterise moving back on to the site as a 'flagrant' breach of the injunction order but a last resort of defendants with nowhere else to go.

103. By their initial actions in moving off the site, the defendants (D3, D5, D6, D7, D8) demonstrated that they wished to comply with the court orders. Their actions in moving back on to the site must be viewed in the light of their earlier compliance and the change in circumstances which meant that they had little to no remaining options in finding alternative accommodation. However, it is also correct to acknowledge that, in moving back onto the site they were fully aware that they would be in breach of the continuing interim injunctions. I bear in mind also that they made applications to the court for variation of the injunction.

104. In this case, apologies have been offered to the court and the defendants have sought to vary the terms of the injunction and pursue matters through the planning application and appeals process.

105. The position of D13 and D14 is different. At the point at which they moved on to the site, they were not in breach of any order. They have made planning applications and instigated appeals against refusals expeditiously.

Planning Applications and Appeals

106. Application WA/2022/02625 for one gypsy pitch was refused permission on 9 December 2022 for four reasons. Those were: encroachment into countryside and harm to visual amenity; domination of nearby settled community; absence

of information on ecology matters and absence of flood risk assessment. The last two matters are potentially capable of being overcome by conditions. The first two matters are issues of planning judgment which the claimant has made, and which are matters properly for them.

107. The balancing exercise to be undertaken between any harm and other relevant considerations, including personal circumstances is one which would come before the Inspector at appeal. In this case, I am satisfied that there have been material changes in the position in relation to various matters which may mean that an Inspector would come to a view which is different to the claimant. Those material differences relate to the arguments about the assessment of need and the current supply of pitches, evaluations as to overdominance in light of the newly adopted local plan and allocations therein, the further information which has materialised in relation to the personal circumstances of the defendants. Mr Bennett himself accepted that the Smith case represented a material change in terms of the assessment of need which would affect any balancing exercise.

108. In addition, I have found that there were failings of the claimant in not properly conducting a full re-evaluation and balancing exercise once it became aware of the personal circumstances of the defendants. Those matters would feature in any planning appeal. The planning status of the site is not therefore final.

Conclusions on D3, D5, D6, D7, D8

109. The claimant decided that it was expedient to seek injunctive relief at a point where there was unauthorised development on the land. At that point they had little or no information about the personal circumstances of the defendants, other than their names. The application proceeded on the basis that the site was unoccupied at that time. That position was entirely reasonable.

110. Whilst the claimant continued to visit the site throughout the course of proceedings, this was to gather further information about who was on the site and what further development had taken place, if any, as well as for the purposes of serving court papers and other notices. There is little in the way of the claimant seeking to investigate the welfare position of the defendants as the proceedings continued and as further information came to light.

111. Several of the defendants have significant medical needs and very serious medical conditions. Much of the information relating to those needs has come to light late in these proceedings.

112. I remain conscious of the duty to uphold lawful decisions made by planning authorities. I must also bear in mind the consequences of a final injunction when there are no alternative sites available, and the defendants are likely to resort to unauthorised roadside camping which would lead to further environmental harm and hardship for the families and children in terms of their welfare needs

not being met. These are significant factors militating against the grant of a final injunction on the facts of this case.

113. As each of these matters became apparent it was incumbent on the claimant to investigate matters and to re-assess the balance of factors in light of emerging information. The proportionality of the decision should have been revisited when the claimant became aware of these matters. There is scant evidence to suggest that the claimant meaningfully reviewed the original decision at key points when the identity and needs of individual occupants became known. The impression gained is of an initial decision being taken to pursue injunctive relief and the claimant pursuing it to a final injunction without pausing to re-evaluate the appropriateness of the use of coercive measures on becoming aware as to personal circumstances of the individuals they were concerned with.

114. Section 187B gives the court an original jurisdiction which it is to exercise as it thinks right, and subsection (2) states that the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach. The court must exercise its discretion appropriately.

115. As Deputy High Court Judge Timothy Straker QC in Guildford Borough Council v Cooper [2019] EWHC opined:

> "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."

116. I also remind myself of Simon Brown LJ in Porter when discussing the relevance of the local authority's decision to seek injunctive relief, commenting that the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

117. Here the defendants accept that there has been a breach of planning control which the court should seek to address. The court must however have regard to all the circumstances, which include the best interests of the children. Given the failures of the claimant to properly engage and grapple with the significant welfare issues of these defendants, and the best interests of the children on site, once they were put on notice of the same, I conclude that there has not been the sort of evaluative exercise properly required before seeking final injunctive relief.

118. I also bear in mind that the local authority chose to seek injunctive relief which carries the threat of imprisonment as opposed to serving an enforcement notice. There is no evidence that upon learning that the site was occupied and upon discovering some of the health difficulties of the defendant, the claimant considered use of enforcement notice powers as an alternative to pursuing its injunction. It is for the local authority to apply its mind to the enforcement tools at its disposal and act proportionately. That remains a requirement as the factual matrix changes and decisions needs to be revisited.

119. There is also my conclusion that the planning status is not yet final given that the Secretary of State, on appeal may take a different view to the local authority. I also must bear in mind the significant impact that a final injunction would have. Having regard to all matters, I am satisfied that it is appropriate for the court to decline to exercise its discretion to make the final injunction requested and to discharge the interim injunction in force.

120. I wish to make it clear that, in accordance with the authorities, that this is a decision being made at this point in time, in view of the way these proceedings and the evidence has played out. That does not debar the local authority from returning to court at another point in time to seek relief from breaches of planning control or from exercising other enforcement powers.

Conclusions on D13 and D14

121. Many of the above factors apply equally to D13 and D14. However, their position is different in that they were not in breach of an injunction when they moved on to the site. The local authority could have chosen to use enforcement action against them. These defendants submitted timely planning applications and have pursued appeals with due expedition. For all of these reasons I conclude that it would be unjust and disproportionate to grant final injunctive relief against these defendants also. I decline to do so and I further conclude that the interim injunction should be discharged against these defendants.

Conclusions on Remaining Defendants

122. The Land was owned by D1 and D2 at the beginning of proceedings and the Land Registry does not appear to have been updated of changes of ownership. D1 and D2 are aware of these proceedings and have not made application to be removed. In these circumstances, given the history and past uncertainty I am satisfied that it is appropriate to grant a final injunction in negative form in respect of D1 and D2.

123. D4, D9 and D10 have not played any part in these proceedings. They were joined as parties because their names featured in a planning statement dated 2 July 2021 prepared by Mr Philip Brown, planning consultant, in support of a planning application for use of the Land as residential caravan site for 4 families. D11 was named following service of a statutory notice under s. 330

Town and Country Planning Act 1990 (as amended). In relation to these four defendants, I am satisfied that they have been concerned with the Land, albeit in a peripheral sense. The claimant maintains its case against these defendants, whilst accepting that costs should not be awarded against them. I am satisfied, given their previous involvement and the documentation, that it is appropriate to grant final injunctions in negative form against these defendants.

Persons Unknown

124. The claim for injunctive relief against persons unknown has been carefully framed and limited with regard to both the area of Land covered, it is a relatively small area in the administrative district, and the activities are limited and clearly defined. The injunction is justified having regard to the guidance in the LBBD case [2022] 2 WLR 946.

125. I would ask the parties to draw an order reflecting the above.