Neutral Citation Number: [2018] EWHC 0011 (QB)

Case No: HQ17X02461

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/01/2018

Before :

HIS HONOUR JUDGE BIDDER QC

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Between :

BASINGSTOKE & DEANE BOROUGH COUNCIL	**Claimant**
- and -	
(1) ALEXANDER THOMPSON	**Defendants**
(2) MR SAMPSON BLACK	
(3) MR CALLUM HURLEY	
(4) WILLIAM CONNORS	
(5) PERSONS UNKNOWN	
(6) JOHN DORAN	
(7) JIMMY LOVERIDGE JUNIOR	
(8) JOHN CONNORS	
(9) WILLIAM CONNORS	
(10) MR NOLAN	
(11) TOMMY WALL	
(12) MR LOVERIDGE (*FREDDIE LOVERIDGE JNR)*	
(13) MR LOVERIDGE (*FREDDIE LOVERIDGE SNR)*	
(14) PATRICK DORAN	
(15) REUBEN MURPHY	

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David Lintott (instructed by **Shared Legal Services, Basingstoke and Deane Borough Council**) for the **Claimant**
Alan Masters (instructed by **Minton Morrill, Solicitors**) for the **Defendants**

Hearing dates: 29th , 30th October, 1st November, 30th November, 1st December 2017

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JUDGMENT

His Honour Judge Bidder QC :

1. This case was listed before me, pursuant to the order of Mrs Justice Whipple of 19th September 2017, for the trial of an application by the Third and Fourth Defendants to vary Clause 4 of the order of Mr Justice William Davis of the 21st February 2017.

2. Davis J. made on that latter date an ex parte injunction under section 187B of the Town and Country Planning Act 1990 ("the 1990 Act").

3. The Claimant is the local planning authority in respect of land known as land off Little London Road, Silchester, Reading RG7 2PP ("the land"). The land has been divided into 13 plots and Defendants (1)-(4) and (6)-(14) are Gypsies or Travellers who at the time of the hearing on 19 September 2017 were said by the Claimant to control and/or occupy those plots and/or to have carried out unauthorised operational development and/or unauthorised material change of use to the plots as shown in the plans attached to Adrian Clifford Munday's evidence dated 16th May 2017 at ACM1 (B18 of the application bundle and following). No enforcement notice has been issued in respect of what is, clearly, unauthorised development and change of user of the land.

4. Defendant 5 is “Persons Unknown”. That includes some families who only became associated with the site for the first time immediately prior to the production of the welfare report, known as the “TRAIN” report, served on behalf of the Defendants and dated 9th October 2017.

5. This hearing was originally listed for 19 September 2017 but was adjourned to this date. On the 19th September the area of the injunction was extended to include adjoining land within the Defendants' control.

6. The Injunction Order, which is set out in full at A11 was made to preserve the status quo pending a determination of the planning application by Mr Thompson. It provides that the Defendants be restrained from doing five actions. Paragraphs (1), (2) and (5) relate to depositing further hardcore, lopping, chopping or removing further trees and hedgerows and constructing any day room respectively. Paragraphs (3) and (4) provide as follows:

> *"(3) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting entry onto the land of any caravans, touring caravans or mobile homes;*
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> *(4) the Defendants, by their servants or agents or otherwise, be restrained from causing or permitting the use of any caravans, touring caravans or mobile homes currently present on the land.*"

7. The order was made ex parte and liberty to apply was given to the Defendants on 48 hours' notice in writing. That liberty to apply has never been exercised. Instead at the hearing of a committal application on 14 March 2017, Mr Justice Nicol accepted an oral application made by Defendants 3 and 4 (A16 paragraph 5) to vary paragraph 4 of the injunction.

8. The fact that the original injunction was to preserve the status quo is of considerable importance. The basis of the original application (and, fundamentally, of the amended variation) was to allow only the caravans present on the land at the time of the original injunction to remain there and the witness evidence in support of the variation relied on the fact asserted by the Defendants who served witness statements that they had been living on the land with their families prior to the grant of the injunction. The lately joined

Reuben Murphy accepts he is in a different position because he bought the plot originally occupied (he avers) by Callum Hurley and had not been living on the site at the time of the original injunction.

9. The Claimant contends, with some force, that if the status quo pertaining at the date when the injunction was granted was that nobody was living on the land then the case for variation fails.

10. As far as I could see at the outset of the hearing, the extent of the variation sought had never been particularised nor had it been put in writing. That appeared to me to be unsatisfactory, particularly as, in the skeleton argument of Mr Masters, counsel for the defendants to the Particulars of Claim, 14 in number including "persons unknown", the defendants appeared to be seeking to join further defendants to the application and to purport to ask for a much wider amendment to the injunction than I had imagined had originally been contemplated and to ask for it on behalf of all defendants.

11. That the variation application that I was to try at this hearing was to have been only on behalf of the 3rd and 4th Defendants seemed to me to be clear from the orders of Nicol J and of Whipple J., particularly the latter, who gave very detailed and helpful directions for trial of the variation application and, initially, having heard argument, I ruled that a limited application to vary was only to be tried. Mr Masters then asked for a short time to consider his position and to consider applying for an adjournment. From the submissions of both counsel following that short time for reflection, they made it clear to me that an application which was much wider than that contemplated by previous courts would assist both sides, could be accommodated by the

available evidence and would not prejudice the Claimant's position. I therefore revoked my earlier order and adjourned until the next day (we started at 2pm on 30th October) for Mr Masters to put his application for variation in writing and for him to take instructions upon an undertaking he could give on behalf of those defendants who wanted to participate in the application and who were then resident at the site. That appeared to me sensible to regularise the proceedings and the hearing of that application then continued.

12. I fear that his overnight written variation application was not satisfactory to me and I ordered him to produce a draft of an order which he sought from me as a substantial variation of the original injunction.

13. That draft order was in the following form, namely that it be ordered that:

"(1) The Defendant Mr Reuben Murphy be added as named Defendant

(2) Paragraphs (1) to (5) of the Order of 21 February 2017 be varied to read as follows:

(1) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting the further deposit of hardcore or other materials upon the land marked upon the Plan annexed to this order ('the land') save that the named Defendants 1-11 are permitted to install gates within their permitted development rights at the entrance to the land so the site can be secured;

(2) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting the further lopping chopping or removal of trees and hedgerows from the said land;

(3) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting entry onto the land of any further caravans, touring caravans or mobile homes such that the maximum number of caravans shall not exceed 16;

(4) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting the use of any caravans, touring caravans or mobile homes currently present on the said land save for the named Defendants 1-11 and their families be allowed to reside in their caravans , not exceeding 16, on the land until further order;

(5) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting the taking of any steps in the construction of any day room and use thereof;

(3) Liberty to the Defendants to apply on 48 hours' notice in writing."

14. The underlined sections above indicate changes to the wording of paragraphs of the Davis J. order.

15. The application to vary is now made on behalf of 11 defendants, namely, Alexander Thompson, William Connors, John Doran, Jimmy Loveridge, John Connors, William Connors (a second William Connors), Tommy Wall, Freddie Loveridge Junior, Freddie Loveridge Senior, Patrick Doran and Reuben Murphy. Those are not identical with those defendants named on the Particulars of Claim. It is clear that it does not include Sampson Black, Callum Hurley and a Mr Nolan. I was told by Mr Masters for the defendants that Callum Hurley has moved from the site. His statement remained in the trial bundle in the Defendants' evidence section. Mr Masters said that his instructing solicitors were no longer instructed by Hurley but I was not told when they last had instructions from him. I asked that to discover whether it would have been possible to remove his statement from the bundle at an early stage. As my narration of the facts will reveal, Mr Hurley's comments to police officers who came to the site with officers of the Claimant Council were and are extremely inconvenient to the Claimants' case. I have had no explanation of when or why Mr Nolan or Mr Sampson Black ceased to participate in these proceedings. Neither Mr nor Ms Nolan were represented by Mr Masters, counsel for the other defendants.

16. Mr Murphy was not amongst the original defendants on the Particulars of Claim and the first application to vary the Davis J. order is to add Mr Murphy as a defendant to the action which application I grant, largely to ensure that he, currently resident with his wife and young child on the Silchester land, has a voice in these proceedings. His was an articulate voice and, upon my allowing a late application to allow him to rely on a lately served witness statement, he and Mr Loveridge gave evidence to me. I have in the title to this judgment made some minor amendments to the names of the various defendants as they are set out in the Particulars of Claim for clarification purposes and I order that the Statements of Case and court papers be amended accordingly. There are 2 William Connors.

17. The other amendments represent a fundamental alteration in the effect of the injunction order and while further development of the site is stayed, up to 16 caravans and families are permitted to remain living on the land. It is obvious that Davis J. understood there to be no one living on the land at the time of his injunction which was granted to prevent that happening and to prevent further development of the land, which was then in a nascent state. There is no time scale in what, of course, is still an incomplete and inadequate draft order but it was clear from Mr Masters' skeleton that his aim on behalf of his clients was that the land should remain an occupied Gypsy/Traveller site until at least when the planning application was finally dealt with.

18. The application to vary is made on behalf of Defendants, 1, 4, 6, 7, 8, 9 and 11 to 15 inclusive.

19. The injunction proceedings arose out of the occupation of and development of the land made by the Defendants and other Romany Gypsies and Irish Travellers who have now created an extensive area of hard standing on the site and have stationed caravans on it. The site was purchased by 2 Travellers, namely Jade Nolan and Freddy Loverage (as it is spelled in the register) on 10th November 2016 for £240,000 with the land having been registered to them on 19th April 2017 (see Office Copy of register of titles, B456). The Defendants want to create a site for Gypsies and Travellers there, with proper facilities for all, including safe facilities for children, with one of the main intentions being to introduce some needed stability into the children's lives and encouraging their education and ensuring good healthcare.

20. The land comprised agricultural fields and lies to the North of Little London Road, Silchester, Reading. It lies outside any settlement boundary as defined by the Proposals Map of the adopted Basingstoke and Deane Local Plan. The land is protected from development and in particular residential development on the basis that it is outside the settlement boundaries and within open countryside. The Claimant contends that the site lies within a Hazardous Substance Authority (HSA) Zone, within the Basingstoke and Deane Borough Council Habitat Area and adjacent to Ancient Woodland. Their case is that it is within an SSSI (Site of Specific Scientific Interest) Impact Risk Zone and, at least in part, the SSSI of Pamber Forest and Silchester Common.

21. On Saturday 18th February 2017 the Claimant was informed by police that Travellers had entered the land and were cutting down trees, carrying out other operational development and works and had placed a number of caravans on

the land. The evidence of the Defendants is that that work began on Friday 17th February, 2017.

22. As of Monday 20th February 2017 the Defendants (1)-(5) had, according to the evidence from the Claimant (mainly comprised in the statements of Mr Adrian Munday, the Senior Officer in the Claimant's Planning Enforcement and Compliance Department) carried out various breaches of planning control including unauthorised operational development comprising the increase in the level of the land by depositing of imported builders waste and other materials and laying of hardcore and the creation of an access and pitches.

23. Importantly to the Claimant's case, it is the evidence of Mr Munday that as at the 21 February 2017 no Defendant (even an unnamed one) had commenced the use of any of the derelict caravans placed on the land. No planning permission has been granted for any of the above development and none of the operational development relates to the use of the land for agricultural purposes.

24. On Monday 20th February (I accept, on the evidence before me), a planning application dated 17th February 2017 was received by the Claimant in respect of the land. The application seeks permission for the establishment of "a residential caravan site comprising 13 plots." The named applicant is the 4th Defendant, William Connor and the application states that a new vehicle access is proposed along with a septic tank, a day room and space for 26 cars. The application states that no "building, work or change of use" had started. The Claimant says that the application incorrectly asserts that the land does

not lie within an area at risk of flooding and that there are no trees or hedges on the site.

25. At the very least, therefore, some of the now named defendants and the originally named defendants started developing the site at Silchester on the very date that the application for planning permission was dated, before it could possibly have been considered by the planning authority and even before the title to the land of Mr Loverage (or Loveridge) Senior and Jade Nolan had been registered.

26. There is uncontroverted evidence that works of development on the site involved from their commencement heavy lorries, earth moving equipment and also the employment, apparently especially to work on this site, a minimum of 4 Romanian workmen.

27. It is, therefore, in my judgment, an incontrovertible inference and one I confidently draw that one or more defendants had planned the move on to the site well in advance and intended to steal a march on the local planning authority and any residents or interested parties in the local area who might object to planning permission.

28. I accept the contention of the Claimant in Mr Lintott's skeleton that the ex parte injunction was intended to preserve the status quo until trial.

29. What was the position in relation to service of that injunction? A contested committal application was made on 13th March 2017 against all 4 then named defendants and against persons unknown and judgment was given on the 14th March. The application against the First Defendant was withdrawn, he not

appearing. It appears it was withdrawn after Nicol J. had given his judgment. The applications against the 3rd and 4th Defendants were dismissed. Service of the injunction order was in issue. William Davis J. had ordered alternative service on Mr Hurley and on defendant 5, namely "persons unknown", "on the said land…to be initially effected by service of a PDF copy of the order".

30. The judgment of Nicol J. is in the trial bundle. He was not satisfied that service of the original order was served in accordance with that order in that he was not satisfied that placing the order on a jeep which was on the land was service "on the land" and, because of the absence of evidence from the Claimant, neither was Nicol J. satisfied that the order had been served as soon as reasonably practicable. He accepted, on the evidence presented to him by the Claimant, that planning controls had been "flagrantly ignored by someone" and he ordered that personal service of the original injunction order be dispensed with and that the Claimant was permitted to serve documentation, including his order of 14th March 2017 (TB A14 to 17) on the then Defendants and on any person on site by affixing copies to at least 3 permanent places on site. He specifically confirmed to the Defendants before him that the original injunction remained in force (as it had done from the date it was given or made – see CPR 40.7) from 21st February 2017. Mr Lintott, for the Claimant, correctly submits that order has been in force ever since that date.

31. I accept the evidence of Mr Munday that immediately following the hearing before Nicol J. on 14th March 2017 the Claimant has ensured that the injunction was affixed to at least 3 permanent places on the land (see his witness statement at page B488, evidence that was not challenged). As at the

21st February, a copy of the injunction was affixed to a tree on the land (see exhibit ACM/3 at B109 and Munday's statement at B92). On the 22nd February 2017 I accept from Mr Munday's evidence at B93 that he affixed the injunction to a fence on the land (ACM/4 – B111). Mr Taylor saw copies of the injunction fixed to telegraph poles on the 2nd May, 31st August and 11th October 2017 (his witness statement pages B578 and 579 – not challenged). There is also unchallenged evidence that persons on site were handed copies of the injunction.

32. As far as those who may have been associated with the site from 20th to 22nd February, I accept the evidence of Mr Munday for the Claimant that he read out aloud the injunction on the site on 22nd February. It is inconceivable to me that after that had happened that any adults associated with the site at that period could have been unaware of the existence of the injunction.

THE LEGAL FRAMEWORK TO THE INJUNCTION

33. Section 187B of the Town and Country Planning Act 1990 provides:

> *"(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers in this Part.*
> *(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.*
> *(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.*
> *(4) In this section 'the court' means the High Court or the county court."*

34. In *South Bucks District Council v Porter [2003] 2 AC 558* the House of Lords considered the interrelationship between section 187B, section 6(1) of the

Human Rights Act 1998 and the Convention for the Protection of Human Rights and Fundamental Freedoms scheduled to that Act. The headnote to the Appeal Cases report states that section 187B conferred on the court an original and discretionary, not a supervisory, jurisdiction, to be exercised with due regard to the purpose for which it was conferred, to restrain actual or threatened breaches of planning control; that it was inherent in the injunctive remedy that its grant depended on the court's judgment of all the circumstances of the case; that, although the court would not examine matters of planning policy and judgment which lay within the exclusive purview of the authorities responsible for administering the planning regime, the court was not obliged to grant relief because a planning authority considered it necessary or expedient to restrain a planning breach; that the court would have regard to all, including the personal, circumstances of the case, and, since section 6 of the 1998 Act required the court to act compatibly with a Convention right (as so defined), and having regard to the right guaranteed in article 8, the court would only grant an injunction where it was just and proportionate to do so.

35. Each of the 3 cases before their Lordships involved occupation of land by Gypsies or Travellers. In each, the planning position was uncertain.

36. Lord Bingham identified in his judgment the rudiments of the then current planning regime and one common and important feature of the regime, then and now, is that applications are made to, and, in the ordinary way, determined by local planning authorities democratically elected and accountable and the responsibility of the local community for managing its own environment is integral to the system.

37. However, there were and are, as Lord Bingham recognised, important restrictions on local planning authorities. As he said at paragraph 11 of his judgment:

> "*But the local planning authority's decision is not final. An appeal against its decision lies to the Secretary of State, on the merits, which will be investigated by an expert, independent inspector empowered to hold an inquiry at which evidence may be received and competing interests heard before advice is tendered to the Secretary of State. The final decision on the merits rests with the Secretary of State, a political office-holder answerable to Parliament. The courts have no statutory role in the granting or refusing of planning permission unless, on purely legal grounds, it is sought to challenge an order made by the local planning authority or the Secretary of State: in such event section 288 of the Act grants a right of application to the High Court. In addition, there exists the general supervisory jurisdiction of the High Court, which may in this field as in others be invoked to control decisions which are made in bad faith, or perversely, or unfairly or otherwise unlawfully. But this is not a jurisdiction directed to the merits of the decision under review*"

38. Lord Bingham also noted the history of failure of Gypsies to obtain planning permission and the long term lack of capacity of sites authorised for occupation for Gypsies to meet their needs. He notes the impact of section 23 of the Caravan Sites and Control of Development Act 1960 which gave local authorities power to close commons to Travellers and Gypsies and which they used with a vigour that was absent from their use (or rather lack of it) of the concomitant power under section 24 of the same act to open dedicated sites for them.

39. Lord Bingham endorses the judgment in the Court of Appeal of Lord Justice Simon Brown and quotes from it extensively. The House of Lords was in full agreement in the Porter case and, therefore, it seems to me that it will be right to regard as having been approved the guidance of Lord Justice Simon Brown which I hope I may accurately summarise as follows:

i) that the judge on a section 187B application was not required, nor even entitled to reach his own view of the planning merits of the case;

ii) that the judge should not grant injunctive relief unless prepared to commit for breach;

iii) that the judge must consider all questions of hardship for a defendant and his family, that family's health and education and the availability of suitable sites;

iv) that the judge must also consider the need to enforce planning control in the general interest and the planning history of the site, as well as the degree and flagrancy of the postulated breach of planning control;

v) the length of occupation may be relevant;

vi) also relevant will be the extent to which the authority in making the decision to seek an injunction have had regard to all material considerations and to have properly posed the article 8(2) questions as to necessity and proportionality;

vii) in deciding whether or not to grant an injunction and whether or not to suspend it or for how long, while the court is not to question the correctness of the current planning status of the land, it may consider, in broad terms, the degree of environmental damage resulting from the breach, the urgency or otherwise of bringing it to an end, and may have in mind the possibility of the authority itself coming to reach a different planning judgment in the case;

viii) Finally, the assessment of proportionality requires that not only should the injunction be appropriate and necessary for the safeguarding of the environment but it must not impose an excessive burden on the individual, here, the Gypsy or Traveller, whose private life, home and the retention of his ethnic identity are at stake.

40. To that list, it is plain that I should add, as a primary factor, but not one that overtops all others, the best interests of any children who may be affected by the injunction.

41. Lord Bingham also said at page 579 A:

> "*Where it appears that a breach or apprehended breach will continue or occur unless and until effectively restrained by the law and that nothing short of an injunction will provide effective restraint (City of London Corpn v Bovis Construction Ltd [1992] 3 All ER 697, 714), that will point strongly towards the grant of an injunction.*"

42. Additionally, at 580 F he said:

> "*When application is made to the court under section 187B, the evidence will usually make clear whether, and to what extent, the local planning authority has taken account of the personal circumstances of the defendant and any hardship an injunction may cause. If it appears that these aspects have been neglected and on examination they weigh against 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, and there is force in the observation attributed to Václav Havel, no doubt informed by the dire experience of central Europe: "The Gipsies are a litmus test not of democracy but of civil society" (quoted by McCracken and Jones, counsel for Hertsmere in the fourth appeal, "Article 8 ECHR, Gipsies, and Some Remaining Problems after South Buckinghamshire" [2003] JPL 382, 396, fn 99).*"

43. The balancing exercise which the Court undertook under section 187B in accordance with the principles which their Lordships had laid down would, in Lord Bingham's considered view, mean that it was questionable whether article 8 of the Convention had any bearing on the Court's decision but their Lordships considered the decision of the ECHJ in *Chapman v United Kingdom 33 EHRR 399* and I have also borne it very much in mind. It is to be noted that the ECHJ in Chapman confirmed that article 8 did not give a right to be provided with a home and rejected an argument that because statistically the number of Gypsies is greater than the number of places available in authorised Gypsy sites, the decision not to allow the applicant Gypsy family to occupy land where they wished in order to install their caravan in itself constituted a violation of article 8.

44. Lords Steyn and Clyde in their judgments in Porter both stressed that the grant of an injunction, even under section 187B, was an equitable remedy and, therefore, discretionary.

45. Although the Porter case contains the overarching guidance for the approach to a section 187B injunction, the Claimant here relies heavily on 2 practical examples of that guidance in operation.

46. In *Mid Bedfordshire District Council v Brown [2005] 1 WLR 1460*, the Claimant Council, alerted to the fact that unauthorised works were being carried out on land, obtained an interim injunction under section 187B of the Town and Country Planning Act 1990 to restrain its use for residential purposes. In breach of that injunction the defendants moved their caravans onto the land. They subsequently submitted an application for planning

permission for a change of use to a gipsy residential site. The judge granted a final prohibitory order but suspended it pending the determination of the planning application on the ground that the interests of the safety and stability of the young children on the site overrode the objective of safeguarding the environment. The Court of Appeal allowed the council's appeal. In the judgment of the Court, at paras 24-28, Lord Justice Mummery said:

> "*24. On the issue of the justice and proportionality of granting an immediate injunction the judge considered the countervailing factors, which, applying the principles laid down in South Bucks District Council v Porter [2003] 2 AC 558, he thought were against the grant of an immediate injunction: although the council had indicated that the permission was unlikely to be granted, the judge placed little weight on a view which he thought had been expressed without detailed consideration, and there was a possibility that the council would make a different planning decision, the time for making a decision expiring on 27 October 2004; although the judge found that there would be some environmental damage caused by the breach of planning control, it would not be serious and the injunction would not remove it; there were no alternative local official or private sites to which the defendants could move; and there would be hardship if the defendants were required to move, as that would affect the safety and stability of the defendant's small children. He thought that an injunction would not bring the defendant's unlawful activities to an end.*
>
> *" Conclusion*
>
> *"25. In our judgment, the judge's decision to suspend the injunction pending the determination of the planning application did not take proper account of the vital role of the court in upholding the important principle that the orders of the court are meant to be obeyed and not to be ignored with impunity. The order itself indicated to the defendants the correct way in which to challenge the injunction. It contained an express provision giving the defendants liberty to apply, on prior notice, to discharge or modify the order. The proper course for the defendants to take, if they wished to challenge the order, was to apply to the court to discharge or vary it. If that failed, the proper course was to seek to appeal. Instead of even attempting to follow the correct procedure, the defendants decided to press on as originally planned and as if no court order had ever been made. They cocked a snook at the court. They did so in order to steal a march on the council and to achieve the very state of affairs which the order was designed to prevent. No explanation or apology for the breaches of the court order was offered to the judge or to this court.*
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> *"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.*
>
> *"27. The effect of that message would be to diminish respect for court orders, to undermine the authority of the court and to subvert the rule of law. In our judgment, those overarching public interest considerations far outweigh the factors which favour the essential suspension of the injunction so as to allow the defendants to keep their caravans on the land and to continue to reside there in breach of planning control.*"

47. In *Broxbourne Borough Council v Robb and Others [2011] EWCA Civ 1355* the Court of Appeal considered an application to vary an injunction in circumstances where the respondent local authority had obtained a without notice injunction prohibiting the stationing and occupation of residential accommodation, mobile homes or caravans on plots of land within a leisure park. The Appellant later purchased one of the plots in ignorance of the injunction. He and his family permanently occupied the plot in a mobile home structure and caravan. The local authority's planning compliance officer advised him of the injunction and gave him 14 days to comply with it but he maintained that he had nowhere else to go and had become settled. Cranston J refused to vary the Injunction. The Court of Appeal held that Cranston J *([2011] EWHC 1626 QB*) had correctly determined that such an application to vary was governed by the principles set out not only in *Porter* , but also in *Brown*. Therefore, there had to be a consideration of planning issues (including whether the prospects of success were sufficiently strong to provide a factor of real weight weighing the balance in favour of granting a variation of the injunction pending the outcome of the appeal), personal circumstances

(including the implications of Article 8 of the European Convention of Human Rights and the best interests of the children), and the overarching public interest in ensuring that court orders are respected and obeyed.

48. The Court of Appeal held that Cranston J had correctly dealt with personal circumstances noting the judgment of the ECHJ in Chapman. He had also correctly noted, again, from Chapman, that when considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully. If the home was lawfully established this factor would self-evidently be something which would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of a home in a particular place was unlawful, the position of the individual objecting to an order to move would be less strong and the court would be slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community. Cranston J. found there were no health issues though he found there was self-evident interference with the home and family life were they to be obliged to move. But on the other side of the balance, in considering proportionality, he put the planning laws and their enforcement. Although the father's flouting of the law could not be visited on the children their interest as a primary consideration did not mean that it could not be outweighed by other factors in the balance so that interference with their Article 8 rights was proportionate. The Court of Appeal noted that Cranston J., having dealt with planning

matters and personal circumstances, decided that to vary the injunction so as to permit the very action that it was designed to prevent would fail to acknowledge the force of the injunction. The Court found that where there was a continuing breach of an existing injunction, and the application is to vary it for the future, so as to allow a person to continue to do the very act which the injunction prohibits, "the need to uphold the authority of the court is of overarching importance in the exercise of the court's discretion".

49. It should be noted that the applications before me are for variations of the original ex parte injunction granted by Davis J. Thus, the factual matrix is similar to that considered by Cranston J. in *Broxbourne*.

50. The evidence before me called by the Defendants was very clearly selective and it is impossible for me to ignore that, as far as the Defendants themselves were concerned, of the 15 Defendants, only 4 were called before me to give evidence. No explanation was given to me as to why others were not called. It is, in my judgment, remarkable that the owners of the land, Freddie Loveridge Snr (to take the spelling of the name in the Particulars of Claim) and Ms Nolan (who Mr. Lintott for the Claimant correctly points out are recorded in the land register title as living elsewhere) were not called, given that there has been evidence from called defendants that they had paid very substantial sums of money to Mr Loveridge and Ms Nolan for plots on the land. As remarkable is the fact that William Connors (the 4th Defendant) who was the person who made the planning application, was not called to give evidence. Neither was Mr Hurley (the 3rd Defendant), who said, according to evidence called by the Claimant, which is not contradicted by Mr Hurley, that

all caravans originally moved on to the land were for storage only and were not fit to live in. The person who accepted he organised the whole operation (which acceptance is supported by other evidence before me), namely Mr Thompson, the 1st Defendant, was also not called. There is evidence from the Claimant (not now contradicted by Mr Thompson) that Mr Thompson said that on the 20th February 2017 that the women and children were "on standby". There are witness statements from Freddie Loveridge Snr, William Connors (the 4th Defendant – unsigned and undated) , Mr Wall and Callum Hurley and while I give them some weight, it is not as much weight as I could give them had they given oral evidence on oath which was tested before me. There is no witness statement from Mr Thompson or Mr Wall.

51. In the absence of any explanation for the failure to call these various witnesses, and while I am always cautious about drawing any conclusions adverse to parties from a failure to call witnesses, the pattern here, I am clear, is of very selective calling of witnesses and a tactical decision not to call witnesses who were potentially damaging to the case for the variation applied for. 11 defendants did not give evidence. There was, therefore, no evidence on oath from them that they were living on the site when the Davis injunction was granted or that, when they moved on to the site, that they were unaware of the injunction or its terms.

OCCUPATION OF AND RESIDENCE ON THE SITE

52. It is clearly an important issue from the point of view of whether this is a case which resembles *Broxbourne* or *Brown* and whether I should vary an injunction that was, on both parties' cases, intended to preserve the status quo,

as to whether, when the injunction was originally granted by Davis J. any of the defendants or their families were living on the land.

53. It is a reasonable inference from paragraph 4 of the order made by Davis J. on the 21st February 2017 that he acted on the basis that there was no one in residence on the site. The notice of application for the ex parte injunction is not in the trial bundle and there is no reference to any statement or evidence that was before His Lordship at that hearing which was simply attended by counsel for the Claimant. It would have been incumbent on the Claimant, through their counsel, to notify His Lordship had they believed there was anyone resident on the site. It can be inferred from the same paragraph 4 that His Lordship was told that there were one or more caravans present on the site.

54. When the matter came before Nicol J. on 13th March 2017 he had evidence from Callum Hurley and from William Connors, the 4th Defendant. Mr Hurley told his Lordship that he lived on the site and used a caravan or mobile home then on the site as his home. He did not tell his Lordship that he lived there with any family of his. Mr William Connors told the Judge that he had brought his own caravan on to the site on 17th February 2017. He told him that it was his home and that he was one of 4 people on the site called William Connors, one of which was his son. In a careful judgment, Nicol J. did not say that he had been told by Mr Connors that his family had been living with him on the site. Mr Hurley told him that he was illiterate. He said that Council representatives sometimes came to the site and told those on the site that they needed to take a paper. However, he said he had been brought up not to take

papers when he did not know what they said. That was described by Nicol J as showing "a cavalier approach to court proceedings and potential obligations to the court". Nicol J. did not find that the alternative service ordered by Davis J. had been exactly complied with by the Claimant which is why he did not order committal. That is a very different matter from a finding that they did not know of the terms of the injunction. He was not called upon to determine if those 2 defendants were living on the site as at the 13th March. Neither of those defendants have given evidence before me.

55. Freddie Loveridge Jnr. gave evidence on oath to me. I was told he could not read or write but during the course of his evidence he also told me that he could read numbers and was numerate. His statement is at C93 and in it he says that he moved on to the land on either the 15th or 16th February 2017. He refers to photographs exhibit FL1 which he says show the site from the moment they moved on. The photographs do not bear dates as those produced by the Claimant do. The next sentence in his statement reads "There were 13 caravans on the land and there is a caravan on my plot and my father's plot." It is not clear from his statement that he meant by that there were 13 caravans on the site from the 15th or 16th of February but that was clarified in supplementary questions asked by Mr Masters who asked him how many caravans were on the land when he moved on. He said he thought 18 and Mr Masters then pointed out to him that in his statement he had said 13. It was, therefore, clear that he meant that from the 15th or 16th February there had been 18 caravans on the site. Those caravans are not shown in the photographs he produces and which are exhibited to his statement nor in the photographs exhibited to Mr Munday's statements which photographs were

taken over a number of days beginning on the 20th February. Mr Munday's diagram at B19 which represents the positions of caravans on the 20th February, shows 9 caravans marked.

56. C 99 (the second of FL1) shows Mr Loveridge sitting in one of 3 white plastic chairs in front of a large touring caravan with a distinctive dragon like design to the left of the door to the caravan. The caravan is sitting on what appears to be rough hardcore. There appears to be a cable running from one end of the caravan to what looks like a portable red generator which is near to another caravan in the background of the photo. Photo C100 shows another caravan, also apparently stationed on hardcore with an estate car in front of it and a flat back lorry and a van and a trailer nearby. Beyond a wooden fence can be seen the top of another caravan. The land around those vehicles is either flattened out hard core or has some finer material spread over it. There is no person visible in the 3rd photograph.

57. In supplementary questions by Mr Masters he said that when he arrived in February he arrived with his family in the one caravan that he owned. He said he had given his father the money for his plot. His father, of course, was one of the 2 purchasers of the entire land.

58. He said that when they first started developing the site his caravan and family were in the Reading motorway service but in answer to Mr Master's next question, namely, "where were they when work was done in the day?" he said that his wife and child were on the site and that from the moment work started he considered the site to be his home. There were, however, after February, a number of periods, from a couple of weeks up to a month, when he, his family

and his caravan were away from the site with no caravan having been left on his plot.

59. In cross examination he said he knew Mr Thompson, the first defendant. Mr Lintott then put to him Mr Munday's conversation with Mr Thompson (see B4 and 5) on the 20th February in which Mr Munday asked Mr Thompson "are there any ladies, children or families living on site?" to which the response was "yeah, they're not here because of all the machines on site, but they're on standby." He then altered his original evidence to say that when they "all" moved in his wife and children went in the car to the shops and in the night time stayed on the site. He agreed Mr Thompson was organising the work and directing traffic on the site. He maintained that although Mr Thompson knew him he could not have been aware that Mr Loveridge's family were on the site.

60. He confirmed that his plot was, he said, plot number 3 but he then was asked to look at Mr Munday's diagram of the layout of the site on 20/2/17 at B19, ACM 1. That diagram was one of a series of diagrams produced as a compendious exhibit ACM1 to Mr Munday's witness statement of the 16th May 2017. The diagrams were prepared (it appears from paragraph 18 of that statement) from his examining photographs and videos taken from police body worn video cameras. He was not cross examined by Mr Masters as to the accuracy of those sketch plans and no one has asked me to watch the videos and so I take those sketch plans to be accurate. They are diagrams which are dated and which show different numbers of caravans from day to day.

61. In any event, Mr Lintott put to Mr Loveridge that on the Munday diagram for 20/2/17 there was no caravan on plot 3, marked as a Loveridge plot, next to another Loveridge plot on which there was a caravan marked. Indeed, Mr Lintott put to him that there were no caravans of any kind on that plot up to March. Mr Loveridge then said his caravan was on plot 9 in the top left corner of the diagram. He agreed that that was not where he was living at the date of the TRAIN report (see pages C109 and 110 for confirmation of that) but was where William Connors was living. Mr Lintott put to him part of Mr Munday's statement at B 6 in which he describes on plot 9 on his first visit to the site on 20th February an unlevelled caravan which was insecure and rocked easily and with no generator, water container or gas canisters. He made no comment. Mr Lintott also put to him what Callum Hurley had told Mr Munday (see page B5) namely, that the condition of all the caravans on site that day was irrelevant as they were all storage caravans and would never be used as living accommodation. Mr Loveridge agreed with Mr Lintott that he did not suggest that anyone would live in a caravan such as that described by Mr Munday. Mr Lintott then repeated to him that the caravan described was on plot 9, the plot on which he had said he had placed his caravan, whereupon Mr Loveridge said that he thought Mr Lintott had meant the plot on which he was now living. He maintained that despite the diagram Mr Munday had drawn on 20th February which showed no caravan on plot 3 he had had his caravan on plot 3.

62. Mr Lintott also put to Mr Loveridge what Mr Munday saw on the police body worn video taken on the evening of 21st February when he nailed a copy of the injunction to a fence. He described the Travellers as "getting ready to go

home" and that there were no lights on the site and the site conditions were atrocious with dangerous objects protruding from the very uneven ground. Mr Loveridge said that "we never left the site that day so that there were no people going home". Again there has been no suggestion that Mr Munday's description of what was shown on the video was inaccurate. To my question he said (as is described by Mr Munday as being heard on the video) he had not heard an official looking man shouting out about a court order.

63. Mr Lintott also put to Mr Loveridge the contents of Mr Munday's statement at B8 paragraph 20 in which he states that on 25th February the body worn police video details a visit by him and the police to the site when the police were intent on obtaining the details of everyone on site. Mr Munday says that the police were satisfied there was no one on site apart from 3 Romanians who were working for the Travellers and whose names were taken by the police. Despite that evidence he maintained that he was on site on that day and that the police officers must be mistaken.

64. He was then shown Mr Munday's site plan for 25th February (B21) which again showed no caravan on plot 3. He said the plan must be in error but in the same breath said that they had to move caravans around while they were levelling the ground. It was put to him that despite Mr Munday's frequent visits to the site, Mr Munday had never seen him – Mr Loveridge said he had seen Mr Munday.

65. Later in his evidence he said he had moved his caravan from plot 3 to plot 9. In re-examination, in answer to leading questions put to him by Mr Masters he said he had been on the site during all the day on the 25th February and that his

wife and child would join him at night. There might have been times during the day when he went to the toilet or went to get food.

66. Mr Loveridge was, I am afraid, in my judgment, a very inconsistent and unsatisfactory witness.

67. Mr John Doran also gave evidence on oath. He, too, could neither read nor write and his statement was summarised for him at my suggestion before he was asked supplementary questions. He clarified his paragraph 2 (C13) by stating that he moved on to the land the same day as the work started, namely, the 17th February. In his statement he is careful to stress that that was before the injunction was brought to the site. He said that when work started his caravan was kept in the lane leading to the land because there was not much room due to the work on the land but that it was moved on to the land as soon as it was tidy enough.

68. That seems to me to reflect the realities of what was happening in the early days of the unauthorised development of the site, when heavy earth moving equipment and lorries were levelling the land and spreading rough hard core followed by a finer top mix.

69. Mr Doran said that caravans were getting moved around a lot because work was necessary in particular places. It must be obvious that caravans which were the homes of the Travellers were at real danger of substantial damage as a result of the earthworks.

70. Despite his saying that his caravan was initially kept in the lane, in questions by Mr Masters supplementing his witness statement (and Mr Doran had been

in court while earlier evidence had been given) he said that caravans of plot owners were all on the land. He intended that his family would live on plot 10 and he said that his family were living with him at night and that he himself was living on the site during the period of working.

71. Inconsistently with his earlier evidence he then said that he knew work started on 16th February and he was asked by Mr Masters whether between that date and the 20th February when the council visited he had travelled away from the site (another of several leading questions asked by Mr Masters). He said yes (unsurprisingly) but said he was not sure of the dates but he had gone to the mission and attended church quite a lot and took his van and family. I am afraid I regarded that evidence as quite obviously tailored to avoid what Mr Doran knew was the evidence of an absence of lived in caravans on the site when Mr Munday and police officers attended the site. Given that it is very obvious that all the defendants who made statements realised the importance of "living" on the land as early as possible (and I have no doubt, having read and heard the defendants' evidence that they were all "forensically aware") it is striking that that important qualification to his evidence was not contained in his witness statement. Adding to his list of leading questions, Mr Masters then asked "Is it possible that council officials were there and your caravan was not?" to which the quite worthless answer "Yes" was inevitably given.

72. It is relevant to the overall circumstances and the article 8 considerations that Mr Doran said that between February and September 2017 he often ("quite a lot") travelled away for work from the site and estimated he was 4 to 5 months away.

73. He said that he had paid Alex Thompson for his plot but would not tell me how much he had paid. While I appreciate that most of the defendants are illiterate and that written documentation may not be a traditional part of the Gypsy/Traveller culture , many are numerate and none of those who gave evidence to me struck me as naïve. Yet there is no supportive evidence and certainly no written evidence of payments for the plots, not even in the form of confirmatory evidence of those who received money for the plots. It is, therefore, very difficult for me to accept the oral evidence of the defendants who gave evidence to me of having paid substantial sums for their plots which they would be unable to find again if they were unable to develop this site as a Gypsy/Traveller site.

74. In cross examination Mr Lintott put to Mr Doran Mr Munday's evidence (B12 – para 28) of his encounter with Mr Doran in April, when Mr Doran was with the 3rd Defendant Mr Hurley, when it appeared to Mr Munday that Mr Doran had only just moved on to the site. Although Mr Munday said that Mr Doran claimed he had been living on the site since 17th February, Mr Munday had never seen his plot top-dressed before nor his distinctive sign-written van. While speaking to Mr Doran, they were approached by William Connors, the 4th Defendant. Mr Munday asked him "Who are you and why have I not seen you on site before?" to which Mr Connors replied: "I'm the elusive Mr William Connor who you should know about Mr Munday as I'm behind all this. I've always been out to dinner whenever you've come calling." Mr Munday asked him when he started living on site and he replied: "The 17th February" at which both Mr Connors and Mr John Doran laughed out loud. Mr. Doran maintained that despite that evidence, he had indeed been on the

site since the 17th February. Mr William Connors has not been called to give evidence nor has Mr Hurley. Neither was Mr Munday specifically challenged by Mr Masters about that evidence. I accept Mr Munday's evidence about that conversation. It wholly undermines Mr Doran's inconsistent and unsatisfactory evidence about living on the site from the 17th February.

75. Indeed, Mr Doran went further in his evidence about being on the site since the 17th February and maintained that Mr Munday had come to the site on that day. That is highly unlikely to be correct as Mr Munday only received information from the police about the occupation of the land upon his coming on duty on Monday 20th February 2017 (see his second affidavit at B222). Mr Doran could not recall what Mr Munday had said on that first day but he said he could not be mistaken as he was very good with faces. Moreover he said that Mr Munday had come by himself and not with the police and he thought he might have had a dog with him.

76. That improbable evidence was supported by Jimmy Loveridge Jnr when he came to give evidence. He said he remembered Mr Munday coming to the site on the 17th February "as plain as day". It was put to him that that took place before the police had even notified the council that the Gypsies/Travellers had moved on to the site and Mr Lintott asked him if he could be mistaken about the date and he said he was sure of the date and in re-examination he added that the dog with Mr Munday was a cocker spaniel. I accept the evidence later given by Mr Munday that he does not even own a dog.

77. This was, I am afraid, evidence of collusion between Mr Loveridge Jr and Mr Doran. It undermines the evidence of both of them.

78. Mr Loveridge Jnr also gave evidence that he had moved to live on the site from the 17th February. His witness statement is at C10 and in that he says his plot is number 8 and pointed to the top right hand corner of Mr. Munday's diagram of the 20th February 2017 which indicates that there was a caravan on that plot on that day. Mr Loveridge's second paragraph dealing with his moving on to the site "before the injunction was brought to the site" is in identical terms to that in Mr John Doran's witness statement.

79. He said that when he travelled after February 2017 he would take his family, his caravan and all his possessions and there would be nothing left on the site. He pointed to photo B 355 taken on the 24th February 2017 and said that the 2 caravans in the distance just left of centre were his and were 2 touring caravans though he had now exchanged those for one larger caravan. He also identified his caravans in B 376, a close up of the 2 caravans, one being a Hobby make. Somewhat inconsistently with what he initially told me he told Mr Masters in answer to supplementary questions that when he travelled for work he left the Hobby caravan on the site. He said that when there was work going on on the site his wife could not come on to the site because there was so much machinery and one of his caravans was stationed at Bagshot and his wife would stay in that. As it is clear that there was still work going on at the site on the 24th February it is not clear to me why there are 2 of what he says are his caravans on the plot.

80. Mr Lintott put to Mr Loveridge the evidence of Mr Munday about the caravans on site on the 20th February (see B5 paragraph 16). Mr Munday said in his main and most recent statement (much of which had been derived not

only from his memory of visits to the site but from footage from police body worn cameras and photographs which are dated) that the 9 or so caravans on the site which he said had been dotted around to simulate the planning application were past their sell by date and usefulness as living accommodation. Mr Munday was cross examined at length by Mr Masters about the apparent condition of the caravans in the photographs. It was not obvious from the photographs that these were, effectively, derelict caravans, though, equally, there is no obvious sign from the photographs that they were being lived in. Mr Munday, who in supplementary questions from Mr Lintott confirmed that, despite the evidence from the defendants which he had heard, he still maintained there was no one living on the site before the 27th February, was adamant that the photographs showed dilapidated caravans, though he accepted that some appeared to have their struts lowered. He pointed out some broken windows and the absence of life around the caravans. He also pointed out that he had looked inside some of the caravans and he also pointed out that there was sharp rubble and hard core on the site which was, he said, a construction site. Mr Masters put to him that his evidence was incredible given the photographs but I am afraid I do not consider that the photographs in themselves disprove Mr Munday's evidence about the lack of any persons actually living on the site.

81. I do, however, accept that, as Mr Masters correctly put to Mr Munday in cross examination, in his first witness statement, at B91, he said in paragraph 7, having earlier named Mr Thompson, Mr Callum Hurley (who he refers to as Mr Callum) and Mr Sampson Black (none of whom have given evidence to me):

"At 13.59 hrs on the 22nd February 2017, I returned to site to personally serve the sealed order on the above named defendants *who are living on the site*."(my italics)

82. Mr Munday correctly said that the purpose of this first witness statement, made on 28th February 2017, was to prove service on the defendants. He floundered when attempting to explain what he meant, saying that it was an unfortunate choice of words if it was now misconstrued and that the defendants were "on the site but not in residence on the site in any caravans on any plot". Indeed he reiterated that they could not have been as the caravans were dilapidated and not levelled and there was no outward sign of residential use of the caravans, there being no generators or washing lines or gas bottles and he stressed that the land was a construction site. Rather stubbornly, he would not admit that the use of the words "living on the site" were, in my judgment, a simple error on his part. That stubbornness does not, however, cause me to doubt his overall credibility and his detailed description of the site from his first visit on the 20th February to the 27th February, contained in his main statement, which is unnecessary for me to detail at any further length, is supported by the photographs and was in large part taken from watching police videos. He admitted to Mr Masters that he had not been on the site every hour of the day nor had he been there at night.

83. More significant seems to me what Mr Munday says he was told on the 20th February (B5) by the 3rd Defendant Mr Hurley, namely, "that the condition of all these caravans are irrelevant as they are all storage caravans and would never be used as living accommodation".

84. Mr Lintott also put to Mr Loveridge the passage at B8, taken from the watching of police video, where, on 25th February, the Romanian workers tell the police that, they were the only persons on site. Mr Loveridge said that he was probably out somewhere at that time. I am afraid that I considered, watching him give evidence, that that was not a truthful statement. Indeed when pressed about other dates before the 15th March when 2 caravans were recorded on his plot he said that he was certainly staying on site then but must have been off site working, a convenient excuse common to the defendants. I have already mentioned that he joined in Mr Doran's patently incorrect evidence about seeing Mr Munday on site with his dog on the 16th or 17th February.

85. I am afraid that the witness statements of those defendants who did not give evidence do not persuade me that the weight of evidence in Mr Munday's main statement, the reported comments of defendants (not called) which tell against anyone living on the site between the 17th February and the 27th February, the photographs, the descriptions of conditions on site which are taken from unchallenged observations of contemporaneous police body worn video, is unreliable and I prefer the evidence of Mr Munday to that of the defendants, both called and not called.

86. I accept Mr Lintott's submission that the reliable and substantial evidence called by the Claimant drives me to the conclusion that none of the Defendants were living on the site when the injunction was obtained by the Claimant from Davis J. Mr Lintott is right to stress what Mr Hurley (not called) is recorded

on bodycam footage on 22nd February (B7 para 18) as saying when the injunction is read out to him and he is told what he can and cannot do:

"*My caravan has been damaged by a machine. I can't be staying there. There's all gas pipes and mains. I'm going to be taking that off and putting another one on there*."

87. The conditions on what was in the early days of a planned unlawful occupation of the site by a group of like-minded Gypsies/Travellers were such that I am unable to believe they would risk the caravans which they actually lived in, let alone their families, on the site. There was no lighting, there was heavy earth moving equipment, the hard core was in the process of being levelled and contained dangerous objects. I accept Mr Lintott's submission that the Defendants (both called and uncalled) plainly appreciated the importance of being able to say that they were living on the site at the time when the injunction was obtained. They were, I judge, particularly in the light of the most obvious fact that the whole operation was carefully planned to catch the planning authority by surprise, forensically aware.

THE PLANNING MERITS

88. While I am not required, nor even entitled to reach my own view of the planning merits of the case I am entitled to form a view as to whether the prospects of success in an application and in an appeal from any refusal are sufficiently strong to provide a factor of real weight weighing the balance in favour of granting a variation of the injunction pending the outcome of any appeal. I must also consider the need to enforce planning control in the general

interest and the planning history of the site, as well as the degree and flagrancy of the breach of planning control.

89. I propose to consider the application for planning permission as it stands although it is relevant for me to consider that there may be amendments to that application and further information may be put before the planning authority.

90. 2 planning experts gave evidence before me, namely Mr Woods, for the Defendants and Mr. Jupp for the Claimant.

91. It is common ground between the experts that the Claimant is unable to demonstrate a 5 year supply of Gypsy and Traveller sites and I accept that it is likely to be some time until the sites allocated within the local plan become available. Thus Mr Jupp accepts that that inability and the lack of alternative sites add significant weight in favour of the proposed development. He also accepts that the provision of a settled base from which some of the defendants and their families could access education and health services adds further weight in favour of the proposal. Each of the defendants who gave evidence to me stressed those factors.

92. I accept the evidence of Mr Jupp that the local plan is a recently adopted one and should be afforded full weight. I also accept his evidence that there is substantial adverse impact on the natural environment of the development. Neither is the site located within a reasonable distance of local services and there is no evidence that there would be successful integration between the travelling and settled communities. There has been a substantial level of objection to the application. On those bases alone there is a conflict with policy CN 5 of the local plan. Even though the site is near to a sewage works

(though it is screened from those works by a substantial copse of trees) and adjoins an industrial site, photographs in the bundle of the site before the development make it clear that the proposals as they stand are not "sympathetic to the character and visual quality of the area concerned; respect enhance and not be detrimental to the character of visual amenity of the landscape likely to be affected, paying particular regard to various criteria." I accept Mr Jupp's view that there is, therefore, a conflict with policy EM1 of the local plan. His views are supported by the planning statement of Nicola Williams in the trial bundle.

93. The current site boundaries in the plan accompanying the planning application does indeed encroach on a SSSI. Mr Woods, for the Defendants, made light of this while accepting that, while the majority of the site lay outside the SSSI there was some encroachment to the North East of the site. He contended that an amended plan reducing the boundaries of the site and allowing a 15 m buffer zone between the site and the SSSI would avoid this being a problem. However, this would mean that the entire plot layout would have to be changed because plots in that corner of the site would, effectively, disappear. Having regard to the evidence of the defendants who said they had paid substantial amounts of money for "their" plots, I cannot simply assume that this would be a simple matter. While Mr Woods said, with confidence "such a scheme can be devised", none had been devised prior to the hearing. Mr Masters, for the defendants, promised a plan during Mr Woods' evidence within 7 days. No such plan has yet been submitted despite Mr Masters' submission to the contrary in his written submission.

94. Thus, on the basis of the objection by Natural England to the scheme on the grounds of the adverse impact on the Pamber Forest and Silchester Common SSSI there is a very strong likelihood that planning permission would not be granted.

95. There is, moreover, an objection from the Hampshire and Isle of Wight Wildlife Trust not only because of the encroachment on the SSSI but because of the destroyed part of the SSSI. No Tree Preservation Orders were in force in relation to several mature trees that were felled within the boundaries of the SSSI in order to level the site. Had there been proper notice of the intention to develop the site it is very possible that steps to impose such orders would have been taken to protect those trees. This is an example of the defendants deliberately bypassing proper procedures. The retrospective application as submitted has also, according to the Natural England objection, already destroyed supporting habitat of the interest features for which the SSSI has been notified and would prevent the future restoration of the affected area leading to permanent loss.

96. The aerial photograph at B573 shows the extent of woodland removed as a result of the site works. There is no Forestry Commission objection and they have merely referred to their standing advice. However, Mr Jupp's evidence that a felling licence is required from the Commission when more than 5 cubic metres of trees are felled in a calendar quarter and calculates that to comply with that no more than 8 trees could be down. The aerial photo strongly suggests that more have been felled.

97. Although the site had, by the time of the hearing, been taken out of a flood zone area, there was factual evidence from a local resident, Mr Mahaffey, that this was an area of land, water meadows, that historically, regularly flooded. It is therefore likely that the flooding aspect will have to be reconsidered. Mr Mahaffey also provided photographs of the land before the unauthorised development. Even accepting the proximity of the factory and the sewage works, it is very strongly arguable that the development would cause, as Mr Jupp contends, "considerable harm to the character and appearance of the countryside" contrary to paragraph 109 of the National Planning Policy Framework. This is, I accept, likely to be accorded substantial weight.

98. In making my assessment of whether I should accord the prospect of the defendants successfully obtaining retrospective planning permission real weight, I cannot ignore the fact that this application is very substantially incomplete. I accept Mr Jupp's evidence that the Council has contacted Mr Woods, the planning agent for the Defendants (changed since the application was initially made) requesting a considerable number of important details missing from the application, namely:

i) A planning statement;

ii) A drainage assessment (particularly important having regard to the site's close proximity to the SSSI and its significant separation from the nearest settlement);

iii) A statement of personal circumstances – this is remarkable for its absence. Much criticism has been made at the hearing and in submissions of the limited assessment by the Council of the personal

circumstances of the Defendants and their families. I do not consider that to be justified criticism at all. I have found that when the Council applied for the injunction and when they were attempting to serve it on those on site, the defendants and their families were not living on the site. I am unconvinced that since then the defendants, other Gypsies/Travellers, and, in particular, their families, have lived for any significant time on the site. I am clear that they ensured that they were on site while the authors of the TRAIN personal circumstances report were compiling that report but the evidence from the defendants who were called before me strongly suggested to me that much of the time from February to October 2017 was spent travelling to fairs, to work or to the missions attended by the defendants. As the personal circumstances of the defendants is strongly argued before me as an important factor in my decision it appears to me not to sit well with that argument that no statement of personal circumstances accompanied the application;

iv) Bio-diversity assessment;

v) Landscape and visual impact assessment;

vi) Odour assessment – this is clearly important given the proximity of the site to the sewage works though I accept Mr Woods' evidence that Gypsy sites have, in other parts of England and Wales, often been placed near to sewage works; the evidence of odour given before me is patchy and inconsistent.

vii) Noise assessment;

viii) Highways statement.

99. On the highways and access issue, Mr Woods stressed in his evidence that it was important that there had been no highways objection. Factual, though not expert, evidence was given by Mr Mahaffey in his detailed statement of some analysis of accidents at the junction of the access lane to the site with the nearby highway. There is evidence of a blind bend in the vicinity of the access.

100. Mr Woods was correct in saying that no highways objection had been received by the authority but that had changed by the time Mr Jupp gave evidence and he was able to update me by telling me (and I accept) that a highways objection had been communicated saying that highways were unable to conclude that the development could be successfully integrated into existing movement networks, nor that safe, suitable and convenient access could be provided, nor that the development would not result in unacceptable or severe impacts on highway safety. Mr Woods contended it was unnecessary expense to produce a highways statement when there was no objection. I conclude that one will unquestionably now be necessary. The objection appears to me to support Mr Mahaffey's and local residents concerns about the access.

101. There has also, since Mr Woods gave evidence been a rights of way objection, an objection from the Woodland Trust (again related to development within the buffer zone to ancient woodland) and from Hampshire flood and water management in relation to the impact caused by surface water. There is no assessment of the latter in the application despite the fact that the development

was in, I accept from Mr Mahaffey, ancient water meadows, and now presents a substantial area of impermeable surface.

102. I was satisfied on the evidence before me that the site is too far away from the Aldermaston Atomic Weapons Establishment ("AWE") for the risk of an airborne radiation leak to be an objection to planning permission that would carry substantial weight but in his oral evidence to me Mr Mahaffey gave evidence of the fact that, according to him, the AWE had been fined for radiation leaks via sewage outfall to the sewage works some 4 times in the last 20 years. AWE has a licence to discharge limited amounts of contaminated material into the Silchester stream which runs directly adjacent to the site and between it and the sewage works and Mr Mahaffey suggested that the AWE had been subjected to special safety measures in relation to that specific risk for the last 5 years.

103. Mr Mahaffey, a parish councillor, was giving evidence on his own behalf and on behalf of residents and was not part of the Claimant team. Thus his evidence about the radiation risk (not in his statement) had not been put to or dealt with by Mr Woods. Nor, indeed had the updated material given in evidence to me by Mr Jupp, including the evidence of recent objections to the development. I therefore gave permission, with a time scale which was discussed with both sides at the end of the hearing, for Mr Woods to produce a written response and I timetabled written submissions from counsel to reflect that new material had to be produced. The timetable for the new material was missed. I extended it. The extension was missed. I was not prepared to extend the timetable further and I have not, therefore, had any response from

Mr Woods to this latest material which, in my judgment, significantly weakens the argument by Mr Woods that retrospective planning permission was likely to be granted.

104. The recently adopted Development Plan (the Basingstoke and Deane Local Plan) does have a policy that is directly relevant to this development of a Gypsy/Traveller site, that is, policy CN5. That policy is set out in full at B522 and 523 in Mr Jupp's statement. Mr Jupp has assessed this unauthorised development in accordance with the criteria in the plan at paragraph 70 of his report. He finds clear and substantial conflict with policy CN5. As far as (b), (c), and (g) are concerned it seems to me unarguable on the facts that he is incorrect in his conclusions and in the absence of a highways statement, I cannot be satisfied that he is incorrect in relation to access.

105. Mr Jupp also considered paragraph 55 of the Framework, set out at his paragraph 72 (though the parties helpfully provided me with an authorities bundle which included both the Framework document and the 2015 Planning Policy for Traveller Sites ("PPTS"). Both he and Nicola Williams agree that this site, which is clearly, I find, situated in open countryside away from any settlement, is not located in a sustainable location. Mr Woods accepted that Gypsy sites are harder to establish in the green belt though he pointed out that some sites had been obtained. He accepted in cross examination that the nearest bus stop was more than 500 m away from the site and that the nearest primary school was not closer than 1.5 km from the site. However his evidence was that these factors were not conclusive. That may be but they are factors which support the conclusions of Mr Jupp and Miss Williams and I

prefer their evidence about the sustainability of the location of the site. As Mr Jupp pointed out, the Framework document does not define what is meant by isolated but the local plan does and when looking at that this site falls within that definition.

106. It is to be noted that recent guidance by the Department for Communities and Local Government (their letter of 31/8/15) introduces a planning policy, applicable to this application for planning permission, making intentional unauthorised development a material consideration to be weighed in the determination of planning applications and appeals. That is very obviously applicable here.

107. Mr Jupp also considers the application's compatibility with the PPTS as recently amended. I accept Mr Woods' arguments that the lack of provision by this authority of local provision of Gypsy/Traveller sites and the length of time that that lack has existed, and the lack of alternative accommodation are factors of significant material weight here. However, paragraph 25 of the PPTS, which relates to the siting of Traveller site development in open countryside is very obviously, in the view of Mr Jupp and Miss Williams, which view I accept and which I consider on the evidence to be very clearly established, not met by this application nor, indeed, is paragraph 26 of the PPTS.

108. I do not accept Mr Woods' argument that paragraph 14 of the Framework is engaged so as to establish a presumption in favour of sustainable development. This is not a case where the Development Plan is out of date nor do I accept that in a recent appeal the Council made any concession that the local plan was

out of date. Even if they had that would not, in my judgment, alter my view as to the engagement of paragraph 14. In the Dixon Road appeal (see paragraph 86 of Mr Jupp's statement) the council confirmed that there were sites available to accommodate additional pitches if further assessments indicate a need for a greater number of pitches and in the light of that evidence the inspector concluded there was not an ongoing failure of policy in relation to the provision of Gypsy and Traveller sites. However, the position seems to me to be put beyond doubt by the recent Parliamentary written statement of Baroness Williams of Trafford following the judgment in *Wenman v Secretary of State* that those persons who fall within the definition of "Traveller" under the PPTS cannot rely on the lack of a 5 year supply of deliverable housing sites under the Framework to show that relevant policies for the supply of housing are not up to date.

109. In any event, as it stands, this application is within an SSSI.

110. I do not consider it is necessary (or desirable given the current length of this judgment) for me to set out the planning issues between the parties in any greater detail. I found the evidence of Mr Jupp to be careful, considered and fair. For those reasons and for the reasons I have outlined above dealing with specific planning points I accept his evidence, supported as it is by Nicola Williams's statement. I do not consider that it is probable that planning permission will be granted for this site or that an appeal against a refusal will be successful and I do not consider I should attribute substantial weight to the defendants' prospects of successfully obtaining retrospective planning permission.

PERSONAL CIRCUMSTANCES OF THE DEFENDANTS AND THEIR FAMILIES

111. I have available to me the report of the 9th October 2017, by the Traveller and Romani Advice and Information Network ("TRAIN") into the best interest of the children living at the Silchester Site and I heard evidence from one of the authors of that report, Dr Allen.

112. While I accept that there is incontrovertible evidence that Gypsies and Travellers are, in comparison with the general population, more likely to suffer bad health, I note that the authors of the report found that each child that they found living on the site were in good health and up to date with vaccinations save where one family had made an "informed" decision not to take up the MMR.

113. Dr Allen reports that one of the residents, Mary Rooney, who was 17 at the date of the report, was 6 months pregnant and suffering from the stress of worrying about the planning dispute and the threat of eviction. There is no medical evidence to confirm any adverse effects, however.

114. There is no doubt that if the defendants and the other residents of the site were to be permitted to continue to live there, the children would be able to access a local surgery and local dentists and opticians. They would also have access to fresh running water.

115. While concern was noted in the report that the residents were not allowed to take rubbish to the local household waste and recycling facilities about 7 miles away from the site and so were burning refuse on site, which was a hazard to

the residents, particularly to the children, I accept the evidence of Mr Mahaffey that the residents of the site were under a mistaken apprehension as to those facilities and would be able to use them.

116. As far as education is concerned there is a very striking attainment gap between Gypsy and Traveller children and other white children. I am afraid that that was illustrated graphically by the illiteracy of 3 of the defendants who gave evidence to me and who, together with Reuben Murphy, confirmed to me that they wanted their children to have a decent education. This deficit is clearly a critical obstacle in the way of children of Gypsies and Travellers making the most of their lives and the defendants are not unaware of the fact that their culture, which is, of course, very important to them, is handicapping their children.

117. As Dr Allen explained to me, registration at a local school and continued contact with Traveller liaison staff can mitigate the problems inherent in the Traveller culture. Their children are already being supported by the local Ethnic Minority and Traveller Achievement Service who are working well with all families.

118. All these families have to cope with continued hostility based on their ethnicity and culture. The TRAIN report speaks eloquently of the fear of children of living on the roadside and the threat of eviction. Their parents genuinely wish to protect their children from those fears and from the reality of that life. Being constantly moved on lowers these children's self-esteem. It causes a loss of contact with members of their extended families. They do not have a safe place to play – that means their development is as stunted as by a

lack of continuous education. The children told Mr Allen and his colleague that they wanted a play area and above all, they wanted a trampoline.

119. The defendants who gave evidence to me and other members of this community are strongly religious and belong to an active evangelical Christian community. Attending church and their missions is very important to them. Ironically, travelling to the various missions is a factor which contributes to the disturbance of their settled living patterns.

120. A settled site would encourage the development of community and family bonds.

121. The current site, in its semi-developed state means that the children and their clothes become dirty very quickly

122. There is an undoubted deficit nationally and locally in appropriate sites. The site at Silchester is in an incomplete state and there are environmental hazards for the children there. Just about all these families will have had experience of hate crime.

123. The authors of the TRAIN report do not support the eviction of the families that they speak about in their report and see eviction as a further breach of their rights and a threat to the welfare of the children and families living on the site

124. Dr Allen was unable to give evidence (save hearsay evidence) as to the conditions that existed before October 2017. I accept his evidence that to conduct a fully welfare enquiry, the Council would have had to have spent the time and resources that he and his colleague did. However, I am entirely

satisfied that that would have been futile before the injunction was granted as no one was living on the site and I have found that there was little continuous residence on the site between February and October because of the conditions on the site and because the defendants were moving around the country working and attending fairs and missions. Before enforcement action could be taken, it would be essential for the Council to consider the interests of the children and the human rights of the families on the site and the TRAIN report is an excellent resource for the start of such consideration.

125. Dr Allen told me and it was amply confirmed by the evidence of each of the defendants who gave evidence, that the families on the site are determined to take responsibility to break the cycle of deprivation that they have been trapped in and ensure that their children have better opportunities than they have had. It will, I judge, involve them in difficult choices between their loyalty to their Traveller or Romani culture and their obligations to their families.

126. I should note that it was not part of Dr Allen's instructions, as was established in cross examination, to establish in relation to any of the families he interviewed and described when they moved on to the site.

127. Each of the defendants stressed, and I accept, that the main object of their purchasing plots on this site and seeking planning permission was to ensure a stable base for their children so that the children's health and education could be furthered. None of them were, however, prepared to give up the travelling life and each expected to spend significant periods travelling away from the site.

128. Mr Reuben Murphy moved on to the land later than other defendants, on about, according to his lately served statement, the 28th September 2017. He moved on to the plot which had been occupied and, he says, owned, by Callum Hurley being informed by him that there was an injunction in place but that it only applied to Mr Hurley and other named people and did not affect Mr Murphy or his family. He was an articulate witness, who said he had had some limited schooling and he was literate. He wanted both his wife and his children to receive decent education and although he intended to keep travelling he would, as others also said, keep Silchester as his base and keep in touch with the Gypsy liaison officer so that schools could be arranged in other areas and some home schooling supplied. He wanted a gate installed at the entrance to the site to give extra security. He said he owned a plot having made an oral agreement with Mr Hurley. He was shown by Mr Lintott photo A11 and asked him if he had seen copies of the injunction around the site but he denied he had though he was aware that copies of the injunction were posted on fence panels around the site. I am afraid I do not accept that evidence. Although he may have come to the site late, he conceded in evidence that he had known of the site since, to use his words "day dot" and knew when the site was purchased, who went on to it and what things first happened on the site. He was, I am satisfied, aware of the plans to steal a march on the planning authority. He had solicitors, he accepted. He was part of a trade association. He said his solicitors were not the sort who dealt with "very minor disputes" and he understood they "only deal with one part of the law". This was not very frank evidence and I am sure he knew very well the

extent of the injunction when he moved on. He and his family have only been living on the site since late September 2017.

129. Although I have the TRAIN report, there is no doubt that there have, even in the period of less than a year since the site was first occupied, been a series of changes of those who have occupied the site. It is very difficult to track those changes. Only 4 of the defendants have given evidence, which weakens the weight that can be given to personal circumstances. I have already said that I am not satisfied with the evidence of the payments allegedly made for the plots. It follows that I cannot, on a balance of probabilities, accept that, in the event of moving from this site, the defendants who have given evidence to me could not recover any money they have paid or pay again for land for which planning permission for another site might be sought.

130. There is no doubt that if I refuse to grant the variations of the injunction sought, the way is clear for the Council to take enforcement proceedings and evict the families currently living on the land. That is why there has been a full and extended hearing in this case. Such eviction would unquestionably be against the best interests of the children of the families resident on the site and that is a factor of primary importance. It would also adversely affect the article 8 rights of both children and adults.

SUBMISSIONS AND CONCLUSION

131. Mr Masters contends that this is not a case where the defendants have deliberately defied a court order or "cocked a snook" at the court.

132. Despite the fact that Nicol J. did not order committal because he was not satisfied that service had been precisely achieved, that does not mean that the injunction order of Davis J. somehow ceased to have effect. I have no doubt whatsoever that each of the defendants who gave evidence to me was, when he began to reside on the site and when he brought his caravan on to the site aware that he did so in breach of an injunction. I have no real doubt that all adult residents on the site were in the same position. Thus I reject his consequential submission that they have followed a proper course throughout in seeking to vary the order. Indeed there was not an immediate application to vary or discharge the ex parte order as that order permitted.

133. I reject the submission of Mr Masters that the injunction only had effect when served. That is patently not the case though it would be impossible to obtain enforcement of the order without valid service, however the Court determined that should be achieved.

134. The Council has simply been unable to make detailed welfare enquiries, first, because defendants were not resident on the site when the injunction was applied for and obtained and, second, thereafter, because of the constant flux of the defendants and their families on what is still an unfinished site.

135. I accept Mr Masters' contention that there is no suitable alternative accommodation. That would have been the case before the defendants moved on to the site.

136. I accept this is not a green belt site. It is a site, however, in the countryside and isolated from the nearest settlement. I do not consider that it has been established on a balance of probabilities that there are good prospects of

retrospective planning permission being obtained. The unlawfulness of the initial occupation is an important factor of substantial weight in the unlikelihood of planning permission being obtained

137. I accept Mr Lintott's primary submission that there is an overarching public interest in ensuring that court orders are respected and obeyed.

138. In my judgment, it was a main purpose of Parliament in creating section 187B of the Act to ensure that the system of local and democratically based planning grant was effective. The defendants, I am sure, and I exclude none of them, were all party to a plan to pre-empt that planning system and to gain an unfair advantage for their application by making it difficult and expensive for the Claimant to do other than grant their application retrospectively. Those who organised and planned the occupation of the land, an occupation that was known by all to be achieved before the planning authority could possibly even consider, let alone grant permission and without the necessary information to make a proper decision on that application, were, as I have put it earlier in this judgment, "forensically aware" and broadly familiar with the legal background to planning grants for Gypsy/Traveller sites. They have deliberately tried to steal an unlawful march on the authority.

139. I accept Mr Lintott's submissions that none of the defendants was living on the site when the injunction was obtained. I agree with Mr Lintott that the defendants appreciated the importance of being able to say they were living on the site at the time when it was obtained. Some of the comments recorded on police body cam videos show that the defendants or some of them were contemptuous of the legal process. That type of approach simply cannot be

permitted to gain an unfair advantage or the authority of the court and the democratically based planning process will be damaged beyond repair.

140. The object of Davis J. when he granted the injunction was to preserve the status quo pending the determination of the planning process. Those who moved on to the site after the injunction in this case (as far as residence is concerned, that includes all the defendants and, indeed, in my judgment, on a balance of probabilities, all the adults resident on the site) did so in "conscious defiance of the injunction" to use Mr Lintott's words.

141. Even though this is an application to vary the Davis J. ex parte injunction and not entirely to lift it, in substance, this is akin to considering on a return day inter partes, whether or not to continue an injunction. The variations sought are, effectively, sufficiently wide to render the original purpose of the injunction nugatory, that purpose being to preserve the status quo at the time of grant, which I find, did not include any residence on the site, pending resolution of grant of permission or appeal.

142. If I refuse to grant these variations, I must appreciate that it clears the ground, so to speak, for enforcement proceedings and I bear in mind that Lord Justice Simon Brown, in *Porter* in the Court of Appeal, stated that an injunction under section 187 B should not be granted unless the court was prepared to commit for breach.

143. This case, however, has far more similarities to *Brown* and to *Robb.* Indeed, in my judgment, the flagrancy of the initial planned unauthorised occupation is such that it is, in many ways, more important here than in those cases to

uphold both the authority of the court and to support the fundamental tenets of the planning system.

144. The hardship to the defendants themselves, more significantly to their families and particularly their children, who have at present no alternative site to go to and will be forced on to the side of the road again, is obvious. However, that was their situation before the injunction was granted. I am not convinced on balance that those who say they have "purchased" plots have done so and I am certainly not satisfied that they will not be able to recover any money they have spent to invest it in purchasing another site in relation to which a proper application for planning permission can be made without unauthorised development first being embarked on.

145. This is not a case, I accept, where any of the children have ill health . None of the families have lived for very long on this site. The Council had no opportunity before making the application for the injunction to assess welfare issues because there was no one in residence and their attempts since then have been thwarted by a turnover of people actually living at any one time on the site. If they determine to consider enforcement they have the TRAIN report and the evidence from the hearing before me and can, if necessary, make other enquiries before assessing the proportionality of seeking enforcement of the Davis order.

146. There has, in this case, been very substantial environmental damage and there is urgency in the need to bring this unauthorised occupation to an end.

147. I have reviewed the interests of the children. It is very clear that stability is a pressing need in their lives and their best interest lie in a stable base, and

continuous schooling and health care. However, the problems of providing that to them lie as well in the difficult decision of their parents as to whether they continue to hold by the tenets of their own culture. Moreover, while the best interests of the children must be a primary consideration they do not overtop other consideration and, similarly, while a decision not to vary the injunction may lead to interference with their and their parents article 8 rights, there are other competing interests and the court must assess proportionality.

148. In my judgment, the Claimant has made an appropriate assessment of the proportionality of continuing to oppose the application to vary and to preserve the injunction taking into account the defendants' and other residents' circumstances including the best interests of the children as a primary consideration. Not only have they made an appropriate assessment but, having considered all the evidence, I am satisfied that that assessment is correct.

149. To vary this injunction would be wholly to undermine the court's authority and the planning system and would give a green light to "strong arm" tactics designed to bypass or unfairly influence planning decisions.

150. I decline to vary the injunction and, apart from the adding of a defendant, I dismiss the Defendants' application.