Neutral Citation Number: [2024] EWHC 2496 (KB)

Case No: QB-2019-002737

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/10/2024

Before:

MR JUSTICE EYRE

- -

Between:

LONDON BOROUGH OF HAVERING	**Claimant**
- and -	
(1) WILLIAM STOKES	**Defendants**
(2) – (105) OTHER NAMED DEFENDANTS	
(106)PERSONS UNKNOWN FORMING UNAUTHORISED ENCAMPMENTS WITHIN THE LONDON BOROUGH OF HAVERING	

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Caroline Bolton and Natalie Pratt (instructed by **LB Havering Legal Services**) for the **Claimant**
The Defendants did not attend and were not represented

Hearing date: 19th October 2022
Further submissions: 9th December 2022, 23rd February 2024, and 30th May 2024
Further evidence: 17th June 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE MARTIN SPENCER

MR JUSTICE EYRE:

Introduction.

1. The Claimant is the council and local planning authority for the borough of Havering ("the Borough") which covers some 44 square miles in the north-east of Greater London. The Claimant is seeking to address by way of precautionary injunction the problems arising from unauthorised traveller encampments and in particular those associated with fly-tipping. It is to be noted at the outset that, as I will explain more fully below, the Claimant proceeds on the footing that this behaviour is engaged in only by an unrepresentative minority of members of the Traveller and Gypsy communities. The Claimant obtained an interim injunction from Pepperall J on 12th September 2019 and the matter came before me on the final hearing of the Claimant's application.

2. As originally formulated the claim was brought against 105 named defendants together with persons unknown. The claim has been discontinued against 54 of the named defendants and now continues against the remaining 51 together with persons unknown. The Claimant says that it can show that each of the remaining named defendants participated in one or more unlawful encampments in the Borough in the period from July 2016 to July 2019 and relies on this together with the nature of the encampments in question as the principal basis for saying that there is a sufficient risk of the repetition of such conduct by those defendants to warrant the grant of an injunction against them. It is said that the court can infer that those defendants participated in the unauthorised encampments because in each of their cases a vehicle of which they were either the registered keeper or an insured driver was identified as having been at one or more of such encampments. In respect of some of them there are additional matters on which the Claimant relies to show such participation. Against those defendants a borough-wide order is sought in the terms I will consider below.

3. The Claimant points out it has not identified all the vehicles and persons which had been present at unauthorised encampments in the Borough during the three-year period leading up to July 2019 and says that the Named Defendants are only a minority of those who were present at such sites. It is for that reason that the Claimant seeks relief against persons unknown saying that there is sufficient risk of unauthorised encampments by persons other than the Named Defendants for such relief to be granted. However, in respect of persons unknown the relief sought is not a borough-wide injunction of the type sought against the Named Defendants but rather an injunction restraining entry on to any of a list of 306 named sites.

4. The hearing in this matter was on 19th October 2022. However, in November 2022 the Claimant learnt that the Supreme Court was to hear the case of *Wolverhampton City Council & others v London Gypsies and Travellers and others* [2023] UKSC 47, [2024] 2 WLR 45. On application by the Claimant, I then paused work on the judgment which was partially prepared and gave directions for further submissions to be made after the handing down of judgment in the Supreme Court. That court heard submissions on 8th and 9th February 2023 and handed down judgment on 29th November 2023. I received further submissions in February 2024. Having reflected on those I made directions for the provision of further evidence in respect of the current circumstances and for submissions thereon. I received that evidence on 17th June 2024 (the submissions having been received at the end of May 2024).

The Legislative Background.

5. The Claimant brings these proceedings in exercise of its power under section 222 of the Local Government Act 1972 to bring legal proceedings in its own name as local authority where it considers such a course "expedient for the promotion or protection of the interests of the inhabitants" of its area. Section 222 does not create a new or separate cause of action vested in the relevant local authority but does permit it to bring proceedings in its own name.

6. In the Claim Form the Claimant invoked section 187B of the Town and Country Planning Act 1990 and section 1 of the Anti-Social Behaviour, Crime and Policing Act 2014. It no longer relies on the latter but instead focuses on the former. The contention is that the forming of encampments and engaging in fly-tipping are development for the purposes of section 55 of the 1990 Act and, having been undertaken without planning permission, are breaches of planning control. It is in those circumstances that the Claimant says an injunction under section 187B is to be granted.

7. The relevant provisions of the 1990 Act are as follows.

8. Section 55(1) and (3) which address the meaning of development thus:

> (1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, *"development,"* means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.
>
> (1A) For the purposes of this Act "*building operations"* includes –
>
> (a) demolition of buildings;
>
> (b) rebuilding;
>
> (c) structural alterations of or additions to buildings; and
>
> (d) other operations normally undertaken by a person carrying on business as a builder.
>
> (3) For the avoidance of doubt it is hereby declared that for the purposes of this section –
>
> (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used…
>
> (b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if –
>
> (i) the superficial area of the deposit is extended, or
>
> (ii) the height of the deposit is extended and exceeds the level of the land adjoining the site.

9. Section 57(1) which provides that planning permission is "required for "the carrying out of any development of land".

10. Section 187B which 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 under this Part.

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

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

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

11. The approach to be taken when an injunction is sought under section 187B was explained in *South Buckinghamshire DC v Porter* [2003] UKHL 26, [2003] 2 AC 558. The question of whether the conduct in question is a breach of planning control will be a matter for the local authority and not the court. However, the decision as to whether an injunction should be granted remains a matter for the court's discretion having regard to the circumstances of the case as a whole. It follows from the decision in *Wolverhampton v London Gypsies and Travellers* that the court's discretion in a case where the application is for an injunction against persons unknown which has the prospect of affecting the lives of members of the Traveller or Gypsy communities then that discretion is to be exercised in accordance with the approach set out there.

12. Where an injunction is granted on a local authority's application pursuant to its section 222 power then section 27 of the Police and Justice Act 2006 enables the court to attach a power of arrest in the following circumstances as provided for by subsections (2) and (3):

"(2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.

(3) This subsection applied if the local authority applies to the court to attach the power of arrest and the court thinks that either-

(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or

(b) there is a significant risk of harm to the person mentioned in that subsection."

13. Section 77 of the Criminal Justice and Public Order Act 1994 empowers a local authority to direct persons residing in a vehicle or vehicles on a highway or on unoccupied land or on occupied land without the occupier's consent to leave that land. If a person subject to such a direction fails to comply with it the local authority can apply on 24 hours' notice to the magistrates court for an order for the removal of such persons. The direction and any consequent order prohibit the return to the site in question of the persons subject to the direction for a period of 3 months. The direction and order only apply to the land on which the persons in question were encamped at the time of the direction. As I will explain below the Claimant contends that by reason of that restriction and the expiry of the limitation on return after 3 months the powers under the 1994 Act do not enable it adequately to address the problem posed by repeated unauthorised traveller encampments.

The Problem which the Claimant seeks to address and the Evidence in General Terms.

14. I need not recite the detail of the evidence which has been put forward by the Claimant. The proceedings were begun in July 2019 and at that time the Claimant provided evidence about traveller encampments in the preceding three years. At the hearing in October 2022 I received further evidence about matters between then and the date of issue and I have now been provided with evidence as to events since that hearing.

15. The Claimant's concern is not primarily with traveller encampments without more. Instead its particular concern is with those of such encampments as are associated with commercial fly-tipping and/or forcible entry to property and in particular those of such encampments as are associated with aggression on the part of the occupiers to others. It is important to keep in mind at all times that, as the Claimant expressly recognises, to the extent that those who engage in such behaviour are members of the Traveller or Gypsy communities they form a small and non-representative minority in such groups. It is partly in acknowledgement of this factor that the Claimant has drawn up the policy entitled "Negotiated Stopping Procedure and Temporary Transit Agreement" ("the Stopping Policy") to which I will refer below.

16. The instances of forced entry to premises described in the evidence have included some or all of: the cutting of locks; the removal of bollards; and the ramming of gates. On some occasions such entry has been associated with the making of threats to security staff and others who have sought to prevent the entry.

17. The evidence of commercial fly-tipping describes the actions of those who obtain waste from other locations (doing so for payment) and then deposit that waste on a site which has been entered and occupied unlawfully. By depositing the waste on such sites those who have received payment for removing the waste from elsewhere avoid having to pay the charges, including landfill tax, which would have to be paid if the waste were to be taken to a licensed landfill site. Such action has the further consequence that, after the encampments have left, the owners of the land have to remove the waste and themselves incur the costs of the removal and lawful disposal of the waste.

18. The unauthorised encampments will in most cases amount to a breach of planning controls by virtue of being a temporary conversion of the site in question to a temporary traveller site without there being planning permission for such change. In addition where refuse or waste materials are deposited that will be done without planning permission having been obtained for that change of use.

19. The sites about which the Claimant is concerned do not have planning permission for residential use nor for the commercial depositing of waste. That will typically mean that the sites are not suitable for such use and will not have appropriate facilities for waste disposal or sewerage connexions. The use of the sites in those circumstances has a number of consequences. In addition to the harm to the interests of the owners of the sites, including the cost of restoration as just explained, there will be harm to the amenity of other properties in the locality of the site. The extent of that harm to the amenity of others will depend on the nature of the operations on the site and the nature of the locality. However, a degree of harm will almost invariably be present when a site is used without planning permission for an unauthorised use. The absence of sewerage connexions has led in respect of a number of the encampments to public health concerns because of the presence of untreated human excreta.

20. In the period between July 2016 and the issuing of the claim in July 2019 there were a total of 96 unauthorised encampments in the Borough. After the interim injunction was granted by Pepperall J there were further encampments but these were markedly fewer in number than those previously. Moreover, in most instances when those occupying the encampments were informed of the existence of the injunction they left the site in question voluntarily albeit not always immediately. That pattern has continued in the period since the hearing before me. The Claimant submits that this demonstrates both the need for continued injunctive relief and also the effectiveness of such relief.

21. The Stopping Policy is intended to provide a means whereby those who would otherwise be in breach of the injunction can obtain permission for a temporary encampment. Its scope is limited because it is dependent on the encampment being authorised by the relevant landowner and on such use of the site in question being lawful in terms of the planning legislation. However, it does advance matters to the extent of providing a mechanism whereby permission can be obtained from the Claimant for encampments on its land which would otherwise be caught by the injunction. In addition, if there is an encampment on the Claimant's land which would otherwise be so caught the Claimant will, if those occupying the land were unaware of the mechanism for seeking permission, approach the matter in the first instance as if an application for such permission was being made.

22. It is to be noted that there is comparatively limited provision of sites for travellers in the Borough. There are 43 sites and a total of 140 plots or pitches. Of those 31 sites containing 102 plots are currently unauthorised in the sense of not having planning permission for such use. However, the Claimant's evidence was to the effect that it was anticipated that such authorization would be forthcoming in the course of the development the Claimant's planning policies.

23. The Claimant contends that the other routes of redress which are potentially open to it or to other affected landowners are not adequate. It can readily be understood that legal action seeking damages for trespass after the ending of the occupation is unlikely to be an effective remedy. Although the Claimant has been able to identify some of those who have been present on unlawful encampments they are a minority of such persons and in many cases identifying the occupiers will not be possible. Moreover, even when the potential defendants can be identified finding their location for purposes of bringing legal proceedings and of enforcing any damages award will be at best a difficult exercise once they have left the relevant site.

24. I accept also that action under the 1994 Act is a partial solution at best. I accept the evidence provided by the Claimant that many of those to whom a direction under section 77 is given will only move from the site when the Claimant has applied for and obtained an order from the magistrates court. I also accept that the fact that such a direction and order will be limited to a particular site and for a period of 3 months means that those occupying an unauthorised encampment are liable to move to another location in the Borough or to seek to return after the 3 month period. It follows that the powers under the 1994 Act do not enable the Claimant adequately to address the problem posed by repeated unauthorised traveller encampments.

The Approach proposed by the Claimant.

25. The Claimant has revised the terms of the order which it is seeking in light of matters which I raised during submissions from counsel but the structure of the proposed order has not altered. That structure is advanced in light of the Claimant's acceptance that it is a minority of the members of the Traveller and Gypsy communities who engage in the combination of unauthorised encampments associated with fly-tipping and related anti-social behaviour but also in the light of the Claimant's concern as to the potential recurrence of such conduct; the harm such conduct can cause; and the Claimant's contention that other methods of prevention have proved ineffective.

26. The Claimant's evidence; original submissions; and proposed approach were all formulated before the decision of the Supreme Court in *Wolverhampton v London Gypsies and Travellers*. It follows that they were not structured by reference to the guidance given there. However, the Claimant submits that the evidence provided and the course proposed accord with the substance of that guidance.

27. In relation to the Named Defendants the Claimant says that these are persons who can be shown to have taken part in unauthorised encampments in the past and it says that the court can safely conclude that there is a real prospect that if not restrained they will engage in such conduct in the future. Accordingly, the Claimant proposes in relation to these Defendants a borough-wide injunction against setting up an encampment on any land in the Borough. An encampment is to be defined as "the entering and/or occupying any part[1] of land for residential purposes (temporary or otherwise) with caravans/mobile homes". That is not proposed as an absolute prohibition but rather such encampments are only to be prohibited if they are without planning permission or not in accord with statutory permitted development rights or without either the written permission of the local planning authority or the consent of the owner of the land in question. In the last of those instances it is proposed that the Claimant should be given 2 working days' notice of the proposed encampment to enable it to consider whether to seek relief under section 187B of the 1990 Act. The Named Defendants are also to be forbidden from stationing caravans or mobile homes anywhere in the Borough other than when driving through or in compliance with the parking orders regulating the use of car parks. Finally, they are to be prohibited from depositing controlled waste or causing such waste to be deposited other than in accord with a relevant waste management licence or environmental permit.

28. The prohibitions proposed for persons unknown mirror those for the Named Defendants but instead of prohibiting such conduct anywhere in the Borough the Claimant seeks a prohibition in respect of 306 listed sites. The Claimant explains that it accepts that it is not in a position at this time to assess the welfare needs of persons unknown who might in the future form an encampment in the Borough and that in those circumstances a borough-wide prohibition would not be appropriate. It says that the limitation of the prohibition on persons unknown to particular sites strikes an appropriate balance between the unknown needs of such persons and the need to protect land in the Borough and the interests of the residents of the Borough.

29. The 306 sites consist of 91 schools, academies, colleges, and similar institutions; 21 council-owned car parks; 167 parks and open spaces; and 26 locations which are said to be particularly vulnerable to unauthorised encampments. In respect of that last group

[1] As will be noted below if the injunction is granted some refinement of the wording will be needed in the interests of clarity and/or grammatical accuracy.

that vulnerability is said to have been demonstrated by the fact of previous unauthorised encampments on those sites. Notice of the injunction is to be given to persons unknown by the affixing of a copy of the order in a prominent position on each site together with a further notice stating that the site is subject to an injunction preventing unauthorised encampments.

30. The Claimant proposes that the injunction should continue to 19th October 2025, being 5 years from the time when Nicklin J directed that the order made by Pepperall J be brought back before the court for further consideration together with a number of other such injunctions.

31. The Claimant contends that, rather than by providing for a review at a fixed date or dates, the need to ensure that there is no disproportionate interference with the Convention rights of members of the traveller community can be addressed by provision for an application to vary or discharge the order in so far as it affects a particular person on 72 hours' notice.

32. The Claimant proposes that the order should bear a power of arrest under section 27 of the Police and Justice Act 2006.

Precautionary Injunctions against Persons Unknown.

33. Section 37 of the Senior Courts Act 1981 confirms and restates the power of the High Court to grant an injunction "in all cases in which it appears to the court to be just and convenient to do so". The approach to be taken when an injunction against persons unknown is directed at or will have an impact on the activities of members of the communities of Travellers and Gypsies is that laid down in *Wolverhampton v London Gypsies and Travellers*.

34. If the names of the persons said to be committing the prohibited (or potentially prohibited) acts or who are to be subject to the injunction are known then those persons should be named and joined as defendants. In addition where the persons committing such acts or to be enjoined exist but their names are not known then if it is possible to identify them by a description they should be so identified and served (see *Wolverhampton v London Gypsies and Travellers* at [221] and the judgment of the Court of Appeal in *Barking & Dagenham LBC v Persons Unknown* [2022] EWCA Civ 13, [2022] 2 WLR 946 at [117]). It is only when relief is sought against persons who do not fall into either of those categories that an injunction should be sought against persons unknown.

35. The Supreme Court emphasised that the starting point is that a local authority seeking such an injunction must establish that there is a compelling justification for the order sought. That will require the authority to show that there is "a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. Further the threat must be real and imminent" [218]. The authority must also show that the need to protect the relevant rights or to prevent the anticipated harm cannot be "adequately met by any other measures" available to the authority [167(i)].

36. The application of the principles which the Supreme Court identified was explained at [187] – [234] and summarised thus at [238]:

“For the reasons given above we would dismiss this appeal. Those reasons differ significantly from those given by the Court of Appeal, but we consider that the orders which they made were correct. There follows a short summary of our conclusions:

> (i) The court has jurisdiction (in the sense of power) to grant an injunction against ‘newcomers’, that is, persons who at the time of the grant of the injunction are neither defendants nor identifiable, and who are described in the order only as persons unknown. The injunction may be granted on an interim or final basis, necessarily on an application without notice.
>
> (ii) Such an injunction (a “newcomer injunction”) will be effective to bind anyone who has notice of it while it remains in force, even though that person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action. It is inherently an order with effect contra mundum, and is not to be justified on the basis that those who disobey it automatically become defendants.
>
> (iii) In deciding whether to grant a newcomer injunction and, if so, upon what terms, the court will be guided by principles of justice and equity and, in particular:
>
> > (a) that equity provides a remedy where the others available under the law are inadequate to vindicate or protect the rights in issue.
> >
> > (b) That equity looks to the substance rather than to the form.
> >
> > (c) That equity takes an essentially flexible approach to the formulation of a remedy.
> >
> > (d) That equity has not been constrained by hard rules or procedure in fashioning a remedy to suit new circumstances.

These principles may be discerned in action in the remarkable development of the injunction as a remedy during the last 50 years.

(iv) In deciding whether to grant a newcomer injunction, the application of those principles in the context of trespass and breach of planning control by Travellers will be likely to require an applicant:

> (a) to demonstrate a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other remedies (including statutory remedies) available to the applicant.
>
> (b) to build into the application and into the order sought procedural protection for the rights (including Convention rights) of the newcomers affected by the order, sufficient to overcome the potential for injustice arising from the fact that, as against newcomers, the application will necessarily be made without notice to them. Those protections are likely to include advertisement of an intended application so as to alert potentially affected Travellers and bodies which may be able to represent their interests at the hearing of the application, full provision for liberty to persons affected to apply to vary or discharge the order without having to show a change of circumstances, together with temporal and geographical limits on the scope of the order so as to ensure that it is proportional to the rights and interests sought to be protected.
>
> (c) to comply in full with the disclosure duty which attaches to the making of a without notice application, including bringing to the attention of the court any matter which (after due research) the applicant considers that a newcomer might wish to raise by way of opposition to the making of the order.

(d) to show that it is just and convenient in all the circumstances that the order sought should be made.

(v) If those considerations are adhered to, there is no reason in principle why newcomer injunctions should not be granted."

37. An injunction of the kind sought here has the potential to affect the private and family life rights of members of the Traveller and Gypsy communities to pursue a nomadic lifestyle. The Supreme Court addressed this question at [74] – [79] and at [95]. The right to pursue a nomadic lifestyle "must be respected but the right to that respect must be balanced against the public interest" [75]. Account must also be taken of the Convention rights of other persons affected by the exercise of the rights of the members of those communities. My understanding of the effect of the Supreme Court's analysis is that the potential impact in general terms of such an injunction on the right to pursue a nomadic lifestyle will be adequately taken into account by the application of the principles which the court said governed the grant of such injunctions against persons unknown. The position in respect of a particular individual will fall to be considered not at the stage of the grant of the injunction but when such an individual applies for the injunction to be set aside or varied. As Sir Geoffrey Vos MR said in *Barking & Dagenham* at [105]:

"The only point at which a court can test whether an order interferes with a particular person's private and family life, the extent of that interference, and whether the order is proportionate, is when that person comes to court to resist the making of an order or to challenge the validity of an order that has already been made."

<u>The Approach to be taken when a Precautionary Injunction is sought against a Named Defendant.</u>

38. What is the approach to be taken when the person who is to be subject to the proposed precautionary injunction is a named defendant rather than a person unknown?

39. In *Vastint Leeds BV v Persons Unknown* [2108] EWHC 2456 (Ch), [2019] 4 WLR 2 Marcus Smith J was considering an application for a precautionary injunction against persons unknown with a view to restraining trespass onto an industrial site by travellers with caravans in circumstances where there had been instances of such entry associated with commercial fly-tipping. Although the injunction was to be against persons unknown the judge analysed the position in relation to precautionary injunctions more generally and I adopt the summary of the applicable principles which he set out thus, at [31]:

1. "A distinction is drawn between final *mandatory* and final *prohibitory* quia timet injunctions. Because the former oblige the defendant to do something, whilst the latter merely oblige the defendant to not interfere with the claimant's rights, it is harder to persuade a court to grant a mandatory than a prohibitory injunction. That said, the approach to the granting of a quia timet injunction, whether mandatory or prohibitory, is essentially the same.

2. Quia timet injunctions are granted where the breach of a claimant's rights is threatened, but where (for some reason) the claimant's cause of action is not complete. This may be for a number of reasons. The threatened wrong may, as here, be entirely anticipatory. On the other hand, as in *Hooper v Rogers,* the cause of action may be substantially complete. In *Hooper v Rogers,* an act constituting nuisance or an unlawful interference with the claimant's land had been committed, but damage not yet sustained by the claimant but was only in prospect for the future.

3. When considering whether to grant a quia timet injunction, the court follows a two-stage test: (a) First, is there a strong possibility that, unless restrained by injunction, the defendant will act in breach of the claimant's rights? (b) Secondly, if the defendant did an act in contravention of the claimant's rights, would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of *actual* infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate?

4. There will be multiple factors relevant to an assessment of each of these two stages, and there is some overlap between what is material to each. Beginning with the first stage – the strong possibility that there will be an infringement of the claimant's rights – and without seeking to be comprehensive, the following factors are relevant: (a) If the anticipated infringement of the claimant's rights is entirely anticipatory – as here – it will be relevant to ask what other steps the claimant might take to ensure that the infringement does not occur. Here, for example, Vastint has taken considerable steps to prevent trespass; and yet, still, the threat exists. (b) The attitude of the defendant or anticipated defendant in the case of an anticipated infringement is significant. As *Spry, Equitable Remedies,* 9th ed (2013) notes at p 393: "One of the most important indications of the defendant's intentions is ordinarily found in his own statements and actions". (c) Of course, where acts that may lead to an infringement have *already* been committed, it may be that the defendant's intentions are less significant than the natural and probable consequence of his or her act. (d) The time-frame between the application for relief and the threatened infringement may be relevant. The courts often use the language of imminence, meaning that the remedy sought must not be premature. (*Hooper v Rogers* [1975] Ch 43, 50)

5. Turning to the second stage, it is necessary to ask the counterfactual question: assuming no quia timet injunction, but an infringement of the claimant's rights, how effective will a more-or-less immediate interim injunction plus damages in due course be as a remedy for that infringement? Essentially, the question is how easily the harm of the infringement can be undone by an ex post rather than an ex ante intervention, but the following other factors are material: (a) the gravity of the anticipated harm. It seems to me that if some of the consequences of an infringement are potentially very serious and incapable of ex post remedy, albeit only one of many types of harm capable of occurring, the seriousness of these irremediable harms is a factor that must be borne in mind. (b) The distinction between mandatory and prohibitory injunctions."

40. As in the case of persons unknown where a named defendant is a member of the Traveller or Gypsy community an injunction of the kind sought here has the potential to affect the exercise of the defendant's right to pursue a nomadic lifestyle. However, the scope for the court to take account of that potential impact will be limited unless the defendant in question advances submissions or provides evidence in relation to the impact. The point made by the Master of the Rolls in *Barking & Dagenham* at [105] is relevant here. The court will necessarily have evidence of the impact or the potential impact of the conduct to be enjoined on the rights of those seeking the injunction or who will be affected by that conduct. The information which a claimant will have about the personal circumstances of a defendant is likely to be limited at best. The onus is on the defendant to advance any contention that the proposed order amounts to a disproportionate interference with his or her Convention rights. In doing that the defendant must identify the matters said to be material to the assessment of proportionality in his or her particular case. The court cannot engage in speculation. If a defendant chooses not to advance an argument contending that the injunction in question will have a disproportionate effect on his or her Convention rights or chooses not to advance evidence in support of such an argument then there will be no scope for

the court to have regard to the effect or its potential disproportionality other than in most general terms.

41. How is the court to determine whether, applying the *Vastint* two-stage test and the multi-factorial assessment identified by Marcus Smith J, there is "a sufficiently real and imminent risk" of sufficiently serious conduct by a named defendant to warrant the grant of the precautionary injunction sought against that defendant? At one level it can simply be said that court needs to consider the evidence in the particular case applying the normal rules that matters needed to be proved on the balance of probabilities by the party asserting them and then to assess whether the necessary criteria have been satisfied. However, as will be seen there have been differences at least of emphasis in the approach taken by other judges.

42. By way of preamble, the context of the exercise I am to undertake is relevant. The matter was before me on the final hearing of the application for an injunction. As I will explain below I am satisfied that there has been proper service on all the Named Defendants against whom the Claimant is continuing to seek relief. There has been no response from any of those defendants. It follows that I am assessing the evidence in circumstances where the Named Defendants have chosen not to attend the hearing and have also chosen not to advance evidence challenging the evidence on which the Claimant relies as showing that there is a risk that they will create unauthorised encampments unless restrained.

43. In *Royal Mail Group Ltd v Efobi* [2021] UKSC 33, [2021] 1 WLR 3863 Lord Leggatt considered the circumstances in which an adverse inference can be drawn from the absence of a witness and his guidance in that regard is relevant here. It is to be noted, however, that Lord Leggatt's explanation of the approach to be taken in such circumstances was derived from his understanding of the nature of the exercise of assessing evidence more generally and so is of more general application. At [41] he warned against the "risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality" adding "so far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so." It was in the context of that general point that Lord Leggatt went on to say that "whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances."

44. It is in the light of that understanding of the exercise of assessing evidence that I turn to the contentions as to the appropriate approach here.

45. In *Thurrock Council v Stokes & others* [2022] EWHC 1998 (QB) Nicklin J gave judgment after the final hearing of the Claimant's Part 8 claim for an injunction against a number of named defendants. The circumstances were similar to those before me and the Claimant sought an injunction against unauthorised encampments in order to address problems caused by unauthorised traveller encampments and in particular those associated with fly-tipping.

46. Nicklin J approached the case of each of the named defendants separately. He assessed in respect of each of them whether the evidence showed that the defendant in question had been present at a particular unauthorised encampment and also whether, when present at such an encampment, the defendant in question had engaged in fly-tipping or

in causing damage to property. Although in many instances Nicklin J was prepared to infer presence at an encampment from the presence there of a vehicle of which the defendant was the registered keeper he declined to infer participation by such a defendant in fly-tipping or the causing of damage and required evidence directly implicating the particular defendant in such actions before he would conclude that the defendant had engaged in such conduct.

47. Thus, and by way of example, when dealing with the first defendant, Martin Stokes, Nicklin J concluded that the defendant was present at an encampment at Frankie & Benny's but declined to find that there was evidence of involvement in the causing of damage saying, at [67]:

> "The encampments, to which Mr Stokes was party, led to damage being caused to the lock at Frankie & Benny's and to the fence and bollards at the Car Craft site. However, it is impossible, on Thurrock's evidence, to conclude that it is more likely than not that Mr Stokes was responsible for causing that damage. On the evidence, I cannot infer that Mr Stokes caused the damage any more than I can infer that any other person present in the encampment had done so. Ms Bolton cannot – and does not – advance her case against Mr Stokes on any sort of joint enterprise or joint tortfeasor basis. Beyond presence at an encampment, there is no evidence to support liability on such a basis".

48. Similarly, addressing the case of the defendant Danny Hallissey, Nicklin J said, at [137] – [138]:

> "137 However, Thurrock has not proved, on the balance of probabilities, that Mr Hallissey was responsible for fly-tipping or the depositing of any other waste at either site. None of the police evidence attributes responsibility for the depositing of waste to any individual. No doubt that represents the reality of the situation; that they had no evidence to demonstrate who was responsible.
>
> 138 Nevertheless, Thurrock's submission was that *all* of the people at the site are to be held responsible for the fly-tipping. Ms Bolton was not able to provide any authority for that proposition which would appear to fly in the face of basic principles of justice and fairness. Absent proof of some form of joint enterprise or commission of a joint tort, which is not alleged against any of these Defendants, an individual is responsible for his/her acts, not those of someone in their family, amongst their neighbours or wider community".

49. At [364] Nicklin J dismissed the injunction claim against those defendants in respect of whom the claimant had failed to prove involvement in an unauthorised encampment. The reasons for that dismissal were explained thus at [412] and [414]:

> "412 On the basis of the findings of fact in Section G above, the claims brought against the 13th, 14th, 15th, 22nd, 32nd, 34th, 40th, 46th, 50th, 69th, 80th, 82nd, 83rd, 84th, 102nd and 104th – a total of 16 named Defendants – will be dismissed because, on the facts, Thurrock has failed to demonstrate that the relevant Defendant formed an unauthorised encampment (or one that breached planning control) and/or has been guilty of any act of fly-tipping. There is therefore no factual basis (or any other evidence) to sustain any allegation that the relevant defendant credibly threatens to do so unless restrained by injunction…
>
> 414 In my judgment, the case against each named Defendant must be considered individually. If Thurrock cannot establish an actual or threatened breach of planning control by the relevant named Defendant, then that is an end of the matter. The fact that Thurrock can show that X has breached (or threatens to breach) planning control is of no relevance to the case against Y (absent demonstration of some form of joint liability)".

50. Nicklin J then turned to consider whether he should grant relief against those defendants whom he had found to have been present at unauthorised encampments. At [368] the judge explained in the following terms the basis on which the claimant had sought an injunction against fly-tipping and his conclusion that the claimant had failed to prove that any of the named defendants had engaged in fly-tipping or threatened to do so in the future (the reference to Section G being to that part of the judgment where he had analysed the evidence in respect of each defendant separately):

> "The anti-fly-tipping part of the injunction was sought by Thurrock, indiscriminately, against all named Defendants, whether Thurrock had any evidence of fly-tipping against the individual Defendant or not. Ms Bolton's submission in support of this approach towards people against whom Thurrock advanced no evidence of historic fly-tipping seemed to be based on little more than the premise that, if someone is a member of a Gypsy or Traveller community that has encamped on land in the past, s/he threatens to fly-tip in the future. That proposition only needs to be stated to be rejected (and appears, in any event, to be contrary to Thurrock's own evidence that those guilty of fly-tipping represent a "*small minority*" of those in the Gypsy/Traveller communities who are alleged to have formed unlawful encampments – see [396] below). As a matter of fact, and for the reasons set out in Section G, Thurrock has failed to prove that any named Defendant has been guilty of fly-tipping or credibly threatens to do so in the future".

51. At [394] Nicklin J accepted that:

> "Where a person has been guilty of repeated unlawful encampments on land and s/he has been evicted using powers under s.61 and/or ss.77-79 CJPOA, the Court may be persuaded to conclude that, unless restrained by an injunction, the defendant is simply going to keep forming unlawful encampments on land and that s/he is not only *"deliberately and flagrantly flouting the law"* but also that s/he threatens to continue and that nothing short of an injunction will be effective to stop further breaches of the law. An injunction under s.222 may be justified where the Court is satisfied that there is *"clear evidence of persistent and serious conduct"* amounting to a public nuisance: *City of London Corporation -v-Bovis* (see [392] above)".

52. At [418] and following Nicklin J explained why he was declining to grant any injunction against those defendants whom he had been satisfied had been present at unlawful encampments. In doing so he assessed the prospect of the defendant in question breaching planning control in the future and the risk of irreparable harm if there were such a breach.

53. In that exercise Nicklin J had regard to the proportionality of the extent to which the proposed order would potentially interfere with the Convention rights of the defendants. He did so in light of his analysis (at [385] – [390]) of the approach laid down by Coulson LJ in *Bromley LBC v Persons Unknown* [2020] EWCA Civ 12, [2020] PTSR 1043. Nicklin J was critical of the failure by the claimant before him to address the personal circumstances of the sundry named defendants. He regarded that as a matter relevant to the proportionality of the order sought. It is necessary to revise that approach in light of the decision of the Supreme Court in *Wolverhampton v London Gypsies and Travellers* and the analysis of this question by the Master of the Rolls in *Barking & Dagenham* to which I have referred at [37] and [40] above. The court will not be able, other than in the most general sense, to take account of the personal circumstances of a named defendant who has chosen not to adduce evidence of those circumstances nor to contend that the proposed order would interfere with his or her Convention rights. Nonetheless, account does need to be taken at all times of the requirement for a claimant to provide

a sufficient justification for a precautionary injunction and for that injunction to be in no more extensive terms than necessary to prevent the contemplated harm.

54. The Claimant criticised the approach taken by Nicklin J in *Thurrock* and in their skeleton argument, at [57], Miss Bolton and Miss Pratt said:

> "In *Thurrock*, Nicklin J conducted an analysis of each named Defendant and their conduct when considering whether to grant the final injunctive relief sought, rather than considering the totality of the evidence as a whole. Whilst it is submitted that Nicklin J's approach may well be correct for the purposes of a claim brought under the 2014 Act, s1, it is submitted that the approach is not correct for the purposes of a claim brought pursuant to s187B and/or s222."

55. The Claimant urged me to take the approach which it said had been taken by HH Judge Simon in *Thurrock Council v Adams & others* [2022] EWHC 1324 (QB) and by Grigson J in *University of Oxford v Broughton & others* [2004] EWHC 2543 (QB).

56. In *University of Oxford v Broughton & others* Grigson J granted a precautionary injunction against a number of named individuals together with a number of unincorporated associations. The defendants were persons or organisations opposed to the use of live animals in experiments. In short terms the relief granted was intended to restrain the defendants from interfering with the construction and subsequent use of a research laboratory at which such experiments would be performed. At [85] Grigson J said that he had been urged to confine the relief to those actually engaged in harassment or likely to be so engaged and then explained why he was not prepared to confine the relief in that way saying:

> "Mr. Dally submits that any order should be made only in respect of persons who are actually harassing or are likely to harass the protected persons. As regards the first category, such persons could simply be arrested and charged with the criminal offence. As regards the second category, other than the specific defendants, it is unlikely that they could be identified. To grant an order in those terms would be to neuter it. As I have pointed out, the purpose of injunctive relief is to prevent acts which, if repeated against individuals would amount to harassment, whoever it is who commits them".

57. In *Thurrock Council v Adams & others* Judge Simon, sitting as a judge of the High Court, was concerned with protest action under the banner of the Just Stop Oil campaign and related groups to disrupt the operation a number of fuel terminals and related facilities in the area of the claimant local authority. The defendants were a number of named individuals together with persons unknown. One of the named defendants had been represented and her counsel had submitted that the court should not aggregate together the acts of different individuals but should instead focus on assessing the conduct of the individual alleged tortfeasor. In his submissions counsel distinguished between a case where all the relevant individuals had been congregating together at one place at the same time and a case where the acts causing the claimant to seek relief had taken place at different times and places and had been performed by different persons. He said that while aggregation of the conduct might be permissible in the first category it was not in the second. Judge Simon rejected that argument explaining thus, at [53], that the court was entitled to treat the defendants as a "broad-based composite":

> "Mr Simblet makes a good point that not all protestors have been directly involved in the differing acts complained of. However, I reject the submission that the Court must assess the conduct of an individual tortfeasor, on the basis that one is not dealing with a single group of individuals congregating in one place. In my judgment, a proper analysis of the

> acts engaged in by protestors entitles the Claimants and the Court to treat as a broad-based composite the Defendants, whose individual actions are intended to contribute to the goal of an alliance that shares a belief in the tactics promulgated by JSO, however loosely connected each person may be to it. Any other approach would neuter the Claimants in the exercise of their statutory duties…"

58. Judge Simon and Grigson J were dealing with protesters and with those who had allied themselves to a campaign with particular objectives and who were aiming to disrupt a particular activity. There is no direct analogy to the circumstances with which I am concerned here and certainly there cannot be a simple "read across" from the approach to be taken to such protesters to that applicable to members of the Traveller and Gypsy communities. It can readily be understood that it is appropriate to look to the past conduct of a campaign as a whole when assessing the degree of risk that a person who voluntarily joins that campaign will act in a particular way. The court is likely in such circumstances readily to infer that the new recruit to the campaign will act in the same way as others have previously. The situation is different where the conduct to be restrained is not aimed at furthering a particular campaign but is unlawful conduct for commercial gain. Association with others engaged in that conduct may but will not always indicate a willingness on the part of the person associating to engage in that conduct. Whether it is proper to draw the inference that such a person is likely him or herself to engage in the unlawful conduct in the future will depend on the circumstances seen in the round and considered as a matter of common sense. Much will depend on matters such as the nature of the conduct in question; its duration; and the degree and the circumstances of the association of the defendant with that conduct (which will be influenced by the size of the group and the openness of the conduct).

59. I have no doubt that Nicklin J was right to approach the case before him on the footing that where the court is considering the granting of a precautionary injunction against a particular named defendant then it must assess with care the evidence in relation to that defendant. The court must determine whether the requirements for such an injunction have been satisfied in respect of each defendant individually.

60. In *Thurrock* Nicklin J came to a conclusion on the evidence before him and on the facts of that case as to whether those requirements had been satisfied in respect of the defendants whom the claimant there sought to enjoin. I do not understand him to have been saying that as a matter of law the court can only be satisfied that there is a degree of risk sufficient to warrant a precautionary injunction if the individual defendant in question has previously committed the act to be enjoined. If he was purporting to lay down such a proposition as a matter of law I would disagree. It is important to remember that the exercise for the court is not that of determining liability for past conduct as would be the case if the claim were for an award of damages or a committal for contempt. Rather the exercise is one of assessing the risk posed by the defendant as to the future. That will involve finding facts as to that person's past conduct and drawing inferences as to the risk for the future doing so as a matter of common sense and "ordinary rationality" as Lord Leggatt explained in *Efobi*. Clearly the court can be satisfied that there is a risk that a person will do something in the future even if that person has not done that act in the past. In an appropriate case the court can be satisfied that the degree of risk and the level of the harm which will result if the acts are done are sufficient to warrant granting a precautionary injunction even if the defendant has not previously acted in infringement of the claimant's rights. To take an example far removed from the circumstances of this case if a person is shown to have been making

preparations for acting in a particular way and to have expressed an intention to do so a court is likely to be willing to conclude that there is a risk of such conduct even if the person in question has never acted in that way in the past (see also the analysis by Marcus Smith J in *Vastint* at [31] which I have quoted above).

61. It follows that I must consider whether a risk sufficient to warrant the grant of a precautionary injunction has been shown in respect of each defendant separately while assessing the evidence in relation to that person alone. However, common sense inferences can be drawn and the evidence in relation to a particular defendant can include the actions of persons with whom that defendant has associated him or herself particularly if they occur at the time of that association. Evidence of past wrongful conduct by an individual and/or express threats to act in a particular way in the future will provide a strong indication of the risk of such conduct in the future but it is not the only way in which such a risk can be established. A person who associates him or herself with a group where some or all of the other members are openly engaging in wrongful conduct may thereby evince a willingness to engage in that conduct him or herself. As explained above all will depend on the particular circumstances. On the facts of the case before him Nicklin J was not prepared to draw from the presence of the defendants in that case at unauthorised encampments an inference that there was a risk of future conduct sufficient to warrant the grant of a precautionary injunction. He did not, however, purport to say that such an inference could not be drawn as a matter of law. Indeed, as I have already noted, Nicklin J accepted, at [394], that repeated presence at unauthorised encampments could cause a court to conclude that a defendant would continue in such conduct unless restrained by an injunction. I am satisfied that past presence at an unauthorised encampment can be an indication of a future risk of harmful conduct such as to warrant the grant of a precautionary injunction. Whether it is such an indication will depend on the particular circumstances.

62. The consequence is that in the circumstances of this case I do not have to be satisfied that a defendant has him or herself engaged in fly-tipping or related conduct in the past. I do, however, have to be satisfied that it is a proper inference from the defendant's past actions that there is a sufficiently grave risk of future conduct with sufficient potential for harm to warrant the grant of a precautionary injunction. It is to be remembered that it is the Claimant's case that each defendant has previously participated in an unlawful encampment. I will have to consider whether that has been established and then to consider the question of future risk. As will become apparent from my consideration of the individual defendants the relevant factors here will include the nature of the site accessed; the circumstances in which it was accessed; the behaviour of those on the site; and the extent of any fly-tipping or related activity. It is potentially proper to infer that an individual who has been part of a group occupying land to which access has been obtained by force; where control of the site is maintained against others; and where there has been extensive fly-tipping is him or herself willing to engage in such actions particularly where such participation has been repeated. As I will also note below such behaviour involves deliberate defiance of the law and disregard for the rights of others. A person who chooses to be associated with those engaged in such conduct can legitimately be regarded as being at the very least content with and accepting of conduct from which a law-abiding person would strive to disassociate him or herself. The risk of such action will not be present to the same degree where a defendant has been associated with an encampment where there has been no forced entry to the site and where there has been little or no fly-tipping. I am to look at the evidence in relation to

each named defendant and consider whether it shows in relation to the defendant in question a risk (and if so of what degree) of that person engaging in an unauthorised encampment and the degree of harm likely to be associated with such an encampment by such that person.

The Injunction against Persons Unknown in relation to particular Sites.

63. I am satisfied that the Claimant has shown a risk of sufficient gravity and imminence to warrant the grant of an injunction against persons unknown in respect of the identified sites. It is clear that there is an imminent risk of acts in breach of planning control which will be associated with trespass and with the causing of the tort of private nuisance to the occupiers neighbouring properties.

64. I have taken account of the large number of sites which will be covered by the injunction but the following factors mean that protection of those sites by the proposed injunction is warranted.

65. The starting point is the effect of unauthorised encampments particularly when associated with unlawful fly-tipping. The nature and seriousness of the harm which such behaviour will cause to others if carried out on the grounds of schools, on council car parks, and on public parks, and at the sensitive locations identified by the Claimant is readily apparent. Such behaviour is not associated with all unauthorised encampments and still less with the majority of the members of the Traveller and Gypsy Communities. Nonetheless, it is apparent that there is a significant number of persons who have engaged in this behaviour in addition to the Named Defendants. Such persons will be liable to repeat that behaviour unless they are restrained. There is considerable force in the point made by Miss Bolton that those who force their way on to the property of others and who then engage in unlawful and commercial fly-tipping are showing a deliberate defiance of the law and a cavalier disregard for the rights of others. Those who have engaged willingly in such conduct are unlikely to desist unless they are compelled to do so. I am satisfied that the proposed injunction provides a proportionate and appropriate way of dealing with the risk posed by such persons. The evidence of the frequency of encampments in the Borough before the injunction and the reduced frequency since the interim order was made (and the response of those who are told of the injunction when encamped in the Borough) show the effectiveness of the injunction in dealing with such encampments.

66. I am also satisfied that other potentially available measures would not be effective adequately to address this risk. I have already explained why civil proceedings for damages or other relief after the event and action under the 1994 Act would not be effective as a protection against widespread and repeated incursions of the kind with which the Claimant has had to deal. The Claimant's evidence does not address the question of whether the risk could be addressed by the making of byelaws but I am satisfied that such a process would not assist in the circumstances here.

67. The Stopping Policy has a limited scope but I am satisfied that it is a genuine attempt on the part of the Claimant to address the effect of the injunction on the Convention rights of members of the Traveller and Gypsy communities. No further amelioration is needed at this stage and to the extent that further protection is needed for those rights in particular cases that can be obtained by way of applications by affected individuals for a variation of the injunction.

68. Accordingly, the injunction sought against persons unknown in respect of the identified sites is granted. I will consider the terms and duration of the order below.

The Addition of a Power of Arrest to the Injunction against Persons Unknown.

69. The Claimant seeks the addition of a power of arrest pursuant to section 27 of the Police and Justice Act 2006. For such a power to be added the injunction has to be one restraining conduct which is capable of causing nuisance or annoyance to a person (section 27(2)). In addition either the conduct must consist of or include the use or threatened use of violence (section 27(3)(a)) or there must be a significant risk of harm to the person to whom the nuisance or annoyance may be caused (section 27(3)(b)). Where those preconditions exist the court then has a discretion as to whether to add the power of arrest.

70. Here Miss Bolton submitted that the section 27(3)(b) precondition was satisfied because the conduct being enjoined was capable of causing nuisance or annoyance to the property owners of land on which unauthorised encampments might take place and to neighbouring occupiers. She submitted the relevant harm was environmental harm and harm to health by reason of the public health concerns I have summarised above.

71. I accept that the section 27(2) requirement is met because the unauthorised encampments are capable of causing nuisance and annoyance to the relevant landowners and to neighbouring occupiers. However, I have considerable doubt as to whether the section 27(3)(b) requirement is satisfied. Environmental harm and harm to economic interests is not harm of the kind at which this provision is primarily directed. Similarly, health concerns arising out of the public health factors are also not the primary focus of this provision. The provision is concerned primarily with the risk of physical harm though I accept that it is not confined to such harm.

72. However, even on footing that the section 27(3)(b) precondition has been satisfied I am not persuaded that it is appropriate as a matter of discretion to add a power of arrest to the injunction against persons unknown. In deciding whether to add a power of arrest it is necessary to take account of both the likelihood of harm and of the nature of the harm liable to be caused. It also necessary to consider whether the granting of an injunction without such a power will provide sufficient protection to those at risk of harm. Here the potential harm is predominantly a harm to the financial interests of the landowners and to the amenity of the neighbouring occupiers. The evidence about the effectiveness of the interim injunction is significant because it shows that in most cases those who occupy land but who are then told of the injunction move on within a very short period. The grant of the power of arrest involves an impact on the liberty of the subject and I am not satisfied that taking such a step is either necessary or proportionate in light of the degree and type of risk posed by persons unknown. I will consider below whether the position is different in respect of the Named Defendants or any of them.

The Relief against the Named Defendants.

73. I am satisfied that, other than in the cases of Maurice Taggart and Patrick Connors (Named Defendants 59 and 105 respectively), there has been service on the remaining Named Defendants in accordance with the sundry orders which have been made in that regard. Where there has been scope for question in that regard I have set out my conclusion in the Schedule.

74. None of the remaining Named Defendants have chosen to respond to the proceedings still less to advance evidence either denying the actions alleged on their part or to make submissions as to the proportionality of such interference as there might be with their Convention rights. It follows that I cannot take account of that consideration other than by way of background. In that regard it is of note that the principal focus of the Claimant's concern is that of unlawful encampments which are associated with fly-tipping which is being carried out for commercial gain. Prevention of such conduct is not of itself an interference with the right of a defendant to pursue a nomadic lifestyle. It also follows that none of the remaining Named Defendants have chosen to disavow the behaviour of those with whom they are said to have been associated and still less to assert that their association has come to an end.

75. I am satisfied that the Scott Schedule drawn up by the Claimant contains an accurate summary of the Claimant's evidence against each of the remaining Named Defendants. I was taken through much of that evidence in greater detail in the course of Miss Bolton's submissions.

76. In order to link particular Named Defendants to particular unauthorised encampments the Claimant relies on the presence at the encampment in question of an identified vehicle. The Claimant contends that where a vehicle of which a Named Defendant was the registered keeper or which a Named Defendant was insured to drive was present at an encampment then the court can proceed on the basis that the relevant Named Defendant was also present at that encampment at the same time as the vehicle. I am satisfied that it is appropriate to proceed on this basis in respect of the vehicles of which Named Defendants were the registered keepers. In the absence of any rebuttal from a Named Defendant then I am satisfied on the balance of probabilities that when a vehicle of which the Named Defendant was the registered keeper was present at an encampment then that Defendant was also present. This is particularly so as the vehicles were used in conjunction with caravans which were occupied as dwellings. I am not persuaded that the same course can safely be adopted in respect of those Named Defendants who were insured to drive particular vehicles. There is indeed force in the Claimant's submission that the person who is insured to drive a vehicle is likely to be present with the vehicle. That is particularly so where the vehicle is one of a number of vehicles used by a group of family members travelling together. Nonetheless, the connexion is, however, less clear cut than in the case of the registered keeper of a vehicle. I am not able to be satisfied that a given Named Defendant was present at an encampment solely on the basis of the presence there of a vehicle which that Named Defendant was insured to drive.

77. The Claimant's schedule makes reference to reports of antisocial and criminal conduct in which those present at the encampments were said to have engaged. Considerable care is needed before weight can be given to that evidence. It is to be remembered that the attribution of anti-social and criminal acts to those on an encampment could be mistaken. In addition, those on an encampment may not have been aware of behaviour taking place away from the encampment. It cannot, without more, be said that a person on the encampment can be regarded as having associated him or herself with that behaviour. The position is different in respect of behaviour taking place on the encampment and in particular the way in which entry was effected and the use of an encampment for fly-tipping on a substantial or commercial basis. As already explained I am satisfied that depending on the particular circumstances presence on an

encampment where there was forcible entry or where there was such fly-tipping is an indication of a defendant's willingness to associate with those engaged in such conduct and potentially of the defendant's willingness to engage in such conduct him or herself.

78. I have set out my conclusions in respect of the individual Named Defendants in the Schedule. I have taken account of the number and nature of the encampments at which the individual defendant has been present. The greater the number of encampments and the graver the conduct at them then the greater the likelihood of a willingness to participate in such activities and the greater the risk of repetition and/or the greater the potential degree of harm posed by the defendant. Thus, those who have been involved repeatedly in instances where there has been forcible entry to a site and/or commercial fly-tipping have shown a repeated willingness to defy the law and to act in disregard of the rights of others (and at the very least they have shown a willingness to associate with those acting in that way). Such persons pose a greater risk of further harm and a risk of greater harm than those who have not been involved in such incidents. In addition, the greater the number of occasions when a defendant has been present at sites where there has been forcible entry and/or commercial fly-tipping then the greater is the likelihood that such presence was not coincidental but that it is indicative of a willingness to engage in such activities. The degree of the risk of further harm and of increased gravity of harm posed by a person who has only been involved in a single incident depends on the gravity of the incident and the nature of the person's involvement.

79. It will be seen that in some instances I am satisfied that there is a sufficient degree of risk coupled with conduct of such gravity or of such consequences that a borough-wide injunction is warranted. In other cases either the risk of the defendant engaging in entry on property or the consequences of such entry are not such as to warrant a borough-wide prohibition. I have set out my assessment in respect of each Named Defendant in the Schedule. By way of summary, I have not normally regarded involvement in a single unauthorised encampment without any aggravating features as warranting a borough-wide injunction against an individual whereas repeated involvement in such encampments is more likely to do so. Where a Named Defendant was present at a single encampment with aggravating features then I have been more likely to regard the risk of repetition and/or of serious consequences as warranting a borough-wide injunction. This is particularly so where there is evidence of active participation by the particular Defendant in the conduct in question or where the number involved in the encampment has been small. The latter factor is at the very least a strong indication that the Defendant in question was actively associating with the harmful conduct because the scope the Defendant having been unaware of the conduct is greatly reduced in those circumstances.

80. The occupation of the Palms Austin Hotel in October 2016 was a particularly serious incident. It involved forcible entry to the hotel; the physical ejection of the staff; and the making of threats to kill. In addition, there was ransacking of the hotel and substantial fly-tipping on the site. Brian and Patrick Stokes (Named Defendants 4 and 16 respectively) were present at that encampment and I am satisfied that in respect of each there is a serious risk of repeated conduct of real gravity. That is so even though in the case of Patrick Stokes it is the only encampment in respect of which his involvement has been shown.

81. Conversely, although the encampment at Bedfords Road Park involved the depositing of waste I have concluded that for most of those of the Named Defendants who were present only at that site a borough-wide injunction is not warranted. The position is different in respect of Harry Mochan (Named Defendant 70). Mr Mochan was the registered keeper of three of the vehicles on that site and for that reason I am satisfied that in his case there is sufficient evidence of involvement in the depositing of waste for a borough-wide injunction to be warranted.

82. I am satisfied that the Claimant has shown that the Named Defendants against whom I have granted relief (that is all the Named Defendants other than numbers 59, 66, 67, 79, 81, 82, 90, 91, and 105) have been involved to at least some extent in the conduct giving rise to the Claimant's concerns. As a consequence, even in respect of those Named Defendants for whom a borough-wide injunction is not justified there is sufficient evidence of potential risk for protection to be granted in respect of the sites identified by the Claimant as being particularly sensitive and/or vulnerable and which are to be protected by the injunction against persons unknown.

83. The factors which make a power of arrest under section 27 of the Police and Justice Act 2006 inappropriate also apply to most of the Named Defendants. Even where a borough-wide injunction is justified in respect of a particular Named Defendant there is not sufficient justification to add a power of arrest. However, the situation is different in relation to Brian and Patrick Stokes (Named Defendants 4 and 16). The occupation of the Palms Austin Hotel was associated with marked violence and with serious damage to property. In their cases not only are the preconditions for the addition of a power of arrest present but I am satisfied that it is an appropriate and proportionate step even when all proper account is taken of the interests of the liberty of the subject.

84. I will address the form and duration of the order below.

The Form and Duration of the Order.

85. In the course of the hearing in October 2022 it became apparent that the wording of the proposed injunction could be improved and clarified in various respects. The points made then were not contentious and on the handing down of this judgment I will invite the Claimant to provide a revised form of order taking account of those points. In addition, the order will need to distinguish clearly between the restrictions on Persons Unknown; the restrictions on those Named Defendants who are to be subject to the borough-wide injunction; and the restrictions on those Named Defendants who are to be subject to the injunction in respect of the identified sites.

86. Miss Bolton submitted that the injunction should continue to October 2025. She contended that there was no need for a separate review provision because those affected by the injunction could apply for its discharge or variation. The Supreme Court in *Wolverhampton v London Gypsies and Travellers* did not regard the opportunity to apply for discharge or variation as an alternative to the need for the injunction to be limited to 12 months and for there to be a review at that stage. Here I have received further evidence setting out the updated position. In light of that I am satisfied that it is appropriate for the injunction to run to 19th October 2025 which is in practice a period only marginally longer than that envisaged by the Supreme Court.