



Neutral Citation Number: [2023] EWHC 670 (KB)

Case No: QB-2021-002721

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 March 2023

Before:

MR HEALY-PRATT

(sitting as a Deputy High Court Judge)

Between:

WAVERLEY BOROUGH COUNCIL

Claimant

- and -

1) ANTHONY MARTIN GRAY

Defendants

2) PHILIP MARTIN GRAY

3) MATTHEW DOHERTY

4) MARY DOHERTY

5) MARK DOHERTY

6) ALLANA DOHERTY

7) BARNEY DOHERTY

8) THERESA DOHERTY

9) JOHN DOHERTY

10) MARY ANN DOHERTY

11) WISDOM PENFOLD

12) PERSONS UNKNOWN (UNDERTAKING

OPERATIONAL DEVELOPMENT ON THE

LAND KNOWN AS STOVALD'S HILL,

CRANLEIGH AND/OR SEEKING TO USE THE

LAND FOR CARAVAN USE

13) THOMAS DOHERTY

14) SIMON DOHERTY

Wayne Beglan (instructed by **Waverley Borough Council**) for the **Claimant**

Felicity Thomas (instructed by **Community Law Partnership**) for the

Michael Fry (instructed by **Brilliance Solicitors Ltd**) for **D13**

Stephen Cottle (instructed by **Deighton Pierce Glynn**) for **D14, D3, D5, D6**

Hearing dates: 13 March 2023

Approved Judgment

MR HEALY-PRATT:

Introduction

1. This judgment deals with the applications made by three Defendants to suspend or vary certain injunctions relating to breaches of planning control. Those applications were made in the context of a trial hearing listed for 13 and 14 March 2023 where the Claimant's claim is for a final prohibitory and mandatory injunctions pursuant to s. 187B of the Town and Country Planning Act 1990 and s. 222 of the Local Government Act 1972.
2. The claim concerns a plot of land north of Lydia Park near Cranleigh in Surrey. Trial was adjourned as a result of a ruling by me on 13 March 2023 on a successful application by the Seventh Defendant, Barney Doherty (D7) for relief from sanctions. The claim is now subject to a later trial, where there will be a full ventilation of the evidence and issues. Hence, these applications are in substance for interim relief pending trial.
3. The land is outside any settlement boundary and protected by an up to date local plan policy covering the Area of Great Landscape Value ("AGLV"). The applicants are members of the Gypsy & Traveller community.

Recent procedural events

4. This matter was last before the Court on 11 November 2022 when HHJ Pearce, sitting as a Deputy-High Court Judge, made orders for interim injunctions to continue against D1-D12. D7 was present, but not represented nor was he involved as a litigant in person. By paragraph 1 of the order the Thirteenth Defendant Thomas Doherty (D13) and Fourteenth Defendant Simon Doherty (D14) were added to the proceedings as newcomers to the Land. D13 and 14 were represented by Counsel at that hearing. On 11 November 2022 D13 and D14 gave undertakings in negative form, which are set out in Schedule C to that order. HHJ Pearce declined, on balance, to order relief against D13 and D14 beyond the terms of those undertakings.
5. Earlier, on 14 September 2021 Mr Richard Hermer KC (sitting as a Deputy-High Court Judge) made orders for the interim injunctive relief to continue and gave directions. The effect of his order was to continue the previous injunction orders that had been in force since 14 July 2021.
6. The interim injunctions all addressed the same essential actual or apprehended breaches of planning control, namely the change of use of land to that for stationing caravans for human habitation. As the without notice order had done, the two on notice orders prevented occupation of the Land or allowing others to take up occupation of the land, and further works of operational development.
7. For the purposes of the applications, the claimed occupation of the Sites is as follows: Site 1 (now subdivided into three sections): Barney and Theresa Doherty and their family (D7 and D8) (bottom section). Site 3: Thomas Doherty (D13) and his family. Site 5: Simon Doherty (D14) and his family.
8. On 13 October 2022, D13 made an application for retrospective planning permission under application reference WA/2022/02625. On 9 December 2022, the Claimant refused the Planning Application. On the same date, D13 made the Variation Application. On 28 December 2022, D13 submitted an appeal to the Secretary of State against the refusal of the Planning Application. That appeal has yet to be determined.

9. On 30 September 2022, D14 made an application for retrospective planning permission under application reference WA/2022/02766). On 7 December 2022 the Claimant refused Planning Application. On 10 January 2023, D14 submitted an appeal to the Secretary of State against the refusal of the Planning Appeal. That appeal has yet to be determined.

The applications to this Court

10. Following the 11 November 2022 hearing before HHJ Pearce, applications were made by D7, D13 and D14 to suspend and/or vary the effect of interim injunctions and associated undertakings. D7 requested suspension to permit his family to continue to occupy a caravan on the land. D13 and D14 were clearly in a different position to D7 as late additions to the claim. Their request was that no mandatory final injunction should be made until exhaustion of the planning process relating to their appeals.

Application by D13

11. The application to vary on behalf of Thomas Doherty (D13): This application dated 9 December 2022 came late after occupation and operational development. In substance it appears based on the fact a planning appeal has been made and personal circumstances. Mr Fry explained that the intention of the variation application was to maintain interim prohibitory relief for the Claimant as against D13, but not, at this stage, to permit trial in respect of D13 the Claimant's application for final relief, particularly final mandatory relief. The draft order for the variation application did not seek to water-down, or otherwise amend, the protection previously ordered for the Claimant by way of undertakings offered by D13. D13 was not aware of any authority for the proposition that a final mandatory injunction was appropriate as against a defendant who was pursuing appeal rights which had not been exhausted, had not been subject to enforcement action, and who had Article 8 points which fell to be considered within that appeal process.

Application by D14

12. The application to vary on behalf of Simon Doherty (D14): This application dated 22 December 2022 came late after occupation and operational development. Again, in substance it appears based on the fact a planning appeal has been made and personal circumstances. Mr Cottle adopted the submissions made on behalf of D13 in relation to this application given the similarity of the procedural circumstances with D14. For completeness it should be noted that Mr Cottle also represented Mathew Doherty (D3), Mark Doherty (D5) and Allana Doherty (D6) who had all been joint applicants to the application now brought by D14. However, on 13 March, D3, D5 and D6 agreed a consent order with the Claimant, approved by me, to adjourn their part in that application until trial. That order was issued on 21 March 2023.

Application by D7

13. The application to vary on behalf of Barney Doherty (D7): This application dated 7 March 2023 seeks suspension of the previous orders. It too came late after occupation and operational development. Similarly, it appears based on personal circumstances. I have already provided a ruling on ancillary aspects of that application relating to relief from sanctions in my order of 16 March 2023.

The issues

14. The issue for Mr Barney Doherty (D7), Mr Thomas Doherty (D13) and Mr Simon Doherty (D14) is what is to happen between now and the outcome of the trial. This is

because D7 is the subject of the interim injunction dated 11 November 2022 and D13 and D14 as named Defendants have provided undertakings consistent with the terms of that interim injunction. D7 asks the Court to vary the injunction to suspend the prohibition on residential use so that he and his family can continue to reside on the land. D13 and D14 seek to maintain the status quo so as to allow for the resolution of their various planning appeals.

15. The necessity or expediency of injunctive relief is not in issue: D7, D13 and D 14 accept that they have breached planning control and accept that it is necessary and expedient for any further breach to be restrained. D13 and D14 submit that in circumstances where they are both seeking to regularise the breach of planning control by way of a planning appeal to the Secretary of State, it would not be appropriate for the Court to grant an injunction providing final and/or mandatory relief for the Claimant.
16. Put another way, there are two issues for this Court:

Issue 1

Do the planning appeals by D13 and D14 need to be exhausted prior to the granting of a mandatory final injunction?

Issue 2

What form of injunction is appropriate for the purpose of restraining the breach of planning control as regards D7, D13 and D14.

17. I am mindful of the overriding objective (CPR 1.1) that these applications, and indeed the claim, are dealt with justly and at proportionate cost. In that context, the parties are well aware that there will now be a later trial that will ventilate the evidence and issues. Accordingly, piecemeal or re-litigation of the same substance matter should be treated with caution. Without in any way prejudging the timing, outcome or merits of that trial, Issue 1 may well be rendered moot at that later time. Accordingly under CPR 1.4 (2)(d), in furtherance of the overriding objective and under the case management powers of this court I consider that Issue 1 is properly a matter for the trial judge. The undertakings given by D13 and D14, as embodied at Schedule C of the 11 November 2022 order by HHJ Pearce, continue in full force and effect. Consistent with that approach, I note that the application by D3, D5 and D6 [para 12] has already been agreed to be dealt with, if required, at trial (see my order dated 21 March 2023).
18. Hence, the remaining issue for this judgment is the application by D7 to suspend the effect of the interim injunctions in order to permit his family to continue to occupy a caravan on the land.
19. I am persuaded that it is appropriate to continue the order of HHJ Pearce dated 11 November 2022 as against D7 - without variance or suspension. I am not satisfied that it would be appropriate to suspend or vary that order. I am satisfied that none of those courses are appropriate and the continuation of the order is the necessary in the interests of justice, in a case which raises a serious issue to be tried and in my judgment a strong prima facie claim, and in the light of the 'balance of convenience and justice' and the public interest.

The applicable law

20. Pursuant to s187B of the Town and Country Planning Act 1990, the Council has the power to apply for injunctive relief to restrain any actual or apprehended breach of planning controls. The principles on which the power to grant such injunctions is to be exercised is the subject of well-known guidance given in South Buckinghamshire DC v Porter [2003] 2 AC 558. Lord Bingham stated the applicable principles in the following terms: i) The court exercises an original not a supervisory jurisdiction, ii) The court should have regard to all of the circumstances of the case, iii) The Judge is not entitled to reach his or her own independent view of the planning merits of the case, iv) The judge should not grant injunctive relief unless he or she would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, v) The test for an injunction is whether it is just and proportionate to grant it, vi) That will involve considering the impact of such an injunction on the defendants, some of whom may wish to use the site as their home, including their rights to private and family life under Article 8 of the ECHR and their property rights under Article 1 Protocol 1, vii) It is also relevant, but not determinative, that the local authority, as the democratically elected and accountable body with principal responsibility for planning control in their area, has decided to seek relief.
21. The following matters are also clear:
- i) The local authority must take into account the best interests of children who may be affected either by the exercise of enforcement powers, or the obtaining of an injunction: see Flintshire County Council v The Queen [2018] EWCA Civ 1089.
 - ii) The local authority must take account of their obligations under the Equality Act 2010 having regard to the fact that members of the Gypsy, Romany and Traveller communities are a protected minority: Moore v SSCLG [2015] EWHC 44 (Admin).
 - iii) At the interim stage, the applicable test for prohibitory relief under s187B is, broadly, the familiar American Cyanamid test: Basingstoke & Deane BC v Loveridge [2018] EWHC 2228 (QB).
22. In Thurrock Council v Stokes and Ors [2022] EWHC 1998 (QB) At [388], Nicklin J considered the Court of Appeal's decision in Bromley LBC v Persons Unknown [2020] EWCA Civ 12, and noted that:
- "The fundamental question is one of proportionality: "whether the problem can be dealt with in a less draconian way": Bromley [71]. Each case must be assessed on its own merits: Bromley [78]. Depending upon the circumstances, relevant factors to the Court's discretion whether to grant an injunction, as identified in Bromley, may include the extent of the injunction sought, whether for example it is borough wide: [62]- [65], the duration of the injunction sought: [88]-[89], the (non-)availability of alternative sites (including transit sites); the absence of such sites may be regarded as a "very important factor militating against the imposition of a borough wide injunction": [74]; the cumulative effect of injunctions granted to other local authorities in similar terms: [75]-[79]; and whether the local authority has carried out its own assessment of the proportionality of use of its enforcement powers: [80]-[87]"*.
23. In Porter, the House of Lords made clear that it was for the Council to satisfy the Court that it had placed before the Court all the necessary evidence that went to the issue of proportionality. At page 580 para. 28 E-F, Lord Justice Bingham said:

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

24. I also found assistance from Fordham J in Brentwood Borough Council v Thursting & Ors [2020] EWHC 2040 (QB) at paragraph 13:

“I do, however, remind myself that I am only at the interim relief stage of these proceedings.... I am not, however, holding a trial or deciding on the grant of a final injunction. It is relevant to my exercise of judgment to recall that I am dealing with interim relief. The parties in this case accept that the "serious issue to be tried" and "balance of convenience and justice" approach is in principle the relevant one. I said earlier that there was a passage in Porter that touches on interim relief. It is in paragraph 17 of Lord Bingham's speech where he cites from a 1997 Good Practice Guide (Enforcing Planning Control: Good Practice Guide for Local Planning Authorities, issued by the Department of Environment, Transport and the Regions). The passage to which Lord Bingham there refers reflects the fact that the court will be "assessing ... 'the balance of convenience' in the decision whether to grant injunctive relief on the [local planning authority]'s application" – I interpose: where that relief is interim relief – and "the court will have to weigh the public interest (which the [local planning authority] represents) against the private interests of the person or people whom the [local planning authority] seek to restrain”.

25. I remind myself that personal circumstances should not be relied on in an effort to outflank previous court orders: Brentwood BC v. Buckley [2021] EWHC 2477 (QB) at [8] – [9], [15] per Kerr J; Cheshire East BC v. Maloney [2021] EWHC 350 (QB) at [47] – [53] per Turner J. Further, I also remind myself of Mid-Bedfordshire DC v Brown [2005] J.P.L 1060 at [26] - [27] where Tugendhat J’s decision to grant a suspension was reversed by the Court of Appeal per Mummery LJ:

- i) *“The practical effect of suspending the injunction has been to allow the defendants to change the use of land and to retain the benefit of the 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 to and 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. 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 over-arching public interest considerations far outweigh the factors which favour a 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.”*

26. I was also referred by Mr Cottle and Miss Thomas to Guildford BC v Cooper [2019] [HQ 18 X 02419], where Mr Straker KC (Sitting as a Deputy-High Court Judge), dismissed a claim for an injunction in a case in which the Defendant had been committing a criminal offence in breach of an enforcement notice for more than five years. His approach to the required balancing exercise began thus:-

“34. There is no doubt that there is a serious breach here of planning control which the court should ordinarily strive to overcome. However, the court cannot do so without regard to all the circumstances, and without particular consideration of certain important matters. In those important matters, the children have to take centre stage, and Mr Cottle is correct to say that both the court and the Council should seek to take that course which causes least harm to the children”.

The application by Barney Doherty

27. I start with the relevant evidence:

a) Mr Gibb

Mr Gibb, Planning Enforcement Officer for the Claimant, provided two witness statements dated 14 July 2021 and 20 July 2021. At paragraph 26 of his first statement, Mr Gibb states that on Friday 11 June 2021 he carried out welfare needs checks for D7, and others, over the telephone. A copy of the completed welfare check form was produced as an exhibit WAG/11, but that exhibit was not in the hearing bundle. In the opinion of Mr Gibb, the land was not being occupied in June/July 2021, but an area of hardstanding had been formed and there were caravans on the land. Mr Gibb did not observe the presence of females or children at that time.

b) Mr Bennett

Mr Bennett, Senior Planning Enforcement Officer for the Claimant, provided four witness statements dated 20 July 2021, 19 October 2022, 21 December 2022 and 11 January 2023. In his second statement dated 19 October 2022 at paragraph 18 he noted that he was told by Mark Doherty (D5) that D7 and his family (comprising Barney's wife - Lizzie- and two children) sometimes occupied the most southerly pitch, but that Barney and his family were frequently staying in and out of hospital as one of their children had a brain injury.

c) Barney Doherty

D7 provided two witness statements dated 26 October 2021 and 7 March 2023. In the first statement there is explicit mention of the serious medical condition (cystic fibrosis) of his son (Barney junior), together with his care needs. From that evidence it appears that D7 was not living on the land. He had been living on the land for seven to eight months prior, but then left once the first injunction order was granted in 2021. It is also clear that Barney Junior was not spending time with his father. This is because Barney Junior was cared for by his mother, who no longer lived with D7 as she was living with her parents at their home. Exhibited to that statement [BD1] is a brief medical summary from Jackie Francis, Clinical Nurse Specialist in Children's Cystic Fibrosis at the Royal Brompton Hospital dated 26 October 2021 detailing relevant clinical needs. In particular Ms Francis states:

“Barney's Mother is with him throughout the day and night, aiding, prompting, encouraging, monitoring, and responding to any problems

arising, as well as being responsible for carrying out his treatment.”

D7 also stated that he had suffered with depression in the past, but was on medication. Attached as exhibit [BD2] to that statement was a photograph of a packet of Sertraline Hydrochloride prescription medication, a common anti-depressant, with D7 named on the patient label.

In his second very recent witness statement of 7 March 2023, D7 says that Theresa Doherty is now living with him and their two children in caravans on the land. Barney Junior turned 18 years of age on 28 February 2023. Their daughter who is 16 is stated as having ADHD. D7 also confirms that he continues to suffer with anxiety and depression and has been on medication since a very young age and is still prescribed Sertraline. There is no explanation or detail as to how and why these domestic arrangements changed since the provision of the first witness statement by D7 of October 2021, and why D7 moved back onto the land in breach of the existing order, or why his family seemingly joined him.

Submissions by D7

28. Miss Thomas submits that the health needs of Mr Doherty’s family have not been assessed nor the impact of an imminent eviction. Hence she asserts that the Court has no knowledge of what form such checks took, what information was gleaned and any practical response to that information. In that regard, she suggests that it would be very unlikely for any rigorous enquiries made regarding the family’s welfare not to have revealed the presence of BD’s very disabled son occupying his caravan. So the Claimant would have been aware of the complex health needs of at least one of the children. It is further suggested that was no further enquiry into the extent of the health difficulties or whether those meant that either child was disabled. Further, information provided by Mark Doherty at the site visit on 09.08.2022 gave the Claimant further reason to make relevant enquiries.
29. Miss Thomas further submits that it is surprising that the Claimant demonstrates no further enquiries into what the level of brain injury was, whether there was disability and no further information obtained about the personal circumstances of the family that may cause particular hardship upon a contemplated eviction. Miss Thomas also submits that the Claimant’s evidence tends to gloss over the omission, since the one passing reference in Mr Gibb’s statement provides no further detail given of any assessment of circumstances, potential harm or hardship that might amount to a proportionality assessment of the impact the injunction would have on the well being of the family’s children or indeed on the adults.
30. At this point it is significant to note that it emerged at the 13 March 2023 hearing that Miss Thomas had not been made aware of the first witness statement made by her lay client, D7, dated 26 October 2021 or its exhibits. Mr Beglen rightly raised the existence of that important and relevant evidence. No reason was provided to me why that omission had been permitted to happen. However, I infer that it was an oversight by those representing D7 given the late granting of emergency legal aid on 3 March 2023 and late instruction of Counsel. In context, I consider that the evidence contained within the first witness statement of D7 substantially neutralised the force of Miss Thomas’s submissions.

The Claimant’s submissions

31. The development of the land is in breach of planning control. It has occurred outside settlement boundaries and within the protected area of the AGLV. Accordingly, it is contrary to recently adopted development plan policy. The recent refusals of planning

permission reflect the importance of these points. The breach is serious and flagrant. Much of it has occurred in the face of court orders requiring the defendants not to occupy the Land, not to allow others to occupy the land, and not to undertake works relevant to that occupation. Senior development management officers have looked at the circumstances and concluded that planning enforcement is necessary and expedient. In addition, on the policy side, the issue of planning permission in the area has been considered, and recently refused both by the Claimant and, on appeal, by the planning inspectorate. Part of the reasoning for those refusals was the imbalance now present between the settled and travelling community in the locality. That is a planning judgment for the relevant authorities to make.

32. The Claimant has considered information relating to the personal circumstances of the defendants in an appropriate fashion in the facts of this case. It has properly considered issues of hardship, equality, and human rights. It has considered the issue of local need and concluded (as a planning inspector looking at Part 2 of the Local Plan is imminently expected to do) that sufficient provision has been made, applying normal planning principles, for the travelling community (even on the strictest application of the recent Lisa Smith case). In my view it is clear that the Claimant was aware of the first witness statement of D7, where it is also clear that no children were living with D7, as their care was being provided for his ex-wife elsewhere.
33. The Land does not have planning permission for the works of development described below and further works that have or may be about to be undertaken upon it. Nor does the Land (or any part of the Land) have planning permission for a change of use which requires these works to be undertaken, in particular for a change of use for stationing of caravans for human habitation.
34. The Land, and a number of surrounding parcels of Land, are vulnerable, by reason of their location and development which has historically taken place to the south, to intentional unauthorised development seeking a change of use for stationing of caravans for human habitation.
35. The capacity of the Land appears sufficient to hold a similar number of pitches to the number of pitches already present and proposed at Lydia Park and the surrounding land. Thus, acknowledging the level of development historically permitted in the area, the Claimant has not permitted further development to the north of the track. Nor have planning inspectors on appeal.
36. The Breaches of Planning Control: None of the Land has been granted planning permission for use as a caravan site. The Land was always intended by the Defendants to be put to use for the stationing of caravans and/or mobile homes for human habitation. Substantial works of development have occurred in order to facilitate that material change of use, including the laying of large amounts of hardcore. Much of that development has occurred in the face of Court orders requiring it not to happen.
37. So far as D7 is concerned, the failures to comply with the injunction orders were serious and longstanding. In these circumstances Mr Beglen submits that it is right for the Court to entertain a degree of scepticism about what is now said by way of personal circumstances.
38. The Claimant proposes in its emerging local plan (Part 2) to fully meet the needs of the Gypsy and Traveller population. However, in the relevant area it has decided to do so by small new allocations, dispersed across the relevant area of the Claimant. That plan is anticipated to emerge imminently from its examination, having completed its consultation on the main modifications required by the inspector, and it will then be for the Council to decide whether to adopt it. It can only emerge from examination on

the basis that it passes the tests of soundness (set out at §35 NPPF 2021) and is thus, for example, positively prepared (meeting objectively assessed needs); justified (an appropriate strategy); effective (deliverable over the plan period); and consistent with national policy.

39. Mr Beglan further submits that the behaviour demonstrated by those responsible for the condition of the Land suggests a disregard for the planning system, or alternatively a deliberate attempt to overcome otherwise applicable planning controls by intentional unauthorised development of the Land.
40. Mr Beglan further asserts that the Council has taken into account its duties under the Equality Act 2020 and given appropriate consideration to the composition of households as explained to it (and in light of the particular planning applications which have been made to it, and refused) but is of the view that it is proportionate to continue to seek relief in this case as against D7.

Analysis

41. The contextual starting point is that the court has considered and ordered relief in favour of the Claimant in substantially the same form on three occasions since July 2021. D7 was subject to those proceedings on each occasion.
42. In my *ex tempore* ruling of 13 March 2023, I accepted that:
 - a) D7 was originally represented in 2021 by a different solicitor,
 - b) D7 does not read and write,
 - c) D7 lacked funds to continue to be represented,
 - d) D7 attended the November 2022 hearing before HHJ Pearce, but was not represented nor did he represent himself,
 - e) D7 did prepare a letter for the Court (Exhibit BD3 to his witness statement dated 7 March 2023) setting out his concerns that the complex health needs of his children had not been understood or considered by the Claimant, and asked Counsel representing certain other Defendants to pass the letter to the Judge,
 - f) the letter was important as it highlighted the significant health problems suffered by him and his two children, one of whom has a serious brain injury and his responsibilities as parent and for their needs
43. Accordingly, I ordered all relevant medical records and reports to be filed and served by D7 no later than 9 June 2023. Subsequent to the hearing of 13 March 2023, I have been provided, by Counsel for the Claimant, with an agreed note of the Judgment of HHJ Pearce of 11 November 2022 - which makes no reference to D7 or any evidence raised by him or on his behalf.
44. There is a degree of opacity and inconsistency relating to certain aspects of evidence from D7. His two witness statements reflect very different accounts of the care arrangements for his children. In October 2021, his ex-wife was conducting the care of his son away from the land. This was known to the Claimant. In March 2023 D7 stated he is involved with the care of his, now adult, son with the assistance of his ex-wife, on the land. I purposely ordered recent medical reports and records to be produced by D7 to create greater evidential clarity. I would also expect that material

to be accompanied by a full witness statement from D7 setting out the chronology, details and reasons for the apparent change in his family's domestic circumstances. Clearly this is an issue that needs to be fully ventilated at trial where there should be a proper and supported evidential basis for this issue to be addressed.

45. On the available evidence, I do not accept the submissions from Miss Thomas that the Claimant was not sufficiently aware of the needs of the children of D7. I consider that the Claimant was aware of D7's witness statement of 26 October 2021 and its contents. His children were being cared for by his ex-wife away from the land. Considerably later it appears that his ex-wife and their two children may well have moved back onto the land in the face of the existing interim injunctions addressing the same essential actual or apprehended breaches of planning control, namely the change of use of land to that for stationing caravans for human habitation and further works of operational development.
46. Mr Beglan has reminded me of comprehensive planning history relating to the land and the procedural history of enforcement since 2021. Mr Beglan says the balance favours the importance of retaining public confidence in planning control. D7 provided his first witness statement in October 2021 and a second very recent witness statement; with various exhibits annexed to it. The Claimant suggests such material as has been provided is insufficient to persuade me to treat its case as other than a strong case. But the question arises as to whether it is sufficient to displace the strong presumptive case the Claimant advances.
47. The general function of an interim injunction is to 'hold the ring' pending final determination of a claim (United States of America v Abacha [2015] 1 WLR 1917). The basic underlying principle of that function is that the court should take whatever course seems likely to cause the least irremediable prejudice to one party or another: National Commercial Bank Jamaica Limited v Olint Corp Ltd (Practice note) [2009] 1 WLR 105 at [17]. In my view, given the evidential uncertainty surrounding the family arrangements for D7, and the requirement that more specific substantiated evidence be provided, the current injunction properly holds the ring pending final determination of the claim at trial. This is consistent with my ruling on Issue 1 as well as the orders of this Court of 16 March and 21 March 2023.
48. In my judgment, it continues to be clear that there is a serious issue to be tried, namely whether the Claimant is right to apprehend a breach of planning control. It is generally accepted that damages cannot be a sufficient remedy in this kind of case, where the Claimant acts as the public guardian seeking to defend the proper planning uses of land; and to the extent that it is necessary to consider the narrow balance of convenience it falls in continuing the interim order without variance or suspension in relation to D7 and his family. Accordingly, the application by D7 is not granted.
49. In relation to Costs; for D7, 13, & 14, Costs in the case.
50. I invite the parties to draw up an appropriate order.