



Neutral Citation Number: [2025] EWHC 109 (KB)

Case No: KB-2025-0000216

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**URGENT APPLICATIONS COURT (COURT 37)**

Thursday, 23<sup>rd</sup> January 2025

Before:  
**FORDHAM J**

Between:  
**DURHAM COUNTY COUNCIL**  
- and -

**Claimant**

(1) PERCY STEPHENSON  
(2) DANNY PATRICK LEE  
(3) THOMAS PATRICK WARD  
(4) PERSONS UNKNOWN (OTHER THAN THE  
NAMED DEFENDANTS) OCCUPYING OR  
CAUSING OR PERMITTING THE  
DEVELOPMENT OR OCCUPATION IN BREACH  
OF PLANNING CONTROL OF THE LAND TO  
THE SOUTH WEST OF NEWHOLME ESTATE,  
STATION TOWN, WINGATE, COUNTY  
DURHAM.

**Defendants**

Ben Du Feu (instructed by Durham County Council) for the **Claimant**

Hearing date: 22.1.25

**Approved Judgment**

FORDHAM J

Note: This judgment was handed down virtually by being uploaded to the National Archives at 4pm on 23 January 2025.

## **FORDHAM J:**

### Introduction

1. Yesterday evening I approved the terms of an injunction order which I have made which prohibits certain actions at land in Station Town near Wingate postcode TS28 5NE. I announced in Court 37 on a without-notice application by the Claimant (DCC) that I was satisfied that the Order was justified as necessary. I said I would give my reasons in a written judgment released at 4pm today. That means my reasons, referenced in a recital to the Order, are available to coincide with when the Order is to be served at the land.

### Injunction Webpage

2. I raised with DCC – and DCC readily agreed – the idea of a specified website page for “Wingate Injunction 2025”. This website page has been included within the Order. The Order has this within the provision alternative service:

*the putting of the documents on the website of the Claimant’s website [www.durham.gov.uk](http://www.durham.gov.uk) on a page with the title “Wingate Injunction 2025”, searchable by using “Wingate Injunction 2025”.*

There is also this undertaking within the Order:

*The Claimant will promptly upload to the Claimant’s website [www.durham.gov.uk](http://www.durham.gov.uk) on a page with the title “Wingate Injunction 2025” all documents filed with the Court or produced by the Court, except so far as directed by the Court.*

This is intended to promote full information about what the Court has been told, what the Court has done, and the basis on which the Court has acted. I regard this as very important because of the obligations and the rights of those affected by the order; and because of wider considerations of open justice. The full terms of the Order, and everything else, will be on that Webpage. I will not set everything out in this judgment. I can stick to the main points.

### Information Sheet

3. Arising out of exchanges with Counsel about straightforward and accessible information, Counsel drafted a single sheet which, as well as the Order itself, is to be prominently displayed at the land. It reads (plan omitted):

**THE HIGH COURT HAS ORDERED AN INJUNCTION IN RELATION TO THE LAND AS SHOWN ON THIS PLAN: [omitted].**

**THE INJUNCTION CONTAINS IMPORTANT PROHIBITIONS ON THE DEVELOPMENT, USE AND OCCUPATION OF THE LAND.**

**IT ALSO HAS IMPORTANT RIGHTS AND SAFEGUARDS.**

**IT CAN BE VIEWED AT THE LAND.  
FULL DETAILS ARE AT [WWW.DURHAM.GOV.UK](http://WWW.DURHAM.GOV.UK) “WINGATE INJUNCTION 2025”  
OR EMAIL: [planningenforcement@durham.gov.uk](mailto:planningenforcement@durham.gov.uk)**

**THERE WILL BE “REMOTE-ACCESS” COURT HEARINGS ON FRIDAY 24 JANUARY 2025 AT 2PM AND FRIDAY 31 JANUARY 2025 AT 2PM. ANYONE CAN ATTEND BY USING A COMPUTER OR MOBILE PHONE. FOR DETAILS CONTACT:  
[planningenforcement@durham.gov.uk](mailto:planningenforcement@durham.gov.uk)**

## Materials

4. I read the entirety of the bundle that had been filed with the Court – which can be accessed at the webpage – and I read two authorities in full: Ipswich Borough Council v Fairview Hotels [2022] EWHC 2868 (KB) (but see especially §§84 to 97); and Wolverhampton City Council v London Gypsies and Travellers [2023] UKSC 47 [2024] 2 WLR 45 (but see especially §§167-193 and §§218 to 238). In terms of the submissions that were made – and which I have accepted – these can be found in Mr Du Feu’s Skeleton Argument. In factual terms, the basis for making the injunction is the evidence that has been provided to the Court by two planning officers, Susan Porter and David Chong. They each provided a witness statement with exhibits. The exhibits include photographs of the position at the land observed by Mr Chong on an enforcement site visit last Wednesday, 15 January 2025.

## Law

5. In legal terms the powers are in section 187B of the Town & Country Planning Act 1990 and section 37(1) of the Senior Courts Act 1981. There are the principles and point seen in Ipswich and Wolverhampton. Rule 25.3(1) of the Civil Procedure Rules deals with applications made “without notice”, as this one was. I have had well in mind the statutory rights protected by the Human Rights Act 1998 and the Equality Act 2010, as well as the principle that close regard should always be had to the best interests of children.

## Gypsies, Roma and Travellers

6. I found it helpful to locate and read the relevant section on planning injunctions in Willers and Johnson, *Gypsy and Traveller Law* (LAG, 3<sup>rd</sup> edition 2020) at pages 279 to 287. I pause to note what the authors say at §4.265:

*Gypsies and Travellers are amongst the most disadvantaged racial groups in our society, with low levels of life expectancy, high vulnerability to serious illness, poor mental health, high child mortality rates and low levels of educational attainment and literacy. A key contributor to the poor socio-economic conditions of Romani Gypsies and Travellers is the fact that thousands of families still have no lawful place to station their caravans and live their traditional way of life.*

I considered the section in Wolverhampton at §§190-194, headed “an obligation or duty to provide sites for Gypsies and Travellers”. The Order I have made included an undertaking from DCC, which I invited and have accepted, to file a witness statement dealing with that subject for the ongoing assistance of the Court:

*The Claimant will within 7 days file a witness statement addressing Gypsy and Traveller provision in the Claimant’s area.*

## Urgency

7. The enforcement investigation in this case began last Tuesday 14<sup>th</sup> January 2025. I am told that after the enforcement visit the next day (Wednesday 15<sup>th</sup>), Counsel was instructed during Friday (17<sup>th</sup>) and papers were then drafted and provided to the Court

on Tuesday (21<sup>st</sup>). The hearing slot was secured for today. I accept that this is a case of urgency.

### Without Notice

8. But it is not a case where there has been “extreme urgency” such that it would not have been possible to provide informal notice. There could have been notice, and lines of communication (see Wolverhampton §227). The reason why the application is “without notice” is a different one. It is because of the concern that by giving notice of this hearing it would serve to undermine the aim of the application being made. I accept that a without-notice application was justified as necessary. The application is for an injunction order whose terms will prevent further people from entering on the land, from the date and time of the service of the order. That is an important part of the proportionate balance being struck. However, by alerting people to the hearing of the application for an order of that nature, it would stand to incentivise accelerated action to get onto the land and get under the wire, prior to the service of any order. That would encourage the very activity sought to be prevented. Although I have been persuaded in the circumstances of this case that it is justified as necessary and proportionate that the application be made and heard “without notice”, an important part of that justification is the important procedural protections which the order secures.

### Procedural Protections

9. The procedural protections are as follows:
- i) There are the steps to promote full access to all the materials in the case, by way of service and the use of the webpage.
  - ii) I am directing a “return date”, which is a further hearing at which this Court will consider whether the order should be continued, discharged or varied. That will be next Friday 31<sup>st</sup> January 2025. Anyone affected by this order who wishes to have their voice heard can attend. They will be able to file with the court any written evidence or documents or photographs. They will be able to file with the court any written representations.
  - iii) I am directing that there be an urgent “mention” hearing, which will be tomorrow (Friday 24<sup>th</sup> January 2025 at 2pm). The Court can be appropriately updated by DCC. And anyone affected by this order who wishes to have their voice urgently heard can attend.  
  

*There shall be a “mention” hearing before Fordham J at 2pm on Friday 24 January 2025 with a time estimate of half an hour to be heard on MS Teams, for the Claimant to update the Court; and so that any person may attend and raise any matter said to be urgent.*
  - iv) I am directing that those hearings will be “remote hearings”. There will be a link. That mode of remote hearing is sometimes used. It promotes accessibility to the court. It will be convened by my clerk or the court clerk. It is particularly appropriate in this case, where the site is in Durham. I do not think justice is achieved by expecting people to travel to London to observe a hearing or have their voice heard. This way, the hearing can be observed by anyone with a smart-phone or tablet.

- v) The Order includes what I am told is a monitored email address at DCC. By using that email address anyone interested in or affected by this Order can obtain information including as to how to get the MS Teams link for the hearings. The Order says:

*Anyone wishing to observe or participate in these hearings should contact [planningenforcement@durham.gov.uk](mailto:planningenforcement@durham.gov.uk) in good time, asking for the MS Teams link.*

### Justification

10. The justification for ordering the interim injunction is as follows. The starting point is that Parliament has conferred a specific power in section 187B on a local planning authority to seek an injunction in the context of an apprehended breach of planning control. The statutory power allows for interim orders. I have an original jurisdiction, not a supervisory one. That means I have to be satisfied as primary decision-maker. It is, however, relevant that experienced planning officers have exercised their judgment so far as the seeking of the order being appropriate and expedient is concerned. Next, there is in my judgment a serious basis for saying that (a) a substantial breach of planning control has happened at the land and (b) there is a real and imminent risk that an ongoing breach of planning control is likely to occur unless restrained by court order. Next, I am satisfied that damages would not be an adequate remedy. Next, DCC as the local planning authority has important public interest functions in the context of proper planning and enforcement. Next, my Order prohibits entry onto the land, and the continuation of activities on the land; but it preserves the “status quo” so far as anyone currently on the land at the time of service of the Order is concerned (albeit without prior notice incentivising accelerated action). Next, by taking interim action this avoids unravelling the position. One factor (see Ipswich at §93iii) about an “anticipatory interim injunction” is about not moving people out after occupation, albeit that it was there expressed in relation to a “long period of occupation”. Next, there is in my judgment – on the face of it – a legitimate aim and proportionality of the intervention. Next, I am satisfied that the interests of children and relevant human rights as well as the Equality Act public sector equality duty have all be considered.

### Cross-Undertaking in Damages

11. In the light of the observations in Wolverhampton at §234, after Ipswich §106, I considered with Counsel the question of a cross undertaking in damages from DCC. I am holding the ring. This is a public interest context. It involves a specific geographical site. The order is interim. This is not a “protest case”. DCC should not, in my judgment, be deterred as a public authority from exercising its public interest enforcement functions. I am quite satisfied that the Order is justified and appropriate, notwithstanding the absence of a cross-undertaking in damages.

### The Position on the Ground

12. There is in the evidence a full description of the site visit on 15 January 2025 including photographs, which I have carefully considered. There is an apparent large scale development activity at the Land. It involves fencing off intended plots of various sizes from 500m<sup>2</sup> to 2000m<sup>2</sup>. There are large wooden fences. There are electricity and water supply lines. There is a surfaced access road. A hardstanding base has begun to be laid. There are brick pillars, lighting units, CCTV and septic tanks. There are excavation

works involving heavy plant, as seen in the photographs. On the face of it, this is development activity of an unauthorised kind. It appears to involve intended works of a large-scale for occupation by multiple caravans. I am at this stage satisfied, on the face of the information currently available, that it is appropriately described as apparently flagrant conduct.

13. Inquiries have elicited that the land is partly owned by the First Defendant and partly owned by the Second Defendant; that the lawful authorised use of the land is agricultural and equestrian; that no planning applications have been made since 2010; and that there is no record of any pre-planning enquiries. The Third Defendant has been included because, according to the Land Registry information, through named solicitors he has made an enquiry with a view to an apparent intended purchase of that part of the land which contains the apparent plots intended for occupation. Whether the Third Defendant's enquiry is connected with what is happening on the ground is not known. It may or may not prove to be connected.

#### The Position of Those Already in Occupation

14. At the time of the site visit on 15 January 2025 there was a car and four touring caravans seen at "Plot 16". A conversation took place with a grandmother and then with her adult daughter, understood to be at the land in caravans, accompanied by the daughter's two children. They were not required to give their details and did not do so. There are said to have been indications that they regard themselves as having been invited onto the land. It is important to reemphasise that the Order, as framed, does not require anyone who is already in occupation at the time of service of the Order to leave. Rather, it prevents new people from occupying the land.
15. The Order includes a specified date and time which is far clearer than referring to "the date of service" which might be difficult for an individual to ascertain.
16. At my invitation DCC has included prominently within their proposed drafting of the Order, a clear communication that anyone currently in occupation is not required to leave. The first page of the Order, after the usual Penal Notice and before the usual explanation and warning, inserts:

***IMPORTANT***

***(1) THIS ORDER DOES NOT REQUIRE ANYONE ALREADY OCCUPYING THE LAND AS AT 4PM ON 23 JANUARY 2025 TO LEAVE THE LAND.***

***(2) THIS ORDER CONTAINS IMPORTANT DUTIES, RIGHTS AND INFORMATION.***

#### Machinery and Works

17. The Order does not require any equipment or plant or machinery to be removed from the land. But it does prohibit further activities using equipment, plant or machinery. All of this is spelled out in the Order.

#### A Clear Record

18. DCC will need to take a clear record with photographs of the position at the date and time of service. This too is a feature of the Order. It will protect everybody.

### Liberty to Apply

19. As well as the return date and interim mention hearing, the Order is by design generous so far as liberty to apply is concerned (see Wolverhampton para 232), in that I am not imposing any minimum notice period. Notice is required of any application to vary or discharge. Such notice should always be adequate. But if somebody affected by the Order considers that they have a truly urgent basis for being heard on an urgent basis, they can seek to persuade the Court by using the liberty to apply, provided that they notify DCC.

### Persons Unknown

20. The Order includes “persons unknown” (see Wolverhampton §167). As to that, I am satisfied that this case involves what are properly characterised as real and imminent risk; compelling need; an emergency measure to hold the ring. I am satisfied that the Order is clear and precise and properly tailored; that it has clarity and particularity; that it has appropriate and extensive procedural protections; all this is all in a context where the local authority will have a duty recorded in the Order to continue to ascertain the identity of individuals and to give appropriate consideration to further steps to serve and possibly join ascertained named individuals. Those names are not currently known to DCC having taken what, in my judgment, have to date been appropriate steps.

### Conclusion

21. The Order is therefore made. I will next revisit this case at the remote “mention” hearing, when I can obtain an update and consider the position further in the light of what I am then told.