

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 12/02/2025

Before :

JASON BEER KC
(Sitting as a Deputy Judge of the High Court)

Between :

THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF ENFIELD

Claimant

- and -

(1) CHARLES SNELL
(2) DAVID SNELL
(3) STEPHEN MAY
(4) ABDELLAH TAYEB (AKA CASTRO)
(5) MICHAL WUJEK
(6) PERSONS UNKNOWN

Defendants

Frances Hoar (instructed by **Legal Services, Enfield Council**) for the **Claimant**
The Defendants did not appear and were unrepresented

Hearing date: 4th February 2025

JUDGMENT

This judgment was handed down remotely at 10.30am on 12th February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archive.

Jason Beer QC (Sitting as a Deputy Judge of the High Court):

A. Introduction

1. The River Lea rises at Well Head inside Waulud's Bank, a neolithic henge in Marsh Farm at Leagrave Common (near Luton), and flows through north London into the River Thames, at Bow Creek (near Canning Town). It has a canalised and navigable section known as the Lee Navigation (and sometimes the River Lee) from Hertford Castle Weir to where it flows into the Thames.
2. The London Borough of Enfield (“*the Council*”) is the owner of land, traversed by a stretch of the Lee Navigation, which it is seeking to develop under the umbrella title of the Meridian Water Regeneration Project (“*the Project*”), the gross development value of which is approximately £6 billion.
3. Previously, the relevant stretch of the Lee Navigation was occupied for the purposes of mooring boats and other activities by five named Defendants (“*the Named Defendants*”). Their occupation prevented the Council’s contractors from undertaking some of the preparatory and development works necessary for creating the infrastructure for the Project. Mandatory and prohibitory injunctions were granted on an interim basis in relation to them by HHJ Auerbach (Sitting as a Judge of the High Court) on 21st May 2024 (with judgment on the same day: [2024] EWHC 1206 (KB)) and Duncan Atkinson KC (sitting as a Deputy Judge of the High Court) on 12th June 2024 (with judgment on 5th August 2024: [2024] EWHC 2064 (KB)).
4. These injunctions were effective: all Named Defendants left the relevant area by the end of June 2024, and have not returned. The Council also sought prohibitory injunctions against “Persons Unknown” – HHJ Auerbach declined to grant such

injunctions (because of ineffective service), but Duncan Atkinson KC did so, again on an interim basis.

5. The claim therefore came before me for trial, to (i) determine whether any final relief ought to be granted to the Council in relation to the Named Defendants; and (ii) to determine whether to make final injunctions against “Persons Unknown”.

B. The Facts

The Project

6. The Project is a very significant urban development project. When completed, it will consist of some 10,000 residential homes, alongside commercial and shopping premises.
7. This scale of urban development plainly requires substantial infrastructure works to support it. Part of that infrastructure development includes the erection of a new road bridge across the Lee Navigation and the construction of a new canal wall and embankment. The construction of the new canal wall and embankment requires the clearance of the existing embankment of the canal of vegetation – using both mechanical and chemical clearance methods in preparation for engineering works. The works also include surveys, construction of hoardings, fencing and positioning of plant and materials in the relevant area.

The Construction Partners and the Contract

8. Taylor Woodrow is a UK-based civil engineering contractor and one of four operating divisions of Vinci Construction UK Limited. The Council contracted with Taylor Woodrow to undertake some of the infrastructure development

works, which include the clearing of the canal embankment and related construction works abutting the Lee Navigation.

The Council's ownership of the land

9. The Council is the registered proprietor of three parcels of land within the site of the Project. They are all within the London Borough of Enfield and bear the Title Numbers:

- a. AGL536977, comprising freehold land adjoining the Lee Navigation lying to the west of Harbet Road and as shown edged with red on the Title and Title Plan;
- b. AGL536978, comprising a lease of airspace for a bridge over the Lee Navigation, and as shown edged with red on the Title and Title Plan; and
- c. AGL216617 comprising freehold land known as Site E, Leaside Road Tottenham, London and more particularly referred to in the Transfer of Title between IKEA Properties Investments Limited and the Council dated 12th December 2016 and as shown edged with red on the Title and Title Plan.

Collectively, these comprise the relevant area in respect of which injunctive relief is sought (“*the Relevant Area*”).

The Commencement Date

10. Under the Contract, work on and to the Relevant Area was due to commence on 6th December 2023. However, it did not start and continue as planned because of the presence of the Named Defendants in the relevant area:

- a. The First Defendant, Charles Snell, is the son of the Second Defendant, Charles Snell. They lived on a narrow boat on the relevant stretch of the Lee Navigation for several years.
 - b. The Third Defendant, Steven May, was said by the Council to have had a narrow boat moored on the relevant stretch of Lee Navigation – however, by the time that the proceedings came before HHJ Auerbach, relief was no longer sought against him, as it was accepted that he was no longer present in the Relevant Area.
 - c. The Fourth Defendant, Abdellah Tayeb (or Castro) also has a boat which was moored on the relevant stretch of the Lee Navigation. He has a number of dogs.
 - d. The Fifth Defendant, Michal Wujek, lived in a structure on the Relevant Area which he called a shed. He had been doing so for at least eight months before the proceedings came before HHJ Auerbach. He too had a number of dogs.
11. On 11th January 2024, Ms Maguire asked for letters and notices to be served on the Named Defendants. On 29 January 2024 Taylor Woodrow served on the Council an early warning notice under the Contract referring to the presence of boaters and encampments on the bank. On or before 2nd February 2024 the Canal & River Trust (“CRT”) placed Suspension of Mooring Licences Notices in the Relevant Area. These Notices were not effective in moving the Named Defendants from the Relevant Area.
12. Taylor Woodrow gave the Council notice under the Contract on 7th March 2024 suggesting that the presence of the Named Defendants, their boats and structures, were preventing development work – a so-called “compensation event”. Penalty

clauses under the contract meant that the Council was exposed to the *risk* of incurring liabilities to Taylor Woodrow of up to £142,000 a week (assuming that no measures in mitigation of the presence of the Named Defendants could be taken – for example, fencing areas off; and assuming that no progress was made at all with the development work at the Relevant Area).

The Proceedings

13. On 18th April 2024 the Council filed a Part 8 Claim in trespass and nuisance and to prevent alleged anti-social behaviour. Within the application, it sought an interim injunction on a without notice basis due to its urgency. There were five named Defendants, as set out above; the Sixth Defendant was “Persons Unknown”.
14. On 21st May 2024 the application for interim relief came before HHJ Auerbach (I need not address the circumstances in which it had earlier come before Rory Dunlop KC (Sitting as a Deputy High Court Judge) on 1st May 2024 and was adjourned by him - see his reserved judgment of 3rd May 2024: [2024] EWHC 1061 (KB)). HHJ Auerbach granted the interim relief sought against the First, Second, Fourth and Fifth Named Defendants. Each was required to give up their occupation of the relevant area by the end of 12th June 2024. HHJ Auerbach did not make any order against the Third Defendant, as he had by then vacated the Relevant Area (see [5] and [20] of his reserved judgment), nor against Persons Unknown because at that time it was accepted by the Council that service had not been effected in accordance with the Court's earlier directions (see [20] of his reserved judgment).

15. The case of the Named Defendants was listed before Duncan Atkinson KC on 12th June 2024 to (i) determine an application for a further injunction order in relation to the Named Defendants in the same terms as had previously made (essentially a renewal of the order made on 21st May, as the four Named Defendants had not ended their occupancy of the relevant area); and (ii) to consider the Council’s application for interim relief against Persons Unknown, including not only unidentified persons already occupying the Council’s land but also newcomers who might be affected by the Order sought at a subsequent date.
16. At the conclusion of the hearing on 12th June 2024 the Deputy Judge granted the applications both to renew the existing interim injunction order against the four Named Defendants and to grant an interim order against Persons Unknown – his reasons were subsequently set out in a reserved judgment on 5th August 2024. He also gave directions for the service of evidence and to bring this matter on for trial on 4th and 5th February 2025.

The Hearing

17. At the hearing before me on 4th February 2025, the Council was legally represented by Counsel and Solicitor, and Jonathan Skelton was present. None of the Named Defendants appeared, whether by themselves or legal representatives. No-one appeared to represent the views or positions of “Persons Unknown” (e.g. the National Bargee Travellers Association (“*the NBTA*”), which had been served with the proceedings and given notice of this hearing).
18. I read and bring into account the written evidence of:

- a. Karen Maguire (the Council's Lead Officer for Trespass and Encampments) in her witness statements dated 18th April 2024 and 7th May 2024;
 - b. Rauf Iqbal (the Council's Strategic Infrastructure Works Construction Programme Manager) in his witness statement dated 7th May 2024;
 - c. Frederick Chatfield (a Process Server instructed by the Council) in his witness statement of 26th June 2024;
 - d. Jonathan Skelton (the Council's Strategic Infrastructure Works Construction Programme Lead) in his witness statement dated 21st January 2025; and
 - e. Balbinder Kaur (an Assistant Principal Lawyer in the Council's Legal Service's Department, who had conduct of the claim on behalf of the Council), in her witness statement dated 22nd January 2025.
19. I also heard live evidence from Jonathan Skelton, in which I tested and explored some of the points which he made in his written evidence.
20. The evidence establishes the following:
- a. The strategic infrastructure works programme itself has a value of £195 million and provides roads, bridges, utilities and land remediation works.
 - b. In relation to the need for clear, unhindered and unimpeded access to the Relevant Area: it was absolutely necessary for the boats, vessels and other structures (and the people within them) to be removed from and remain clear of the Relevant Area in order that the infrastructure works

could be carried out. Chemical clearance methods were employed in preparation for engineering works to construct a new canal wall. The works also included surveys, construction of hoardings, fencing and positioning of plant and materials in the Relevant Area.

- c. The infrastructure development works have, since full access has been given to the Relevant Area, progressed well – they have now moved to and will for the duration of the infrastructure development project involve a substantial and sustained ground works programme and development of the embankment of the Lee Navigation. Substantial heavy machinery used for digging, moving, and lifting earth is employed.
- d. The works that I have described present not merely a risk to the health and safety of any persons in the vicinity of the works, but cannot be carried out – certainly on the embankment of the Lee Navigation – whilst boats, vessels and other structures are positioned there.
- e. The Council had to pay some £300,000 - £400,000 (Mr Skelton did not have the precise figure) to Taylor Woodrow pursuant to penalty clauses under the Contract in relation to the delay of full access being given to Taylor Woodrow between 6th December 2023 and when the boats, vessels and other structures were removed in June 2024 pursuant to the injunction granted by Duncan Atkinson KC on 12th June 2024.

C. The Law

The Council's power to bring the proceedings

21. The Claimant is a local authority within the meaning of s270(1) of the Local Government Act 1972 (“*the 1972 Act*”). Section 222(1)(a) of the 1972 Act empowers a local authority to institute proceedings of this kind.
22. In *Richmond LBC v Trotman* [2024] EWHC 9 (KB), HHJ Blair KC, sitting as a Judge of the High Court, found at [55] that, where a local authority is the owner of a riverbank, it:

“...has the necessary legal standing to bring proceedings in its own name for the protection of the interests of the inhabitants of its area in a claim for an injunction to prevent a public nuisance, pursuant to section 222 of the Local Government Act 1972...”
23. In *Ackerman v London Borough of Richmond* [2017] EWHC 84 (Admin) Beatson LJ held that the permanent mooring of a boat which obstructed free access from the land to the river constitutes both a private and a public nuisance, noting at [28]:

“...in my judgment it was legitimate for the respondent to regulate the way in which the appellant and others occupy the river bank, land held for the benefit of the whole community, to the detriment of other uses of the land and river bank.”
24. In *Cambridge City Council v Traditional Cambridge Tours Ltd* [2018] EWHC 1304 (QB), Whipple J held at [54] that:

“...[t]he Council is obviously entitled to take action to prevent a trespass of land belonging to it, whether or not that trespass happens to be connected with or a prelude to unlawful activity on the River Cam, which falls under the jurisdiction of a different authority.”

Navigational and Mooring Rights

25. The Council, as the landowner of the relevant area, is the riparian owner and, as such, the owner of the entirety of the soil of the river between two river banks it owns or of half the river where it owns only one river bank: *Lamb v Newbiggin* (1844) 1 Car & Kir 549; *Micklethwait v Newlay Bridge Co* (1886) 333 ChD 133;

Central London Railway Co v City of London Land Tax Commissioner [1911] 2 Ch 467, CA.

26. As the riparian owner, it is entitled in the natural course of things to access to, and egress, from a non-tidal river such as the Lee Navigation where it is in contact with its frontage: *Hindson v Ashby* [1896] 2 Ch 1, CA; *North Shore Railway Co v Pion* (1889) 14 App Cas 612, PC. Interference with the right of access of a riparian owner is actionable without proof of special damage: *Lyon v Fishmongers' Co* (1876) 1 App Cas 662, HL.
27. On non-tidal waters such as the Lee Navigation there is no common law public right of navigation: *Hargreaves v Diddams* (1875) LR 10 QB 582. It may, however, arise from immemorial usage, Act of Parliament or express grant: *Orr Ewing & Co v Colquhoun* (1877) 2 App Cas 839; *R v Betts* (1850) 16 QB 1022. This is to be contrasted with the position in tidal rivers, where the Crown owns the alveus and there exists a public right of navigation where such navigation is possible (*Miles v Rose* (1814) 5 Taunt 705; *Williams v Wilcox* (1838) 8 Ad & E 314; *Lord Fitzhardinge v Purcell* [1908] 2 Ch 139; *Moore v British Waterways Board* [2013] EWCA Civ 73).

Power to grant injunctive relief

28. Section 37 of the Senior Courts Act 1981 provides:
- "(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just..."
29. The grant of an injunction is therefore within the discretion of the Court, which is empowered to leave a claimant to his remedy in damages where an injunction

is not just and convenient. The *American Cyanamid* requirements do not apply to an application for a final, rather than interim, injunction. As I explain below, however, the balance is instead angled against the applicant to a greater extent than is required usually, so that there must be a "compelling justification" for the injunction against Persons Unknown to protect the claimant's civil rights.

30. The Council here seeks an "anticipatory" or "precautionary" injunction to restrain conduct which they apprehend may happen in the future. Such an order, formerly known as a *quia timet* injunction, will be granted only where there is a strong probability that, unless restrained, a defendant will act in breach of a claimant's rights and that the harm resulting from such a breach would be so grave and irreparable that damages would not be an adequate remedy: *TFL v Persons Unknown & Ors* [2023] EWHC 1201 KB at [20] The Council must show that there is an imminent and real risk of such harm: *HS2 Limited v Persons Unknown* [2022] EWHC 2360 (KB) at [99].

"Newcomer Injunctions"

31. The Supreme Court considered circumstances in which 'newcomer' injunctions may be imposed in *Wolverhampton City Council v London Gypsies and Travellers & Ors* [2023] UKSC 47; [2024] 2 WLR, holding that an injunction against newcomers is only likely to be justified as a novel exercise of an equitable discretionary power if (at [167]):

“(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which

would 5 need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.

(ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226—231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.

(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.

(iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.

(v) It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries.”

32. The Court set down the following considerations as guidance to courts asked to consider imposing newcomer injunctions (as summarised in the headnote of the Weekly Law Report of the case, altering the numbering to improve clarity):

“...such an injunction was only likely to be justified as a novel exercise of the court's equitable discretionary power if the applicant:

- (a) demonstrated a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other available remedies (including statutory remedies);
- (b) built into the application and the injunction sought, procedural protection for the rights (including Convention rights) of those persons unknown who might be affected by it;
- (c) complied in full with the disclosure duty which attached to the making of a without notice application; and
- (d) showed that, on the particular facts, it was just and convenient in all the circumstances that the injunction sought should be made;

- (e) that, if so justified, any injunction made by the court had to:
 - (i) spell out clearly and in everyday terms the full extent of the acts it was prohibiting, corresponding as closely as possible to the actual or threatened unlawful conduct,
 - (ii) extend no further than the minimum necessary to achieve the purpose for which it was granted,
 - (iii) be subject to strict temporal and territorial limits,
 - (iv) be actively publicised by the applicant so as to draw it to the attention of all actual and potential respondents and
 - (v) include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the injunction; and that, accordingly, it followed that the challenge to the court's power to grant the impugned injunctions at all failed."

33. In *Valero Energy v Persons Unknown & Bencher & Ors* [2024] EWHC 134, Ritchie J set out at [57] – [60] a summary of the approach to be taken (reduced by him to a series of “guidelines and rules”) in summary judgment applications for a final injunction against unknown persons, or newcomers, who are protestors of some sort. Excluding those which are not directly relevant in this claim (which is not an application for summary judgment, nor does it involve protest), the relevant guidelines are as follows:

“Balance of convenience - compelling justification

(5) In interim injunction hearings, pursuant to *American Cyanamid v Ethicon* [1975] AC 396, for the Court to grant an interim injunction against a defendant the balance of convenience and/or justice must weigh in favour of granting the injunction. However, in PU cases, pursuant to *Wolverhampton*, this balance is angled against the applicant to a greater extent than is required usually, so that there must be a "compelling justification" for the injunction against PUs to protect the claimant's civil rights. In my judgment this also applies when there are PUs and named defendants.

(6) The Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UK.SC 23, if the PUs' rights under the European Convention on Human Rights (for instance under Articles 10(2) and 11(2)) are engaged and restricted by the proposed injunction. The injunction must be necessary and proportionate to the need to protect the Claimants' right.

Damages not an adequate remedy

(7) For the Court to grant a final injunction against PUs the claimant must show that damages would not be an adequate remedy.

(B) Procedural Requirements - Identifying PUs

(8) The PUs must be clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the Claim Form), and (b) clearly defined geographical boundaries, if that is possible.

The terms of the injunction

(9) The prohibitions must be set out in clear words and should not be framed in legal technical terms (like "tortious" for instance). Further, if and in so far as it seeks to prohibit any conduct which is lawful viewed on its own, this must also be made absolutely clear and the claimant must satisfy the Court that there is no other more proportionate way of protecting its rights or those of others.

The prohibitions must match the claim

(10) The prohibitions in the final injunctions must mirror the torts claimed (or feared) in the Claim Form.

Geographic boundaries

(11) The prohibitions in the final injunctions must be defined by clear geographic boundaries, if that is possible.

Temporal limits - duration

(12) The duration of the final injunction should be only such as is proven to be reasonably necessary to protect the claimant's legal rights in the light of the evidence of past tortious activity and the future feared (quia timet) tortious activity.

Service

(13) Understanding that PUs by their nature are not identified, the proceedings, the evidence, the summary judgment application and the draft order must be served by alternative means which have been considered and sanctioned by the Court. The applicant must, under the Human Rights Act 1998 S.12(2), show that it has taken all practicable steps to notify the respondents.

The right to set aside or vary

(14) The PUs must be given the right to apply to set aside or vary the injunction on shortish notice.

Review

(15) Even a final injunction involving PUs is not totally final. Provision must be made for reviewing the injunction in the future. The regularity of the reviews depends on the circumstances. Thus such injunctions are "Quasi-final" not wholly final"

Attachment of a power of arrest to an injunction

34. By s27 of the Police and Justice Act 2006, where a local authority is party to proceedings by virtue of s222 of the 1972 Act and an injunction is granted which prohibits conduct which is capable of causing nuisance or annoyance to a person, a power of arrest may be attached to the injunction if:

"... the court thinks that either-

- (a) the conduct mentioned [above] 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."

D. The Named Defendants

Service

35. A statement as to service was provided by Frederick Chatfield 26th June 2024. This established that the First, Second, Fourth and Fifth Defendants were served with the Order of Duncan Atkinson KC of 12th June 2024 (in accordance with paragraph 7 of its terms) and therefore notice of the hearing before me. I am satisfied that sufficient steps have been taken to effect service on these Named Defendants.

Discharge

36. I discharge the First, Second, Fourth and Fifth Defendants from these proceedings. I also dispense with the need for the Claimant to file a Notice of Discontinuance pursuant to CPR 38.3(1)(a).
37. This reflects the fact that the interim injunctions were effective; that these Named Defendants have not returned to the relevant area nor threatened to do so; and that the Council applied from them to be discharged from these proceedings.
38. After some debate, it was agreed that these Named Defendants should not be removed from the title to these proceedings, nor from the face of the Injunction

Order – this is because some of the orders and directions that I have made apply to, and affect them (even if the effect of them is that they are discharged from the proceedings).

39. It remains the case, however, that the Named Defendants could be Persons Unknown if, by their conduct, they act so as to bring themselves within paragraph 1 of the Injunction Order: they must not think that their discharge from the proceedings is a green light to revert to their previous conduct – they too are caught by the prohibitions in the Injunction Order.

E. Persons Unknown

Service

40. Paragraphs 7, 8 and 9 of the Order of Duncan Atkinson KC of 12th June 2024 set out the required methods of service of that Order (which gave notice of the hearing before me), and - where relevant - associated documents, for the purposes of the final hearing of the application for an injunction. I am satisfied by the following evidence that these required methods of service have been complied with by the Council:

- a. Service on Persons Unknown: the evidence of Frederick Chatfield ([11] of his witness statement dated 26th June 2024)
- b. Service on the NBTA: the evidence of Balbinder Kaur ([6] of her witness statement of 22nd January 2025); and
- c. Publication: the evidence of Balbinder Kaur ([4], [5] and [7] of her witness statement of 22nd January 2025).

Substance

41. I propose broadly to follow the structure of the “guidelines and rules” set out by Ritchie J in Valero Energy, adapting them to the circumstances of this case.

Substantive Requirements

42. Cause of action: The pleaded claim is fear of trespass, private nuisance and anti-social behaviour to an in the Relevant Area. In my judgment the claim as pleaded is sufficient on a *quia timet* basis.
43. Full and frank disclosure: The concerns about the accuracy of some of the Council’s evidence, which in part led Rory Dunlop KC to adjourn the application on 1st May 2024, were subsequently addressed by the Council in further evidence filed, which was to the satisfaction of the Court on both previous applications for interim injunctions: see [15] and [60]-[64] of HHJ Auerbach’s judgment of 21st May 2024, and [12]-[13] and [39]-[41] of Duncan Atkinson KC’s judgment of 5th August 2024. Like them, I am satisfied that the potentially misleading evidence set out in Ms Maguire’s first witness statement of 18th April 2024 as to financial penalties that the Council might incur by reason of delays Taylor Woodrow encountered in gaining access to the Relevant Area was corrected by Ms Maguire’s subsequent statement of 7th May 2024 and, in particular, through the evidence of Rauf Iqbal in his witness statement of 7th May 2024.
44. In his submissions to me, Mr Hoar was careful to draw to my attention facts and matters which might tell against the imposition of an injunction against Persons Unknown (in particular: (i) the absence of any trespass upon or nuisance at the Relevant Area since the Named Defendants vacated it and (ii) the fact that this is not a case concerning occupation for the advancement of a protest or campaign,

where it might reasonably be anticipated that individuals may return to the Relevant Area for that purpose).

45. Overall, I am satisfied that the Council discharged its duty of full and frank disclosure.
46. Balance of convenience – compelling justification: In my view there is a compelling justification for the grant of a final injunction preventing Persons Unknown from trespassing upon, causing a nuisance on, or engaging in acts of anti-social behaviour on, the Relevant Area. I bear in mind that none of the Named Defendants have returned to the Relevant Area (but that may be *precisely* because of the effectiveness of the injunctive relief that this Court has granted), and that this is not a case of occupation for the purposes of campaigning or protest – where it might reasonably be anticipated that, in order to advance such a campaign or protest, individuals will return to the site (this, of course, is relevant in that it means that no issues under Article 10 or 11 ECHR arise). These are, however, very modest points when placed along three compelling grounds for the grant of the injunction sought:
47. First, the events which led to the issuing of these proceedings against the Named Defendants, and the evidence in relation to those events, establishes that, unless restrained, individuals are likely to occupy the Relevant Area – especially the embankment on the Lee Navigation adjacent to the canalised waterway itself. Indeed, it has been established in these proceedings (albeit only for the purposes of determining whether to grant interim relief), that the acts of the First, Second, Fourth and Fifth Defendant constituted trespass upon the Relevant Land as well as a nuisance: see [45] of HHJ Auerbach’s judgment (“Putting it all together, I

am therefore satisfied that the Claimant has a very strong, if not unanswerable, case that the continuing presence of all of the Defendants against whom it seeks interim relief, within the area in respect of which that relief is sought, is an actionable trespass, as well as a nuisance”) and [32] and [37] of Duncan Atkinson KC’s judgment. These conclusions and findings – that individuals *have* occupied the relevant area, and that their conduct *does* amount to a trespass and a nuisance – are in my view simply a reflection of what is really common sense: users of the Lee Navigation would otherwise wish to moor, perhaps temporarily but also perhaps semi-permanently, their boats or vessels on the embankment of the Relevant Area unless they are restrained from doing so; and that, in the context of the need to undertake the infrastructure development works in the Relevant Area, such mooring – for whatever period of time – constitutes a trespass and a nuisance. As I observed in the course of the hearing, this part of the Lee Navigation (and, indeed, many other parts of it) is not the same as a parcel of dry land which is being developed, where there would be no need (everything else being equal) for the protection of the law to be required to prevent individuals from going upon it. Here, it is entirely natural for individuals to wish to moor their vessels and boats in the Relevant Area – this is a waterway, which such mooring commonly occurs, and elsewhere on the Lee Navigation there is an abundance of such mooring. Indeed, in photographs taken in late 2024 and placed before the Court for a different purpose (namely to show that the Named Defendants had vacated the Relevant Area, and to show the extent of the groundworks being undertaken), a line of boats – eight or so by my reckoning - can clearly be seen moored on the Lee Navigation, but *outside* of the Relevant Area.

48. Second, no public right of navigation exists in this non-tidal stretch of Lee Navigation – any individuals who moored vessels in the Relevant Area or erected structures on the embankment within it would, like the Named Defendants, prevent the Council, as riparian owner, from accessing and using its land: such individuals would be trespassing, and causing a nuisance.
49. Third, the evidence before me establishes that the infrastructure development works have progressed at some pace since the claim was last before the Court. They involve not so much as removal of vegetation from the embankment, but the entire reconstruction of the embankment. This requires access from both sides – landside, and waterside. It involves driving piles deep into the riverbed, and extensive construction works. It is, quite simply, impossible for those works to be carried out if vessels are moored or present along the embankment. This is not so much an issue of health and safety, but rather the more mundane point that if the embankment is not free of vessels then the work cannot be undertaken.
50. This last point in my view is determinative: the land has now been cleared of the Named Defendants (and others), groundworks have started, and are in progress: Incursions into the relevant area risk the need to cease the constructions works Relevant Area – not only would this present delay to the infrastructure work, but it would have a knock on impact on the Project itself.
51. Article 8: It is clear from some of the evidence before me (and a matter of general knowledge) that some boats on the Lee Navigation are homes – accordingly, rights under Article 8 of the ECHR may be engaged. However, as Beatson, LJ (with whom Nicol J agreed) noted in *Akerman v London Borough of Richmond* [2017] EWHC 84 (Admin). At [43]:

“The authorities show that a trespasser will only be able to trump the rights of an owner or property by invoking article 8 in an exceptional case: see *Manchester City Council v Pinnock*, [2010] UKSC 45, [2011] 2 AC 6, and *London Borough of Hounslow v Powell* [2011] UKSC 8, [2011] 2 AC 186 and the summary by Etherton LJ, as he then was, in *Thurrock BC v West* [2012] EWCA Civ 1435 at [22]- [31]. This is particularly so where the owner is a public authority which holds the land for the general public good such as the respondent in this case.”

52. Additionally, as there is no evidence that any person whose boat *was* their home would be precluded from residing in it by locating it at a place *other than* in Relevant Area, it seems to me that this is not a case where the possible interference with such rights falls to be brought into account in reaching my decision.
53. Damages not an adequate remedy: In my clear view damages would not be an adequate remedy for trespass on or nuisance upon the Relevant Area. First, judging the adequacy of damages as a remedy in the case of injunctive relief against persons unknown is entirely speculative. Second, the identity of those who may trespass or commit acts of nuisance (*a fortiori* their means) would in the circumstances be difficult to establish, in particular because of the transitory nature of some mooring activities on the Lee Navigation. Third, delays or impediments to the infrastructure development works are likely to have consequential effects on the progress of the Project as a whole – the financial cost of such impediments to progress are likely to be very substantial indeed, and beyond the means of most people. Fourth, part of the justification for the grant of the injunctions is because of a risk to the health and safety of those who may moor or occupy the Relevant Area – although compensation might run if injuries, even fatalities, are caused the better course is to take action to prevent such harm from arising.

Procedural Requirements

54. Identifying Persons Unknown: In my judgement, in the draft injunction placed before me by the Council, the Persons Unknown are clearly and plainly identified by reference to: (i) the tortious conduct to be prohibited; and (ii) clearly defined geographical boundaries.
55. The terms of the injunction: In my judgement, the prohibitions in the draft injunction are set out in clear and easily understood words and are not framed in legal technical terms. Further, they do not seek to prohibit conduct which viewed on its own is lawful.
56. The prohibitions must match the claim: The prohibitions in the draft injunction *do* mirror the torts pleaded as being feared by the Council in the Part 8 Claim.
57. Temporal limits – duration: The draft injunction placed before me was expressed to continue until further order of the Court. In the light of the fact that the evidence establishes that the infrastructure works in the Relevant Area are scheduled to be completed by 31st March 2027, and that they are on track for completion by that date, in my view it is necessary for the injunction to have an end date of 31st March 2027 rather than being open-ended (even if there was a review scheduled in, say, early 2026 – as to which: see below). I have therefore included that date as the end date of the injunction.
58. Service: the Order should be served by an alternative means pursuant to CPR 6.15(1), namely:

- a. Firstly, by placing it in a clear plastic envelope attached to a stake placed prominently in the following locations in the Relevant Area:
 - i. At the southwest corner of the land edged red on the Plan (the approximate location of which is marked with a large blue X on the plan attached to the Order);
 - ii. At the southeast corner of the land edged red on the Plan (the approximate location of which is marked with a large blue X on the said plan);
 - iii. At the northwest corner of the land edged red on the Plan (the approximate location of which is marked with a large blue X on the said plan);
 - iv. At the northeast corner of the corner of the land edged red on the Plan (the approximate location of which is marked with a large blue X on the said plan);
 - v. At all four corners of the land which it is proposed will constitute a bridge across the Lee Navigation (the approximate locations of which are each marked with a red X on the said plan); and
 - vi. At approximately 50 metre intervals along the western bank of the Lee Navigation between the northern and southern perimeter of the Land (the approximate locations of which are each marked with a green X on the said plan).
- b. Secondly, by the Council emailing the Order (and other associated material set out in the Order) to the National Barge Travellers Association.

- c. Thirdly, by the Council publishing the Order (and other associated material set out in the Order) on a page of its website that shall be accessible by clicking on an online link.

59. The right to set aside or vary: By the draft injunction order the Persons Unknown are given the right to apply to set aside or vary the injunction on relatively short notice (2 clear working days): this is appropriate.
60. Review: The Council properly suggested that there be a review hearing, in accordance with the guidance given in *Wolverhampton* about 1 year from now. This was suggested, however, in the context of the draft Order placed before me that continued the injunctive relief until further order of the Court. Whilst such a review would be essential in that context, it is neither necessary or desirable in the context of (i) the re-drafting of the Order by me to include within it a definite end date; (ii) the fact that this end date is only some 2 years from now; and (iii) I have included express provisions for any person to apply on shortish notice to set aside or vary the injunction. Put another way, I cannot see the utility of a review in the circumstances of this case – either the injunction will be working well, in which case there will be no need for a review; or it will not, in which case the problem needs to be brought before the court immediately, and not at some arbitrary date one year from now.
61. Power of Arrest: The evidence before me does not demonstrate that there has been the use of, or threatened use of, violence nor a risk of harm to the person of the Council: the grounds in s27(3) of the 2006 Act are not established, and there will be no power of arrest attached to the injunction.

F. Outcome

62. I shall therefore grant the injunction in the terms sought, save as is set out above.