



Neutral Citation Number: [2022] EWHC 3081 (KB)

Case No: QB-2022-001483

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 December 2022

Before:

JEREMY HYAM KC
(Sitting as a Deputy High Court Judge)

Between:

**THE ROYAL BOROUGH OF KINGSTON-UPON-
THAMES**

Claimant

- and -

WARWICK SALZER (1)
THAMES BOAT CHARTERS LIMITED (2)

Defendant

Mr Francis Hoar (instructed by SLLP) for the CLAIMANT
Mr Warwick Salzer as litigant in person and director of the Second Defendant

Hearing dates: 2-3 NOVEMBER 2022

Approved Judgment

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The Deputy High Court Judge:

1. This is an application for a final prohibitory and mandatory injunction against the Defendants to prevent either or both of them mooring vessels on a stretch of the River Thames in the Royal Borough of Kingston Upon Thames. An interim injunction prohibiting mooring of boats other than that which might be regarded as the Claimant's home has already been granted by Her Honour Judge Sarah Richardson sitting in this Court, on 30th May 2022 following a trial on 27 May 2022.
2. The First Defendant, Mr Warwick Salzer is a riverboat user, and is director and majority shareholder of the Second Defendant. For approximately 20 years prior to the grant of the interim injunction, he had been renting or hiring out boats, and taking customers on fishing trips on a stretch of the River Thames in the Royal Borough of Kingston Upon Thames. In order to carry on this business, he has necessarily had to keep the boats that he has used for such business moored in a location convenient to his business. He has no licence to moor from the council and no private mooring rights. Rather he has historically used the public and visitor moorings that are provided and maintained by the Royal Borough of Kingston Upon Thames ('RBKUT') along a stretch of the Thames which lies south of the main bridge at Kingston-on-Thames, and include locations known as Charter Quay, Horsefair Quay, Town End Pier, Riverside Walk, Queens Promenade, and Half Mile Tree.
3. It appears that by long established practice on the Thames there is a limited entitlement to free mooring on moorings which are operated by the Council. According to the latest version of the Claimant's "Mooring Policy" this is derived from the Thames Conservancy Act 1932.
4. Section 79(2) of the Thames Conservancy Act 1932 states all vessels have the statutory right '*to anchor moor or remain stationary for a reasonable time in the ordinary course of pleasure navigation*'. Section 136 of the same Act states '*no charge shall be made for vessels tied up or moored at night or for a reasonable time*'. The terms of this provision do not prevent fees or charges being applied and it is for the Council, acting reasonably to determine what amounts to a reasonable time. They have determined a period of 24 hours as the free mooring period which is in accordance with long established custom and practice by other navigation authorities such as the Environment Agency and their predecessors in this regard (the Conservators of the River Thames).
5. The current mooring policy (introduced in November 2021) and charging structure as operated by the Claimant and published on its website reads as follows:-

"Mooring in Kingston

To improve, protect the local environment and maintain the area's unique riverside heritage. visitor moorings fees have been introduced. The intention is to deter boats from overstaying at mooring sites ensuring moorings are available for visitors to the town centre and the riverside remains a safe and pleasant place for everyone.

Permitted Mooring Locations

- 1. The mooring of any vessel is only permitted at Town End Wharf and Horsefair Quay.*
 - 2. By mooring a vessel, the registered owner and/or person in charge of the vessel accepts the terms and conditions.*
 - 3. Mooring is only permitted alongside: finger mooring or double mooring is not permitted.*
 - 4. Mooring is restricted to Environment Agency Registered Vessels ONLY. Vessels must have a valid Boat Safety Certificate and be insured against loss or damage.*
 - 5. The following mooring fees apply throughout the year:*
 - a. First 24 hours (in accordance with the public right of navigation defined in the Thames Conservancy Act 1932): no fee provided the vessel does not return to either Town End Wharf or Horsefair Quay within 48 hours of leaving its mooring.*
 - b. For each subsequent 24 hours or part thereof, the fee is £10.00*
 - c. When Red Boards are displayed (as indicated on the Environment Agency website), the daily charge of £10.00 per 24 hours or part thereof shall apply until the red boards are removed.*
 - 6. No vessel may be moored at either Town End Wharf or Horsefair Quay for more than 72 hours. (Other than when the River is under Red Board conditions – see 5.c.)*
 - 7. After a vessel has left its mooring it may not return to either Town End Wharf or Horsefair Quay before the expiry of 48 hours.”*
6. A particular focus of the claim has been on boats owned by the Defendants and moored at a location described as Riverside Walk (Gazebo). This is an area of mooring in a location just south of the bridge at Kingston Upon Thames where steps come down from the Gazebo Public House to the riverside and adjoining Riverside Walk. It is a highly popular place during the summer months for members of the public to walk, sit on the steps, eat lunch or feed ducks. It is not one of the visitor moorings identified in the Mooring policy quoted above, but, the moorings on that stretch of riverside are, for reasons I explain below, clearly in the possession and control of the Claimant, and the Claimant is both expected and entitled to control the use of those moorings as a public authority, reasonably and fairly.
7. Since at least 2020 there have been complaints made to the Council about Mr Salzer’s boat hire operation, both from other river users, and from the owners of the public house who objected in particular to a pedalo operation that Mr Salzer appears to have commenced in this location during lockdown.
8. According to the evidence of the Council’s officers, RBKUT is the freeholder of riverside land at Queens Promenade, Town End Pier, Horsefair Quay, Canbury Gardens, Half Mile Tree. A map produced by Mr Ralph Hyde, who is Environmental Protection Officer for the Claimant, shows the areas of land in freehold ownership but also identifies three areas as “dedications”, including areas south of Kingston Upon Thames Bridge, the former dedicated as a river walk under an agreement dated 12th August 1976, and another dedicated as a footpath on 21st April 1977. In addition there

is an area identified as a Leasehold interest at a location outside the Gazebo Public House which is located near Riverside Walk.

9. The title for that land, SGL51872, also called 3-5 Thames Street, is currently owned by Zurich Assurance Limited. It is owned subject to a lease for 999 years from 8th February 1982 in respect of ‘*land at the back of 3 and 5 Thames Street*’. That lease was made in favour of L.P.S. Richmond Holdings in 1982. At or about the same time as that lease was entered the Head-lessee (L.P.S. Richmond Holdings which in turn is owned by the brewery Samuel Smith) agreed to enter into an underlease of a specific area of land “The Riverside Walk” to RKBUT for a 999 year term less ten days. The initial agreement dated 1st February 1982, placed obligations on L.P.S. Richmond Holdings, identified as “the Company” in the Agreement and on RKBUT (identified as “the Corporation” in the underlease).
10. Under the Agreement the Company was obliged to:

“renovate and permanently maintain in good repair to the satisfaction of the Corporation the boundary wall along the river frontage including the steps down to the river and the balustrades surmounting the steps”.
11. It was also obliged to remove a boundary wall attached to “*Kings Passage*” (a small set of steps leading down to the river to the south of the land) and provide capping flush with Riverside walk level. In order to facilitate the works which were envisaged under the Agreement (the main element of which was the building of a public house on the land) the Company covenanted “*to use their best endeavours (such endeavours to include if necessary the institution and prosecution of proceedings in the appropriate court) to remove or cause to be removed all boats of whatever description from the river fronting the land coloured blue on the plan at least three months before the opening date for trading of the Public House*”. If they failed to do so within that time period, then and it thereafter fell to the Corporation to have to do so, the Company were to indemnify the Corporation in respect of cost, expenses and any compensation required to be paid to boat owners.
12. The Agreement also contained a provision which required the Corporation to display a notice on Riverside Walk that it had not been dedicated to the public as a right of way.
13. In my view it is clear that this Agreement clearly evidences mutual intention between the parties to it that:-
 - (i) The river front land to which moorings were attached (whether it was or formed part of a landing stage or otherwise) was understood to be within the ownership of the land demised.
 - (ii) The power to remove moorings attached to that land, rested with the Company in the first instance but thereafter, and pursuant to the underlease, with the underlessee, the RBKUT.

14. That same mutual understanding, continued into the drafting of the underlease which contained the following covenants by RBKUT:-

“ ...

(3) That it will erect and at all times during the sub-term maintain on the demised premises a Notice to the effect that the same have not been dedicated to the public as a highway

(4) ...

...

(8) That it will erect and maintain for the duration of the underlease a suitably worded notice to deter illegal or permanent mooring along the Riverside Walk;

(9) That it will take action against any boats moored illegally or permanently along the Riverside Walk.

(10) That it will not moor boats along the frontage of the Riverside Walk except for repair and maintenance work thereto and will not impede the mooring of boats by bona fide customers visiting the Public House erected or to be erected on the Landlord's adjoining property during normal trading hours except as aforesaid”

RBKUT's powers

15. The Claimant, RBKUT is a local authority within the meaning of Section 270(1) of the Local Government Act 1972 (“**LGA 1972**”) with responsibilities and duties related to the riverbanks, pathways and towpaths adjoining the River Thames running through the Royal Borough of Kingston upon Thames (including Horsefair Quay, Town End Pier, Queens Promenade, Half Mile tree, Charter Quay, and Riverside Walk (including the area outside the Gazebo Public House, Kingston upon Thames).
16. Section 222 of the LGA 1972 confers upon local authorities the power to institute civil proceedings in its own name, where the authority considers it "*expedient for the promotion or protection of the interests of the inhabitants of their area*". Section 111 of the LGA 1972 confers upon local authorities a power to do anything which is calculated to '*facilitate, or is conducive to or incidental to, the discharge of any of its functions*'. Section 2 of the Local Government Act 2000 confers upon local authorities a power to do anything that it considers is likely to achieve the '*promotion or improvement of the economic, social or environmental well-being of its area*'.
17. Sections 23-28 of the Greater London Council (General Powers) Act 1972 ('the **GLCGPA 1972**') and Section 94 of the Public Health Acts Amendment Act 1907 ('the 1907 Act') grants the Claimant the power to licence and enforce conditions and restrictions on the mooring of pleasure boats within the Borough.

18. Section 28 of the GLCGPA 1972 confers upon the Claimant the power to remove a vessel on the River Thames that is “*sunk, stranded, abandoned or without lawful authority left or moored at or in the vicinity of any of the lands, the wharves or the facilities*” of the Council, if it gives the necessary three month statutory notice on the owner of the said vessel.
19. The Claimant is the enforcing authority for breaches of the London Local Authorities Act 1990 (as amended) (“**LLAA 1990**”), and has the power to seek injunctive relief (and/or to take other enforcement action and/or to prosecute) for trading on a street (or on a footway, which in this instance includes the towpath and the “*Gazebo steps*”, outside the Gazebo Public House, as a ‘dedicated public footpath’ pursuant to Sections 21 and 31 LLAA 1990 in the absence of a street trading licence as required by Section 21(1) LLAA 1990).
20. In this case, the Claimant argues that the Defendants have no licence and no other lawful authority for mooring or hiring vessels by the Gazebo land. Even if the Claimant does not have an interest in the land abutting the Thames the Defendant’s vessels are moored by a public right of way (the responsibility for which lies with the Council) and the Defendants are trading ‘in the vicinity’ of lands and facilities of the Council. Thus, the Claimant says, it has the power to remove the Defendants boats and/or take other enforcement action under both the 1972 and the 1990 Acts. The Claimant says that the evidence it adduces shows that vessels have persistently overstayed and, it having sent enforcement notices which have been ignored, the Claimant may seek injunctive relief requiring their removal and the court may grant it.

The evidence of the Claimant

21. I heard evidence from the Claimant’s witnesses Mr Ralph Hyde and Mr David Kingstone who gave evidence in accordance with their witness statements. That evidence showed beyond doubt that there had been a very significant degree of overstay on Council moorings by boats owned or operated by Mr Salzer. Mr Salzer asked questions in cross-examination. The main thrust of Mr Salzer’s questioning was directed to two issues. First seeking to show that he was being treated unfairly by comparison to others who used the river and other river businesses in the locality, and second questioning why Council thought it had a right to enforce and why such a right was being enforced now, the Council seemingly having acquiesced in the frequent mooring of boats in the various locations for which the Council is responsible. Both Mr Hyde and Mr Kingstone answered his questions politely and reasonably. They were exercising duties upon them as council officers having regard to the fact that the moorings in question were under council control and it was their responsibility to ensure that the use visitor moorings were not abused and the vessels were properly removed. In their evidence it was explained that from at least 4th January 2017, Mr Hyde had been aware of persistent unlawful mooring by the boat “Haddon a Good One”. It received no fewer than 14 separate removal notices. Mr Hyde’s statement exhibited schedules of sightings of when that boat had overstayed or trespassed on council property. The number of events were highly numerous. Evidence was also given of how another boat known as ‘unnamed vessel 21’ had also been persistently unlawfully moored from 18 September 2019. A spreadsheet of sightings of when that boat had overstayed or trespassed was also exhibited.

22. From around 20th June 2020 the Council became aware of persistent unlawful mooring of two swan paddle boats/pedalos. These were found to be regularly and consistently mooring unlawfully on the Council's land and at Riverside Walk. As I have noted above, the mooring of these pedalos/Swan boats gave rise to complaints by the owner of the public house.

The evidence of the Defendant

23. Mr Salzer called evidence from a number of witnesses, five of which were unchallenged and read by agreement and the balance of which (a further nineteen letters) I have taken into account, notwithstanding that they are strictly hearsay. Those statements or letters of support include one Kaja Gwincinska, a support worker for disabilities who explained how Mr Salzer had helped her in her work by providing free services for persons with disability in Kingston. There was also evidence from Mr Wynne Thibaut, a disabled user of his services who said that "*he really enjoyed the service provided and was very sad when it stopped*". Ms Lucca Messina, provided a character reference and explained how Mr Salzer's business not only encouraged the community to exercise outside but also brought beauty and fun back into Kingston. His other witnesses gave evidence to similar effect. The overall effect of this evidence was that there was a community of people in Kingston who knew Mr Salzer, thought highly of him and valued the service he provided. I noted that two of such statements were provided from former managers of the Gazebo Public House, both of whom felt that he uplifted the area with his personable character customer service skills and general love of the area, and that he was always very kind and helpful to everyone on the river, nothing being too much trouble day or night.
24. Mr Salzer in his own evidence did not really dispute the fact of overstaying as evidenced by the schedules which were produced by the Council. Neither did he dispute, that members of the public regularly use the steps and land around the Gazebo Public House including the walkway next to the moorings described in these proceedings as the landing strip, or landing stage. He suggested (and having seen photographs on the Royal Borough of Kingston on Thames website of the location in the 1950s I am sure he is right), that the landing stage at the bottom of the steps leading from the Gazebo public house was constructed at a time after 1950/60. I would add that if it was built in or around 1982 as part of the works that were done at the time of the underlease (some 40 years ago) it may explain why it is not shown on the land registry plans. He was keen to point out that he possessed Environment Agency licences for his boats and they were all properly insured, albeit that these licences have not been produced in his bundle of documents. His essential point was that so far as he was concerned the Council had not proved their ownership rights of the moorings in respect of which they purported to exercise responsibility, and more generally it was unfair to him, a man who despite disadvantages, had tried to build up a successful business on the riverside, to be impeded in carrying on his business by a failure of the Council to engage with him in allowing him to obtain some form of licence to moor on Council land on a more permanent basis.

The claim for the injunction

25. The primary claim for an injunction against the Defendants is in trespass. The Claimant argues that both as the local authority and as the corporation with an interest in land abutting or in the vicinity of the River Thames, it is entitled to require the

Defendants to cease mooring at the Gazebo land or generally within the Borough. The Claimant argues it derives these rights, independently and alternatively, from the following statutory, contractual and common law sources:

- (1) Section 28 of the GLCGPA 1972, allowing it to remove vessels unlawfully moored abutting or in the vicinity of its lands (including the Gazebo steps);
- (2) Section 21 of the 1990 Act, which allows it to restrict trading from persons by a public highway, including within the River Thames;
- (3) The Underlease, the contextual construction of which establishes that it includes piece of land identified in these proceedings as the landing stage; and
- (4) Common law, under which the landing stage, as a dedicated public highway abutting the land etched within the Underlease, is a part of the land in which the Borough has an interest; and under which the evidential presumption that the strip is a public highway applies with strong evidential force and has not been rebutted.

26. Based on these matters, the Claimant argues that the Defendants' failure to remove the vessels from the Gazebo land for over three years and his mooring of various other vessels on the riverside without permission, the court can be satisfied that the injunction should be granted on a permanent basis.

Ownership of the land

27. Although a considerable portion of the hearing and the Claimant's skeleton argument was engaged with the question of the ownership of the landing stage or landing strip, this argument appeared to me to be a relatively straightforward issue to resolve having regard to the particular remedy sought in these proceedings which is limited to a final injunction to prohibit overstay on the moorings.
28. In that regard, I should make clear that no declaration as to the ownership of the land is being sought by the Claimant. The Claimant suggested, and I agree, that any final declaratory order as to ownership would almost certainly have to involve other relevant parties such as the head-lessee and the landlord.
29. Notwithstanding, I am quite satisfied that there is sufficient evidence before me on which I am able to conclude that for the purposes of an action in trespass (which strictly speaking is an action for a remedy against the infringement of the Claimant's possession of land), that the Claimant has proper entitlement to the possession of the land in respect of which it seeks the remedy of injunction (namely, the riverside path and moorings). That evidence (partly summarised above) consists at least in the following:-
30. First, the underlease, which is based upon a shared assumption between the head-lessee and the lessor that the head-lessee has a right of the to restrict the mooring of boats by the landing stage and under the demise confers upon the Claimant duties to enforce that restriction. The clauses of the underlease require of the Claimant:

“(8) That it will erect and maintain for the duration of the underlease a suitably worded notice to deter illegal or permanent mooring along the Riverside Walk;

(9) That it will take action against any boats moored illegally or permanently along the Riverside Walk.

(10) That it will not moor boats along the frontage of the Riverside Walk except for repair and maintenance work thereto and will not impede the mooring of boats by bona fide customers visiting the Public House erected or to be erected on the Landlord's adjoining property during normal trading hours except as aforesaid"

31. Second, there is no other sensible interpretation of the agreements than that the landing stage or strip, which may well have been constructed as part of works envisaged at the time, is understood by the parties to the agreement to form part of the demised premises and over which the underlessee is entitled and expected to exercise control.
32. Third, in similar terms to the case of *Conservators of the Thames v Kent* ([1913] T. 602.) - [1918] 2 K.B. 272), the rule *usque ad medium filum aquae* (up to the middle of the river) applies, as a rule of construction of the extent of the demised premises so as to enable the Court to presume that the whole width of the landing stage/strip is included in the demise contained in the underlease. There is nothing in the evidence to rebut that presumption.
33. Fourth and finally, even if there were some defect in title, there is good evidence both from the Claimant and the First Defendant himself that the landing stage in question is used as a public right of way and has been so for over 20 years, with no good evidence showing a contrary intention. In particular although there appears to be an obligation on the Council as underlessee to put up signs to the effect that there is no dedication of the land as a public highway, there is no evidence that any such notices were ever in fact put up, and clear evidence from both the Claimant's witnesses and the Defendant himself, that the land in question has been used as a public right of way for over 20 years. In such circumstances, and if it became necessary to have some other basis other than trespass for the injunction, I would find that the Claimant was entitled to an injunction in the terms sought to protect the moorings under its control on the landing stage/strip for the proper use by river users and other members of the public in accordance with its statutory responsibilities and powers and in accordance with its published mooring policy.

Adverse possession

34. At one stage it seemed as if the Defendants might be arguing that they had by long use of the moorings acquired some kind of proprietary right by adverse possession of the land which formed the mooring area. This argument was not pursued at trial by Mr Salzer and in my view he was right not to pursue it. His own evidence demonstrated that none of his boats had in fact been moored in the same place for a number of years. Rather what he did was to regularly move his boats around the Council's moorings. He would stay longer than permitted until deeming it appropriate to move along. He would then move his boat or boats to another free mooring on council land.

Acquiescence

35. Although not expressly raised by him (Mr Salzer was acting in person) I also considered whether, in defence to injunctive proceedings brought by the Council he was, through his evidence, essentially arguing that the Council had acquiesced in his past conduct such that it would now be unconscionable for the Council to insist on its strict rights of enforcement against him.
36. If that was what he intended to argue, it is not an argument I can accept. The doctrine of acquiescence is summarised by Thesiger LJ in *De Bussche v Alt* (1878) 8 Ch. D. 286 at 314.):-

“If a person having a right, and seeing another person about to commit, or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. This ... is the proper sense of the term ‘acquiescence’.”

37. The doctrine has been further illuminated by the Privy Council in *Singh v Rainbow Court Townhouses* [2018] UKPC 19 approving the dicta in *Chatsworth Estates Co v Fewell* [1931] 1 Ch. 224:

“It is in all cases a question of degree. It is in many ways analogous to the doctrine of estoppel, and I think it is a fair test to treat it in that way and ask, ‘Have the plaintiffs by their acts and omissions represented to the defendant that the covenants are no longer enforceable...?’”

38. In the light of those authorities Sir David Bean in *Injunctions* 14th Edtn. summarises the relevant principle thus:

“A claimant who has acquiesced is only debarred from relief altogether where it would be dishonest or unconscionable for him, after the delay, to seek to enforce his rights.”

39. Given that the Council has been serving notices on the Defendant since at least 2017, and that throughout the relevant period clear notices have been displayed at all moorings indicating that any free mooring is limited to the period of 24 hours, after which there is no return for another 48 hours, it is my view that if Mr Salzer was seeking to raise acquiescence as a defence to these injunctive proceedings it clearly fails. In my view, given the history demonstrated in the evidence of Mr Hyde and Mr Kingstone for the Claimant it would not be unconscionable for the Claimant to seek to protect their possession rights by way of injunction.

Article 8

40. For reasons I have given in already, it is my clear finding that:-

- (i) The Claimant has a lawful basis for the injunctive relief it seeks based on the law of trespass; or, in the alternative based on its statutory powers under (amongst others) Section 111 of the LGA 1972, as the body responsible for the

public walkway and associated moorings at Riverside Walk outside the Gazebo Public House.

- (ii) That claim is not defeated by any defence relying on acquiescence or a proprietary right (adverse possession).

41. I should therefore consider whether Article 8 is engaged and if so, whether the terms of the injunction that is sought is at risk of breaching any Article 8 rights of the First Defendant. I do not consider there is any Article 8 right of 'home' with respect to the Second Defendant company, as a corporate person, which are deserving of protection.

Mr Salzer's home

42. On the evidence before me at trial the Claimant did not seek to contest that the boat 'V2' pursuant to the proviso to the interim injunction granted by Her Honour Judge Sarah Richardson sitting as a Deputy High Court Judge in May of this year, remains moored at the Gazebo Public House moorings and is a kind of houseboat, was essentially the Claimant's "*home*" for Article 8 purposes. That apparent concession was notwithstanding the fact that the visitor moorings have no sanitation facilities and no electrical hook up and there is evidence in the bundle before me of the First Defendant residing at least for the purposes for receiving a medical report connected with personal injury litigation at another address in the borough. I make no criticism of the Claimant for making the apparent concession which was clearly made in the interest of narrowing the issues in circumstances where Mr Salzer was representing himself as a litigant in person.

Engagement of Article 8

43. Article 8 European Convention on Human Rights provides:-

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

44. It is the Claimant's case that, on the assumption that the boat V2 is the Claimant's home, Article 8 is not engaged by the proposed injunctive relief sought, or if it is, that it will not be breached if the proposed injunction is granted.
45. In evaluating these arguments, I remind myself of paragraph [61] of the Supreme Court decision in *Manchester City Council v. Pinnock*, [2010] UKSC 45 an appeal concerning possessions proceedings with respect to a tenancy granted by a local authority. In respect of the engagement of Article 8, Lord Neuberger, giving the judgment of the Court explained:

“ First, it is only where a person's "home" is under threat that article 8 comes into play, and there may be cases where it is open to argument whether the premises involved are the defendant's home (e.g. where very short-term accommodation has been provided). Secondly, as a general rule, article 8 need only be considered by the court if it is raised in the proceedings by or on behalf of the residential occupier. Thirdly, if an article 8 point is raised, the court should initially consider it summarily, and if, as will no doubt often be the case, the court is satisfied that, even if the facts relied on are made out, the point would not succeed, it should be dismissed. Only if the court is satisfied that it could affect the order that the court might make should the point be further entertained.”

46. The Claimant points out the following features which tell against the engagement of Article 8, on the assumption that, for the purpose of this argument, that the boat known as V2 is Mr Salzer's "home".
47. First, the Claimant says this is not a case in which Mr Salzer is being evicted from his home. He lives in a boat that is moored unlawfully. He is not being required to leave the boat in which he lives and he is free to moor it, lawfully, elsewhere. This is a clear distinguishing feature from the housing possession cases, even those where Article 8 is arguably engaged. In simple terms, he does not lose the roof over his head because he can, and probably will, take that roof with him and moor elsewhere if the injunction is granted.
48. The Claimant additionally argues:-
 - (i) Mr Salzer will have never had a legal basis for remaining moored by the landing stage outside the Gazebo Public House or indeed anywhere on Council property. Such rights as there are to moor have always been subject to the control of the Council. Free mooring is permitted for 24 hours only.
 - (ii) Aside from mooring illegally, he has remained moored in defiance of enforcement notices lawfully served for almost six years after he was first served with one (in February 2017);
 - (iii) The nature of living in a riverboat is that it is required to have a mooring, something which Mr Salzer has always known; and any mooring other than one with long-term rights is inevitably precarious;
 - (iv) The duration of time during which Mr Salzer's has moored boats by the landing stage/strip is not a weighty factor in the proportionality assessment; and it should have particularly minimal weight in circumstances where: (a) the length of his mooring has not given him proprietary rights; and (b) Mr Salzer has for almost six years moored in defiance of enforcement notices;
 - (v) Mr Salzer continuing to moor interferes with the Claimant's proprietary rights;

- (vi) As it does with the Claimant's ability to comply with its contractual duties to the Headlessee and with the Headlessee's ability to enforce those rights against the Claimant; and
 - (vii) In addition to exercising its proprietary rights, the Claimant is acting on behalf of the residents of Kingston to ensure that vessels are not moored unlawfully and/or unsafely.
49. Mr Salzer himself does not specifically make any argument in respect of Article 8. Indeed he indicated that were I to grant an injunction he would move straightaway, rather suggesting that he would take his 'home' with him and set up elsewhere. He did not plead with me that were I grant the injunction he would be deprived of a home or that he had nowhere to go. His real argument was that he did not believe the Council had proven its entitlement to move him, and considered that their action to remove him now after he had struggled to operate his business there for a good number of years and without any help from the council to find him a more permanent mooring (whether by licence or otherwise), was unfair. Of course, it is true that removing him from his current location may break social ties, but there was no evidence presented to me which suggested that any rupture of this kind would be such as to threaten let alone actually breach Article 8.
50. In these circumstances I consider I can deal with this matter summarily. I conclude that Article 8 is simply not engaged by the terms of the injunction sought. However, in deference to the submissions which have been made by the Claimant, I make the following findings of fact relevant to the Article 8 proportionality balance, which must be considered having regard to the injunction that is actually sought, the material terms of which are set out as an appendix to this judgment and which do prohibit the Defendants from doing anything that other river users who do not have any private mooring rights are prevented from doing:
- (i) Mr Salzer appears to have used V2 or an equivalent houseboat as his home notwithstanding that it has no attached sanitation or electricity. This indicates a very temporary and intermittent link to any temporary mooring.
 - (ii) The boat V2 has never been moored in the same place for a very long period. Rather it has persistently overstayed in one place and then moved on to another.
 - (iii) Mr Salzer can have had no right to expect that he has any right to live and moor on the Gazebo landing stage or indeed any part of the Kingston riverside. The evidence suggests that he has never done anything other than 'squat' on moorings until he has either voluntarily, or been requested to move on.
 - (iv) The local authority as the body responsible for the moorings in question, has a reasonable expectation that it may enforce its mooring policy.
51. After the hearing and in conjunction with the draft form of injunction I was provided with a copy of the Council's mooring policy (already reproduced above) and an email from the solicitor from the Council to the effect that it has implemented a charging scheme for mooring following a decision made at the Council's Place Committee on

11 November 2021. It has done so under its powers under s23-28 of the Greater London Council (General Powers) Act 1972, specifically s26(2) which states:

“The Kingston Council may demand, receive and recover in respect of the use of all or any of the lands, the wharves and the facilities such reasonable charges as they may from time to time prescribe”.

52. It is clear that the introduction of the charging scheme is aimed at deterring the kind of overstaying that has featured in this case. I do not consider that there is any evidential basis for Mr Salzer to argue that his being singled out or treated in a discriminatory way. Rather, all river users in the Kingston area are discouraged from overstaying and the charging scheme is one means of doing this.
53. By reference to this policy, and as clarified by Counsel for the Claimant in closing submissions, the Claimant seeks an injunction in terms that the Defendants comply with the Council mooring policy and does not moor on Council land outside the terms of that policy. This is reflected in the terms of the draft injunction sought which I have been provided which are materially as follows:-

“The Defendants shall be prohibited, whether by themselves or by inciting or encouraging any other person or whether by their servants, agents, officers or otherwise:

a. from mooring on or to boats attached to the landing strip attached to the Steps down to the River Thames and/or to the walls on the River Thames, being the unshaded portion of the demise of leasehold title SGL356430, between the steps outside the Gazebo Public House at Riverside Walk, Kingston upon Thames KT1 1QN and the River Thames (‘the Landing Strip’), save: (i) in accordance with the existing permission of the Corporation of the Royal Borough of Kingston upon Thames (‘the Corporation’), namely that a person may moor on a river frontage owned or controlled by the Corporation for 24 hours without charge provided that that person may not moor on any river frontage owned or controlled by the Corporation for 72 hours after mooring on such a river frontage; and/or (ii) with the permission of the Corporation by private arrangement or in accordance with any contractual and/or statutory provisions as may apply and/or be amended from time to time;

b. from accessing the Gazebo steps or towpath outside the Gazebo Public House or the Landing Strip at Riverside Walk, Kingston upon Thames KT1 1QN, within the curtilage of leasehold title SGL356430, to reach vessels moored contrary to para 1 (a) of this Order;

c. from bringing and leaving or otherwise mooring on any river frontage owned or controlled by the Corporation in the Royal Borough of Kingston, vessels for any purpose outside of mooring byelaws or rights, including as they may be amended

from time to time, or where necessary without obtaining prior consent from the Council to moor to Council owned lands on or adjoining the River Thames; and for the avoidance of doubt the Defendants are not prohibited from the following: (i) mooring in accordance with the existing permission of the Corporation of the Royal Borough of Kingston upon Thames ('the Corporation'), namely that a person may moor on a river frontage owned or controlled by the Corporation for 24 hours without charge provided that that person may not moor on any river frontage owned or controlled by the Corporation for 72 hours after mooring on such a river frontage; and/or (ii) mooring for up to 72 hours on Horsefair Quay and Townend Pier within the Royal Borough of Kingston upon Thames where mooring is permitted on the payment of an appropriate fee and compliance with the other terms and condition that apply from time to time; and/or (iii) mooring with the permission of the Corporation by private arrangement and/or in accordance with any contractual and/or statutory provisions as may apply and be amended from time to time;

(2) The Defendants must remove from the river frontage of any land owned or controlled by the Corporation (which, for the avoidance of doubt, includes the Landing Strip), any vessels owned or controlled by the Defendants, currently moored to land owned by the Claimant within 14 days of this order;"

54. It may be seen from the terms of the order sought, that what the Council is in fact seeking against the Claimant is no more or less than a strict upholding of its possession rights in accordance with its published mooring policy. While there may be some minor amendment to the form of that order and the way in which it is expressed as a result of this judgment, I do not consider, having regard to the relevant facts before me and which I have set out, that, even if Article 8 is engaged, it can be disproportionate, or in breach of any Article 8 right of the First Defendant to order that the First and Second Defendant must conduct themselves as any other responsible boat user in Kingston Upon Thames. In saying so I am mindful of the Supreme Court's guidance in *Manchester City Council v Pinnock* [2010] UKSC 45, expressed in the not entirely different context of an Article 8 defence to possession proceedings, where the Court held:

"in virtually every case where an occupier has no contractual or statutory protection, and the local authority is entitled to possession as a matter of domestic law, there would be a very strong case for saying that the making of an order for possession would be proportionate."

Discretion to grant injunction on a final basis

55. The remedy of final injunctive relief is discretionary and once made the Court will expect that order to be obeyed. As Lord Bingham of Cornhill in *South Bucks DC v*

Porter [2003] 2 A.C. 558 at [32]. observed:-

“When granting an injunction, the court does not contemplate the possibility that it will be disobeyed ... Apprehension that a party may disobey an order should not deter the court from making an order otherwise appropriate: there is not one law for the law-abiding and another for the lawless and truculent. When making an order, the court should ordinarily be willing to enforce it if necessary. The rule of law is not well served if orders are made and disobeyed with impunity. These propositions, however, rest on the assumption that the order made by the court is just in all the circumstances and one with which the defend- ant can and reasonably ought to comply, an assumption which ordinarily applies both when the order is made and when the time for enforcement arises ... The court should ordinarily be slow to make an order which it would not at that time be willing, if need be, to enforce by imprisonment. But imprisonment in this context is intended not to punish but to induce compliance, reinforcing the requirement that the order be one with which the defendant can and reasonably ought to comply.”

56. *Prima facie* a Claimant who has proved trespass should be entitled to an injunction to protect its rights unless there are strong countervailing reasons why such an order should not be made. I do not consider, on the evidence that I have been presented with, that damages would be an adequate remedy or be likely to be an effective means of deterring future non-compliance by the Defendants.
57. I have already considered the potential arguments which might be made by Mr Salzer on equitable grounds to defeat an injunction and consider none have any significant weight. Given the long history of overstaying, or more colloquially “*squatting*” on council moorings I consider that the grant of injunctive relief to restrain future repetition, in circumstances where it has been sought by the Council as a remedy of last resort, is an entirely proper exercise of discretion for the Court.
58. Despite my clear view that an injunction can and should be granted, it was difficult at the hearing not to have some sympathy for Mr Salzer. The effect of the interim injunction has already been to effectively shut down his business. Making a final injunction in the terms that I have been asked to make will prevent that business from restarting in the same location or anywhere in close proximity unless or until Mr Salzer is able to negotiate a licence to moor either on private land, or on a Council-owned mooring. Throughout the hearing and notwithstanding the difficulties of presenting a case as a litigant in person, he conducted himself with dignity and propriety. He was entirely straightforward and I considered, truthful in the evidence he gave. The witnesses whom he asked to give evidence, and whose evidence I accepted as read without challenge, gave testimony to the fact that he has a strong community of support in the Kingston area. That support is based on the fact that over a long period of time he has provided services to river users including free services to those that are vulnerable and disabled. Many of those users of his services, whether it be fishing trips or free pedalo rides, have derived benefit and enjoyment from his services. It is unfortunate that despite the efforts he has made, he has not been able to

secure, by negotiation with the Council a licence to use Council moorings for the purpose of his business. But in the absence of such permission or licence to moor, and in the absence of any private mooring right, the Court cannot condone or sanction the persistent overstaying or trespassing at moorings for which the Council are responsible. The reality is that the Council has been remarkably tolerant and forbearing to date. Since at least 2020 complaints have been made to the Council about the use of the moorings made by the Defendants both by members of the public and the owners of the Gazebo Public House. Only reluctantly have the Council, as Claimant, come to court, no other means at their disposal having been effective to deter what I have found was and is an undoubted trespass on property in the possession of the Claimant.

59. For these reasons I consider the Claimant is entitled to the injunction it seeks and propose to grant the injunction in terms similar to those proposed in draft form with the deletion of paragraph 1(b) of the draft which I consider to be unnecessary and not justified. A copy of the injunction order I propose to make as amended is attached as an appendix to this judgment. If there is to be substantial argument about the suggested terms or my amendment of them, there will need to be a short further hearing arranged for the purpose to perfect the terms of the order.
60. The draft order contemplates the payment of costs by the Defendants subject to detailed assessment if not agreed. Any submissions as to that part of the order by either the Claimant or Defendant should be provided to the Court in writing along with any amended draft of the final terms of the injunction prior to formal handing down.

Appendix 1 Proposed draft order

CLAIM NO. QB-2022-001493

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

B E T W E E N:-

THE ROYAL BOROUGH OF KINGSTON UPON THAMES COUNCIL

Claimant

-and-

WARWICK SALZER

1st Defendant

-and-

RIVER THAMES BOAT CHARTERS LIMITED

2nd Defendant

INJUNCTION ORDER

PENAL NOTICE

If you the within named Warwick Salzer and River Thames Boat Charters Limited disobey this Order you may be found guilty of contempt of Court and may be sent to prison or fined or your assets may be seized.

IMPORTANT:-

NOTICE TO DEFENDANT

- (1) This Order obliges you to do the acts set out in the Order. You should read it all carefully. You are advised to consult a Solicitor as soon as possible. You have a right to ask the Court to vary or discharge this Order.**
- (2) If you disobey this Order you may be found guilty of contempt of Court and may be sent to prison or fined or your assets may be seized.**

UPON CONSIDERING the Particulars of Claim, Application for an Injunction and reading the witness statements of Ralph Hyde and David Kingstone, the informal witness statement of the First Defendant, documents exhibited to their witness statements and included in the Trial Bundle the skeleton argument on behalf of the Claimant and the written submissions, oral arguments and photographs provided by the Defendants;

AND UPON HEARING FROM counsel to the Claimant and the First Defendant in person and as Director of the Second Defendant;

IT IS ORDERED THAT:

The Defendants shall be prohibited, whether by themselves or by inciting or encouraging any other person or whether by their servants, agents, officers or otherwise:

- a. from mooring on or to boats attached to the landing stage/strip attached to the steps down to the River Thames and/or to the walls on the River Thames, being the unshaded portion of the demise of leasehold title SGL356430, between the steps outside the Gazebo Public House at Riverside Walk, Kingston upon Thames KT1 1QN and the River Thames (**'the Landing Strip'**), save: (i) in accordance with the existing permission of the Corporation of the Royal Borough of Kingston upon Thames (**'the Corporation'**), namely that a person may moor on a river frontage owned or controlled by the Corporation for 24 hours without charge provided that that person may not moor on any river frontage owned or controlled by the Corporation for 72 hours after mooring on such a river frontage; and/or (ii) with the permission of the Corporation by private arrangement or in accordance with any contractual and/or statutory provisions as may apply and/or be amended from time to time;
- ~~b. from accessing the Gazebo steps or towpath outside the Gazebo Public House or the Landing Strip at Riverside Walk, Kingston upon Thames KT1 1QN, within the eurtilage of leasehold title SGL356430, to reach vessels moored contrary to para 1 (a) of this Order;~~
- c. from bringing and leaving or otherwise mooring on any river frontage owned or controlled by the Corporation in the Royal Borough of Kingston, vessels for any purpose outside of mooring byelaws or rights, including as they may be amended from time to time, or where necessary without obtaining prior consent from the Council to moor to Council owned lands on or adjoining the River Thames; and for the avoidance of doubt the Defendants are **not** prohibited from the following: (i) mooring in accordance with the existing permission of the Corporation of the Royal Borough of Kingston upon Thames (**'the Corporation'**), namely that a person may moor on a river frontage owned or controlled by the Corporation for 24 hours without charge provided that that person may not moor on any river frontage owned or controlled by the Corporation for 72 hours after mooring on such a river frontage; and/or (ii) mooring for up to 72 hours on Horsefair Quay and Townend Pier within the Royal Borough of Kingston upon Thames where mooring is permitted on the payment of an appropriate fee and compliance with the other terms and condition that apply from time to time; and/or (iii) mooring with the permission of the Corporation by private arrangement and/or in accordance with any contractual and/or statutory provisions as may apply and be amended from time to time;

- (2) The Defendants must remove from the river frontage of any land owned or controlled by the Corporation (which, for the avoidance of doubt, includes the Landing Strip), any vessels owned or controlled by the Defendants, currently moored to land owned by the Claimant within 28 days of this order;

Variation or discharge of this order

- (3) The Defendants may apply to the Court at any time to vary or discharge this Order but if they wish to do so they must first inform the Claimant's Solicitors in writing by email to the address within this Order at least two clear business days beforehand.

Interpretation of this Order

- (4) In this Order the words "he" "him" or "his" include "she" or "her" and "it" or "its".
- (5) Where there are two or more Defendants then (unless the contrary appears)
- (a) References to "the Defendant" mean both or all of them;
 - (b) An Order requiring "the Defendant" to do or not to do anything requires each Defendant to do or not to do it;

The Effect of this order

- (6) A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
- (7) A Defendant which is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents or in any other way.

Service of this Order

- (8) This Order shall be served by the Claimant on the Defendant and may be served personally on the First Defendant, also as the director of the Second Defendant, or by the alternative means (pursuant to CPR 6.15(1)) of placing the Order on the First Defendant's vessel known as 'V2' presently moored on the Landing Strip,;

Enforcement of the Order

- (9) Any committal application issued in respect of a breach of any injunction order made by the court, may be supported by witness statements in place of affidavits.
- (10) This Order will remain in force until further Order.

Variation or discharge of this order

- (11) The Parties may apply to the Court at any time to vary or discharge this Order but if they wish to do so they must first inform the other party or the other party's solicitors in

writing at least two clear business days hours beforehand

Communications with the Court

- (12) All communications to the Court about this Order should be sent to the King's Bench Division of the High Court, the Royal Courts of Justice, The Strand, London WC2A 2LL quoting the case number. The office is open between 9am and 4pm Monday to Friday, but the public counter is only available upon making an appointment in advance. The telephone number is 0207 947 6000.

Costs

- (13) The Defendants shall pay the Claimant's costs of the action, to be subject to detailed assessment unless agreed.

Name and Address of Claimant's Solicitor

South London Legal partnership
Gifford House
67c St Helier Avenue
Morden SM4 6HY
DX 16130 Morden 3
Telephone: 020 8545 4877

Email: Jennifer.Jarvis-Roberts@merton.gov.uk

Ref: CS/Leg/GB/2464/22

Dated this day of November 2022