Neutral Citation Number: [2023] EWHC 965 (KB)

Case No: QB-2022-000449

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 April 2023

Before:

His Honour Judge Antony Dunne
(sitting as a Deputy High Court Judge)

- -

Between:

MAIDSTONE BC **Claimant**
- and -
(1) GOLIEA BRAZIL
(2) MOSES BRAZIL
(3) BILL WEBB
(4) DEAN MARNEY
(5) PERCIVAL POWELL
(6) ROBERT JOHN NICHOLLS
(7) SHARON SMITH
(8) PERSON OCCUPYING CARAVAN ON LAND IDENTIFIED AS PLOT 5
(9) PERSON OCCUPYING CARAVAN NO. 1 ON LAND IDENTIFIED AS PLOT 6
(10) PERSON OCCUPYING CARAVAN NO. 2 ON LAND IDENTIFIED AS PLOT 6
(11) PERSON OCCUPYING CARAVAN NO. 3 ON LAND IDENTIFIED AS PLOT 6
(12) PERSON OCCUPYING CARAVAN ON LAND IDENTIFIED AS PLOT 8
(13) ALFIE DOYLE
(14) ASHLEY DOYLE
(15) PERSON OCCUPYING CARAVAN ON LAND IDENTIFIED AS PLOT 11

(16) PERSON OCCUPYING CARAVAN ON LAND IDENTIFIED AS PLOT 13
(17) PERSON OCCUPYING CARAVAN NO. 1 ON LAND IDENTIFIED AS PLOT 15
(18) PERSON OCCUPYING CARAVAN NO. 2 ON LAND IDENTIFIED AS PLOT 15
(19) JOHN HARRIS
(20) CHARLIE HOLDEN
(21) LOUISE COOPER
(22) LOUISE PRIOR
(23) ANTHONY COOPER

Defendants

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- -

Ms Emmaline Lambert (instructed by **Ivy Legal Ltd**) for the **Claimant**
Mr Simon Bell (instructed by **SJM Planning**, under the Bar Licensed Access scheme) for the **First, Second, Third and Thirteenth Defendants**
Mr Robin Green (instructed by **Clarke Kiernan) for the Twentieth, Twenty-First, Twenty-Second, and Twenty-Third Defendants**

Hearing dates: 30th March 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 27 April 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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His Honour Judge Antony Dunne (sitting as a Deputy Judge of the High Court):

Introduction

1. This is the hearing of an application for a permanent injunction by the claimant Maidstone Borough Council against 23 defendants some of whom are named and some of whom are not. The application is brought by the claimant under section 187B of the Town and Country Planning Act 1990. The Claimant's evidence in support of the application is contained in six statements from Neill Whittaker, a planning consultant engaged by the Claimant, who has produced exhibits NJW/1 to NJW/59.

2. The First, Fifth and Sixth Defendants are the owners of the Land which is registered at HM Land Registry in three parcels: K630518, TT62494, TT96383. Title number K630158 is described as "Land at Three Sons, Hampstead Lane, Nettlestead, ME18 5HN" ("the Land")". This land is registered to the 5th Defendant, Percival Powell. Two parcels of this land have been divided from it and are now registered as: (a) TT62494 – registered to the first defendant Goliea Brazil (the first defendant) and occupied by the first defendant and Moses Brazil (the second defendant); and (b) TT96383 – registered to Robert Nicholls the sixth Defendant. The remaining Defendants are understood to be the occupiers and/or potential owners of various plots on the Land K630158, but the plots are not yet registered as separate parcels of land at HM Land Registry. There are 10 pending applications to split the Land K630158.

3. The Defendants who occupy the Land are described by reference to plot numbers on the Land. These plot numbers are identified by annotations to exhibit NJW/15, an aerial photograph of the land. The full list of defendants and their interest in the land is as follows:

Defendants 1 and 2 (D1 and D2) - Goliea Brazil and Moses Brazil. GB registered proprietor of TT62494 described as plot 1.
Defendant 3 – Bill Webb – Occupier of plot 4.
Defendant 4 – Dean Marney – Occupier of plot 5
Defendant 5 – Percival Powell – Registered proprietor of K630158
Defendant 6 – Robert John Nicholls – Registered proprietor of TT96383, described as plot 7
Defendant 7 – Sharon Smith – Occupier of plot 5 as at 13.9.21
Defendant 8 – Person occupying caravan on land identified as plot 5
Defendant 9 - Person occupying caravan no.1 on land identified as plot 6
Defendant 10 - Person occupying caravan no.2 on land identified as plot 6
Defendant 11 - Person occupying caravan no.3 on land identified as plot 6
Defendant 12 - Person occupying caravan on land identified as plot 8
Defendant 13 and 14 – Alfie and Ashley Doyle – occupiers of land identified as plot 9

Defendant 15 - Person occupying caravan on land identified as plot 11
Defendant 16 - Person occupying caravan on land identified as plot 13
Defendant 17 - Person occupying caravan no.1 on land identified as plot 15
Defendant 18 - Person occupying caravan no.2 on land identified as plot 15
Defendant 19 – John Harris – owner/occupier of the rear part of the land in 2019
Defendant 20 – Charlie Holden – occupier of a plot on the Land
Defendant 21 – Louisa Cooper – occupier of plot 11 since 2020
Defendant 22 – Louise Prior – occupier of a plot on the Land
Defendant 23 – Anthony Cooper – Occupier of plot 11 since 2020

In this judgment the Defendants will be referred to by the number they have been assigned in these proceedings.

Terms of the injunction sought.

4. The terms of the injunction sought are set out in the draft order as follows:

> "1. In relation to the Land known as "Land at Three Sons, Hampstead Lane, Nettlestead, ME18 5HN" ("the Land") as shown edged black on the attached plan, the Defendants, whether by themselves or by instructing, encouraging or permitting any other person:
>
> (i) Must not bring onto the Land any further caravans and/or mobile and/or portable structures such as storage containers and/or lorry bodies for the purpose of human habitation or residential occupation or any other purpose in breach of planning control;
>
> (ii) Must not bring onto the Land any portable structures including portable toilets and/or storage containers and/or lorry bodies or any other items and paraphernalia for purposes associated with human habitation or residential occupation or any other purpose in breach of planning control;
>
> (iii) Must not bring onto the Land any further waste materials and/or hardcore and/or like materials for any purpose, including the creation/laying of hardstandings or hard surfaces, in association with the use of Land for the stationing of caravans and/or mobile homes for the purpose of human habitation or residential occupation or any other purpose in breach of planning control;
>
> (iv) Must not carry out any further works in relation to the formation of paths, roadways or any works including the provision of sewerage, water and electricity infrastructure associated with the use of caravans and/or mobile homes for the purpose of human habitation or residential occupation or any other purpose in breach of planning control;

(v) Must not carry out any further works to the Land associated with or in preparation for its use for stationing caravans and/or mobile homes for human habitation or residential occupation or any other purpose in breach of planning control;

(vi) Must not undertake any further development on the Land as defined in section 55 of the Town and Country Planning Act 1990 without the express grant of planning permission;

(vii) Must remove all hardstanding, fencing, buildings, mobile homes and touring caravans on the Land."

As can be seen, requirements 1(i)-(vi) are prohibitory in nature and seek to maintain the status quo. Item 1(vii) is mandatory in nature and requires the Defendants to remove all development from the Land and restore it to its previous condition.

Procedural History

5. The claim was issued under Part 8 CPR on 10th March 2022 against D1 to D18. D19 to D23 have been added to the proceedings by further order. The matter was, through no fault of the parties, erroneously listed for disposal hearing on 31st January 2023, instead of for trial. The disposal hearing was vacated, and the matter was listed for trial on 30th March 2023.

6. At the hearing before me on 30th March 2023, D1, D2, D3 and D13 were represented by Mr Bell, and D20, D21, D22 and D23 were represented by Mr Green. The Claimant was represented by Ms Lambert.

7. The remaining defendants did not attend the hearing nor were they represented. I have read the certificates of service of Tony Gaskin dated 24th March 2022 and 19th April 2022 showing that the Claim was served on all remaining Defendants, bar John Harris. John Harris is aware of these proceedings as he has applied to be a defendant in them. I have also read the certificate of service of Pieter De Villiers dated 9th February 2023 showing that notice of this hearing was served by the alternative means of being left in a prominent position on the Land. The defendants who did not attend the hearing have therefore been served with the Claim and effective steps have been taken to make them aware of it, and this hearing. I was satisfied that it was in the interests of justice to proceed on 30th March 2023 in the absence of the remaining Defendants.

Planning history of the Land

8. The planning history associated with the Land is long and chequered and is set out in the six statements of Neill Whittaker.

9. The Land is in the Metropolitan Green Belt and is in Flood Zone 3 according to the Environment Agency Flood Map. The lawful use of the Land is as an undeveloped green field for agricultural purposes. An aerial photograph of the site dated April 2015 taken prior to the unauthorised development of the land shows an undeveloped green field. An aerial photograph was taken of site on 14th November 2020 which shows the extent of the development of the site. The site has been entirely transformed. It is now almost entirely covered in earth and hardstanding and has many caravans and permanent structures upon it. The Claimant states that the development of the Land is

inappropriate development, has caused harm to the Green Belt and is in breach of national and local planning policy, including the Department of Communities and Local Government Planning Policy for Traveller Sites ("the PPTS").

10. On 2nd October 2015, the Claimant served two enforcement notices and a stop notice on the Land. The enforcement notices required that there be no further development of the Land and that all previous development be demolished and permanently removed.

11. In 2015, D1 applied for part retrospective planning permission in respect of plot 1 occupied by her and D2. This application was refused on 23rd November 2016. D2 appealed to the Planning Inspectorate against the enforcement notices and on 1st June 2017 Mr Andrew Hammond issued his decision that the appeal should succeed in part, and granted temporary planning permission for plot 1 to be occupied by D1 and D2 and their families for a period of 5 years. The enforcement notices for the remainder of the Land were upheld.

12. On 19th July 2017, D19 submitted a retrospective planning application for 3 residential caravans, 1 utility room and three touring caravans together with sewage treatment plants, boundary fencing and hardstanding on land to the rear of the site. The Claimant declined to determine this application under using its power under Section 70C of the Town & Country Planning Act, because of the enforcement notices which had already been issued for the Land which, with the exception of Plot 1, had been upheld 18 days earlier.

13. On 13th July 2017, Mr Justice Holgate made an injunction order under section 187B Town and Country Planning Act 1990 following the Claimant's ex parte application. The return date for the injunction was 21st July 2017. On 21st July 2017 Mr Justice Kerr made a section 187B injunction order in the same terms. The injunction order related to all the Land, save for plot 1 occupied by D1 and D2, which was by then subject to temporary planning permission. The terms of the injunction were that there should be no further development of the Land. 14 defendants were named in the 21st July 2017 injunction order, including D3, Bill Webb and, D13, Alfie Doyle. The injunction states that it was made after a hearing where the defendants, including William Webb and Alfie Doyle, were represented. I therefore find that both William Webb (D3) and Alfie Doyle (D13) had knowledge of the existence and the content of the 21st July 2017 injunction order.

14. On 29th August 2018, D3 submitted a retrospective planning application for a temporary change of use of the Land to residential use to include the stationing of one static mobile unit and one day room. This application was refused by the Claimant on 10th December 2018. An appeal against this refusal was made to the Planning Inspectorate. This appeal was dismissed on 6th April 2020.

15. On 29th August 2018, D4 submitted a retrospective planning application for the stationing of one mobile home and one touring caravan with associated hardstanding, dayroom and parking. This application was refused by the Claimant on 10th December 2018. An appeal against this refusal was made to the Planning Inspectorate. This appeal was dismissed on 6th July 2021.

16. On 12th April 2019, following reports of significant development activity on the Land, one of the Claimant's planning officers, James Bailey, visited the site. He took photographs of the rear of the Land which show that significant further development had taken place on the Land since the 21st July 2017 injunction, and in breach of it. He

made further visits on 15th April 2019, 1st May 2019 and 29th May 2019. During the visit of 15th April 2019 James Bailey observed that further caravans had been stationed on the site in breach of the 21st July 2017 injunction order and that hundreds of tonnes of hardcore and waste had been spread on the rear of the site. In addition, Mr Bailey also spoke on the telephone to a man who introduced himself as John Harris (D19) who confirmed that he was the owner of the rear of the site. Mr Bailey informed Mr Harris that the activities were in breach of the 21st July 2017 injunction which named him as a defendant. On 15th April 2019, Mr Bailey posted further copies of the injunction order to the site. Mr Bailey spoke to Mr Harris again on 1st May 2019 and Mr Harris confirmed that it was his intention to live at the rear of the site. Mr Bailey prepared a witness statement in 2019 with a view to proceedings for committal for contempt of John Harris. I have not been informed that such proceedings were instituted.

17. On 23rd February 2021 and 13th September 2021, Mr Whittaker inspected the Land. On 23rd February he saw that there were 15 plots on the Land and that most of the plots had been developed. On some of the plots there were caravans and on other plots there were permanent brick built structures. He also spoke to a number of the occupants. On the 13th September 2021 Mr Whittaker served two further enforcement notices on the Land. The first notice, related to two unauthorised outbuildings which had been erected within plot 1. The second notice related to the unauthorised laying of hardstanding and the erection of fencing at the rear of the Land. Appeals against these enforcement notices were made on 25th October 2021. I have not been informed that these appeals were successful. From these site visits Mr Whittaker concluded that the Land continues to be developed without planning permission and in breach of the existing enforcement and stop notices on the Land as well as the 2017 injunction.

18. The main portion of the Land (registered title K630158) is owned by Percival Powell, however the land registry has a note against this land title and it appears that there are 10 pending applications to split this land. As of 7 January 2022, the applications remained pending. The Claimant made enquiries of the solicitors involved in the 10 land registry applications to identify the purchasers and proposed registrants but without success. Mr Whittaker concludes that the owners/occupants of the Land have no intention of complying with the enforcement and stop notices, as these would have shown up on land checks undertaken prior to their purchases.

19. I have read the statement of Simon Mackay, planning agent for the first defendant. Mr Mackay sets out the planning applications that have been made in respect of the Land and his evidence confirms that, save for the temporary planning permission granted to the first and second defendants, all applications for planning permission have been refused. Mr Mackay says that the Claimant has refused in writing to determine planning applications and has given oral indications that further planning applications for the Land will be given similar treatment.

Personal circumstances of the Defendants

20. I have read the witness statements of Goliea Brazil (D1), Moses Brazil (D2), Bill Webb (D3), Alfie Doyle (D13), Charles Hilden (D20), Louisa Cooper (D21), Louise Prior (D22) and Anthony Cooper (D23). These statements set out, amongst other things, their personal circumstances and the hardship they would suffer if the application is granted.

21. Goliea Brazil has three children: the youngest (aged 13) is enrolled in the local secondary school and the school confirms his education would suffer if he was forced to move; the middle child is registered for home schooling; and the eldest is now 18

and works nearby. Ms Brazil suffers from anxiety and relies upon her brother Moses to provide support for her and her family.

22. Moses Brazil has two children, aged 10 and 14, who both attend local schools. I have read letters from their schools which testify to the negative impact there would be on the children's education if they were forced to move. The elder child suffers from ADHD. The family are registered with their local GP. Both Moses and Goliea Brazil say there is nowhere for them to go if they were evicted from their current address.

23. Bill Webb says he has lived on the site since 2016 with his daughter (aged 13). He suffers from depression. His daughter attends the local secondary school and receives specialist support. Since 2020 he has lived on the site with his partner, their son (aged 1) and his partner's child (aged 4). His partner's child is enrolled at the local primary school. Bill Webb's sister is Moses Brazil's partner, and their families are close. Bill Webb has invested in a local public house and is part of the local community. He says he has looked for alternative sites in the area, but none are available. Bill Webb makes no mention in his statement of the injunction order he was made subject to in 2017.

24. Alfie Doyle has been the partner of Ashley Doyle since 2006. Alfie Doyle says he has lived on the site since 2017 and was joined by his partner and the children in 2021, following difficulties at the site they were living on. They have four children aged 11, 9 and twins aged 1. One of the twins was in intensive care after birth and when allowed home three weeks after birth has had regular visits from the health visitor. The older children attend local schools and the 9 year old son needs extra help. Alfie Doyle says that if the family were evicted there would be nowhere else for them to go as there are no available alternative sites. Alfie Doyle makes no mention in his statement of the injunction order he was made subject to in 2017.

25. Louisa Cooper is the partner of Anthony Cooper. She says they were forced to move to the Land in 2020 because of lockdown. She says they bought plot 10. She says they have two grown up children (aged 21 and 20) who live with them. She says that her eldest child has autism and ADHD. She says the family are registered with their local GP. She says that she and her partner cannot read the legal papers that have been served on them. She also says that when they purchased the plot, she had no idea about the planning problems and did not think to ask. She says that she first found out about the planning difficulties and that the site was considered unlawful when she sought advice from Mr Mackay following the service of the enforcement notice in September 2021. Ms Cooper says she there are no other sites for them to go to, although she has not yet filed in the form to go on to Maidstone BC's waiting list.

26. Anthony Cooper confirms much of Louisa Cooper's evidence. He also says that he has suffered severely from long Covid and has depression.

27. Charles Hilden is the partner of Louise Prior. He says he suffers from paranoia, anxiety and depression and receives help from the local GP and the mental health teams at the local hospital. He says he has two adult children and a 14-year old son who lives with his mother in London and visits him.

28. Louise Prior says she and Charles Hilden bought the plot 8 years ago (in 2015). She does not have children. She says that she is currently suffering from cancer which is being treated by the Royal Marsden Hospital and is registered with her local GP surgery. She also says that Mr Hilden suffers from severe mental health difficulties. She says that she has been served with court papers in these proceedings but is unable to

read them because of her dyslexia. She makes no mention of the service of the injunction proceedings in 2017.

The Law

29. Section 187B of the Town and Country Planning Act 1990 provides as follows:

> "(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
>
> (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach."

30. The leading case providing guidance on the exercise of the power to grant injunctions under section 187B of the TCPA 1990 is *South Bucks District Council v Porter (No. 1) [2003] 2 AC 558*. A summary of the key principles which can be derived from the speech of Lord Bingham can be stated as follows:

First, the court's jurisdiction is an original one and not a supervisory one, but it will not normally investigate the planning merits of the local planning authority's decisions.

Second, however, the court has a discretion and should decide for itself whether to grant the injunction and should not do so automatically just because a local planning authority seeks one. This discretion must be exercised judicially.

Third, the Court must not only be satisfied that the defendants intend to breach planning law but also that, in all the circumstances, it is proportionate and just for the court to grant an injunction, taking account, amongst other things, of the impact that such an injunction will have on the defendants, including their rights to private and family life under Article 8 of the European Convention on Human Rights.

Fourth, because the facts of different cases are infinitely various, no single test can be prescribed to distinguish cases in which the court's discretion could be exercised in favour of granting an injunction from those in which it should not. Helpful guidance on the relevant factors to be taken into account is to be found at paragraph 38-42 of the judgment of Brown LJ in the Court of Appeal in South Bucks v Porter which is quoted by Lord Bingham.

31. Paragraphs 38-42 of the judgment of Brown LJ in the Court of Appeal in *Porter* are of relevance to this case and the passage merits full quotation:

> "38. I would unhesitatingly reject the more extreme submissions made on either side. It seems to me perfectly clear that the judge on a section 187B application is not required, nor even entitled, to reach his own independent view of the planning merits of the case. These he is required to take as decided within the planning process, the actual or anticipated breach of planning control being a given when he comes to

exercise his discretion. But it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for himself all questions of hardship for the defendant and his family if required to move, necessarily including, therefore, the availability of suitable alternative sites. I cannot accept that the consideration of those matters is, as Burton J suggested was the case in the pre-1998 Act era, 'entirely foreclosed' at the injunction stage. Questions of the family's health and education will inevitably be of relevance. But so too, of course, will countervailing considerations such as the need to enforce planning control in the general interest and, importantly therefore, the planning history of the site. The degree and flagrancy of the postulated breach of planning control may well prove critical. If conventional enforcement measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be the readier to use its own, more coercive powers. Conversely, however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gipsy moving onto the site might, indeed, involve him in less hardship than moving him out after a long period of occupation. Previous planning decisions will always be relevant; how relevant, however, will inevitably depend on a variety of matters, including not least how recent they are, the extent to which considerations of hardship and availability of alternative sites were taken into account, the strength of the conclusions reached on land use and environmental issues, and whether the defendant had and properly took the opportunity to make his case for at least a temporary personal planning permission.

39 Relevant too will be the local authority's decision under section 187B(1) to seek injunctive relief. They, after all, are the democratically elected and accountable body principally responsible for planning control in their area. Again, however, the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

40 Whilst it is not for the court to question the correctness of the existing planning status of the land, the court in deciding whether or not to grant an injunction (and, if so, whether and for how long to suspend it) is bound to come to some broad

> view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end. In this regard the court need not shut its mind to the possibility of the planning authority itself coming to reach a different planning judgment in the case.
>
> 41 True it is, as Mr McCracken points out, that, once the planning decision is taken as final, the legitimate aim of preserving the environment is only achievable by removing the gipsies from site. That is not to say, however, that the achievement of that aim must always be accepted by the court to outweigh whatever countervailing rights the gipsies may have, still less that the court is bound to grant injunctive (least of all immediate injunctive) relief. Rather I prefer the approach suggested by the 1991 Circular: the court's discretion is absolute and injunctive relief is unlikely unless properly thought to be 'commensurate' — in today's language, proportionate. The approach in the *Hambleton case [1995] 3 PLR 8* seems to me difficult to reconcile with that circular. However, whatever view one takes of the correctness of the *Hambleton* approach in the period prior to the coming into force of the Human Rights Act 1998 , to my mind it cannot be thought consistent with the court's duty under section 6(1) to act compatibly with convention rights. Proportionality requires not only that the injunction be appropriate and necessary for the attainment of the public interest objective sought — here the safeguarding of the environment — but also that it does not impose an excessive burden on the individual whose private interests — here the gipsy's private life and home and the retention of his ethnic identity — are at stake.
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> 42 I do not pretend that it will always be easy in any particular case to strike the necessary balance between these competing interests, interests of so different a character that weighing one against the other must inevitably be problematic. This, however, is the task to be undertaken by the court and, provided it is undertaken in a structured and articulated way, the appropriate conclusion should emerge."

32. In relation to what has been called the human factor in planning decisions, Lord Bingham echoed the comments of Brown LJ [at 39] and stated as follows [at paragraph 31]:

> "Thus the Secretary of State was entitled to have regard to the personal circumstances of the Gipsies, as he did in the cases of Mr Berry and Mrs Porter. When application is made to the court under s.187B, the evidence will usually make clear whether, and to what extent, the local planning authority has taken account of the personal circumstances of the defendant and any hardship an injunction may cause. If it appears that these aspects have been neglected and on examination they

> weigh against the grant of relief, the court will be readier to refuse it. If it appears that the local planning authority has fully considered them and none the less resolved that it is necessary or expedient to seek relief, this will ordinarily weigh heavily in favour of granting relief, since the court must accord respect to the balance which the local planning authority has struck between public and private interests. It is, however, ultimately for the court to decide whether the remedy sought is just and proportionate in all the circumstances."

33. I note the last sentence in the above passage, and I also note the comments of Lord Hutton in *Porter* [at 86]:

"86. Therefore, it is not for the court to act merely as a rubber stamp to endorse the decision of the local planning authority to stop the user by the particular defendant in breach of planning control. Moreover the court is as well placed as the local planning authority to decide whether the considerations relating to the human factor outweigh purely planning considerations; the weight to be attached to the personal circumstances of a defendant in deciding whether a coercive order should be made against him is a task which is constantly performed by the courts."

34. As noted by Lord Brown, the degree and flagrancy of any postulated breach may well prove critical. The case of *Mid Bedfordshire District Council v Brown [2004] EWCA Civ 1709* involved the establishment of a gypsy caravan park on agricultural land in a green belt area in breach of planning control and after the local authority had obtained an ex parte injunction to restrain the occupiers of the land from causing or permitting entry on to the land of any caravan or mobile home. The judge at first instance suspended the effect of the injunction against the Defendant because of the impact on his private and family life. Overturning this ruling the Court of Appeal said:

> "25. In our judgment, the judge's decision to suspend the injunction pending the determination of the planning application did not take proper account of the vital role of the court upholding the important principle that the orders of the court are meant to be obeyed and not to be ignored with impunity. The order itself indicated to the defendants the correct way in which to challenge the injunction. It contained an express provision giving the defendants liberty to apply, on prior notice, to discharge or modify the order. The proper course for the defendants to take, if they wished to challenge the order, was to apply to the court to discharge or vary it. If that failed, the proper course was to seek to appeal. Instead of even attempting to follow the correct procedure, the defendants decided to press on as originally planned and as if no court order had ever been made. They cocked a snook at the court. They did so in order to steal a march on the council and to achieve the very state of affairs which the order was designed to prevent.
>
> 26. The practical effect of suspending the injunction has been to allow the defendants to change the use of the land and to retain the benefit of occupation of the land with caravans for

> residential purposes. This was in defiance of a court order properly served on them and correctly explained to them. In those circumstances there is a real risk that the suspension of the injunction would be perceived as condoning the breach. This would send out the wrong signal, both to others tempted to do the same and to law-abiding members of the public. The message would be that the court is prepared to tolerate contempt of its orders and to permit those who break them to profit from their contempt.
>
> 27. The effect of that message would be to diminish respect for court orders, to undermine the authority of the court and to subvert the rule of law. In our judgment, those overarching public interest considerations far outweigh the factors which favour the essential suspension of the injunction so as to allow the defendants to keep their caravans on the land and to continue to reside there in breach of planning control."

35. In addition, in *South Cambridgeshire District Council v Gammell and Others [2005] EWCA Civ 1429,* the Court of Appeal stated that the correct course for a newcomer to take when he becomes aware of an injunction preventing occupation of the land is to take immediate steps to apply to vary the injunction.

36. I heard submissions about the exercise by the Claimant of its public sector equality duty under section 149 of the Equality Act 2010. I was also referred to the principles set out in the case of *Bracking v Secretary of State for Work and Pensions [2013] EWCA Civ 1345* which summarise the authorities on the exercise of the PSED. I was referred to principle 5 at paragraph 26 of the judgment which states:

> "(i) The public authority decision maker must be aware of the duty to have 'due regard' to the relevant matters;
>
> (ii) The duty must be fulfilled before and at the time when a particular policy is being considered;
>
> (iii) The duty must be 'exercised in substance, with rigour, and with an open mind'. It is not a question of 'ticking boxes'; while there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument;
>
> (iv) The duty is non-delegable; and
>
> (v) Is a continuing one.
>
> (vi) It is good practice for a decision maker to keep records demonstrating consideration of the duty."

The parties' submissions

<u>The Defendants</u>

37. Mr Bell for D1, D2, D3 and D13 and Mr Green for D20-D23 made the following submissions:

(1) The Claimant's assessment of the Defendants' personal circumstances has been cursory, at best. The Claimant should have obtained more detailed information about the Defendants' personal circumstances. In addition, there has been insufficient consideration of the information supplied during the course of these proceedings, including the Defendants' witness statements.

(2) The Claimant's consideration of its public sector equality duty does no more than pay lip service to it. The medical conditions of some of the Defendants amount to disabilities and consideration has not been given to this protected characteristic.

(3) In breach of the Planning Policy for Traveller Sites, the Claimant has failed to provide enough caravan sites within its area to meet existing need. Although the Claimant has power under s24 of the Caravan Sites and Control of Development Act 1968 to provide sites to meet this need, there is no suggestion it is going to.

(4) There is no suitable alternative lawful site for the Defendants to move to.

(5) The Defendants are plainly vulnerable individuals with serious medical conditions requiring a stable base and regular access to medical services. The children of the Defendants will be particularly affected as many of them are settled in local schools.

(6) Neither Green Belt nor flood risk policy is an absolute bar to the grant of a permanent or temporary planning permission, and the grant of such a permission in the future cannot be ruled out. D20-D23 submit that relief should be refused to allow for the grant of temporary planning permission whilst the Claimant provides the further sites it says it is in the process of arranging. It is said that a temporary planning permission has previously been granted for D1 and D2 and there is no reason why a further temporary (or permanent) planning permission should not be granted.

(7) Given the Defendants' personal circumstances and the lack of any suitable alternative accommodation, the hardship that would be caused to them if required to leave their pitches would be severe.

(8) The grant of an injunction at this stage would not be just and proportionate.

The Claimant

38. The Claimant submits that whilst an injunction in the terms sought may constitute an interference with the Defendants' human rights, any such interference is necessary and proportionate having regard to the public interest in protecting: (a) the Metropolitan Green Belt; and, (b) those who may be affected by flooding of the site.

Discussion

39. The factors referred to by Brown LJ in paragraphs 38-42 of the Court of Appeal judgment in *Porter* provide a useful guide to the relevant considerations in this case. I will refer to them in turn before reaching my conclusions at paragraph 79-89 below.

Personal circumstances

40. I have considered the personal circumstances of D1, D2, D3, D13, D14, D20, D21, D22 and D23 in detail at paragraphs 20 – 28 above. I have considered the personal circumstances of D4 as set out in the planning appeal decision of 6th July 2021. I have

also considered the parties submissions on Article 8 of the ECHR, Article 3.1 of the UN Convention on the Rights of the Child, and the guidance of the Supreme Court in the case of *Zoumbas v SSHD [2013] UKSC 74.*

41. Many of the Defendants have medical conditions which benefit from having a stable base and access to a nearby GP. It is said that the severity of the medical conditions for some of the Defendants amount to a disability. Many of the families know each other well and provide support for each other.

42. Of particular note is that D1, D2, D3, D13 and D14 have children who live with them. There are 12 children who live with these defendants. Many of these children are of school age and I have read letters from each child's school which sets out the harm that would be caused to them if they were forced to move. In some cases, the children have vulnerabilities which the school provides specialist support for. There are further children on the site, although I am unaware of their ages or any vulnerabilities that they have. It is in the interests of these children to remain living on the Land so that they have a stable base to access education and other services.

Availability of other sites

43. At present no other sites are available. I have read the statements from Mr Mackay and Mr Hinsley. They have been told by the local planning authorities that there is a waiting list for sites in the Maidstone area and in Kent as a whole. They conclude that there are no other sites available for occupation. The Claimant does not disagree. In its report recommending the injunction application, it states: "The Council is currently able to demonstrate a five-year supply of deliverable sites but is unable to identify any alternative sites to which the occupants would be able to relocate were a court to order that they cease occupation of the Site."

44. I conclude that the combination of the Defendant's personal circumstances and the lack of availability of alternative sites will lead to hardship for the Defendants and their children if they are forced to move from the land.

Planning Harm

45. The degree of harm caused by the development of the Land is significant. A comparison of the aerial photographs of the Land in 2015 and 2020 shows that the site has gone from being an undeveloped field to a site now almost entirely covered by earth and hardcore with many caravans and permanent structures upon it. The site is in the Metropolitan Green Belt. There is no doubt that the development has caused serious harm to the Green Belt because of its inappropriate nature, its impact on the openness of the area and its encroachment into the countryside.

46. Government policy on traveller sites in the Green Belt is set out in the PPTS. Policy E provides that inappropriate development should not be approved except in very special circumstances and that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt so as to establish very special circumstances.

Enforcement and breaches of planning control

47. As noted in *Porter* the degree and flagrancy of any postulated breaches of planning control may prove critical and that where conventional enforcement measures have

failed over a long time to remedy the breach, then the court may be readier to use its own more coercive powers.

48. The Claimant's attempts to take enforcement action to remedy the breaches of planning control have, in my view, been extensive. Enforcement and stop notices were served in 2015. When these proved ineffective, the Claimant secured a section 187B injunction prohibiting further development. Despite the coercive nature of that measure, this too proved ineffective and significant development continued on the Land. The injunction order was served again on the Land in 2019, to little effect. Finally further enforcement notices were served on the Land in 2021, again with no effect. Conventional enforcement measures, and a previous section 187B injunction have failed to halt the development of the Land.

49. With the exception of D1 and D2, I find that the breaches of planning control by all of the other Defendants have been flagrant for the following reasons.

(a) All of the Defendants moved onto the Land without seeking planning permission to station caravans on it, or to build permanent structures upon it.

(b) Only D1, D2, D3 and D4 have sought retrospective planning permission for their development of the site. No other Defendant has sought any form of planning permission. It is said by Mr Mackay and the Defendants that this is because the Claimant has refused determine further planning applications following its refusal to determine a planning application in 2017. This is a reference to the refusal by the Claimant to determine a planning application made on 19th July 2017, using its powers under section 70C of the TCPA 1990. Section 70C provides that a local planning authority may refuse to determine a planning application where an enforcement notice is in place. In this case an enforcement notice had been in place since 2nd October 2015 and has been upheld by the Planning Inspectorate in its decision on 1st June 2017. The Claimant was therefore entitled to exercise its discretion under section 70C to prevent further delay in the enforcement of planning control on the Land. In addition, the Claimant did exercise its discretion to determine other planning applications, including from D3 and D4 made on 29th August 2018. I conclude that the Claimant's refusal to determine planning applications using its discretion under section 70C TCPA does not provide any of the Defendants with an excuse to continue to occupy the Land without applying for planning permission. The Claimant could not have made its position much clearer. Development of the land is a breach of planning control and the remedy for this breach is for the Defendants to leave the land and to return it to its former state. I find that the occupation by D5-D23 of the Land without applying for planning permission is a flagrant breach of planning control. I also find that the occupation by D3 and D4 of the Land following their failed applications for retrospective planning permission is also a flagrant breach of planning control.

(c) The injunction order of 21st July 2017 prevented further development on the Land. D3, D13, D20 and D22 all say in their evidence that they occupied the Land prior to the imposition of this injunction. D21 and D23 say they moved onto the Land after the imposition of the injunction. I have concluded at paragraph 13 above that D3 and D13 had knowledge of the injunction in 2017. Both D3 and D13 say that they moved their partners and their children onto the site in 2020 at a time when they were aware of the injunction, and in breach of it. In addition, Mr Whittaker observed that the plot occupied by D13 and D14 had been developed further between his visits to the Land in February and September 2021. I therefore find that D3 and D13 knowingly breached

the terms of the 2017 injunction order. As the cases of *Brown* and *Gammell* make clear the Court should not be prepared to tolerate breaches of section 187B injunction orders with impunity and D3 and D13's knowing breach of the 2017 injunction order is a strong public interest factor in favour of the grant of relief against them. In relation to D20-D23, their occupation and development of the Land is in breach of the terms of the injunction. However, they say that they were not aware of the injunction order, and I find that there is insufficient evidence before me that they have knowingly breached its terms.

Previous planning decisions

50. As *Porter* makes clear previous planning decisions will be relevant. There have been three decisions by the Planning Inspectorate in relation to plots on the Land. These decisions are highly relevant to this application. They are recent decisions. In each decision the planning inspectorate found that the development caused considerable harm to the green belt and they had health and safety concerns about the development because of its location in a high risk flood zone. Each decision also took into account the personal circumstances of the appellants, the lack of availability of alternative sites, the hardship that dismissal of the appeal would cause to the appellant and the possibility of granting a temporary planning permission. The appeals led to different outcomes, and I heard extensive submissions from the parties as to their significance. It is therefore necessary to analyse each decision in more detail.

51. The appeals related to the following Defendants

Decision 1 – Plot 1 – Moses and Goliea Brazil (D2 and D1) appeal against enforcement notice – Decision date 1.6.17

Decision 2 – Plot 4 - Bill Webb (D3) – appeal against refusal of retrospective planning permission - Decision date 6.4.2020

Decision 3 – Plot 5 - Dean Marney (D4) – appeal against refusal of retrospective planning permission - Decision date 6.7.2021

Decision 1

52. Decision 1 in relation to plot 1 was an appeal by D1 and D2 against the enforcement notice on 2nd October 2015, which was partially allowed by planning inspector Andrew Hammond. He granted temporary planning permission for D1 and D2 for plot 1 for a period of 5 years expiring on 1.6.22. The reasoning for the decision is set out at paragraph 40 as follows:

"It is likely that expected changes to the planning circumstances that are likely to occur in the period of 5 years, with the adoption of the emerging plan and subsequent site allocation Development Plan Document will significantly alter the overall balance in this case. I conclude that the considerations in support of this appeal, as listed above, taken together clearly outweigh the harm that would result to the Green Belt by reason of inappropriate development and other harm so as to justify the grant of a temporary planning permission for part of the appeal site for the period of 5 years on the basis of very special circumstances."

53. Mr Hammond therefore found that the development did cause substantial harm to the Green Belt, although he concluded that the harm caused by plot 1 was less than the other plots because it was closest to the road. The considerations in support of the

appeal, referred to above, which outweighed the planning harm were: (a) the interests the Brazil's five children; and (b) Mrs Brazil's poor health. The anticipated change in the planning circumstances during the temporary planning permission of 5 years was that more sites would become available for occupation by Mr and Mrs Brazil. Conditions were applied to the temporary permission – first, that it was personal, and second that the site be vacated at the expiry of the permission. Mr Hammond also concluded there was no justification for development on any other part of the Land, although no other party appealed or put forward personal circumstances which might have overriden the harm caused by the development.

54. It is said by the Claimant that this decision supports the injunction application. They say: (a) the personal permission expired on 1st June 2022; (b) Mr Hammond concluded that the development harmed the Green Belt; and (c) at the time of the decision the site was only in flood zone 2 but later moved into flood zone 3, and this increased flood risk would lead to a different decision in 2022.

55. I do not agree with the Claimant's submissions. The plain reading of Mr Hammond's decision is that temporary planning permission was granted to D1 and D2 because their personal circumstances amounted to very special circumstances which outweighed the harm to the Green Belt and the risk of flooding. A temporary 5-year permission was granted because it was anticipated more sites would become available which would change the planning balance. However, more sites have not become available, and D1 and D2's personal circumstances are the same as they were 5 years ago. The Claimant says the planning balance has changed because the site is now in flood zone 3 and a different decision would now be made by the planning inspectorate. However, in his decision, Mr Hammond anticipated that the site would move from flood zone 2 to flood zone 3, yet he still granted a temporary planning permission, and he made no reference to the anticipated flood zone change altering the future planning balance. I conclude that there has not been a significant change of circumstances in D1 and D2's case since the planning inspectorate decision on 1st June 2017 and in my view the decision weighs heavily against the grant of an injunction against D1 and D2.

Decisions 2 and 3

56. Appeal 2 was refused. The planning inspector Deborah Board found that the development proposed by Mr Webb was inappropriate development causing harm to the Green Belt and that Mr Webb's development was further from the road and encroached more into the open green space than Mr and Mrs Brazil's development for which temporary planning permission had been granted. Ms Board noted that the development was in flood zone 3 and at high risk of flooding. Ms Board noted that Mr Webb had a daughter of school age who he was the sole carer for. Ms Board also noted that there were no alternative sites in Maidstone that Mr Webb and his daughter would be able to occupy. Despite this Ms Board concluded that Mr Webb's personal circumstances did not outweigh the planning harm to the green belt.

57. Appeal 3 was refused. The planning inspector, Mr Hendley, noted that Mr Marney had a partner, a daughter who was working and two sons of school age. The inspector noted the significant benefit there would be to the family of having a settled location which the proposed development would represent. However, Mr Hendley concluded that these personal circumstances were outweighed by the harm that the inappropriate development would do to the Green Belt and the fact that the development was in flood risk zone 3.

58. These decisions are criticised by the defendants. It is said: (a) the consideration of flood risk was flawed; (b) insufficient regard was had to the appellant's personal circumstances; and (c) that whilst some consideration was given to the evidence that there was a lack of available sites, the evidence of lack of supply was more compelling and should have been given greater weight, in particular when considering whether temporary planning permission should have been granted.

59. I have considered this criticism, but reject it. In relation to criticism (a), there was detailed consideration of flood risk in both appeals and the decisions took account of the Flood Risk Assessment provided by the appellants. The consideration of flood risk appears to me to be a planning consideration which, as paragraph 30 of *Porter* makes clear, is within the province of the local planning authorities and which this Court is not well placed to determine. In relation to (b), regard was had to the appellant's personal circumstances based upon the information supplied by the appellants and there is no evidence these circumstances were given insufficient consideration. In relation to (c), the Planning Inspectors did conclude that there was some evidence to indicate the evidence of supply of sites was dated but, more importantly, concluded that there were no alternative sites for the appellants to relocate to. The planning inspectors therefore took full account of the hardship which would be caused to the appellants and decided to refuse permanent planning permission and also considered and refused temporary planning permission. I conclude that the decisions of the planning inspectors in decisions 2 and 3 were not flawed and that significant weight should be given to their conclusions.

The likelihood of further breaches

60. In his first witness statement Mr Whittaker refers to pending applications to register land in respect of the purchase of 10 plots on the site. He says this shows there is likely to be further development of the land and that the breaches of planning control will become normalised and permanent. The Claimant says that there is therefore some urgency to the application for an injunction to prevent yet further breaches on the site. It is said by the Defendants that a refusal to grant relief is not the same as granting permission to breach planning controls. This is true, but I agree with the Claimant's submissions on the likelihood of further breaches, and I conclude that a refusal of relief will make it more likely that there will be further breaches of planning control on the Land.

The Claimant's decision to apply for an injunction – relevant considerations.

61. The Claimant prepared a report dated 7th December 2021 (exhibit NJW/59) recommending that injunction proceedings be brought and set out what the Claimant considered to be the relevant considerations for the decision makers. The Claimant accepted the recommendation and applied for this injunction.

62. As noted by Lord Bingham at paragraph 31 of *Porter*, when making an application for a section 187B injunction the extent to which the Claimant has considered the personal circumstances of the Defendants and the hardship that an injunction will cause will be important considerations for the Court. If the Claimant has carefully considered the personal circumstances of the Defendants and has none the less resolved to seek relief, this will ordinarily weigh heavily with the Court because the Court must accord respect to the balance which the local planning authority has struck between public and private interests. If the Claimant's consideration of these issues has been cursory, and they

weigh against relief then the Court will be readier to refuse relief. The importance of this report is such that I will refer to its content in detail.

Planning history

63. Paragraph 4 of the report sets out the planning history of the site. This history is accurately recounted, save for one significant error at paragraph 4.2 which states:

> "4.2. …..The temporary 5 year permission granted by way of this appeal for plot 1 at the front of the site expired on 1st June 2021. This now means that none of the development at the site benefits from planning permission."

The temporary planning permission for Plot 1 occupied by the first and second defendants did not expire until 1st June 2022. The decision to apply for an injunction for plot 1 on the basis that it was in breach of planning control was wrong and the injunction application was made whilst D1 and D2 still had planning permission. This flaw undermines at a fundamental level the claimant's decision to apply for an injunction in relation to D1 and D2, but not in relation to the other defendants.

Previous planning decisions

64. Paragraph 5 of the report refers to the previous decisions of the planning inspectorate on 6th April 2020 and 6th July 2021 in relation to the sites occupied by the D3 and D4. The report annexes these decisions which include the detail of the personal circumstances as disclosed by D3 and D4 at the time of their appeal.

65. The report does not refer to the planning inspectorate decision of 1st June 2017 in relation to D1 and D2 and does not refer to their personal circumstances anywhere in the report. Again, these are omissions which undermine the Claimant's decision to apply for an injunction in relation to D1 and D2.

Availability of sites

66. Paragraphs 5.6-5.14 of the report also refer to the supply of sites in the area. The report acknowledges that it is an open question whether the council has underestimated the need for sites in its needs assessment document, the GTAA. However, the claimant does fully acknowledge the hardship an injunction will cause the Defendants. At paragraph 7.23 of the report the Claimant acknowledges that the most likely consequence for those evicted is they will have to live by the roadside and at 7.29 the report acknowledges there are no alternative sites available.

Personal circumstances

67. The report refers to the personal circumstances of the Defendant. The Claimant's consideration of the Defendants personal circumstances is criticised. First, the Defendants say that the Claimants have not secured enough information about those personal circumstances to make an informed decision; and second, that the Claimant gave inadequate consideration to the personal circumstances of the Defendants. The Claimant says that adequate information was secured: first, by conducting the site visits in 2021 and obtaining personal information from those occupants who would talk to the inspectors; and, second, by referring to D3 and D4's personal information in the planning appeal decisions of 6th April 2020 and 6th July 2021. The Claimant says it gave adequate consideration to the personal circumstances of the Defendants.

68. The report gives the following consideration to the personal circumstances of the Defendants. Paragraph 7.13 and 7.14 of the report states:

> "7.13 The Council must also consider the personal circumstances of the Owners and Occupiers and the best interests of the Owners and Occupiers children when considering proportionality. The Owners and Occupiers personal circumstances and best interests of the children may be sufficient to make the proposed action disproportionate.
>
> 7.14 In this case not all of the personal circumstances of all of the occupants are known, indeed there appear to be new occupants of the site since a visit in February 2021 and information from the land registry set out above may indicate that further plots within the site may be occupied shortly. By way of the reasoned decision made the Planning Inspectors in the case of the two recent appeal decisions, this gives a good indication that whilst not all is known at this stage the personal circumstances of the occupiers of the site in relation to possible, health, educational and or wellbeing are unlikely to be such that they would outweigh the considerable planning related harm caused by their continued occupation of the site. With no indication that any of the occupants intend to leave the site despite the planning appeals and existing enforcement notices on the land, an Injunction in this instance which will force them to leave, is considered to be an appropriate and proportionate response."

69. In referring to the interests of the children, paragraphs 7.20-7.21 state:

"7.20 It is known that there are children on plots 4 and 5 and the impact upon their best interests were considered by each Inspector with each decision. There are also children on plots 8 & 9, however their particular circumstances are currently unknown. A child previously with the family on plot 7 is no longer there as the plot is now vacant. There may also be children residing on other plots which we are not aware of. Some of the possible outcomes in respect of the best interests of any children residing on site are considered below:-

> Stay living on the Site: - Staying on the Site is considered to be the best outcome as it will maintain the Children's current way of life and will cause the least amount of disruption.
>
> Live on the roadside: - Living on the roadside is not considered to be a particularly safe or secure environment for a child. There would be little access to safe recreational areas and it would potentially have a negative impact on the continuity of the Children's' education
>
> Live in bricks and mortar accommodation: - Living in bricks and mortar would not preserve the Children's' traditional way of life or links with extended family. There is no guarantee that a house would be available as housing options are dealt with on a priority basis.

> Live in care: - Living in care is not a desirable outcome for any child and this is considered to be the worst outcome.
>
> 7.21 Some of the children on site are of school age and likely attending local schools and so seeking removal of the occupants of the site may have an impact on their schooling and or medical needs if attending a local doctors. Both of these circumstances were considered by the Inspectors in dismissing both appeals on the site as set out above and as such this is a good indication that if the remaining children on site had similar health and educational needs, they would not be enough, either individually or cumulatively with all the other matters to be considered, to outweigh the considerable planning and environmental harm caused by the occupants remaining on site."

70. I agree with the Defendants that the Claimant did not have comprehensive information about the personal circumstances of the Defendants when it wrote its report recommending this injunction application. For example, the report does not refer to the depression suffered by D20, or the psychological difficulties experienced by D21 and D23's adult son. I therefore agree that not all of the personal circumstances of the Defendants were taken into account when deciding to apply for the injunction. However, with the exception of D1 and D2, I conclude that the Claimant has given adequate consideration to the personal circumstances of the Defendants, for the following reasons:

    (a) The Claimant had made reasonable efforts to secure information to conduct a meaningful welfare assessment and to assess the hardship an injunction would cause. It had conducted two site visits in 2021 and had attempted to ask questions of the occupants of each and every occupied plot. I do not have evidence as to whether these questions were focussed on the issue of the Defendants' welfare, but the questions asked did secure a significant quantity of relevant information about the personal circumstances of the Defendants. In addition, the Claimant did consider the personal information supplied by those Defendants who had made planning applications.

    (b) The Claimant did consider the interests of the children of D3, D4 and D13 when considering the hardship the injunction would cause. The impact on the children was the issue which was most likely to outweigh planning harm. The Claimant also considered the obvious hardship that would be caused to the Defendants if they were forced to move from this settled site onto the roadside. I do not consider that any other personal circumstances of the Defendants which were not taken into account by the Claimant would have materially altered the planning balance in this case. In reaching this conclusion I note that Policy E of the PPTS provides that only the best interests of the child are likely to outweigh the planning harm of inappropriate development in the Green Belt.

71. In relation to D1 and D2, I find that the Claimant neglected to give adequate consideration to their personal circumstances.

Equality Act 2010

72. Particular criticism is made of the lack of consideration by the Claimant of its PSED. The report states:

> "7.22 S.149 of the Equality Act 2010 provides that a public authority must, in the exercise of its functions, have due regard

> to the need to eliminate discrimination harassment victimisation against gypsies or travellers, advance equality of opportunity and foster good relations. This means having due regard, in particular, to the need to remove or minimise disadvantages, take steps to meet the needs of and encouraging them to participate in public life or in any other activity in which their participation by such persons is disproportionately low. Should the injunction proceedings be continued what adverse impacts would there be? Their traditional way of life leads gypsies and travellers to frequently come into conflict with other persons. Each time they camp, without permission, the relationship with the local community is strained. In this context the welfare needs of the occupants and their wish to maintain their traditional way of life and their aversion to bricks and mortar need to be considered. There is benefit in avoiding unauthorised encampments."

73. Both Mr Green and Mr Bell said that the Claimant has failed to comply with its duties both procedurally and substantively. Both referred me to the cases of *Bracking v Secretary of State for Work and Pensions [2013] EWCA Civ 1345* and *Bromley LBC v Persons Unknown [2020] EWCA Civ 12.*

74. The first procedural criticism is the lack of an equality impact assessment. I was referred to *Bromley* where it was said at [52] that and EIA will be good practice and evidence of a proportionate approach. However, as Coulson LJ also noted at [52] of Bromley, it is the substance of the EIA undertaken and not its form which matters. In this case, it is necessary to look at the whole of the report and not just at paragraph 7.22, when considering compliance with the PSED. I conclude that taken as a whole the report provides good evidence that the Claimant has fully considered whether applying for an injunction would be a proportionate approach. The second procedural criticism is that the Claimant has placed too much reliance on the planning inspectorate report when reaching its conclusions and has delegated its PSED. I cannot agree with this submission. The Claimant has taken into account the personal circumstances of the Defendants when deciding to apply for this injunction and it has not delegated its consideration of these issues to the planning inspectorate.

75. The substantive criticism is that the Claimant has failed to consider the disabilities of the Defendants and has not therefore considered all of the protected characteristics at stake. This is correct. However, as noted at paragraph 70 above, I have found that the Claimant has given adequate consideration to the Defendants' personal circumstances. I conclude that there has been no substantive failure by the Claimant to comply with its PSED. If that is wrong, I conclude that any failure by the Claimant to comply with its PSED would not alter the conclusion that the Claimant reached on the overall planning balance and the proportionality of applying for this injunction.

<u>Proportionality and the balancing exercise</u>

76. In the section headed proportionality, the report reaches its conclusions on the balance between planning harm and the personal circumstances of the defendants as follows:

> "7.23 It is considered that the most likely consequence of the Owners and Occupiers being evicted is them living on the

> roadside. It must be considered therefore whether it would be more appropriate to wait until a supply of sites is available before evicting the Owners and Occupiers so as to avoid them having to live on the roadside
>
> …
>
> 7.26 This matter has been continuing for many years and has involved the refusal of a number of planning applications, the issuing of Enforcement Notices and Stop Notice, and an Injunction. Officers have regularly visited the Site and made it clear that the occupants are residing there unlawfully.
>
> 7.27 Officers therefore consider this to be a prolonged and flagrant breach of planning control where conventional measures to secure compliance have failed over a long period. The occupants have been aware that they have been residing there illegally since 20??, and no evidence has been presented to the Council that effort has been made to secure alternative accommodation or to seek to regularise the matter during this time.
>
> 7.29 The Council is currently able to demonstrate a five-year supply of deliverable sites but is unable to identify any alternative sites to which the occupants would be able to relocate were a court to order that they cease occupation of the Site. The hardship of requiring families with children to move off the Site must be afforded significant weight as must be the medical and welfare needs of all occupants against the importance of upholding planning legislation and protecting the environment.
>
> 7.30 Therefore taking all of the particular circumstances of this case into account and with no indication that any of the occupants intend to leave the site despite the planning appeals and existing enforcement notices on the land, an Injunction in this instance which will force them to leave, is considered to be an appropriate and proportionate response."

77. In relation to D3-D23, I am satisfied that the Claimant has adequately considered their personal circumstances and that the consideration given by the Claimant to the issue of proportionality before applying for this injunction does weigh heavily in favour of granting relief.

78. In relation to D1 and D2 I find that the Claimant did not give adequate consideration to their cases before applying for this injunction, for the following reasons:

(a) It erroneously concluded that their temporary planning permission had expired, and their occupation of the site was in breach of planning control;

(b) It gave no consideration to the personal circumstances of D1 and D2; and,

(c) It gave no consideration to the fact that D1 and D2's occupation of the site involved less significant breaches of planning control than the breaches by D3-D23.

Conclusion

79. I remind myself that, whilst respect is to be accorded to the views of the Claimant where they have adequately considered the balance between public and private interests in deciding to apply for an injunction, the decision as to whether to grant a section 187B injunction is at the discretion of the Court.

Defendants 3 to 23

80. In relation to each of D3-D23, the injunction order in the terms sought by the Claimant is granted for the following reasons:

(a) The Defendants have conducted significant development of Land in the Green Belt, to the extent that they have entirely transformed it. This is a serious and significant breach of planning control.

(b) There have been extensive attempts by the Claimant to address this serious breach of planning control by enforcement action, including by a previous s187B TCPA injunction. These attempts have all failed. The number of pending land registry applications is evidence that there will be further breaches of planning control. In my view, without this injunction, future enforcement attempts will continue to fail.

(c) The breaches of planning control by D3-D23 have been flagrant. In the case of D3 and D13 the breaches have been particularly flagrant as they have knowingly breached the terms of the July 2017 injunction order.

(d) The grant of an injunction will cause the Defendants hardship. However, this hardship is outweighed by the degree of planning harm, the flagrancy of the breaches of planning control by the Defendants and the failure of other methods of enforcement over many years.

81. In reaching this conclusion I am fortified by the following:

(a) Two previous decisions of the planning inspectorate have found that the personal circumstances of D3 and D4, who both have children, do not outweigh the public interest in planning control.

(b) The Claimant has given adequate consideration of the personal circumstances of D3-D23 before applying for this injunction.

82. In reaching this conclusion, I have considered the submissions of Mr Bell and Mr Green on behalf of the Defendants. In addition to the submissions referred to throughout the judgment I was also referred to:

(a) the decision in *Brentwood Borough Council v Ball and Others [2009] EWHC 244 QB* to refuse an injunction and which is said to be based on similar facts to this case; and

(b) the decisions in *Porter* which, it is said, provide authority for the proposition that there is no special treatment for unauthorised traveller sites on the Green Belt and where injunctions were overturned because judges at first instance had failed to give sufficient regard to the personal circumstances of the occupiers.

83. In relation to the points made about *Brentwood v Ball* at 82(a), I note the comments in Porter [at 29] that the exercise of discretion is a fact specific judgment and that no single test can be prescribed to distinguish cases in which the discretion should be exercised in favour of granting the injunction from those in which it should not. In addition, whilst there are similarities between this case and *Ball*, there are significant differences. In my view, the most notable differences between the two cases are: (a) the degree of the breach of planning control is greater in this case; (b) the enforcement efforts by the Claimant in this case have included a previous section 187B injunction; and (c) the breaches of planning control in this case have included the knowing breach of the terms of the previous section 187B injunction. The decision in the case of *Brentwood v Ball* does not therefore change my view that an injunction against D3-D23 is just and proportionate.

84. I cannot agree with the submissions made about the facts of *Porter* for the following reasons:

(a) It is correct to say that the Court of Appeal did overturn three section 187B injunctions, two of which related to development in the Green Belt. However, it seems to me to that the submission at paragraph 10 of D20-D23's skeleton argument that judges at first instance failed to have proper regard to the personal circumstances of the occupiers, misses some of the Court of Appeal's essential reasoning. In *Porter*, the judge at first instance considered that questions of hardship were entirely foreclosed; in *Searle,* the judge had, in focussing on the lawfulness of the Claimant's application, taken too restrictive a view of the exercise of the discretion he was called upon to exercise; and in *Berry* the Court of Appeal concluded that the judge had erred in regarding the *Chapman* case as effectively determinative of the application before him. The flaws in the reasoning behind the grant of the three injunctions in *Porter and others* were therefore more specific than merely giving insufficient weight to the interests of the occupier, where the judges, self-evidently, did not have the benefit of the guidance of the House of Lords in *Porter*. In this case, the Court has sought to carefully follow the guidance of *Porter* in conducting the balancing exercise between the competing interests in this case.

(b) In addition to the three injunctions the Court of Appeal overturned in *Porter and others,* it upheld one injunction in the case of *Hertsmere v Harty and Others*. In that case the judge granting the injunction carefully scrutinised the Claimant's decision to apply for an injunction, and gave consideration to the personal circumstances of the Defendants. Brown LJ's comments in that case [at 57] are of relevance:

> "57. My views on this fourth appeal have, I confess, shifted more than once during the course of the hearing. At various stages I was inclined to accept Mr Drabble's criticisms of the all-important officer's report and of the council's decision in reliance upon it not merely to refuse planning permission but immediately to apply for an injunction. The critical question, however, is whether in the end the judge when granting injunctive relief deferred excessively to the local authority's own views as to how the balance between the competing interests fell to be struck. Looking at that question as a matter of substance rather than form I am not ultimately persuaded that he did. Rather, I have reached the conclusion that he recognised the true width of his discretion and exercised his

> own independent judgment in deciding that the time had finally come to bring the unlawful use of this site to an end. That was, I have to say, an entirely understandable judgment given the quite remarkable planning history of this site."

In this case, I have, following the guidance of Brown LJ [at 39] and Lord Bingham [at 31], accorded respect to the views of the Claimant on the balance to be struck between the competing interests in this case. However, I have formed my own independent view, that in this case, the personal hardship of D3-D23 is outweighed by the planning merits of the grant of an injunction.

Therefore, the submissions on the impact of the decision in *Porter and others* does not change my view that an injunction against D3-D23 is just and proportionate.

85. I have also carefully considered whether I should refuse relief on the basis that more sites are likely to become available in the next two years and that the planning harm to the Land may be brought to an end with less hardship being caused to the Defendants. I have considered the Defendant's submission that, for this reason, the Claimant may grant temporary planning permission to the occupants of the Land.

86. There is some evidence that the Claimant has previously underestimated the need for further sites for occupation by travellers and is now seeking to put that right by a further assessment of need which has provisionally estimated that there are many more sites needed for occupation. This is a matter of concern to the Court. However, I am not in a position to form a judgment as to whether the Claimant's acknowledgement that more traveller sites now need to be provided represents a previous failure of planning policy on its part. First, the evidence before me on this point is not comprehensive, and points in different directions; for example, the Claimant changed its planning policy in 2018 and has granted planning permission for traveller sites in non-Green Belt land with far greater frequency than it did before 2018. Second, this Court is not well placed to make a judgment, based on conflicting evidence, as to whether the Claimant has breached its planning policy by failing to provide sufficient traveller sites in its area.

87. In this case, I am satisfied that the Claimant is unlikely to grant planning permission of any sort for any plot on this Land for the following reasons: (a) the previous planning history of the site; (b) the decisions of the planning inspectorate on 6th April 2020 and 6th July 2021; and (c) the consideration given by the Claimant in its report on the injunction application. I conclude that because of the degree of planning harm, the flagrancy of the breaches of planning control over many years, and the likelihood of further breaches, this injunction must be granted against D3-D23 now.

88. Finally, I have regard to the comments made by Lord Bingham in Porter [at 32]. This is an order with which the Defendants must comply and if it is not followed, further orders to secure compliance, including imprisonment, may well follow.

<u>Defendants 1 and 2</u>

89. In relation to D1 and D2 the application for an injunction is refused for the following reasons.

(a) Temporary planning permission was granted to D1 and D2 by the Planning Inspectorate because their personal circumstances outweighed planning harm. The permission was granted on the basis that further sites would become available in the period of the permission which would change the planning balance in favour of refusal

of planning permission. However, further sites have not become available, and the planning balance has not therefore changed.

(b) D1 and D2 have had the benefit of temporary planning permission between 2017 and 2022 and they have not breached planning control with the same degree of flagrancy as D3 - D23.

(c) In making its decision to apply for this injunction against D1 and D2, the Claimant failed to give adequate consideration to the circumstances of their case, including their personal circumstances.