

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

**Claim No: KB-2023-004501**

**IN THE MATTER OF PROCEEDINGS**

**B E T W E E N:-**

**WEST BERKSHIRE DISTRICT COUNCIL**

**Claimant**

**And**

**(1) MR THOMAS STOKES**  
**(2) PCS HOMEBUILD LTD**  
**(3) MR PAUL CHRISTOPHER SMITH**  
**(4) PERSONS UNKNOWN**

**Defendants**

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**SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT  
IN SUPPORT OF AN APPLICATION FOR AN INTERIM  
INJUNCTION**

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*References are to Witness Statement paragraphs [WS/X] and Authorities Bundle pages  
[AB/X]*

**Essential Reading:**

1. Application Notice
2. Draft Order
3. Witness Statement of Neill Whittaker

## INTRODUCTION

1. West Berkshire District Council (“the Claimant”) seeks an interim injunction in relation to the land known as “Ermin Street Stables, Ermin Street, Lambourn Woodlands, Hungerford, RG17 7BL” registered under title number BK143882 and shown edged in red on the plan attached to the draft Order (“the Land”).
2. The Claimant is the Local Planning Authority within the meaning of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) for an area including the Land.
3. The First Defendant has an interest in the Land. The Second Defendant is the registered owner of the Land and the Third Defendant is director of the Second Defendant.

### Persons Unknown

4. The Fourth Defendant identified only as “Persons Unknown” refers to those persons who are not named Defendants to this Claim who have an interest in the land or in undertaking works to the Land or intending to undertake works to the Land or entering onto the Land intending to occupy the land in breach of planning control. The Claimant relies upon paragraph 2 of the Practice Direction Part 8A and s.187B (3) of the 1990 Act in support of seeking an Order against “Persons Unknown”.
5. With regard to “Persons Unknown”, guidance was given in *London Borough of Bromley v Persons Unknown* [2020] P.T.S.R.1043 [AB 93] (called “safeguards” in *London Borough of Barking and Dagenham v Persons Unknown* [2022] EWCA Civ 13 at [108]):

29. The law in relation to injunctions against persons unknown has been recently considered by this court in *Joseph Boyd and another v Ineos Upstream Ltd and 9 others* [2019] EWCA Civ 515 . That was a case involving protesters concerned about the fracking process. Having said at [32] that it was not easy to formulate the broad principles on which an injunction against unknown persons can properly be granted, Longmore LJ "tentatively" framed the requirements at [34] in the following way:

"1) there must be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief;

2) it is impossible to name the persons who are likely to commit the tort unless restrained;

3) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order;

4) the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct;

5) the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and

6) the injunction should have clear geographical and temporal limits."

30. Those requirements comprise an elegant synthesis of a number of earlier statements of principle, which makes it now unnecessary to refer to other authorities. I respectfully endorse them.

6. It is submitted by the Council that the requirements are met as follows:
- (i) there is more than a sufficiently real and imminent risk as evidence shows that works have already been undertaken and there is poor conduct by the First Defendant in relation to unregularized works on another site and occupants from another site must leave by the end of November;
  - (ii) it is impossible to name the persons as (a) it is not known those undertaking works and (b) it is not known who future potential occupants may be;
  - (iii) it is possible to give effective notice by virtue of the Alternative Service provision;

- (iv) the terms of the injunction correspond to breaches that have taken place and those that are feared will take place if not restrained;
  - (v) the terms of the injunction order are clear and precise – furthermore, the terms simply tell those potentially affected not to do that which they are not allowed to do without express planning permission;
  - (vi) the injunction has clear geographical limits as outlined on the plan attached to it and has temporal limits in terms of the Return Date.
7. The Claimant is of the view that whilst actual breaches of planning control have not taken place, there is a real risk and it apprehends further operational development and material change of uses taking place in breach of planning control.

#### Service

8. For the reasons set out at WS 51-52 this application is made without notice.

### **THE POWER TO GRANT AN INJUNCTION**

9. Section 187B [**AB 2**] of the Town and Country Planning Act 1990 (as amended) ('the 1990 Act') 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.*
- (3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.*
- (4) In this section "the court" means the High Court or the county court.”*

10. The leading authority on the exercise of the Court's discretion to grant injunctions pursuant to section 187B of the 1990 Act is the decision of the House of Lords in the combined appeals known as *South Bucks District Council v. Porter* [2003] UKHL 558; [2003] 2 AC 558 [AB 8-51 [20]] approving the judgment of the Court of Appeal [2001] EWCA Civ 1549; [2002] 1 WLR 1359.
11. The decision of the House of Lords also confirms that the Court has an original jurisdiction in respect of its exercise of discretion to grant an injunction pursuant to section 187B of the 1990 Act [27].
12. In *Davis v Tonbridge & Malling Borough Council* [2004] EWCA Civ 194 [AB 52], the Court of Appeal summarised the conclusion of the House of Lords in *South Bucks District Council v Porter* as follows [34]:
  - 1) Section 187B confers on the courts an original and discretionary, not a supervisory, jurisdiction, so that a defendant seeking to resist injunctive relief is not restricted to judicial review grounds;
  - 2) it is questionable whether Article 8 adds anything to the existing equitable duty of a court in the exercise of its discretion under section 187B;
  - 3) the jurisdiction is to be exercised with due regard to the purpose for which was conferred, namely to restrain breaches of planning control, and flagrant and prolonged defiance by a defendant of the relevant planning controls and procedures may weigh heavily in favour of injunctive relief;
  - 4) however, it is inherent in the injunctive remedy that its grant depends on a court's judgment of all the circumstances of the case;

5) although a court would not examine matters of planning policy and judgment, since those lay within the exclusive purview of the responsible local planning authority, it will consider whether, and the extent to which, the local planning authority has taken account of the personal circumstances of the defendant and any hardship that injunctive relief might cause, and it is not obliged to grant relief simply because a planning authority considered it necessary or expedient to restrain a planning breach;

6) having had regard to all the circumstances of the case, the court will only grant an injunction where it is just and proportionate to do so, taking account, inter alia, of the rights of the person or persons against whom injunctive relief is sought, and of whether it is relief with which that person or persons can and reasonably ought to comply.

13. The well-known principles laid down by the House of Lords in *American Cyanamid Co. v. Ethicon Limited* [1975] AC 396 [AB 78] apply to the Court's exercise of discretion (see 406F, 407G, 408F).
14. It is to be noted that each of the appeals in *Porter* concerned cases where the Local Planning Authority were seeking mandatory injunction orders to remove persons who had taken up occupation of their land in breach of planning control. This application does not seek any mandatory steps. This application for an interim injunction seeks only to preserve the status quo at this point.

## **BREACHES OF PLANNING CONTROL**

15. The evidence available to date clearly demonstrates that, short of breaches of planning control, there have been works undertaken including significant clearance of the Land which facilitates the bringing on to the Land of caravans for residential use [WS/29]. Furthermore, Mr Whittaker states that it is unlikely that planning permission would be granted if a planning application was made [WS/45].

## **THE NEED FOR AN INJUNCTION**

16. At WS para 53, Mr Whittaker sets out why other enforcement options are not appropriate in this case. Firstly, an Enforcement Notice cannot attack an anticipated breach of planning control of which further breaches are expected. Secondly, the process is lengthy. Thirdly, the ultimate sanction for breaching an enforcement notice or a stop notice is criminal proceedings but the penalty is a fine. By the time the Council waits for further breaches to take place, even more harm will have been caused. Furthermore, if residential occupation is the goal of those doing the works, it can be taken up very quickly and once occupants are on site it is a very lengthy process to remove them.
17. Applying the approach in *American Cyanamid* the Claimant submits that:
- i. There is a compelling case that works which have taken place will lead to breaches of planning control and that previous conduct of the First Defendant demonstrates that it will not cease unless restrained by Court order. In other words, there is a serious question to be tried; and

- ii. The Local Planning Authority cannot adequately be compensated in damages for a breach of planning control.
18. In the premises, the balance of convenience lies in preserving the lawful use of the land and enforcing proper planning control in the public interest.

### **CONCLUSIONS**

19. In the circumstances of the present case, the Claimant submits that an injunction in the terms sought will not involve an interference with the Defendants' Human Rights or, alternatively, any such interference is necessary and proportionate having regard to all the circumstances known to the Claimant at present and the public interest in protecting the environs.
20. In the premises, the Claimant submits that it is appropriate for an injunction to be granted in the terms of the draft Order.
21. The Claimant also seeks an Order for alternative service of any injunction order granted to ensure the earliest possible compliance with proper planning control. In the circumstances, the Court can be satisfied that service by way of the alternative method proposed will come to the attention of the Defendants and will assist in preserving the lawful use of the Land.
22. The Claimant is willing to give the undertakings listed in the draft Order. There is no undertaking as to damages. From *Kirklees MBC v Wickes Building Supplies Ltd* [1993] A.C. 227 [**AB 175**] [D], the court may exercise its discretion not to require such an undertaking, taking into account the circumstances of the case and that the claimant is a local authority with the



function of enforcing the law in its district in the public interest. This has more recently been considered in the context of s.187B in the cases of *Basingstoke & Deane BC v Loveridge* [2018] EWHC 2228 (QB) [**AB 186**][**16**] and *South Downs National Park Authority v Daroubaix* [2018] EWHC 1903 (QB) [**AB 190**] [**16**].

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28<sup>th</sup> November 2023