

Woodville Road- Unlawful encampment

31 July 2020- 5 August 2020

Legal report

Outline:

On afternoon of 31 July 2020, Legal were informed that an unlawful encampment had pitched at Woodville Road green open space and play area. This is an area that is covered by the Civil Injunction, granted by HHJ McKenna sitting at the High court in Birmingham on 3 April 2018 . The existing injunction will be discussed later on in this report.

Ian Dunn, duty ASB officer was advised to serve both a copy of the Civil Injunction and also a s.77 Criminal Justice Public Order Act (CJPOA) 1994, direction to leave land. This was undertaken at 1510hours on 31 July 2020 with police in attendance. The later noting the registration of various caravans and vehicle, however, the issue being that a number of vehicles were Irish registered and as such access to vehicle owner details is limited.

Why serve the injunction and s.77 CJPOA?

The existing Civil Injunction prohibits persons from parking any caravan/mobile or depositing waste in one of twelve locations which is owned and maintained by Boston Borough Council. Condition 2 of the order states that if they become aware of the notice to move immediately. The enforceability of this order, made in 2018, is now very questionable due to a number of recent authorities in the High Court.

A direction to vacate land under section 77 Criminal Justice and Public Order Act (herein CJPOA) 1994 can be served on a person:

- If they are residing in a vehicle
- Within the authority's are, and
- The land forms part of a highway, or
- They are on any unoccupied land
- Or on land without the consent of the occupier, read owner

If a person served with a direction fails to vacate the land mentioned within the direction, they commit a summary only offence, punishable by way of a £1,000.00 fine. However, having been served with a s.77 direction to leave land and fail to do, means that an order under s.78 CJPOA can be sought from the Magistrates' Court.

Further, a person served with a direction who leaves land mentioned within a direction and returns within 3 months of service of the direction commits an offence that is punishable in the Magistrates' Court with a maximum £1,000.00 fine.

Experience has shown during the current pandemic that Civil applications within the County Court are taking longer, due to the fact that Lincoln County Court was closed until recently and all applications being made to Nottingham County Court. In addition, the County Court route for possession of land is questionable, due to the stay on possession proceedings to prevent persons being evicted during COVID19 pandemic. Such applications can of course be made should there be associated Crime and ASB at the locations, as there was here.

The main point would be the costs and the speed of getting the matter before an open Court in the local area. In order to protect the land from potential future incursions you would need to make an application for injunction £308.00 and an application for a writ of possession, £255.00 (total £563.00). That is before any legal costs are incurred in draft an application, particulars of claim and collating evidence, the process in the County Court is more paper heavy than within the Magistrates' Court.

Upon such an application being granted there would be the need to instruct bailiffs to deal with moving the encampment on, as yet, an unknown amount as the camps usually break way before we get to the enforcement stage.

The section 77 direction in this case was served on 31 July at 1510, allowing for the weekend, time to move. On Monday 3 August none of the vehicle had moved and a request for hearing was submitted to the Magistrates' Court at Lincoln. The same afternoon the listing office confirmed that a hearing could take place on 6 August 2020 before the District Judge. The application fee for this is £226.00.

Papers were prepared, section 78 notice drafted, statement and evidence collated and served on the travellers on the afternoon of 3 August 2020, there is a legal requirement, allowing the encampment 24 hours notice of the hearing. Upon service of the summons and evidence bundle Ian Dunn was threatened with physical violence by some males within the camp, although there was three police officers present.

From the report of the encampment, to the listing date for the section 78 application, it was 4 working days.

The application would have been successful and the order granted as drafted. However, prior to the order being sought, the encampment broke up and left on the evening of 5 August 2020.

In the current COVID19 pandemic, with the limited hearings at both County and Magistrates' Court, the quicker and more costs effective approach is under s.77 & 78 CJPOA. The costs incurred on this occasion was a total of £473.69 (legal costs £247.69 and

application fee £226.00), so in conclusion s.77 & 78 approach provides a speedy and cost effective approach to unlawful traveller encampment in the current COVID19 pandemic.

The 2018 Injunction:

The injunction was obtained in April 2018, at the time there was a number of Local Authorities seeking such orders, the Judiciary was on board and applications were granted with little assistance.

However, in 2019 Bromley London Borough Council sought an order a without notice order against "Persons Unknown" prohibiting unlawful encampments, at all green open spaces owned and maintained by the Council and also all car parking areas. This amounted to a Borough wide ban on travellers with no transit sites within their area. A partial order was granted in order to cover the entering of land for the purposes of depositing waste, but not for the stopping or setting up camp at the site mentioned in the application.

This case was appealed to the Court of Appeal (Civil Division) and within the lengthy Judgment ***The Mayor and Burgesses of the London Borough of Bromley v Unknown Person [202] EWCA Civ 12***, attached for ease of reference, the Court provided guidance as to future applications, this can be summarised as follows (found at para 99-109 in full):

- There is an inescapable tension between the article 8 rights of the Gypsy and Traveller community, and the common law of trespass. The obvious solution is the provision of more designated transit sites for the Gypsy and Traveller community..... The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.
- There is no hint in the guidance that it is or could be a satisfactory solution to seek a wide injunction of the sort in issue in this case: indeed, on one view, much of that guidance would be irrelevant if the answer was a borough wide prohibition on entry or encampment.
- Local authorities must regularly engage with the Gypsy and Traveller community Through a process of dialogue and communication, and following the copious guidance set out above, it should be possible for the need for this kind of injunction to be avoided altogether. '**Negotiated stopping**' is just one of many ways referred to in the English caselaw in which this might be achieved.
- If a local authority considers that a (without notice/unknown person) injunction may be the only way forward, then it will still be of the utmost importance to seek to engage with the Gypsy and Traveller community before seeking any such

order Welfare assessments should be carried out, particularly in relation to children. An up-to-date EIA will always be important because the impact on the Gypsy and Traveller community will vary from borough to borough and area to area. In my view, **if the appropriate communications, and assessments (like the EIA) are not properly demonstrated, then the local authority may expect to find its application refused.**

The guidance from the Court of Appeal was that borough wide injunctions are inherently problematic. They give the Gypsy and Traveller community no room for manoeuvre.

The same is true of the duration of the injunction. Again, in the *Wolverhampton* case, the injunction was limited to a period of one year after which there was a review. That again seems to me to be sensible. I consider that it is - without more - potentially fatal to any application for a local authority to seek a combination of a borough wide injunction and a duration of a period as long as five years.

Credible evidence of criminal conduct in the past, and/or of likely risks to health and safety, are important if a local authority wishes to obtain a wide injunction. In my view, the injunctions in the *Harlow* cases were explicable on the grounds of criminality and the grave risks to health and safety. Injunctions which are designed to prevent entry and encampment only, and without evidence of such matters, should be correspondingly more difficult to obtain.

Lord Justice Coulson concluded:

"Whilst I do not accept the written submissions produced on behalf of the third intervener, to the general effect that this kind of injunction should never be granted, the following summary of the points noted above may be a useful guide:

- a) When injunction orders are sought against the Gypsy and Traveller community, the evidence should include what other suitable and secure alternative housing or transit sites are reasonably available. This is necessary if the nomadic lifestyle of the Gypsy and Traveller community is to have effective protection under article 8 and the Equality Act.
- b) If there is no alternative or transit site, no proposal for such a site, and no support for the provision of such a site, then that may weigh significantly against the proportionality of any injunction order.
- c) The submission that the Gypsy and Traveller community can "go elsewhere" or occupy private land is not a sufficient response, particularly when an injunction is imposed in circumstances where multiple nearby authorities are taking similar action.

d) There should be a proper engagement with the Gypsy and Traveller community and an assessment of the impact of an injunction might have, taking into account their specific needs, vulnerabilities and different lifestyle. To this end, the carrying out of a substantive EIA, so far as the needs of the affected community can be identified, should be considered good practice, as is the carrying out of welfare assessments of individual members of the community (especially children) prior to the initiation of any enforcement action.

e) Special consideration is to be given to the timing and manner of approaches to dealing with any unlawful settlement and as regards the arrangements for alternative pitches or housing.

109. Finally, it must be recognised that the cases referred to above make plain that the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act, and in future should only be sought when, having taken all the steps noted above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise.

An injunction for prohibition of travellers needs to cover:

1. What alternative transit arrangements are in place within the borough
2. Be specific to the threats
3. Show engagement with the traveller community
4. Be widely published in order that an unknown person could find out about the application
5. Not to cover the whole of a borough or district thus not providing anywhere for the travellers to go
6. Clear in the terms of the order what is prohibited
7. Limited in time with a review back with the Court that made the order.

The cases referred to in relation to Harlow and Wolverhampton were praised for their adherence to the principle, the ability to show alternative sites, limited to those spaces which are hotspots for encampments, showing Crime and/ or ASB connected with a specific site, a time limit and with a review hearing included.

The above is a long way of saying that the injunction of April 2018, is not in the spirit of case law, nor the current legal thinking. There has been additional cases during 2020 in relation to proceedings and who should be served with papers, the name of the case ***Canada Goose UK Retail Ltd and another v Persons unknown who are protestors against the manufacture and sale of clothing made of or containing animal products and against the sale of such clothing at Canada Goose, 244 Regent Street, London W1B 3BR and another***, reflects the information required to better explain who is covered.

Current amendments made to the Civil Injunction for Boston would be put as: **Boston Borough Council (1st Claimant) and Lincolnshire County council (2nd Claimant) –v- Person's unknown who enter and/or occupy land in this order for residential purpose (temporary or otherwise) by stopping in or sleeping and living within vehicles, caravans or mobile homes**

To enforce the injunction of April 2018, we would have applied for an application to commit to custody, those person who had breached the injunction. We could prove that they had been served and were aware of the terms. However, we did not have specific details of the occupants, these would need to be obtained and papers served against those named person, as you cannot commit an unknown person to custody for breach of an injunction. On reflection, I was of the view that due to the changes made by recent case, that a Judge would not entertain an application for breach of the older injunction.

Other powers available:

Common Law Power:

A person that is entitled to possession of land, i.e landowner, tenant or licensee could use reasonable force to eject a person that has peaceably entered into or on land. A warning must be given, in writing and a warning that if they refuse to leave, then no more force than is reasonably necessary to move persons, vehicles and animals can be used.

Common practice is for a High court Enforcement Officer, typically from the Sheriff Office to serve the letter of possession, then after the time period allowed to return with support in order to enforce the common law power.

The 3rd edition "Gypsy and Traveller Law," Legal Action group at 5.153 refers to such powers by LA, and suggests that the 2004 encampment guidance states:

"The Government believes that local authorities should always follow a route which requires a court order....."

The suggestion being that use of the Common Law power by Local Authorities is not permissible. I am not sure that I totally agree with this submission, however, the Common Law power has limitations. It only covers the land that they are on at the time and there is nothing to stop them going 100 metres up the road to another piece of land and setting up there. It does not, like s.77 CJPOA, prevent them from returning to the specific land within 3 months. A local authority if they were to use such a power must ensure that they have recorded their decision very carefully in accordance with Reg 7 of the Openness of Local Government Bodies Regulations 2014, which covers the recording of decision process for use of delegated powers. Failure to do this and any Public Law challenge, i.e Judicial Review would concentrate on the lack of the recorded decision as to why the use of the power could have been Ultra Vires.

My view would be that we always use a process where the evidence can be checked and challenged by a Court, before using an power to evict and seek possession of land, more for safety of the Council and its officers.

Writ of Possession/Injunction;

An order sought in the County Court to enforce the ability to enter on land and remove a travellers encampment. I would suggest, as noted above (2nd para, page 2) that an injunction is sought at the same time as the writ of possession, the costs would be greater, but would mean that you protection on that land and nearby land from future incursions.

The costs as noted above, would be £308.00 (app for injunction) £255 (app for writ of possession) plus legal costs of preparing the claim. The more cost prohibitive route, but prior to lockdown as the route that the mass majority of local authorities used. The use of the s.s.77 & 78 CJPOA was adopted due to the speed and reduced costs for achieving the same aim./ Once the Magistrates' Court is running as normal, then the CJPOA process may of course become the much slower process and see a reversion to use of the Civil Process.

Police Powers under CJPOA 1994;

It was disappointing that during the Woodville Road encampment that Lincolnshire Police did not consider the use of their power under s.61 CJPOA appropriate. The argument was that they had limited resources at Boston, there are other sectors in Lincoln which could have provided manpower. The ASB team at Boston Borough Council has staffing of three, and unlike the police, do not have access to stab proof vest, body warn camera, handcuffs, baton, CS gas and Taser.

Dynamic risk assessment carried out by the ASB team and future lack of support from the Police could see the cost of enforcing powers against travellers increasing, the use of process servers and bailiffs from the outset. That being said both these bodies insist on the attendance of the police to prevent a breach of the peace.

Section 61 provide:

If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—

(a)that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

(b)that those persons have between them six or more vehicles on the land,

he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

At the Woodville Road encampment each and every element of the power was covered. They caused considerable damage, there was a catalogue of ASB and Crime reported and in accordance with s.61(1)(b), threats were made to an officer of the local authority, the landowner. Mr Dunn was threatened with physical violence. The police resources are far greater than those available to the Council, the Police powers are considerable.

The power was available, it could have been used, but the police require additional resources, as it was the costs fell solely to the Local Authority and the public purse. Costs that will not be recouped.

Future:

Since late 2019 the government has been consulting with various stake holders in relation to the current available powers and extending those powers, or introducing additional powers. The main thrust of what was suggested, was an extension of Police powers.

The Government is to release their findings in Autumn 2020 and potentially create new statutory instruments, or an Act of Parliament to cover any new powers in relation to unlawful traveler encampments.

Andy Goldsborough
Senior Lawyer
Legal Services Lincolnshire