

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

BETWEEN:

A LOCAL AUTHORITY

Claimant

and

PERSONS UNKNOWN

Defendants

**COUNSEL'S NOTE ON THE POWER TO
GRANT A WIDE INJUNCTION PURSUANT
TO SECTION 187B OF THE TOWN AND
COUNTRY PLANNING ACT 1990**

1. We are aware that a number of local authorities have obtained, or are in the process of applying for, injunctions to prohibit camping on public land within their area. These injunctions have been sought against "*Persons Unknown*" rather than (or sometimes in addition to) named individuals, with the effect that any person is capable of being caught by them. The injunctions apply, or are intended to apply, to numerous parcels of land, and sometimes also roads, in the local authority's area. In most cases, it appears that virtually all areas of parkland or open space within the area are affected. This means that, in practice, the injunctions act so as to exclude any camping on local authority land in that region.
2. Many, if not all, of these injunctions have been brought under section 187B of the Town and Country Planning Act 1990 (TCPA 1990). This section allows the Court to grant an injunction to restrain an anticipated breach of planning control. It states 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. We have been instructed by London Gypsies and Travellers to intervene in one such case. Given the wider importance of this issue, we have now been asked to provide an open advice on whether unauthorised camping on local authority land would, in fact, constitute a breach of planning control.
4. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015/596 (GPDO 2015) states:

(1) Subject to the provisions of this Order and regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (general development orders), planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.

5. Part 5 of Schedule 2 GPDO 2015 is entitled “Caravan sites and recreational campsites”. Class A (“Use of land as caravan site”) of this Part is as follows:

Permitted development

A. The use of land, other than a building, as a caravan site in the circumstances referred to in paragraph A.2.

Condition

A.1 Development is permitted by Class A subject to the condition that the use is discontinued when the circumstances specified in paragraph A.2 cease to exist, and all caravans on the site are removed as soon as reasonably practicable.

Interpretation of Class A

A.2 The circumstances mentioned in Class A are those specified in paragraphs 2 to 10 of Schedule 1 to the 1960 Act (cases where a caravan site licence is not required), but in relation to those mentioned in paragraph 10 do not include use for winter quarters.

6. Paragraphs 2, 3, and 10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960 (CSCDA 1960) are key. They read as follows:

Use by a person travelling with a caravan for one or two nights

2 Subject to the provisions of paragraph 13 of this Schedule, a site licence shall not be required for the use of land as a caravan site by a person travelling with a caravan who brings the caravan on to the land for a period which includes not more than two nights—

(a) if during that period no other caravan is stationed for the purposes of human habitation on that land or any adjoining land in the same occupation, and

(b) if, in the period of twelve months ending with the day on which the caravan is brought on to the land, the number of days on which a caravan was stationed anywhere on that land or the said adjoining land for the purposes of human habitation did not exceed twenty-eight.

Use of holdings of five acres or more in certain circumstances

3 (1) Subject to the provisions of paragraph 13 of this Schedule, a site licence shall not be required for the use as a caravan site of land which comprises, together with any adjoining land which is in the same occupation and has not been built on, not less than five acres—

(a) if in the period of twelve months ending with the day on which the land is used as a caravan site the number of days on which a caravan was stationed anywhere on that land or on the said adjoining land for the purposes of human habitation did not exceed twenty-eight, and

(b) if in the said period of twelve months not more than three caravans were so stationed at any one time.

(2) The Minister may by order contained in a statutory instrument provide that in any such area as may be specified in the order this paragraph shall have effect subject to the modification—

(a) that for the reference in the foregoing sub-paragraph to five acres there shall be substituted a reference to such smaller acreage as may be specified in the order, or

(b) that for the condition specified in head (a) of that sub-paragraph there shall be substituted a condition that the use in question falls between such dates in any year as may be specified in the order, or subject to modification in both such respects.

(3) The Minister may make different orders under this paragraph as respects different areas, and an order under this paragraph may be varied by a subsequent order made thereunder.

(4) An order under this paragraph shall come into force on such date as may be specified in the order, being a date not less than three months after the order is made; and the Minister shall publish notice of the order in a local newspaper circulating in the locality affected by the order and in such other ways as appear to him to be expedient for the purpose of drawing the attention of the public to the order.

...

Travelling showmen

10 (1) Subject to the provisions of paragraph 13 of this Schedule, a site licence shall not be required for the use of land as a caravan site by a travelling showman who is a member of an organisation of travelling showmen which holds for the time being a certificate granted under this paragraph and who is, at the time, travelling for the purposes of his business or who has taken up winter quarters on the land with his equipment for some period falling between the beginning of October in any year and the end of March in the following year.

(2) For the purposes of this paragraph the Minister may grant a certificate to any organisation recognised by him as confining its membership to bona fide

*travelling showmen; and a certificate so granted may be withdrawn by the Minister at any time.*¹

7. The effect of these provisions is that not all encampments on local authority land will constitute a breach of planning control. Some encampments will have automatic planning permission by virtue of the GDPO 2015.
8. Clearly, the permitted development rights contained within the GDPO 2015 are not unlimited in nature. Paragraph 2 only permits encampments which consist of 1 caravan and then only for a period of 2 nights at a time with a maximum use of the local authority land 28 days per year. Paragraph 3 permits encampments of up to 3 caravans on local authority land which exceeds 5 acres in size, providing the land is not used for such encampments for more than 28 days. Paragraph 10 applies only to a Travelling Showperson who is a member of a certificated organisation of Travelling Showpeople and who is travelling for the purposes of his or her business. Moreover, the use of land for winter quarters is expressly excluded.
9. However, the fact is that the GPDO 2015 provides that those camping on land for short periods of time, or Travelling Showpeople travelling for the purposes of their business, have certain permitted development rights: their encampments will not breach planning control unless they exceed the scope or ambit of those rights.
10. It follows that any injunction granted by the Court pursuant to section 187B TCPA 1990 in order to restrain an anticipated breach of planning control ought, at the very least, to have been drafted in such a way as to reflect the permitted development rights in the GPDO 2015 and that its terms ought not to have placed any restriction on the exercise of those rights.
11. In the circumstances we would advise that local authorities that have obtained such an injunction (whether on an interim or final basis) be contacted and invited to apply for a variation of the orders they have obtained from the Court so that those injunctions do not restrict the exercise of GPDO 2015 rights. In the event that a local authority refuses to take such a step then we will be happy to advise further.

¹ Paragraph 3 is “*Subject to the provisions of paragraph 13*” of Schedule 1 to CSCDA 1960 which provides that the Minister may on the application of a local authority issue an order withdrawing the permitted development rights in respect of land specified within the order.

**Marc Willers QC
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Garden Court Chambers
3 December 2018**