

**Injunctions: the protection of particularly
sensitive sites and other recent
developments**

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**Dealing with illegal and unauthorised
encampments**

A summary of available powers

“This guide sets out the robust powers councils, the police and landowners now have to clamp down quickly on illegal and unauthorised encampments.”

“Public bodies should not gold-plate human rights and equalities legislation. Councils and the police have been given strong powers to deal with unauthorised encampments and when deciding whether to take action, they may want to consider for example, (a) the harm that such developments can cause to local amenities and the local environment, (b) the potential interference with the peaceful enjoyment of neighbouring property, (c) the need to maintain public order and safety and protect health – for example, by deterring fly-tipping and criminal damage, (d) any harm to good community relations, (e) that the state may enforce laws to control the use of an individual’s property where that is in accordance with the general public interest.”

“Being prepared and acting swiftly: Questions local authorities will wish to consider”

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- *Is there land particularly vulnerable to unlawful occupation/trespass?*
 - *What is the status of that land? Who is the landowner?*
 - *Do any special rules apply to that land (e.g. byelaws, statutory schemes of management, etc) and, if so, are any of those rules relevant to the occupation/trespass activity?*
 - *Has a process been established for the local authority to be notified about any unauthorised encampments? •*
- *If the police are notified of unauthorised encampments on local authority land, do they know who in the local authority should be notified? •*
- *If the power of persuasion by local authority officers (wardens/park officers/enforcement officers) does not result in people leaving the land/taking down tents, is there a clear decision making process, including liaison between councils and local police forces, on how to approach unauthorised encampments? At what level of the organisation will that decision be made? How will that decision-maker be notified?*

“To plan and respond effectively, local agencies should work together and consider:



- *Identifying vulnerable sites.*
- *Working with landowners to physically secure vulnerable sites where possible.*
- *Preparing any necessary paperwork, such as applications for possession orders or injunctions, in advance.*
- *Working with private landowners to inform them of their powers in relation to unauthorised encampments, including advance preparation of any necessary paperwork.*
- *Developing a clear notification and decision-making process to respond to instances of unauthorised encampments.*
- *The prudence of applying for injunctions where intelligence suggests there may be a planned encampment and the site of the encampment might cause disruption to others.*
- *Working to ensure that local wardens, park officers or enforcement officers are aware of who they should notify in the event of unauthorised encampments.*
- *Working to ensure that local wardens or park officers are aware of the locations of authorised campsites or other alternatives.*
- *Identifying sites where protests could be directed / permitted.”*

Powers include:

- Temporary stop notice (s.171E TCPA 1990)
- Pre-emptive injunctions
- Possession Order (Part 55 CPR)
- Interim Possession Order (Section III Part 55 CPR)
- Power to make local byelaws (s.235 LGA1972) – can attach powers of seizure and retention of property for breach (s.150 PRSA 2011);
- Power for LA to direct residents of vehicles (including caravans) to leave land (S.77 CJPOA 1994);
- Similar powers for police (s.61-62 & 62E CJPOA 1994);
- Highways Act 1980 where obstruction to highway

Pre-emptive injunctions: basis?



- **Secretary of State for Environment, Food & Rural Affairs v Meier [2009] UKSC 4**
- *“If a group of people come on to my land without my permission, I shall want the law to provide a speedy way of dealing with the situation. If they leave but come back repeatedly, depending on the evidence, I shall be able to obtain an interlocutory and final injunction against them returning. But they may come on to my land and set up camp there. Again, depending on the evidence, I shall be able to obtain an injunction (interlocutory and final) against them remaining and also against them coming back again once they leave as required by the injunction. Similarly, if the evidence shows that, once they leave, they are likely to move and set up camp on other land which I own, the court can grant an injunction (interlocutory and final) against them doing that. If authority is needed for all this, it can be found in the judgment of Lord Diplock in the Court of Appeal in Manchester Corporation v Connolly [1970] Ch 420”*

(Lord Rodger para 1)

Pre-emptive injunctions against persons unknown



- **Hampshire Waste Services Ltd v Intended Trespassers upon Chineham Incinerator Site**
[2004] Env LR 196.
- **South Cambs District Council v Persons Unknown** [2004] 4 PLR 88
 - ““There was some difficulty in time gone by against obtaining relief against persons unknown, but over the years that problem has been remedied either by statute or by rule.”

Sites of exceptional public interest / utility $\frac{L}{C}$

- Not a statutory term / no definition
- Reflects the exceptional nature of what is being sought
- Examples may include:
 - Protected environmental sites (eg SSSI, protected habitats / species);
 - Sites of public importance (eg war memorial, historic park);
 - Green space – eg sports facilities, or only open space available to occupiers of high density housing
- Key issue: sites on which an encampment cannot be tolerated, even temporarily because of harm which would be caused

Procedure: overview

- Part 7 claim
- Alternative Service
- Application for judgment in default (assuming no AoS / Defence / Admission received within specified time) (Part 12 CPR)
- Alternative Service of Order

The Claim



- Define your Defendant.
 - *“The crucial point, as it seems to me, is that the description used must be sufficiently certain so as to identify both those who are included and those who are not. If that test is satisfied, then it does not seem to me to matter that the description may apply to no one or to more than one person, nor that there is no further element of subsequent identification whether by service or otherwise.”* (**Bloomsbury Publishing Group Ltd v News Group Newspapers Ltd**)
 - *“...it seems to me to be wrong that the description of the defendant should involve a legal conclusion such as is implicit in the use of the word “trespass”. Similarly, it seems to me to be undesirable to use a description such as “intending to trespass” because that depends on the subjective intention of the individual which is not necessarily known to the outside world and in particular the claimants, and is susceptible of change.”* (**Hampshire Waste**)
 - Eg: “Persons Unknown causing or permitting caravans or mobile homes to be stationed or parked for the purpose of residential encampment....”

The Claim



- Identify relevant powers
 - Landowner (quia timet)
 - S.187B TCPA 1990
 - Highways Act 1980
 - S.263 (title vested in Highways Authority)
 - S.130 (power to take legal proceedings as part of performing duty to assert and protect rights of public to use the highway)
 - S.137 (obstruction of highway a criminal offence)
- Pick your sites carefully
- Attach plans showing sites

Alternative Service



- Service of the claim form
 - Application pursuant to CPR 6.15
 - Must be supported by evidence (see 6A PD 9.1)
 - The reason why an order is sought
 - Alternative method/place proposed
 - Why the applicant believes the document is likely to reach the person to be served by method / place proposed
 - Precedent:
 - ***Hampshire Waste***
 - ***South Cambs DC v Persons Unknown***

Alternative Service

- Claim (contd)
 - Order must specify:
 - Method or place of service
 - Date on which claim form deemed served
 - Period for filing (1) AoS (2) Defence (3) Admission
 - Must file certificate of service

Alternative Service

- Service of other documents in the proceedings
 - Application pursuant to CPR 6.27
 - Must be supported by evidence (see 6 PD)
- Service of the Order
 - Can be provided for in body of the Order itself

Application for judgment in default



- Part 12 CPR.
 - Conditions in CPR r 12.3 must be satisfied
 - D has not filed AoS/Defence
 - Time for doing so has expired
 - **PROOF OF SERVICE IS CRITICAL**
 - Application for judgment in default (not request)
 - Will have to be dealt with at a hearing (equitable relief sought)
 - File updated witness statement

Witness Evidence

- Explain selection of sites
 - Why are these sites important?
 - Why cannot even a short encampment be tolerated?
- Set out history of previous encampments
 - When & how many
 - Enforcement action & Clean up costs
 - Impact on community / site

Witness Evidence



- Traveller provision in the area
 - Any relevant policy
 - GTAA
 - How is need being met? (including temporary stopping provision)
 - But note August 2015 Gvt consultation response on proposed changes to planning policy and guidance:
 - Proposal to revoke GTAA Guidance(para 3.11)
 - PPTS amended to make clear unmet need unlikely to outweigh harm to Green Belt (para 3.23)
 - “The absence of authorised sites in the area does not automatically mean that powers of enforcement cannot be used” (para 3.30)

The Order

- May be time limited (eg 1 year)
- Possible requirement to check order is still there (eg every week)
- Penal Notice

Enforcement



- Contempt
 - Will need personal service of Order
 - CPR Part 81
 - Evidence must be by way of affidavit
 - Personal service of application and evidence
- Expedited possession proceedings
- Self-help?
 - Eg common law right to remove obstructions on the highway

Other developments

- Proposal to revoke enforcement guidance:
 - “Guide to effective use of enforcement powers – Part 1” (2006)
 - Revoked 31 August 2015
 - Revocation revoked 2 October 2015
 - “Guide to effective use of enforcement powers – Part 2” (2006)
- Intentional unauthorised development as material consideration on planning application/appeal
- New guidance on enforcement in PPG (March 2015)