

Richard Langham

Borough-wide injunction against travellers: where are we now?

Borough-wide injunction against travellers

Before 2015

Injunctions against persons unknown were used to restrain breaches of planning control and threatened trespass on individual sites.

Borough-wide injunctions were granted against named defendants.

Borough-wide injunction against travellers

The legal and planning policy definition of ‘gypsies and travellers’ requires a nomadic habit of life – ie travelling for the purpose of making a living.

There are no transit sites in Greater London and the closest transit site to Bromley is the site at South Mimms.

Guidance on unauthorised encampment contemplates tolerated trespass on public land.

Borough-wide injunction against travellers

Starting in 2015 authorities sought injunctions against persons unknown (and sometimes named defendants) to prevent the stationing of caravans on *any* of the publicly owned open spaces in the authority's area.

Eventually 38 such injunctions were granted.

Borough-wide injunction against travellers

Pleaded basis of the claims was trespass and s187B of the TCPA 1990.

The injunctions identified all the open spaces sought to be protected, usually numbered in the hundreds.

The injunctions usually prohibited –

- setting up an encampment on a site without the written permission of the local authority or the grant of planning permission by an Inspector
- entering a site for residential purposes;
- putting caravans on a site;
- depositing waste on a site without a licence/permit.

Borough-wide injunction against travellers

There was usually an interim order followed by a prompt final order which was invariably time-limited.

Until Bromley the claims were never contested.

Borough-wide injunction against travellers

Harlow District Council v Stokes [2015] EWHC 953

Harlow District Council v McGinley [2017] EWHC 1851

Tendring District Council v Persons Unknown [2016] EWHC 2050

Wolverhampton City Council v Persons Unknown [2018] EWHC 3777

Waltham Forest LBC v Persons Unknown [2018] EWHC 2400

Kingston upon Thames LBC v Persons Unknown [2019] EWHC 1903

Havering LBC v Stokes [2019] EWHC 3006

Borough-wide injunction against travellers

Bromley v Persons Unknown [2019] EWHC 1675

The judge found that the requirements for an interim injunction to restrain trespass had been satisfied – ie -

- there was “a strong probability” that, unless restrained by an injunction, the defendants would act in breach of the appellant’s rights;
- if the defendant did the act sought to be prohibited, the resulting harm be so grave and irreparable that a remedy of damages would be inadequate.

Borough-wide injunction against travellers

- a) The injunction amounted to “a *de facto* borough-wide prohibition of encampment and upon entry/occupation for residential purposes... in relation to all accessible public spaces in Bromley except cemeteries and highways”.
- b) The injunction was not aimed specifically at prohibiting antisocial or criminal behaviour, but just entry and occupation.
- c) The lack of any alternative transit sites in Greater London.
- d) The cumulative effect of injunctions of this kind – to transfer the problem to other authorities.
- e) The absence of an equality impact assessment, amounting to a failure to consider A8, the best interests of children and the PSED.
- f) The length of the proposed injunction (5 years).
- g) The issue of permitted development rights had not been satisfactorily addressed.

Borough-wide injunction against travellers

108. 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.

Borough-wide injunction against travellers

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.

Borough-wide injunction against travellers

Alternative sites

What sort of engagement is contemplated?

Do the travellers now have a defence against a possession action?

Borough-wide injunction against travellers

The lockdown

Possession proceedings are stayed until 30 October. But the stay does not apply to

Proceedings against unknown trespassers (CPR 55.6)

Proceedings for an injunction

Thank you for listening

© Copyright Landmark Chambers 2020

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 [@Landmark_LC](https://twitter.com/Landmark_LC)
🌐 [Landmark Chambers](https://www.linkedin.com/company/landmark-chambers/)