

Injunctions against unlawful traveller encampments: What can be injuncted?

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Potential grounds of claim

- Common law trespass (if owner / entitled to possession)
- Actual/apprehended breach of planning control (s.187B TCPA 1990)
- Interference with / obstruction of the highway (Part IX Highways Act 1980)
- Anti-social behaviour

Common law trespass

- *Quia timet* injunction to restrain apprehended trespass
- Need to prove:
 - Ownership / entitlement to possession
 - There must be a sufficiently real and imminent risk of trespass to justify *quia timet* relief;
 - Irreparable harm if injunction not granted
 - That it would be just and proportionate to grant the injunction

Common law trespass - quia timet injunctions against persons unknown

1. There must be a sufficiently real and imminent risk of trespass 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 correspond to the threatened tort and must 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.“

***Boyd v Ineos Upstream Ltd* [2019] EWCA Civ 515 per Longmore LJ at [34], endorsed CA in *Mayor and Burgesses of London Borough of Bromley v Persons Unknown* [2020] EWCA Civ 12 at [29]**

Common law trespass

- Key cases:
 - ***Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780**
 - ***The Mayor and Burgesses of the London Borough of Bromley v Persons Unknown* [2020] EWCA Civ 12**

Breach of planning control

S.187B TCPA 1990

“(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.”

Breach of planning control

- What is your alleged breach of planning control? (actual / anticipated)
 - If change of use – caution!
 - Sufficient duration to constitute a material change of use (as opposed to merely transient use)?
 - Permitted development?
 - GDPO 2017 Schedule 2 Part 5 read with paras 2 – 10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960
 - Deposit of waste
 - Operational development

Breach of planning control

- Irreparable harm if injunction not granted?
- Proportionality
- PSED / ECHR

Breach of planning control

- Key / useful cases
 - ***South Cambridgeshire DC v Persons Unknown* [2004] EWCA CIV 1280**
 - ***South Buckinghamshire DC v Porter (No 1)* [2003] 2 AC 558**
 - ***The Mayor and Burgesses of the London Borough of Bromley v Persons Unknown* [2019] EWHC 1675 (QB)**
 - ***East Hertfordshire DC v Doherty* [2012] EWHC 2292 (QB)**

Obstruction / interference with highway

- **Highways Act 1980 s.130**

“(1) It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.

(2) Any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.

....

(5) Without prejudice to their powers under section 222 of the Local Government Act 1972, a council may, in the performance of their functions under the foregoing provisions of this section, institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient.”

Obstruction / interference with highway

- Useful cases
 - ***Sutton LBC v Persons Unknown* [2018] 11 WLUK 89**
 - ***Wolverhampton CC v Persons Unknown* [2018] EWHC 3777 (QB)**
 - ***City of London Corporation v Samede* [2012] EWHC 34 (QB)**

Anti-social behaviour

- S.1 Anti-social Behaviour, Crime and Policing Act 2014
 - But see: ***Wolverhampton CC v Persons Unknown* [2018] EWHC 1777 (QB)**
- S.222 Local Government Act

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.

Thank you for listening

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