

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. QB-2022-001317

In the matter of an application for an injunction made pursuant to the Local Government Act 1972, s222 and the Highways Act 1980, s130(5)

B E T W E E N :

(1) THURROCK COUNCIL

(2) ESSEX COUNTY COUNCIL

Claimants

-and-

(1) MADELINE ADAMS

(2)-(222) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1 TO THE CLAIM FORM

(223) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF OR ALONG THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(224) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES OR AFFIXING ANY ITEM TO ANY VEHICLE TRAVELLING ON TO, OFF, ALONG OR WHICH IS ACCESSING OR EXITING THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(225) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO, INTO OR OFF ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(226) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO OR FROM ANY PETROL STATION OR ITS

FORECOURT WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(227) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(228) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(229) PERSONS UNKNOWN WHO ARE TRESPASSING ON, UNDER OR ADJACENT TO THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM BY UNDERTAKING EXCAVATIONS, DIGGING, DRILLING AND/OR TUNNELLING WITHOUT THE PERMISSION OF THE RELEVANT HIGHWAY AUTHORITY

Defendants

FOURTH WITNESS STATEMENT OF ADAM RULEWSKI

I, **ADAM RULEWSKI**, an employed barrister in the Legal Services Department at the London Borough of Barking and Dagenham, will say as follows –

1. I am a barrister employed by the Legal Services Department at the London Borough of Barking and Dagenham. I represent the First Claimant, Thurrock Council in these proceedings. I am also authorised to make this statement on behalf of the Second Claimant, Essex County Council.
2. I make this witness statement to seek an adjournment of the final hearing of the Claimants' Claim for final injunctive relief against the 222 Named Defendants and seven defined categories of Persons Unknown (against whom the Claimants have interim injunctive relief) on the basis that the Supreme Court is due to hear the appeal from the Court of Appeal's decision in *London Borough of Barking and Dagenham & Ors v Persons*

Unknown & Ors [2022] EWCA Civ 13; [2022] 2 WLR 946 (which appeal is now known as *Wolverhampton City Council (Respondents) & Ors v London Gypsies and Travellers & Ors (Appellants)* (UKSC 2022/0046) on an expedited basis on 8 and 9 February 2023. The determination of the appeal may dispose of part of these proceedings. Thurrock Council is a Respondent to the appeal, having been one of the successful Appellants in the Court of Appeal.

3. The Claimants seek a continuation of the current interim injunction and power of arrest pending the determination of the appeal and the final hearing of the Claimants' Claim. The current interim injunction was granted by HHJ Simon (sitting as a Judge of the High Court) on 27 May 2022 (the '**Interim Injunction**'), and provides for directions to final hearing (which directions I shall summarise below). The Claimants seek a variation to those directions. At present, the Interim Injunction provides that the prohibitions of the Injunction are to continue '*[u]ntil and subject to any further order of the Court*', with the power of arrest expiring on 27 May 2023.
4. As per paragraph 11 of the Interim Injunction, this Application should be made on notice to those Defendants who have acknowledged service and provided an address for service. The Claimants respectfully ask that this Application is dealt with on the papers and without a hearing, unless the Court considers it inappropriate to do so.
5. I understand from the solicitors on record that, according to CE File and having considered the file maintained by the Claimants' solicitors relating to this litigation, no acknowledgment of service has been filed by any Defendant. That said, the Sixty-Third Defendant was represented by counsel and solicitors at the hearing in front of HHJ Simon, and her solicitors will therefore be served. Further, the Claimants have brought successful committal proceedings against the Forty-Eighth, Fifty-First, Eighty-Sixth, One-Hundred and Second and the One-Hundred and Fiftieth Defendants. During the course of those proceedings, the contemnors provided their email addresses to the Claimants to facilitate service of documents relevant to the committal proceedings. This Application shall therefore be served on those Defendants by way of those email addresses.
6. The facts and matters set out by me in this witness statement are either known by me directly and are true, or are known by me indirectly and are believed to the best of my

knowledge to be true. In relation to matters falling into the latter category, I have set out the source of my knowledge and belief. This statement was prepared through correspondence with the Claimants' external legal representatives.

7. There is exhibited to this statement a bundle of documents marked 'AR4'. Where I refer to documents contained in that bundle I do so in the format **[AR4/exhibit number]**.

Draft Order

8. A draft Order is attached to this Application. I have not included with that draft Order Schedule 3 (that being the power of arrest), or the Annexes. Unlike the main body of the draft Order, these documents do not exist in Word format (save for the power of arrest continuation sheet – which only exists in Word format in an unredacted form).
9. The Annexes to the Order sought will be identical to those annexed to the Interim Injunction (exhibited at **AR4/1**). The power of arrest continuation sheet will also be identical to the current Injunction Order, again exhibited at **AR4/1**. The power of arrest pdf form cannot be filled out and attached as Schedule 3 until the Order is made and the details to populate that form are known.
10. Therefore, and as was done before Ritchie J and HHJ Simon on previous occasions, I respectfully ask that, if the Judge is content to make the Order sought, the same be communicated to the Claimants' solicitors, who will then be able to compile the full 52 page pdf Order, with the correct information in Schedule 3 and appropriate redactions, and submit the same to be sealed on both the front page, and on the power of arrest.
11. The Court has therefore a Word version of the main body of the draft Order sought.

The Interim Injunction

12. I exhibit at **AR4/1** a sealed copy of the Interim Injunction. The copy is the same as those that have been served on each of the Defendants, with the addresses of each Defendant redacted to preserve the confidential information of each Defendant.

13. Paragraph 2 of the Interim Injunction (found on page 4 of the Order) provides that the prohibitions set out in paragraphs 2.1 to 2.18 apply ‘[u]ntil and subject to any further order of the Court’.
14. Paragraph 3 of the Interim Injunction (found of page 6 of the Order) attaches a power of arrest to the prohibitions found at paragraphs 2.1 to 2.16 of the Order. The power of arrest is annexed to the Order at Schedule 3 (to be found on pages 17 to 32), and is expressed to expire on 27 May 2023.
15. Finally, for present purposes, paragraph 12 of the Interim Injunction (found on page 8 of the Order) provides:

The continued operation of this order shall be reviewed at a hearing. The Claimants shall apply by 4pm on 14 February 2023 to list that review hearing, which hearing shall be held no later than 22 May 2023. Any evidence in support or opposition to the continued operation of this order shall be filed by 4pm on 28 April 2023.

Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors (UKSC 2022/0046)

16. The Supreme Court has expedited the appeal from the Court of Appeal’s decision in *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2022] EWCA Civ 13; [2022] 2 WLR 946. That appeal has been listed for hearing on 8 and 9 February 2023, and is now known as *Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors* (UKSC 2022/0046) (*‘Wolverhampton’*).
17. Thurrock Council is a Respondent to the *Wolverhampton* appeal, and is one of the self-styled ‘C8 Group’ of local authorities who are represented by the same Counsel team (and who are the same team of Counsel that represent the Claimants in these proceedings).
18. The point on appeal is whether the Court is able to grant final injunctive relief that binds ‘newcomers’ (ie. those persons who were not yet parties to the claim when that final order is made). At first instance, Nicklin J held that such relief could not be granted. On appeal,

the Court of Appeal, in a judgment delivered by the Master of the Rolls, found that such relief could be granted.

19. In these proceedings, the Claimants are seeking final relief against seven defined categories of Persons Unknown. If the Supreme Court were to determine the *Wolverhampton* appeal in favour of the Appellants, it is likely, depending on the specific findings of the Supreme Court, that the appeal will dispose of the Claimants' Claim for final injunctive relief against the categories of Persons Unknown in these proceedings.
20. Therefore, the Claimants seek an adjournment to the final hearing of the Claim pending the outcome of the *Wolverhampton* appeal. I shall set out below the proposed directions and continuation of the Interim Injunction and power of arrest pending the final hearing of the Claim. It is regrettable that the final hearing should be delayed, but it is respectfully submitted that it is the only fair and proper course that can be pursued in the circumstances. Without adjournment, there is a risk that the Claimants will secure the final injunctive relief sought against Persons Unknown, with the Supreme Court determining shortly thereafter that such relief may not in fact be granted. Such an outcome would of course be a great injustice to the Defendants, and would likely lead to further applications being made in these proceedings that would consume further time and resources of both the Court and the Parties.
21. The Claimants are mindful of the Persons Unknown Defendants, and that the vast majority (if not all) of the Named Defendants are unrepresented, and therefore make this Application themselves accordingly. I respectfully submit that, to mitigate the possible prejudice that may be caused to the Defendants, adjournment of the final hearing pending the decision in the *Wolverhampton* appeal would appear appropriate. Without adjournment there is a real risk that final injunctive relief will be granted which, shortly thereafter, the Supreme Court may find the Court does not in fact have jurisdiction to grant.
22. I also respectfully submit that it would not be appropriate to sever the Claim against the 222 Named Defendants from that against Persons Unknown, with only the Claim against Persons Unknown being adjourned pending the outcome of the *Wolverhampton* appeal. Severing the Claim would cause additional expense to the Claimants by reason of the duplication of work, and will use additional Court resources. It would also be nonsensical

to separate the final hearings in circumstances where the evidence relating to the Named Defendants and Persons Unknown significantly overlaps, as it does. Further, Thurrock Council's proceedings that are under consideration with the *Wolverhampton* appeal (those being QB-2019-002738), and which cause Thurrock Council to be a Respondent to the appeal, were severed, such that the claim against the Named Defendants was heard separately to that relating to Persons Unknown. That severance has left Thurrock Council in the awkward position where its Claim is only partially determined (both portions of the Claim have now been heard, and the decision on the Persons Unknown element is still awaited), with the time for seeking permission to appeal on the judgment relating to the Named Defendants being extended until the judgment on Persons Unknown is handed down. It is respectfully submitted that severing the final hearing relating to the 222 Named Defendants from Persons Unknown in this Claim would be inefficient, and would not in any way further the overriding objective (and in fact, would do quite the opposite).

23. I also note that claims in which final injunctive relief is sought against Persons Unknown which were brought by two other local authorities in the C8 Group have been stayed or adjourned (in their entirety) pending the outcome of the expedited *Wolverhampton* appeal (one of which was adjourned on the morning of the final hearing). Whilst it is in fact those proceedings which are under appeal, the claims were proceeding to final hearing prior to the expedition of the *Wolverhampton* appeal, given the wider context in which the proceedings and appeals had progressed.

24. I exhibit at **AR4/2** the Order made in *Rochdale Metropolitan Borough Council v Heron & Ors* (QB-2017-005202) adjourning the final hearing of the claim pending the outcome of the *Wolverhampton* appeal, and at **AR4/3** the Order made in the *Nuneaton and Bedworth Borough Council & Anr v Corcoran & Ors* (QB-2019-000616) staying those proceedings pending the outcome of the *Wolverhampton* appeal. These are the two C8 Group authorities to which I have referred above.

Proposed directions and power of arrest

25. The Claimants attach to this Application a draft Order. That Order:

- i. continues the Interim Injunction pending the outcome of the *Wolverhampton* appeal and the final hearing of the Claimants' Claim;
- ii. gives directions for the progression and listing of the final hearing of the Claim following the determination of the *Wolverhampton* appeal;
- iii. extends the power of arrest by 12 months, by which time it is reasonably hoped that the Supreme Court will have determined the *Wolverhampton* appeal and heard the final hearing of the Claimants' Claim.

26. The draft Order makes no other substantive changes to the Interim Injunction.

27. I appreciate that the Interim Injunction is a large document. I therefore attach at **AR4/4** a version of the Interim Injunction that shows in red underlined text the proposed variations to the Interim Injunction.

28. The Claimants proposed variations would, if granted, mean that any subsequent directions Orders would be a self-contained Order and not require further amendments or variations to the Interim Injunction itself; I respectfully submit that this is the most sensible and efficient way to deal with further Orders, especially in circumstances where there will be further Orders following the determination of the *Wolverhampton* appeal. Amending the Interim Injunction and serving that volume of material on each of the 222 Named Defendants and seven categories of Persons Unknown comes at a significant expense to, and use of resources by, the Claimants. It would be of assistance to the Claimants, and the efficiency of these proceedings generally, if further directions were in self-contained Orders.

The need to continue the Interim Injunction and power of arrest

29. Finally, I should briefly summarise why the proposed variations and directions provide for the continuation of the Interim Injunction and power of arrest pending the outcome of the *Wolverhampton* appeal and final hearing of the Claimants' Claim.

30. In short, following the grant of the Interim Injunction, and until August 2022, incidents of unlawful protest in the administrative areas of Thurrock and Essex decreased dramatically. The decrease in unlawful protest activities in these administrative areas was not in line with the national trend. The Claimants draw the inference that there was at least some causal link between the grant of the Interim Injunction and the decrease in incidents of unlawful protest in their administrative areas.
31. In mid to late August 2022, incidents of unlawful protest associated with the Just Stop Oil and anti-fossil fuel movement again commenced in the Claimants' administrative areas for approximately a two-week period. Those protests were dealt with by way of a combination of personally serving the Interim Injunction on those who were engaging in such conduct, enforcement of the Interim Injunction (including with the assistance of the power of arrest), and the use of the Police's powers. In one instance, a possession Order was also sought (but not enforced) in relation to tunnelling activities in the administrative area of Thurrock under a major A-road leading to the Navigator Fuel Terminal (that being St Clements Way) (see PT-2022-000737).
32. The power of arrest was used against five Named Defendants (D48, D51, D86, D102 and D150), each of whom were arrested under the power of arrest on 24 August 2022. Those Defendants were sentenced on 18 November 2022 (see [2022] EWHC 3252 (KB)), having admitted breaches of the Interim Injunction, and each received a suspended custodial sentence (with D86 receiving a longer sentence than his co-defendants, and also being ordered to pay a fine).
33. As the Court will no doubt be aware from the national news media, the Just Stop Oil group, and the anti-fossil fuel movement more generally, remain active, and those associated with the movement continue to engage in direct action. As such, the Claimants continue to apprehend that further acts of unlawful protest may occur in their administrative areas, such that the Interim Injunction remains just and convenient, and its terms reasonable and proportionate.
34. Further, the power of arrest, which acts both as a deterrent to ensure compliance with the Interim Injunction, and an efficient and effective method of prosecuting breaches, also remains a necessary feature of the Interim Injunction; to date, the power has been used

sparingly and to good effect. The conditions for the attachment of a power of arrest to the prohibitions of the Interim Injunction (as found in the Police and Justice Act 2002, s27) continue to be met; when unlawful acts of protest do occur, there has been no material change to the method of direct action used by the Defendants since the grant of the Interim Injunction and, if anything, the conduct has in fact become more extreme in some circumstances. For example, in August 2022, three protestors excavated and occupied a tunnel under St Clements Way in the administrative area of Thurrock for approximately two-weeks. The extent of that tunnel, and the duration of the occupation, far exceeded anything that occurred in the first wave of protests in April 2022 that led to the Claimants seeking and obtaining the Interim Injunction.

35. I should explain that the protestors who excavated and occupied the St Clements Way tunnel were not dealt with by the power of arrest, as it would not have been possible to extract the protestors from the tunnel and present them to the Court within the 24 hours required under the Police and Justice Act 2006. I use the example of the St Clements Way tunnel simply as an example of the clear propensity and inclination of those associated with the Just Stop Oil movement to continue engaging in acts of unlawful (and extremely dangerous) acts protest in the administrative areas of Thurrock and Essex, such that both the continuation of the Interim Injunction coupled with the power of arrest is the only way to continue to hold the ring until the final hearing of the Claim.

Conclusion

36. It is regrettable that the final hearing of the Claimants' Claim should be adjourned. However, it is respectfully submitted that an adjournment is the only fair and proper way to proceed in circumstances where the imminent and expedited *Wolverhampton* appeal may dispose of part of these proceedings; only an adjournment would further the overriding objective in the circumstances.

Statement of Truth

I believe that the facts set out in this Witness Statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: *Arulewski*

Adam Rulewski

Dated: 25 January 2023