



## Bromley v Persons Unknown & Others [2020] EWCA Civ 12

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– 22.01.2020

### Caroline Bolton

Call: 1998

Barrister

Caroline Bolton is a member of Radcliffe Chambers local government team and acted for the Fourth Intervener in the above case.

### A brief note on the Court of Appeal's judgment

Local authorities have been awaiting the Court of Appeal's decision in the case of *Bromley v Persons Unknown and Others*. The case concerned a de facto borough-wide travellers injunction, pursuant to section 187B Town and Country Planning Act 1990 and Section 222 Local Government Act 1972. Bromley applied at first instance for a de facto borough-wide travellers injunction against Persons Unknown, with no named Defendants included on its claim form.

Bromley sought to prohibit encampments by Persons Unknown on any public land within its borough, save for highways and cemeteries. The injunction was intended to prevent entry onto land, rather than address concerns of anti-social behaviour, quasi-criminal activity, risk to human health or harm to the environment. The injunction also provided evidence of fly-tipping, but not evidence that suggested the extreme level of fly-tipping experienced by some local authorities.

At first instance the London Gypsies and Travellers ('LGAT') intervened in the injunction proceedings, raising concerns about the scope of the injunction and the evidence relied upon in support of the injunction. LGAT highlighted the limited number of encampments experienced by Bromley and the fact that the injunction, if granted in the terms sought, would breach the requirements under European law to facilitate the gypsy way of life and breach the travellers rights under Article 8 of the European Convention on Human Rights. LGAT also highlighted that an injunction in such broad terms offended general permitted development rights under the General Permitted Development Order 2015 (GPDO). Bromley declined to agree to an injunction which made allowances for any general permitted development rights under the GPDO.

The Judge at first instance granted an injunction prohibiting fly-tipping, but declined to grant a broader injunction prohibiting 'Persons Unknown' from entering or encamping on land owned by Bromley. Bromley appealed to the Court of Appeal. A number of local authorities intervened in the appeal including the Fourth Intervener, which included: Harlow District Council, the London Borough of Barking and Dagenham, the London Borough of Redbridge and Thurrock Council. The Judgment of the Court of Appeal was handed down on Tuesday 21 January 2020 and dismissed Bromley's appeal.

In its judgment the Court of Appeal noted that Bromley had not taken the necessary steps to engage with the traveller community prior to seeking the injunction, had not prepared an equality impact assessment (EIA) and had not complied with its public sector equality duty.

Further, the Court noted that Bromley had not evidenced the impacts present in cases such as *Harlow v Stokes & Others* and *Harlow v McGinley & Others* (the 'Harlow Case'), indicating that cases such as the Harlow Cases justified the relief obtained, and made no criticism of the award of the borough-wide injunctions granted in the Harlow Cases and those obtained by the Fourth Intervener.

Accordingly, the Court of Appeal's decision does not sound the death knell for borough-wide traveller injunctions, but it does make clear that those seeking borough-wide injunctions must consider the following:

1. Borough-wide conditions are only likely to be justified against named individuals. Identifying and naming travellers whilst difficult is achievable through working with traveller liaison officers and the police. Further local authorities can, in certain circumstances, seek information from DVLA to identify the owners of vehicles on encampments that have caused anti-social behaviour and harm to the community;
2. Borough-wide conditions are only likely to be justified where there is significant evidence of at least quasi-criminal activity, risk to public health, and/or serious anti-social behaviour;
3. Before seeking a borough-wide or de facto borough-wide order the local authority should ensure that it can demonstrate that it either has a transit site, a negotiated stopping policy, or, a policy for tolerating encampments that are not acting in an anti-social manner. Local authorities that cannot demonstrate this are likely to find their injunctions refused;
4. The simple fact that unauthorised encampments occur within an administrative area will not in itself justify seeking a borough-wide order, or, a de facto borough wide order. There is a positive obligation to facilitate the travellers way of life, and the evidence will need to be significant to demonstrate that the interference with the travellers article 8 rights is proportionate;

5. A robust EIA will be required, as well as detailed evidence of the welfare checks that have been undertaken and the engagement with the traveller community. Engagement with the traveller community could be through the welfare check process, or a gypsy traveller liaison officer. Local authorities who fail to meet these requirements should expect their application for an injunction to be refused;
6. When considering the impact on the traveller community the rights of the travellers' children will be a primary consideration;
7. Welfare assessments should also be undertaken before enforcing an injunction;
8. Against persons unknown a borough-wide injunction is unlikely to be appropriate, and sites should be limited to those that are required to be protected by the injunction and can be justified on the evidence. They should certainly not include all local authority land, or, all land within a local authority's administrative area;
9. The cumulative effect of these injunctions, is a material consideration as recognised by Jay J in *Harlow v McGinley*, but the weight to be afforded to it is a matter for the Judge at first instance;
10. Injunctions of five years plus are likely to be disproportionate in most cases;
11. Without notice injunctions are unlikely to be justified in these cases, save in extreme circumstances;
12. The injunctions ought not to seek to exclude general permitted development rights.

Whilst wider guidance was given in this case, the Court of Appeal emphasised that Bromley was fact specific and distinguishable from many other local authority cases, including the authorities that made-up the Fourth Intervener, represented by Caroline Bolton of Radcliffe Chambers.

Nothing in the Judgment of the Court of Appeal in the Bromley case disturbs the borough-wide injunctions that Caroline has sought for many local authorities that have experienced conduct akin to the problems faced in the Harlow cases. The Judgment is, however, a sound reminder that strong evidence is needed and a carefully prepared case to justify an injunction of this nature.

This publication is not intended to provide legal or other advice and does not necessarily deal with all aspects of the subject matter to which it pertains.

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