



Neutral Citation Number: [2026] EWHC 188 (KB)

Case No: KB-2026-000085

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 02/02/2026

**Before :**

**DEPUTY HIGH COURT JUDGE AIDAN EARDLEY KC**

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**Between :**

**SURREY COUNTY COUNCIL**

**Claimant**

**- and -**

**(1) PERSONS UNKNOWN WHO ARE  
FORMING AN UNAUTHORISED  
ENCAMPMENT ON THE LAND KNOWN  
AS CHOBHAM COMMON AS SHADED IN  
RED ON THE PLAN AT SCHEDULE 1 TO  
THE CLAIM FORM**

**Defendants**

**(2) PERSONS UNKNOWN WHO ARE  
DEPOSITING WASTE ON THE LAND  
KNOWN AS CHOBHAM COMMON AS  
SHADED IN RED ON THE PLAN AT  
SCHEDULE 1 TO THE CLAIM FORM**

**NATALIE PRATT (instructed by SURREY COUNTY COUNCIL) for the CLAIMANT**  
**The Defendants were not represented and did not attend**

Hearing date: 23 January 2026  
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**Approved Judgment**

This judgment was handed down remotely at 12pm on 2 February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

**Aidan Eardley KC :**

1. On Friday 23 January 2026 I granted an injunction in favour of the Claimant, Surrey County Council (**the Council**) against two defined groups of “persons unknown”. These are my reasons.

**The claim and the application**

2. The Council filed a Part 8 Claim Form and an Application Notice on 19 January 2026. The Council seeks an injunction to prohibit unauthorised encampments and fly tipping in respect of four land titles which, for the purposes of this claim, are referred to collectively as “Chobham Common” (or **the Common**). The Common is situated in the north of Surrey and extends slightly beyond the county boundary. It is known for its important ecological significance and recreational value. The Council owns the freehold of the part of the Common that lies beyond the county boundary. The four land titles are:
  - i) SY676014 (Land at Chobham Common and Burrowhill). The freehold title to this land is held by the Council. The land is registered common land;
  - ii) SY676315 (Common Land at Chobham Common, Woking). The freehold title to this land is held by the Council. The land is registered common land;
  - iii) SY779824 (Land on the northeast side of Windsor Road, Chobham). The freehold title to this land is held by the Council. The land is not yet registered common land, and has come to be included within the Common by way of a common land exchange following the construction of the M3 motorway. The commons registration process is underway. The land is treated by the Council in the same way as the registered Common, and the land has all the appearance of being comprised within the Common;
  - iv) SY723895 (Glovers Pond, Chobham Common). The freehold title to this land is held by the Surrey Wildlife Trust. The land is landlocked by other land comprising the Common, the freehold title to which is held by the Council (title no. SY676315). The land is registered common land.

3. Injunctions have been in force in relation to areas (i) and (ii) since 2019. The current injunction, granted in February 2023, is due to expire on or about 1 February 2026. In November 2023, in *Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors* [2023] UKSC 47, [2024] 2 WLR 45 (*Wolverhampton*) the Supreme Court comprehensively restated the law and procedure applicable to so-called “Traveller injunctions”. The Council accepts that it is appropriate to bring a fresh claim and application for a *Wolverhampton*-compliant injunction rather than to extend the injunction granted in 2023. At the same time, the Council seeks to include areas (iii) and (iv).
  
4. I read the witness statements of Nicholas Blackmore (a Council employee with the title “Senior Enforcement Officer – Gypsy, Roma and Traveller and Technical”) and James Herd, Director of Reserves Management for the Surrey Wildlife Trust. I accept their evidence and rely on it for my summary of the factual background and other matters below. I was also greatly assisted by the skeleton argument and oral submissions of Ms Pratt, for the Council. She properly drew my attention to facts and matters that might count against the grant of an injunction, or aspects of its terms, thereby fulfilling the Council’s obligation of full and frank disclosure.

### **Factual background**

5. The Common is a Site of Special Scientific Interest (SSSI), a Grade 1 Nature Conservation Review Site and a National Nature Reserve. It is part of the Thames Basin Heaths Special Protection Area (SPA) and the Ash, Pirbright and Chobham Common Special Area of Conservation. It is ecologically rich and diverse, supporting a number of protected species of plants and animals. It is much valued by dog walkers, horse riders, cyclists, model aircraft enthusiasts and anglers, attracting 250,000-300,000 visitors per year, most of them from within a 5 mile radius. Visitors express the wish that the Common should retain its current open, natural and wild character. The Common is managed on behalf of the Council by the Surrey Wildlife Trust.
  
6. The Council first sought injunctive relief in 2019 because unauthorised encampments had been forming with increasing frequency and were becoming increasingly large. Between 11 May 2018 and February 2019 there were 10 unauthorised encampments,

four of which comprised 14 or more caravans and associated vehicles. Many encampments remained in situ for several days. On 5 occasions, the Council had to obtain orders under s78 of the Criminal Justice and Public Order Act 1994 and its costs of securing the eviction of the encampments and cleaning up came to £51,713.

7. The 2019 injunction (which ran to 11 November 2022) proved effective. Only one, single-vehicle, encampment occurred on the Common during that time (in April 2022) and its occupants moved on after being informed of the injunction. Meanwhile however, unauthorised encampments continued to occur elsewhere in Surrey. Surrey Police recorded 104 in 2020, 79 in 2021 and 30 in 2022 up to 5 June of that year.
8. In light of the continuing risks of encampments on the Common, the Council sought another injunction which was granted in February 2023 for a period of 3 years. The 2023 injunction was also effective. On 17 August 2023 a large encampment of around 20 caravans set up on the Common (having gained access by damaging a gate). Mr Blackmore attended and served the injunction on the occupants and explained its terms and effect. As a result, the occupants swiftly moved on.
9. Meanwhile, unauthorised encampments occurred with high frequency elsewhere in the county, with the police recording 80 in 2023, 77 in 2024 and 62 in 2025.
10. Encampments create the risk of various harmful consequences, including damage to the infrastructure (gates etc) and the depositing of waste. In the past, the depositing of waste on the Common has included not just human and domestic waste from the occupants of the encampments but the fly-tipping of commercial waste. Mr Blackwood explains that it is unclear whether such fly-tipping was done by the same people who were responsible for the encampments. Such waste is not just unsightly. Mr Herd explains the particular risks that it poses to the flora and fauna of the Common and the health of the members of the public who visit the Common for recreation. The injunctions in place since 2019 appear to have been effective in preventing fly-tipping.
11. The Council maintains 17 permanent Gypsy, Roma and Traveller sites across the county. There are no other Traveller injunctions in place in the county.

### **Notice of the claim and application**

12. Technically, an injunction against a defined class of “persons unknown” who are “newcomers” (i.e. people who are not identifiable as parties at the time when an injunction is granted) is sought and granted on a without notice basis: *Wolverhampton* at [14], [139], [142] & [143(ii)]. Nevertheless, a claimant is obliged to take all reasonable steps to bring the proceedings to the attention of those who are likely to be affected by the injunction: *Wolverhampton* at [167(ii)] & [226]-[229].
13. Here, the Council has publicised its claim and application by posting copies of the (unsealed) Claim Form and Application Notice, along with a draft order and notice, at all vehicular and pedestrian access points to the Common. The same materials were sent to the 3 representative organisations for Travellers and Gypsies who were parties to the *Wolverhampton* case as well as the Surrey Gypsy Traveller Communities Forum (I describe this organisation further below). The notice that was displayed around the Common and sent to these organisations directed readers to a dedicated “injunctions” page on the Council’s Website where the supporting evidence could be viewed. Notice was also given on the Council’s Facebook and X accounts. These steps were taken variously on 12 and 13 January. Unfortunately, the Court only notified the Council of the hearing date on the afternoon of 22 January 2026 (with the hearing to commence at 10.30 on 23 January 2026). Thereafter, the Council updated the injunctions page on its website to include the hearing details.
14. I was told that the Council had received only one expression of interest in the proceedings – a communication from a local parish council that was supportive of the application.
15. In the circumstances, I am satisfied that the Council has complied with its duty to take all reasonable steps to notify those who might be affected by the application. There are generous liberty to apply provisions in the order I have made which will enable anyone who was unaware of the application to make representations and seek its discharge or variation.

### **Basis of the application**

16. The Council invites the Court to exercise its equitable jurisdiction to grant injunctive relief where it is just and convenient to do so, now reflected in s37 of the Senior Courts Act 1981. Recognising that the jurisdiction must be exercised in a principled way, the Council points to three legal rights or prohibitions in support of which it says the Court should act. First, in respect of the three parcels of land which it owns, the Council relies on the common law of trespass. Second, insofar as the Common consists of highways (including verges) in respect of which it is the relevant highway authority, the Council relies on s130 of the Highways Act 1980. Third, the Council relies on s222 of the Local Government Act 1972 (**LGA 1972**).
  
17. In contrast to many other Traveller injunctions, no reliance is placed on s187B of the Town and Country Planning Act, which allows a local authority to apply for an injunction to restrain an actual or apprehended breach of planning control. This omission caused me some concern in respect of the part of the Common that is owned by the Surrey Wildlife Trust. The Council would have no claim in trespass in its own right in respect of that land, and I am told that it does not contain any highways. LGA 1972 does not create any substantive legal rights or prohibitions, rather it confers standing on local authorities “*to bring proceedings to enforce obedience to public law*” where the authority considers that to be expedient for the promotion or protection of the interests of the inhabitants of their area: *Wolverhampton* at [45]. I was therefore keen to understand what public law duties the Council was seeking to enforce obedience to in respect of this particular part of the Common.
  
18. Ms Pratt responded by drawing my attention to the following (among other things). First, she referred me to The County Council of Surrey (Open Spaces) Byelaws 1978, which apply to the Common and prohibit the bringing of caravans onto the Common except in the exercise of any lawful right or privilege, and also prohibit the use of any vehicle for the purpose of camping unless the Council permits. Second, she referred me to s193 of the Law of Property Act granting members of the public “*rights of access for air and exercise*” over land that meets the statutory definition of a common (as, I am told, is presently the case for three of the four parts of the Common, including the part owned by the Wildlife Trust) and prohibiting the unauthorised use of vehicles or camping. Third, she referred me to sections 1 and 2 and Schedule 2 of the Countryside and Rights of Way Act 2000, the combined effect of which is to

permit a person to access registered common land but on condition that they do not (e.g.) drive any vehicle, engage in camping, engage in any activity which is organised or undertaken for any commercial purpose, or do anything that disturbs, annoys or obstructs any persons engaged in lawful activity on the land.

19. Case law on LGA 1972, s222 indicates that the “public law” which it can be used to enforce is a wide concept. It includes, e.g. restrictions on Sunday trading (*Stoke-on-Trent City Council v Bovis Construction Ltd* [1992] 3 All ER 697) and noise control legislation (*City of London Corporation v Bovis Construction Ltd* [1992] 3 All ER 697). I am satisfied that one or more of the provisions identified by Ms Pratt count as “public law” obligations in that wide sense. I am also satisfied that it was open to the Council to seek to enforce obedience with them on the basis that it was “*expedient*” for it to do so “*for the promotion or protection of the interests of the inhabitants of their area*”. The Common is an important amenity for Surrey residents. It is plainly preferable for the Council to exercise responsibility for injunctive relief across the whole Common, rather than leaving the Wildlife Trust to assert its own private law rights in respect of the small, land-locked area which it owns.

### **Principles and guidance from *Wolverhampton***

20. In *Wolverhampton* the Supreme Court acknowledged the Court’s power to grant injunctive relief against newcomer “persons unknown” who are Travellers or Gypsies but described this as an exceptional remedy which must be a proportionate response to the unlawful activity to which it is directed (see [225]). At [167], the Court identified the circumstances in which such exceptional relief might be “just and convenient”:

*“...there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:*

- i. *There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.*
- ii. *There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226-231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.*
- iii. *Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.*
- iv. *The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.*
- v. *It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may*

*be, discharge its duty to provide authorised sites for that purpose within its boundaries. “*

21. In the case of applications for precautionary relief, case law already required a claimant to demonstrate a strong possibility that a defendant would act in breach of their rights unless restrained, and that, if the defendant did so, the resulting harm would be so grave and irreparable that, notwithstanding the grant of an immediate interim injunction (at the time of the actual infringement of the claimant’s rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate: see the articulation of this test by Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 at [31] and his identification there of factors relevant to these questions. In *Rochdale MBC v Persons Unknown* [2025] EWHC 1314 (KB) at [78] Garnham J held that the *Vastint* test has now been subsumed into the *Wolverhampton* requirements but that it remains of value as a useful “double check”.
  
22. As to the key requirement of a “compelling justification” for an injunction, the Supreme Court in *Wolverhampton* said that this is the “*overarching principle that must guide the court at all stages of its consideration*” [188] and that there must be a “*strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. Further the threat must be real and imminent*”: [218]. This gives rise to three preliminary questions, the Court held (see [188]-[217]):
  - i. whether the local authority has complied with its obligations to consider and provide lawful stopping places for Gypsies and Travellers;
  - ii. whether the local authority has exhausted all reasonable alternatives, including whether it has engaged in dialogue with the Gypsy and Traveller community to try and find a way to accommodate their nomadic way of life by giving them time and assistance to find alternative or transit sites, or permanent accommodation;

- iii. whether the local authority has taken steps to control or prohibit unauthorised encampments and related activities by using other measures and powers at its disposal.

**“Compelling justification” - discussion and conclusions**

23. Ms Pratt drew my attention to the fact that, in respect of three of the parcels of land, the Council is asserting private law rights as the freeholder/occupier and not just acting in its role as the relevant highway authority or as an enforcer of “public law” obligations. Whether that might make a difference in another case may be open to debate but her case was that, in any event, the three preliminary questions should be resolved in the Council’s favour even disregarding its private law rights, and I have proceeded on that basis.
24. Subject to the answers to the three “preliminary questions” which I consider below, I am satisfied that the evidence does sufficiently demonstrate a compelling need for injunctive relief. I have set out above the significant history of encampments on the Common prior to the grant of the first injunction in 2019. That injunction and its successor have proved to be largely effective but the two encampments that occurred on the Common in April 2022 and August 2023 indicate that the Common remains an attractive place for Travellers. That is understandable given that it is open, unpopulated, and easily accessible by vehicle. The police statistics on unauthorised encampments in the Surrey as a whole support the inference that encampments on the Common are highly likely to occur in the absence of effective prohibitive measures. The need to protect the Common, given its environmental and recreational significance, is strong and the risk of damage arising from encampments and fly-tipping is high.
25. As to the proposal that the injunction should cover the two additional areas not previously included, that case is also compelling. I am told that, in terms of appearance, environmental significance and recreational amenity, there is nothing to distinguish those parcels from the two that have been protected so far. To all intents and purposes they are equally part of the Common, equally worthy of protection, and equally at risk from encampments and fly-tipping. I am told that, of the encampments that have occurred in Surrey outside the area presently protected by injunction,

several of these have formed either within or closely proximate to Land Title SY779824 (the third of the four areas that the Council seeks to protect). Land Title SY723895 is landlocked by other parts of the Common that are in the Council's ownership but I see no reason why it should not be protected in its own right, given that it is equally valuable and equally at risk.

26. I turn then to the three preliminary questions identified in *Wolverhampton*.
27. “*Whether [the Council] has complied with its obligations to consider and provide lawful stopping places for Gypsies and Travellers*”. Those obligations are summarised in *Wolverhampton* at [190]-[202]. I am satisfied that it has. The Council has 17 permanent sites in the County but does not have a transit site (there is no legal duty to have one). There is no formally adopted Council policy in relation to Travellers who wish to stop temporarily at a site in the county, but the Council has a “negotiated stopping practise” that Mr Blackmore describes in detail. He explains that, if the Council receives a report of an unauthorised encampment, he or his team members will visit, speak to those who have stopped, ascertain their reasons for stopping, how long they intend to stay and conduct welfare checks. He says that the Council is always willing to negotiate stop-overs where an encampment has formed in an appropriate place (or can move to one) and where members of the encampment will agree to keep the site clean and tidy, not deposit waste and not cause any nuisances. He explains that the Council is especially likely to agree to a short stop over where there are welfare needs, including where the encampment is on land covered by an injunction. If the Council decides that an encampment should not be tolerated, Mr Blackmore says that it will allow a reasonable period for the encampment to pack up and move on in an orderly fashion.
28. I understand that, in some cases where a local authority deals with encampments on an informal basis and without having a transit site, the Court has required the authority to undertake to introduce a formal policy or to bring the case back to Court if the authority fails to carry out its declared intention to introduce a policy: see e.g. *Basingstoke & Deane Borough Council v Persons Unknown* [2025] EWHC 738 (KB) at [56]-[59]; *London Borough of Havering v Persons Unknown* [2025] EWHC 2603 (KB) at [43]. I do not consider that it is necessary to require such an undertaking in

the present case. The Common accounts for a very small proportion of the land in Surrey (c.f. *Basingstoke* and *Havering* where the injunctions sought covered 10% and 23% respectively of the boroughs). There are no other injunctions in force in Surrey, there are 17 permanent camps, and the Council's informal practice appears to work well on the ground. The injunction sought is unlikely to impinge to any significant extent on the rights of Travellers in the county as a whole.

29. *Exhaustion of all reasonable alternatives*: while this raises similar issues to those that arise under the third preliminary question (see below), the Supreme Court in *Wolverhampton* at [189] included under this heading “*whether [the local authority] has engaged in a dialogue with the Gypsy and Traveller communities to try to find a way to accommodate their nomadic way of life by giving them time and assistance to find alternative or transit sites, or more permanent accommodation*”. See further at [203]. Mr Blackmore provides strong evidence that the Council does engage appropriately with these communities and has developed a good understanding of their needs. The Council works closely with the Surrey Gypsy Traveller Communities' Forum – an organisation founded in 1996 to promote dialogue and understanding between the Traveller community and the public authorities they interact with (including district and borough councils and the police). Representatives of the Council are on the management committee of the Forum and it has a Facebook page with over 2000 subscribers, which appears to serve as a good means of communicating with the community.
30. *Steps to control or prohibit unauthorised encampments by other measures and powers*: Mr Blackmore identified other measures and powers available to the Council and explained convincingly why they are an inadequate means of preventing unauthorised encampments and fly-tipping on the Common.
31. The Criminal Justice and Public Order Act 1994 (**CJPOA 1994**) permits the Council to direct that persons residing in a vehicle on highway land, unoccupied land or occupied land without the occupier's consent must leave the land and remove the vehicle (s77). The direction is effective for 3 months and failure to comply is a criminal offence. In the event of non-compliance, an order for removal can be obtained from the Magistrates' Court (s78).

32. Mr Blackmore explains that, in the Council's experience, those served with a s77 direction tend to delay moving on until the date of the Magistrates' Court hearing or even the date set for removal under s78. That can lead to an encampment remaining in place for days or weeks, which is unacceptable given the risks such encampments pose to a site as sensitive as the Common. Moreover, the time-limited nature of a s77 direction means that the encampment can return after 3 months, and such directions relate to specific parcels of land, so an encampment need only move to a neighbouring parcel to achieve compliance. These features make the CJPOA 1994 an ineffective means of protecting the Common (which consists of several parcels of land) on a medium-or long-term basis. Mr Blackmore substantiates the Council's submissions by exhibiting a list of instances in which ss77/78 were used in respect of the Common in 2018 and 2019 (before the Council started obtaining injunctions). The list shows that encampments remained for a significant period after being directed to leave, and that the Council incurred legal costs (in the range of £1,616-£1,757 for each case) and substantial clean-up costs (in two cases exceeding £10,000).
33. Under s CJPOA 1994 s61, in certain circumstances, the police may direct trespassers to leave land and remove their vehicles and property. The direction is effective for 12 months and failure to comply is an offence. The power may only be used where an encampment is large (6+ vehicles) or is causing damage, disruption or distress. Additionally CJPOA 1994, s60C makes it an offence to reside on land with or in a vehicle without consent (subject to prescribed conditions).
34. The Council submits, and I agree, that ss60C and s61 are not effective alternatives to injunctive relief for the medium/long-term protection of the Common. In particular, they require action by the police who, as is well known, have many demands on their time and resources and may not be able to respond until significant damage has been done. Similarly, a prosecution under these sections is likely to take a significant amount of time to come to court. Mr Blackmore identifies a single instance of the s61 power being used by the police in relation to the Common (in 2018) and no instances of s60C prosecutions.

35. I have already mentioned the byelaws affecting the Common. They would appear to prohibit the activities that the Council seeks to restrain by injunction, but an infringement results only in a summary conviction and a fine not exceeding £20 (para 21). In prescribed cases, a Council officer or a police officer may remove an infringer, but not their vehicles, and there is no power of arrest (para 22). These measures are plainly inadequate to protect the Common from the risk of unauthorised encampments and fly-tipping that I have found to exist.
36. The Council has attempted self-help measures. Concrete chicane barriers were put in place in March 2019 at the car parks on the Common, so that vehicles towing caravans could not enter. These were expensive to keep in place (hire fees of c. £1,260 per month); they were an eye-sore (triggering complaints from the public) and they made it difficult for emergency service vehicles to access the Common (the Common is prone to wildfires). Mr Blackmore explains that one of the car parks is currently being refurbished in a way that should prevent tall vehicles entering. However, I am satisfied that creating obstacles to caravans and commercial vehicles is unlikely to be an economical or effective solution given the need for any such measures to respect the aesthetic and recreational value of the Common and to permit easy access by the emergency services.

### **Procedural protections**

37. I have already explained that the Council's efforts to publicise this claim and application were sufficient. The injunction I have granted includes provisions for alternative service of my Order that require the Council to take substantially identical steps to notify "persons unknown" of the grant of the Order (i.e., in summary, publication on the Council's website, display of copies at the access points to the Common, including a link to the Council's webpage, posts on the Council's social media pages, and service by email/post to the *Wolverhampton* appellants and the Surrey Gypsy Traveller Communities Forum). The earlier injunctions additionally required the Council to publicise them via printed and online versions of local newspapers. I have not included such a requirement in the present order, accepting Ms Pratt's submissions that this would introduce uncertainty (the Council cannot control what the local newspapers decide to publish) and is unlikely to add much to the effectiveness of the other notice provisions.

38. The Order I have made permits the Defendants or anyone notified of it to apply to vary or discharge it on 48 hours written notice to the Council. The Order includes the necessary contact details.
39. I am satisfied that, cumulatively, these aspects of the Order provide the procedural protections required by *Wolverhampton*.

#### **Territorial and temporal limitations**

40. The proposed injunction is restricted only to the Common (as defined), the whole of which, I accept, is strongly in need of protection from the prohibited activities. My Order provides that it will expire just before midnight on 1 February 2027 and requires any application to renew it to be made by 4pm on 23 December 2026, any such application to be considered at a hearing on 25 January 2027. In my judgement, these provisions ensure that (in the words of the Court in *Wolverhampton* at [167](iii)) so far as practicable, the injunction neither outflanks nor outlasts the compelling circumstances relied upon.

#### **Just and convenient on the particular facts**

41. I am satisfied that it is just and convenient to grant the injunction in the terms I have approved. At [167](iv) in *Wolverhampton* the Court noted that it might not be just and convenient to grant an injunction restraining Travellers from using some sites as short-term transit camps if the local authority has failed to exercise its power or failed to discharge a duty to provide authorised sites for that purpose. The Council is not under a duty to provide a transit site. As already explained above, it provides 17 permanent sites and has an effective practice of engaging with those involved in an unauthorised encampment to ensure that any welfare issues are addressed and that they can be moved on in an orderly fashion. These factors, combined with the fact that the Common represents a very small proportion of the county and is in high need of protection, satisfy me that I should not refuse an injunction on the basis that the Council has failed to exercise its powers appropriately.

#### **Terms of the injunction**

42. At [188]-[237] in *Wolverhampton* the Supreme Court mentioned various other matters of relevance. I do not think it matters whether these are regarded as points going to the question of whether it is “just and convenient” to grant an injunction or points going to particular provisions of the injunction. So far as relevant, I decide as follows.

*Definition of the Defendants*

43. See *Wolverhampton* at [221]. The injunction sought is prospective (it is not alleged that anyone is presently camping or fly-tipping on the Common, only that this is likely to occur in future). I accept that the Council’s proposed wording for the definition of the Defendants is necessary and appropriate. Anyone coming to the Common and seeing the injunction will know that they will fall within its terms if they form an encampment or deposit waste. I accept that there is a need to define two classes of “persons unknown”. While the evidence suggests that fly-tipping on the Common has been associated with the formation of encampments, it is not necessarily the case that a fly-tipper will be a member of an encampment. They may be associated with the encampment but not part of it, or they may have no association at all.

*Clarity of terms*

44. I am satisfied that the injunction I have made (in the terms proposed by Ms Pratt) is clear and drafted in everyday language that is easy to understand. It goes no further than prohibiting the conduct that must be restrained in order to protect the Common.

*Undertaking in damages*

45. A private party, seeking an interim injunction, will ordinarily be required to offer a cross-undertaking in damages as a quid pro quo for obtaining interim relief, i.e. they will have to undertake to the Court that they will compensate for the loss incurred by the defendant as a result of the grant of the injunction, should it transpire at trial that their substantive claim was not well-founded.
46. By contrast, where interim injunctive relief is sought by a public authority exercising a law enforcement function in the public interest the Court will not ordinarily require

a cross-undertaking in damages: *Kirklees Metropolitan BC v Wickes Building Supplies Ltd* [1993] AC 227. Exceptions include cases where it is arguable that the public authority was engaged in misfeasance in public office or an infringement of a person's convention rights: *FSA v Sinaloa Gold plc & Ors* [2013] 2 AC 28 at [31].

47. A *Wolverhampton*-style injunction is not an interim injunction that “holds the ring” until a final hearing. It is, in effect, a final remedy granted for a defined period. Nevertheless, the Supreme Court recognised at [234] that “*there may be occasions where a cross undertaking is considered appropriate, for reasons such as those given by Warby J in Birmingham City Council v Afsar [2019] EWHC 619 (QB), a protest case. These are matters to be considered on a case-by-case basis, and the applicant must equip the court... with the most up-to-date guidance and assistance*”.
48. In *Afsar* at [3(5)] Warby J noted as relevant considerations “*whether the authority is acting pursuant to a statutory duty in seeking relief; the fact that the authority is only accorded limited resources to fulfil its functions; whether some other person or body would be able to , and would act if the authority did not; and the undesirability of dissuading or deterring a public authority from acting in the public interest.*” At [4] he continued:

*“Another factor which seems to me to be relevant is the nature of the undertaking itself. Two features may be important. First, it is for the respondent to show that loss has been suffered, and that this has resulted from the grant of the injunction. Secondly, the Court retains the power, and duty, to decide whether, in all the circumstances, the respondent should be compensated for that loss. This must of course be done in a principled way. But by the same token, it must mean that in reaching a decision the Court should take into account the general rule against awarding compensation for loss caused by administrative action undertaken on behalf of the public, and in the name of the public interest.”*

49. Taking these factors into account, I am satisfied that requiring a cross-undertaking in damages is unnecessary and inappropriate. First, it is true that, in respect of three of the four parcels of land, the Council is asserting its private law rights to restrain

trespass. But that is not at the heart of its application, which is aimed at enforcing obedience to the “public law” obligations that I have identified above. Second, although the Surrey Wildlife Trust would be able to bring its own private law claim in trespass in respect of the parcel of land it owns, it is plainly undesirable that it should be required to do so, and similarly undesirable that the Council should be required to give an undertaking in respect of that particular part of the Common. Third, so far as I am aware, there are no encampments on the Common that will be required to vacate as a result of my order and anyone who thinks they ought to be permitted to camp there or deposit rubbish there can apply to vary the injunction on 48 hours’ notice. In those circumstances, the chances of a person demonstrating that the grant of the injunction has caused them loss are minimal. Fourth, there is no suggestion that the Council might be committing misfeasance in public office or interfering with any person’s ECHR a8 rights (see *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2023] QB 295 at [104]-[105]).

*A requirement to seek permission before making a contempt application*

50. The effect of my order is that anyone who, with notice of my order, sets up an encampment or deposits waste in contravention of its terms, will expose themselves to the risk of proceedings for contempt of court. Penalties for contempt are far-reaching and include imprisonment for up to two years. In *MBR Acres Ltd & Ors v Curtin & Persons Unknown* [2025] EWHC 331 (KB) (a protest case, not a Traveller injunction) Nicklin J required that the claimant should apply for the Court’s permission before making any contempt application. I am told that a similar provision has been included in more recent injunctions restraining protestors.
51. I do not consider that I need to incorporate any such proviso in the present case. The proviso was included in *MBR* in light of an unfortunate procedural history suggesting that the claimants were prone to taking disproportionate steps to restrain the activities of animal rights protestors. There is no comparable history here and it is highly unlikely that anyone setting up an encampment on the Common or fly-tipping there could argue that their activities were a lawful exercise of their ECHR rights. The rigours of the procedure for making contempt applications, set out in CPR 81, are sufficient in the circumstances.

**Conclusion**

52. For these reasons, I am satisfied that the Council should be granted an injunction in the terms of the Order that I have approved.