

**Report of the Cabinet Member for  
Public Health, Communities and Equality**

**Introduction**

I will be reporting as follows for Full Council on 7 December 2023:

**1. by Councillor Atkinson as follows:**

What progress is being made to find St Thomas Library a new home and why the DCC could not give the relevant guarantee to landlords to facilitate obtaining a lease on new premises.

**2. by Councillor Connett as follows:**

A recent BBC article reports on a ruling by the Supreme Court that councils do have the power to ban travellers from using council/public land and can take out injunctions in advance of any occupation. Can the Cabinet Member update council on the Supreme Court ruling and what implications it has for the county council's current policy.

**Response**

1. The lease on the building was due in November this year and following a rent review the landlord put the rent up and wanted a long-term arrangement on the building. Earlier this year the landlord attempted to gain planning permission to turn the building into flats we felt entering into a long-term arrangement when the future of the building was unclear would be wrong.

Having taken the difficult decision to not renew the lease on these grounds we regretfully closed St Thomas Library in November. As soon as we knew what was happening we engaged with local people on alternative locations both in the long and the short term. I am pleased to announce that a home has now been found at the Emmanuel Hall in St Thomas. Our provider Libraries Unlimited is preparing the space to open its doors and welcome its members before Christmas. I'd like to thank the residents of St Thomas, the excellent staff at St Thomas Library and local members for their help and co-operation and look forward to visiting the new St Thomas library.

**2. Briefing Note: Unauthorised Encampments**

Currently, it is the usual practice for DCC to tolerate encampments where there is a lack of adequate provision for sites for the UE to move on to. If the encampment is disruptive, or located on a high profile site, it is usual to deal with UEs by way of s. 77/78 procedure under the Criminal Justice and Public Order Act 1994, which is the most efficient procedure due to it consisting of two elements: firstly, issuing a Direction to Leave, and only if that is ineffective, DCC would apply as step 2 to the Magistrates Court for an Order for removal of persons and their vehicles unlawfully on land. These powers have been granted to the local authorities specifically to tackle UEs.

Other powers are available, for example, common law powers under Civil Procedure Rule Part 55. Enforcement must be justified and will only apply when the encampment is within a DCC-owned site, or on the public highway, and only when appropriate to enforce.

DCC takes a multi-agency approach and is in regular liaison with the communities, as well as other authorities, in order to address the issue adequately.

### **Supreme Court decision in Wolverhampton City Council and others (Respondents) v London Gypsies and Travellers and others (Appellants) [2023] UKSC 47**

The above listed remedies can prove ineffective as they do not prevent another group of trespassers from taking possession of the parcel of land from which another group has been evicted. Under the Part 55 procedure, the original order may be restored if some of the “fresh” trespassers came from the same group and were defendants to the original order. However, that may prove difficult, especially when dealing with “Persons Unknown”, as is often the case with Gypsy and Traveller encampments.

Similarly, the s77/78 procedure is only effective for 3 months from the issuing of the s. 77 Direction and Order to Leave: re-entry is a criminal offence with the maximum fine being £1000. The same problem arises when another group enters who have not been a party to the original order of the Court.

Due to the lack of effectiveness of the available remedies, some authorities have applied to the Courts for wide ranging injunctions banning persons unknown from occupying land. These injunctions have been “called in” by the Courts to assess their validity, which has resulted in the Wolverhampton litigation and ended up in the Supreme Court. This decision upheld the injunction and provided a welcome clarification of the law as to whether injunctions can be made against “Persons Unknown” or “newcomers”. The appeal has an effect not only on the Gypsy and Traveller encampments, but that is its primary focus.

For better understanding, the “newcomers” are defined in para. 2 of the SC judgement:

“The appeal raises the question whether (and if so, on what basis, and subject to what safeguards) the Court has the power to grant an **injunction which binds persons who are not identifiable at the time when the order is granted, and who have not at that time infringed or threatened to infringe any right or duty which the claimant seeks to enforce, but may do so at a later date:** “newcomers”, as they have been described in these proceedings”

The issues raised in the course of this litigation, by those acting on behalf of the groups potentially affected, surround Human Rights and procedural unfairness in that the parties potentially affected by the injunction, who have not been a defendant in the interim injunction, do not have an opportunity to respond, and would not have notice of the final injunction hearing.

The Supreme Court considered the above in addition to the question on procedure, particularly, how would a claim for a “newcomer injunction” be validly served. As a general rule, the Court reminds us, an injunction order must describe the defendants with sufficient clarity and identify who is included and who is excluded – otherwise its effect would be to bind the whole world.

Para. 74 discusses issues with traveller injunctions granted over a wider geographical area, i.e., forcing Travellers out of a borough and causing strain on resources in boroughs which had yet not obtained an injunction. It also had impact on the traditional lifestyle led by Travellers which alleged had been recognised and protected by ECHR (right to private and family life).

The Court has taken great care in balancing these issues against the need for an adequate remedy to uphold the law, therefore providing a detailed guidance to the applicants within the judgement. This new type of injunction is to be viewed as an additional method of enforcement as generally there will be no question as to the rights of the defendant where it is clear that they are a trespasser. It is a new type of remedy which will exist alongside the currently available powers and must be used only where the existing remedies have proven ineffective – as a “last resort” option.

The Supreme Court placed the burden of proving why a “newcomer injunction” is necessary on the applicant authority. The Court will consider the below criteria, set out in Para. 167 of the judgement, before granting an injunction of this type:

“(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 (i.e. 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. (Note: It doesn’t mean the injunctions can only apply to one county or district. The action must be proportionate and flexible to fit the facts of a case.)

(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.”

In summary, the “newcomer injunctions” are a new category of a Court derived remedy which the Courts can grant if the local authority can show they complied with the strict criteria set out in this judgement. It exists alongside the current powers available to the local authorities, such as common law procedure under Civil Procedure Rule 55, and more commonly used powers in Criminal Justice and Public Order Act 1998 s. 77/78.

This new type of remedy can be used when all other options have been exhausted, which has a possible application to high profile sites often targeted by Unauthorised Encampments. Additional procedural requirements will apply to those already in place: we must make every effort to bring the intention of applying for such order to the affected communities, as well as disclose as fully as possible the circumstances affecting the UE, including those that may be detrimental to our position. Further, the Court placed emphasis on the need for continuing dialogue with the affected communities and adequate provision of sites, and expressly said that the lack of transit sites or scarcity of authorised Traveller sites may in itself be a reason for the Court to refuse an application for a “newcomer injunction”.

It must be borne in mind that these injunctions are very expensive to obtain and have a considerable impact on officer time due to the requirements set out in this judgement.

The judgement can be accessed at Supreme Court’s website: <https://www.supremecourt.uk/cases/uksc-2022-0046.html>. The press summary is helpful in summarising the main points of the judgement.

**Councillor Roger Croad**

Cabinet Member for Public Health, Communities and Equality