

Claim No. KB-2022-BHM-000188

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

B E T W E E N:-

1. WOLVERHAMPTON CITY COUNCIL
2. DUDLEY METROPOLITAN BOROUGH
COUNCIL
3. SANDWELL METROPOLITAN BOROUGH
COUNCIL
4. WALSALL METROPOLITAN BOROUGH
COUNCIL

Claimants

-and-

PERSONS UNKNOWN

Defendants

HEARING NOTE FOR 15 MAY
2023

Wolverhampton City Council,
Legal Services,
Civic Centre,
St Peter's Square,
Wolverhampton

Ref: LIJ017753P/01201576

Solicitor for the Claimants

For Hearing 15 May 2023

In the matter of an application for an injunction under s.222 Local Government Act 1972 and s.130 of the Highways Act 1980

B E T W E E N:-

1. WOLVERHAMPTON CITY COUNCIL
2. DUDLEY METROPOLITAN BOROUGH COUNCIL
3. SANDWELL METROPOLITAN BOROUGH COUNCIL
4. WALSALL METROPOLITAN
BOROUGH COUNCIL

Claimants

-and-

1. PERSONS UNKNOWN WHO PARTICIPATE BETWEEN THE HOURS OF 3:00PM AND 7:00AM IN A GATHERING OF 2 OR MORE PERSONS WITHIN THE BLACK COUNTRY AREA SHOWN ON PLAN A (ATTACHED) AT WHICH SOME OF THOSE PRESENT ENGAGE IN MOTOR RACING OR MOTOR STUNTS OR OTHER DANGEROUS OR OBSTRUCTIVE DRIVING

2 PERSONS UNKNOWN WHO PARTICIPATE BETWEEN THE HOURS OF 3:00PM AND 7:00AM IN A GATHERING OF 2 OR MORE PERSONS WITHIN THE BLACK COUNTRY AREA SHOWN ON PLAN A (ATTACHED) WITH THE INTENTION OR EXPECTATION THAT SOME OF THOSE PRESENT WILL ENGAGE IN MOTOR RACING OR MOTOR STUNTS OR OTHER DANGEROUS OR OBSTRUCTIVE DRIVING

3. PERSONS UNKNOWN PROMOTING ORGANISING PUBLICISING (BY ANY MEANS WHATSOEVER) ANY GATHERING BETWEEN THE HOURS OF 3:00PM AND 7:00AM OF 2 OR MORE PERSONS WITH THE INTENTION OR EXPECTATION THAT SOME OF THOSE PRESENT WILL ENGAGE IN MOTOR RACING OR MOTOR STUNTS OR OTHER DANGEROUS OR OBSTRUCTIVE DRIVING WITHIN THE BLACK COUNTRY AREA SHOWN ON PLAN A (ATTACHED)

Defendants

HEARING NOTE FOR 15 MAY
2023

Introduction

- 1 This matter was last before the court on 13 February 2023¹ when Freedman J continued [D46-67] an urgent interim Injunction ('the Injunction') and ancillary Power of Arrest, granted by Hill J on 21 December 2022 [D1-24 & D25-27].

- 2 This Hearing Note is intended to address developments since that date including:
 - (1) service of the Injunction and notification of this hearing;
 - (2) efficacy of the Injunction;
 - (3) variation and continuation of the Injunction; and
 - (4) directions for any future hearing(s).

- 3 A fresh bundle has been prepared for this hearing. Both hard copy and a pdf have been filed. The pdf version is 302 pages and the hard copy concludes with page D144. References in square brackets are to that bundle.

- 4 A further additional (tenth) witness statement of Paul Brown, dated 9 May 2023, addressing liaison with West Midland Police on alternative service ('the Police') has been filed. Copies of this witness

¹ A transcript of the hearing on 6 February 2023 [D85-143] and the Judgment on 13 February 2023 [D68-84] appear in the bundle.

statement have been filed via CE-file but are not incorporated in the main bundle.

- 5 This application is to be heard alongside a similar application by Birmingham City Council, *Birmingham City Council v Nagmadin ats ors* [KB-2022-BHM-221].

Pre-Hearing Reading

- 6 Should time permit it is recommended that the following material is considered before the hearing:

- (1) Judgments of:
 - (a) Hill J, given on 21 December 2022 [D28-45]; and
 - (b) Freedman J given on 13 February 2023 [D68-84]
- (2) The Order and Power of Arrest granted by Hill J [D1-24 & D25-27] (sealed 22 December 2022);
- (3) Order of Freedman J (sealed 16 February 2023) [D46-59]
- (4) Report of Adam Sheen on behalf of the Claimants [A1-A7]
- (5) Witness statements of:
 - (a) PC Mark Campbell, dated 9 December 2022 [B22-25];
 - (b) Paul Brown, dated:
 - (i) 27 February 2023 [B26-33];
 - (ii) 28 April 2023 [B89-93];
 - (iii) 4 May 2023 [B109-112]; and
 - (iv) 9 May 2023 [filed by CE file after bundle filed].

Preliminary

Supreme Court

- 7 Both Hill and Freedman JJ were concerned with the progress of the case of *Wolverhampton City Council and others (Respondents) v London Gypsies and Travellers and others (Appellants)* [2022] UKSC /0046 which was pending before the Supreme Court (this is the appeal of *Barking & Dagenham LBC v Persons Unknown* [2022] EWCA Civ13).
- 8 As Freedman J was aware the hearing had concluded but judgment had been reserved [D70 para 4], hence the Claimants undertaking to notify the court as soon as their Lordships deliver judgment [D48]
- 9 No date for judgment has been notified to the First Claimant who are party to that appeal.

Service via the Police

- 10 It is apparent from the tenth witness statement of Paul Brown, dated 9 May 2023, that the orders for alternative service have not been fully complied with. All orders for alternative service contained a provision mandating requests to the Police to *inter alia*:
- (a) post on their website and Instagram, Twitter, and Facebook accounts, a link to the media release.

(b) ensure that copies of the Injunction, Power of Arrest and this order are available at the front desks of their stations throughout the Black Country (see para 5(9) of the Order of Freedman J [D52] for an example).

11 It is clear from Mr Brown's witness statement that while the social media requests were made and acceded to (see para 9 and exhibits) the request for a website link and the provision of hard copy of papers at the front desks of stations was not made until very recently (paras 10 and 11).

12 In terms of explanation for this failure nothing can be added to that provided by Mr Brown.

13 The Claimants repeat the apologies in the witness statement which recognise the serious nature of the failing and where responsibility lies.

14 The Claimants submit that while the failure can only be described as serious it has had little, if any, effect on the intended purpose of the order i.e. ensuring that the existence of the order received widespread publicity:

(1) PC Campbell states [B23/4] that the majority of attendees at events are aware of the injunction.

(2) The Police social media feeds on Facebook and Twitter have publicised the order.

(3) The other steps ordered by the court have been complied with and appear to have been effective.

(4) There has been no attempt to conceal or mislead.

15 Accordingly the Claimants ask the court to hold that the steps taken (including those now taken) amount to good service.

Service

16 The order [D49/para 1(c)] of Freedman J required the Claimants,

Not less than 7 days prior to the hearing the Claimants shall file with the court a succinct report to inform the court of their experience with the publication, operation and enforcement of the Injunction Order, including for example, breaches, warnings or problems, if any arising out of the extended order (including the Power of Arrest).

17 That report has been filed, albeit described as a Case Summary [A1-A7]. It refers at paras 6 to 10 [A3-4] to the detailed evidence regarding publicity of the Injunctions and the steps taken to effect service.

Operation & Enforcement

18 The report also summarises (with reference to detailed evidence) how effective the order has been and the steps taken to enforce it.

19 It is submitted that while the Injunctions and Power of Arrest have not proved to be a “cure all” they have proved to be effective in

reducing street racing and car cruising, particularly of the larger and more organised type.

- 20 It is to be noted that all the witness statements support the order's continuation.

Continuation of Order

- 21 In practical terms the options are to continue the interim order or give directions for a final hearing. The factual matrix has altered little since Freedman J considered this aspect.

- 22 Freedman J addressed this in his judgement at paras 31 & 32 [D 75]:

31 In a Part 8 claim, the court might come to a final stage after a short time relative to a Part 7 claim. The expectation might then be in a case such as the instant one where nobody has come forward wishing to be a defendant or to seek to discharge or vary the order that a swift disposal to the proceedings should occur. There is also a concern which has been expressed particularly by Nicklin J at first instance in the *Barking and Dagenham* case that there is a tendency for interim orders to be continued for years without steps being taken to progress the action instead of driving the case to an end.

32 Despite the above, it is not appropriate to drive the case to an end at this stage. The Supreme Court case as discussed above is such that the court ought not to bring this case to an end until the Supreme Court has given its judgment subject, of course, to how long that process may last. It is possible that the Supreme Court will rule for certain procedures to be observed in such cases and to give guidance

relevant to the making of a final order capable of catching newcomers. Alternatively, it is possible that the decision will be against such orders at least as regards newcomers which is another reason to move with caution before making a final order.

23 It is respectfully submitted that a further limited adjournment may be appropriate with the interim order remaining in place. The Claimants repeat their previous undertaking to notify the court if judgment is delivered by the Supreme Court.

Conclusions

24 The Claimant submits that the interim Injunction and Power of Arrest should remain in place pending any final resolution.

25 The Injunction:

- (1) has been effective;
- (2) provides protection to the public from a real danger;
- (3) has no effect on lawful behaviour;
- (4) has inhibited car cruising/street-racing, especially large scale and organised activity;
- (5) remains subject to the court's supervision and control; and
- (6) meets a pressing need.

11 May 2023

MICHAEL SINGLETON
(Counsel for the Claimants)