

Name: James Herd
Date: 23 8 2022
Statement No.: 1
Exhibits: "JH1"

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

Claim No. QB-

**IN THE MATTER OF SECTION 222 LOCAL GOVERNMENT ACT 1972 AND
SECTION 187B OF THE TOWN AND COUNTRY PLANNING ACT 1990**

B E T W E E N :

SURREY COUNTY COUNCIL

Claimant

-and-

**(1) PERSONS UNKNOWN FORMING AN UNAUTHORISED ENCAMPMENT AND /
OCCUPYING FOR RESIDENTIAL PURPOSES (including temporary accommodation)
WITH OR WITHOUT VEHICLES ON CHOBHAM COMMON, SURREY**

**(2) PERSONS UNKNOWN DEPOSITING WASTE OR FLY-TIPPING ON CHOBHAM
COMMON, SURREY**

Defendants

WITNESS STATEMENT OF JAMES HERD

I, JAMES HERD of Surrey Wildlife Trust, School Lane, Pirbright, Woking, Surrey, GU24 0JN
WILL SAY as follows:

Preliminary:

1. I make this witness statement in support of the Application before this Honourable Court brought by Surrey County Council ("the Council") for a preventative injunction in the terms of the draft Order that I have been shown. In particular an injunction against the First Defendant that :
 - (i) they be forbidden from setting up an encampment within the boundaries of Chobham Common as identified by the attached Map at Exhibit "SM1" without the express written permission of the Claimant as Landowner.
 - (ii) they be forbidden from entering or occupying for residential purposes within the boundaries of Chobham Common as identified by the attached Map at Exhibit "SM1" without the express written permission of the Claimant as Landowner.

and against the Second Defendant that:

- (ii) they be forbidden from depositing waste or fly-tipping within the boundaries of Chobham Common as identified by the attached Map at Exhibit "SM1" without the express written permission of the Claimant as Landowner.
2. I believe that the facts stated in this Witness Statement being verified 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.
3. By this application the Council hopes to repeat the successes of the first such injunction it obtained on 11 November 2019 ("the **2019 Injunction**"). The 2019 Injunction has significantly reduced the number of unlawfully established encampments on the Common. This has accordingly reduced the incidents of the Common being used for the purposes of residential occupation or the unlawful depositing of waste. By obtaining a fresh injunction, it is hoped that the problems that the Council experienced prior to the grant of the 2019 Injunction do not return to the Common.

Background

4. I am Director of Reserves Management employed by the Surrey Wildlife Trust ("the **Trust**").

5. I have read the witness statement of my predecessor, James Adler dated 9 July 2019, which I now have produced and shown to me marked "JH1". I can confirm the information contained in Mr Adler's witness statement remains correct.
6. Chobham Common is still designated as a Site of Special Scientific Interest and a National Nature Reserve.
7. As I believe has been explained by Ian Horgan in his witness statement in support of the claim for a new injunction, there has been a dramatic reduction in the number of occasions unlawful occupiers have come onto the Common for the purposes of encampment and / or waste depositing. This has had a significant beneficial effect on the Common and ensured the enjoyment that can be had by visitors.
8. It is for that reason that I, on behalf of the Trust, unequivocally support the proposed application for the Claimant to be granted a new injunction as we believe it will continue to benefit the Common by ensuring any person who wishes to come onto the land for the purposes of occupation or fly-tipping is discouraged from doing so.
9. I believe that the facts stated 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.



.....
JAMES HERD

Dated 23 8 2022

IN THE HIGH COURT OF JUSTICE

Claim No.

QUEEN'S BENCH DIVISION

IN THE MATTER OF SECTION 222 LOCAL
GOVERNMENT ACT 1972 AND

SECTION 187B OF THE TOWN AND
COUNTRY PLANNING ACT 1990

B E T W E E N :

SURREY COUNTY COUNCIL

Claimant

-and-

(1) PERSONS UNKNOWN OCCUPYING LAND
(2) PERSONS UNKNOWN DEPOSITING
WASTE OR FLY-TIPPING ON LAND

Defendants

WITNESS STATEMENT OF JAMES HERD

DIRECTOR OF LAW & GOVERNANCE,
Surrey County Council,
1st Floor
Dakota
De Havilland Drive
Weybridge
Surrey,
KT13 0YP

IN THE HIGH COURT OF JUSTICE

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Defendants

EXHIBIT "JH1"

This is Exhibit "JH1" referred to in the Witness Statement of James Herd dated 23 8 2022



JAMES HERD

Dated 23 8 2022

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Claim No.

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B E T W E E N :

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-and-

(1) PERSONS UNKNOWN OCCUPYING LAND
(2) PERSONS UNKNOWN DEPOSITING WASTE OR FLY-TIPPING ON LAND

Defendants

WITNESS STATEMENT OF JAMES ADLER

I, JAMES ADLER of Surrey Wildlife Trust, School Lane, Pirbright, Woking, Surrey GU24
0JN WILL SAY as follows:

Preliminary:

1. I make this witness statement in support of the Application before this Honourable Court brought by Surrey County Council ("the Council") for an anticipatory injunction in the terms of the draft Order that I have been shown. In particular an injunction

forbidding Persons Unknown Occupying Land and / or Depositing Waste or Fly-Tipping on Chobham Common ("the Common"), from:

- (1) Setting-up an encampment on Chobham Common without written permission from the Local Planning Authority by virtue of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015/596 (GPDO 2015) or planning permission granted by a planning inspector;
- (2) Occupying any part of Chobham Common for residential purposes (temporary or otherwise) including with caravans, mobile homes, vehicles, and residential paraphernalia without written permission from the Local Planning Authority by virtue of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015/596 (GPDO 2015) or planning permission granted by a planning inspector;
- (3) Bringing on Chobham Common any vehicle whether for the purposes of disposal of waste and materials or otherwise, other than when driving through the County of Surrey or in compliance with the Parking Orders regulating the use of car parks or with written permission from the Local Planning Authority by virtue of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015/596 (GPDO 2015) express permission from the owners of the Land.
- (4) Depositing any personal, domestic or commercial waste and / or fly-tipping on Chobham Common.

Background

2. I am Director of Biodiversity employed by the Surrey Wildlife Trust ("the Trust"). The Trust was established The Surrey Naturalists' Trust. The Trust is a charity and relies heavily upon the support of our members. There are over 100 staff in the employ of the Trust. The Trust is charged with working to protect the countryside for the benefit of the wildlife. I now have produced and shown to me marked Exhibit "JAI" some pages from our website, which give a fuller explanation of our history and the methods of funding.
3. In 2002 the Trust took over responsibility for the substantial countryside estate owned by the Council. One part of the countryside estate, amounting to approximately 1620 acres is Chobham Common ("the Common"). The Common has been designated as a Site of Special Scientific Interest and a National Nature Reserve. It has had that designation due to the incredible diversity of plant and animal life on the Common

The Common

The Wildlife

4. There are three hundred and ninety vascular plant species have been recorded on the site. The wet heath and mire communities support excellent assemblages of wetland plants including the nationally scarce marsh gentian *Gentiana pneumonanthe*, and the Surrey rarities hare's-tail cotton grass *Eriophorum vaginatum*, bogbean *Menyanthes trifoliata*, and royal fern *Osmunda regalis*. Other wetland species include round-leaved sundew *Drosera rotundifolia*, oblong-leaved sundew *Drosera intermedia*, bog asphodel *Narthecium ossifragum*, bog pimpinell *Anagallis tenella*, common cotton grass *Eriophorum angustifolium*, heath spotted orchid *Dactylorhiza maculata*, and saw-wort *Serratula tinctoria*. Of most note is the marsh club moss *Lycopodiella inundata*, which is classified as nationally scarce and is protected under schedule 8 of the Wildlife and Countryside Act 1981, and is a Biodiversity Action Plan (BAP) priority species.
5. The dry grassland areas are quite diverse and support the nationally scarce mossy stonecrop *Crassula tillaea* and *Dianthus armeria* which is classified as nationally vulnerable, is protected under schedule 8 of the Wildlife and Countryside Act 1981. The better areas of secondary woodland support a typical woodland flora. Mistletoe *Viscum album* a Surrey rarity occurs on the site. The Common has a rich bryophyte flora.

Animals

6. One hundred and seventeen species of bird have been recorded on the Common, which forms an important part of the Thames Basin Heaths Special Protection Area (SPA). The Thames Basin Heaths Special Protection Area site was declared under Article 4.1 of the Directive (79/409/EEC) as it supports populations of European importance of the Dartford Warbler *Sylvia undata*, Nightjar *Caprimulgus europaeus*, and Woodlark *Lullula arborea* all of which are listed on Annex I of the Directive and Schedule I of the Wildlife and Countryside Act 1981.
7. Before the heavy snowfalls of February 2009 and 2010 the Common supported in excess of ninety breeding pairs of Dartford warbler (4.7% of the British breeding population). Surveys undertaken in 2009 on the Thames Basin and Wealden Heaths SPAs show a 88% drop in Dartford Warbler numbers; further snowfall and freezing weather in early 2010 is likely to exacerbate this decline. The numbers have now recovered to a large population. The Common supports in excess of fifty pairs of European nightjar (1.5% of the British breeding population). Woodlark numbers vary between six and twelve pairs (0.4-0.8% of the British breeding population).
8. Non-qualifying species of interest that are listed in the SPA citation that breed on the common are hobby *Falco subbuteo*, woodcock *Scolopax rustica*, skylark *Alauda arvensis*, stonechat *Saxicola torquata*, tree pipit *Anthus trivialis*, and yellowhammer

Emberiza citrinella, Merlin *Falco columbarius* and kingfisher *Alcedo atthis* are irregular winter visitors to the site.

8. Red list Birds of Conservation Concern that are resident breeding birds on the Common are lesser spotted woodpecker *Dendrocopos minor*, linnet *Acanthis cannabina*, song thrush *Turdus philomelos*, cuckoo *Cuculus canorus*, tree pipit *Anthus trivialis*, and skylark *Alauda arvensis*. Grey partridge *Perix perix*, Grasshopper warbler *Locustella naevia*, spotted flycatcher *Ficedula hypoleuca*, reed bunting *Emberiza schoeniclus* and Lapwing *Vanellus vanellus* have been known to breed in some years.
9. The four common amphibian species and the four common reptile species occur on the site. Sand lizard *Lacerta agilis* a BAP priority species was successfully re-introduced to the site in 1987.
10. The Common is nationally important for its invertebrate fauna, in particular its Spiders (Areneae); bees, wasps and ants (Hymenoptera); aquatic beetles and ladybirds (Coleoptera); true flies (Diptera); and butterflies and moths (Lepidoptera). The invertebrate site register for the Chobham Common SSSI lists 467 notable invertebrate species; of these, 9 species are listed as endangered (one ant, 3 wasps and 5 bees), 6 species are listed as vulnerable (one hoverfly, 2 spiders, 2 wasps and one bee), 28 species are listed as rare (5 Hemiptera bugs, one sawfly, 7 wasps, 9 bees, 4 Diptera and 2 spiders), 29 species are listed as nationally scarce notable A, 96 species are listed as nationally scarce, 2 species are listed as regionally scarce, 286 species are listed as local, one species is listed as insufficiently known, 2 species are listed as requiring confirmation, and one species is listed as extinct on the site "site possibly now obliterated by M3".
11. Some 281 species of spider have been recorded of which 39 species are classified as rare and 8 as very rare. This gives the Common the largest known fauna in Britain with 47% of all British species. Of most note is the BAP priority species *Uloborus walekenacrius*.
12. 389 species of bees and wasps (Hymenoptera aculeata) have been recorded on the Common together with 21 species of ant (Formicidae). Of most note is the BAP priority species the red barbed ant *Formica rufibarbis* which only occurs on Chobham Common in the mainland UK. A project, funded by IILF, to conserve the red barbed ant on Chobham Common and re-introduce further nests was begun in 2007. (For further information see project reports held by SWT). 106 species of Diptera have been recorded most notably the BAP priority bee fly

13. Some 122 beetle species have been recorded, including 21 of the 24 extant native British ladybird species. 33 species of butterfly have been recorded of which 28 breed on the site. Of most note are silver studded blue and the grayling (*Hipparchia semele*). 322 species of moth have been recorded. 22 dragonfly (Odonata) species been recorded.

Public Use

14. Chobham Common is an important amenity for local people and visitors from other parts of Surrey, the Windsor and Maidenhead area, and from Middlesex and West London. Annual visitor numbers are estimated at between 250,000-300,000, by site managers, with approximately 25% coming from the surrounding villages and 63% come from within 5 miles. The Common is used for informal recreation with walking, dog walking, model aircraft flying, quiet relaxation, horse riding, cycling, and fishing being the main activities.
15. I am aware from numerous discussions I and colleagues have had with visitors to the Common that the vast majority of visitors and local people have expressed the wish that the present 'open, natural and wild' character of the Common is retained. Dog walkers make up 49% of all visitors (WSP Environmental 2004), this shows an increase from 34% in 1994 (Jenkins, 1994). Model aircraft flying accounts for 11% of visits, horse riding just under 5% and cycling 2% (Jenkins, 1994).

Impact of Fly-tipping and Unauthorised Encroachments

16. Fly tipping is a significant blight on the Common as it is a major source of pollution and a potential danger to public health and hazard to wildlife. People may dispose of hazardous materials when they fly tip purely because they can't think of another way to get rid of a potentially dangerous substance. Fly-tipping is a problem in its own right, but it can also lead to many other problems. The following 'collateral damage' has been experienced at the Common.
 - Dumped black bin bags slowly rip apart and begin leaking contaminated fluid, which then seeps down into the soil. This potentially not only affects the soil and the plants that grow in it, but also any aquifers below;
 - Animals get into the rubbish bags and ingest items, which may cause serious damage or death to native wildlife and household pets alike;
 - Black bags containing food waste will draw rodents and other small mammals to the area, many of whom carry disease;

- Contaminated muck away (construction and excavation waste) used as topsoil on large grassland areas will not only contaminate the soil, but also adversely affect the local wildlife, and those people who use the grassland for recreation;
- Waste fly-tipped near streams and rivers, or in their catchments risks being swept into the waterways and contaminating the water, and the wildlife who use the waterways;

Unauthorised Encroachments

17. Fly-tips are often one vehicle load of waste often deposited in an opportunist fashion. An unlawful encampments causes huge problems for the Common. An unlawful encampment often involves tree surgeons or gardeners leaving large amounts (often many loads) of biological material. Whilst much of the flytipping is around the edge of the site, particularly the car parks and road verges, the encampments penetrate further into the site risking wider and larger scale contamination to the rare wildlife on site.

Conclusion:

18. As I believe has been explained by Ian Horgan in his witness statement in support of the claim for an injunction, there has been a dramatic spike in the number of occasions unlawful occupiers have come onto the Common for the purposes of encampment and / or waste depositing This has had a significant effect on the Common and of course heavily detracts the enjoyment that can be had by the visitors.
19. It is correct that the introduction of chicane barriers had prevented larger vehicles and importantly caravans coming onto the Common, but their continued placement is highly undesirable. The barriers are a complete anathema to the open space and natural wildlife environment that the Common offers. However, if they are removed there is a strong possibility that the damage caused previously, by unlawful encampments and fly-tipping will resume as the barriers have been, until now, the only effective means of preventing access. With the barriers removed the damage that I have described will almost certainly resume.
20. It is for that reason that I, on behalf of the Trust, unequivocally support the proposed injunction application as we believe it can have the dual benefit of firstly ensuring that the Common can revert to being a site of openness and natural beauty, whilst secondly ensuring any person who wishes to come onto the land for the purposes of occupation or fly-tipping is discouraged from doing so as they will be fearful that if previously they

could occupy for days and weeks, with the injunction in place, they will be required to move on much more swiftly.

21. In fact I understand based on experiences in other Boroughs that have obtained similar preventative injunctions, that the Persons Unknown, who have historically encamped on green land are respecting the preventative orders and do not come onto protected land. This is exactly the result that I and the Trust hope will arise, if the Court were to grant the injunction sought by the Council.

22. I confirm the contents of my witness statement is true.

A solid black rectangular redaction box covering the signature of James Adler.

JAMES ADLER

Dated 10 July 2019

IN THE HIGH COURT OF JUSTICE

Claim No.

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B E T W E E N :

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Claimant

-and-

(1) PERSONS UNKNOWN OCCUPYING LAND
(2) PERSONS UNKNOWN DEPOSITING
WASTE OR FLY-TIPPING ON LAND

Defendants

WITNESS STATEMENT OF JAMES ADLER

DIRECTOR OF LAW & GOVERNANCE,
Surrey County Council,
County Hall,
Penrhyn Road,
Kingston-upon-Thames,
Surrey,
KT1 2DN

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Claim No.

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BETWEEN:

SURREY COUNTY COUNCIL

Claimant

-and-

(1) PERSONS UNKNOWN OCCUPYING LAND
(2) PERSONS UNKNOWN DEPOSITING WASTE OR FLY-TIPPING ON LAND

Defendants

EXHIBIT "JA1"

This is Exhibit "JA1" referred to in the Witness Statement of James Adler dated 10 July 2019



JAMES ADLER

Dated 10 July 2019



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WHAT WE DO

About Surrey Wildlife Trust

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About us

Surrey Wildlife Trust is one of 46 [Wildlife Trusts](#) working across the UK. With the invaluable support of volunteers and members we manage over 7000ha of land for wildlife and people in Surrey. We also work with other organisations and landowners to protect and connect wildlife sites across the county and inspire local communities and young people to care for wildlife where they live.

David Attenborough

Surrey Wildlife Trust's work inspiring people to love nature has never been more important. If we are to protect nature in the future we have to put people at the heart of it.

Sir David Attenborough



Our CEO

Surrey Wildlife Trust is lead by Sarah Jane Chimbwandira
CEnv MCIEEM

Sarah Jane first worked for the Trust as a university student while studying zoology when she volunteered for an invertebrate survey along the old A3 prior to the Hindhead tunnel. She was subsequently employed by the Trust as a membership secretary in 1997 and with a brief interlude at Surrey County Council has worked for the Trust ever since across the land management, GIS and mapping, planning, biodiversity, evidence and policy departments before being appointed CEO in 2019.

Sarah Jane is also director and co-founder of the [Surrey Nature Partnership](#) and a Trustee for the [Surrey Hills Society](#).



Surrey Naturalists' Trust Logo c. 1965

Our history

The Surrey Naturalists' Trust was formed on 21st March 1959. Over 60 years later our name may have changed, but the motivation that inspired our founders remains the same.

Over the years the number of reserves cared for by the Trust has grown steadily thanks to generous gifts of land and the purchase of sites from fundraising. In 2002 the Trust also took on Surrey County Council's considerable countryside estate and now employs over 100 members of staff to care for the countryside and inspire others to do the same - a far cry from our humble beginnings.

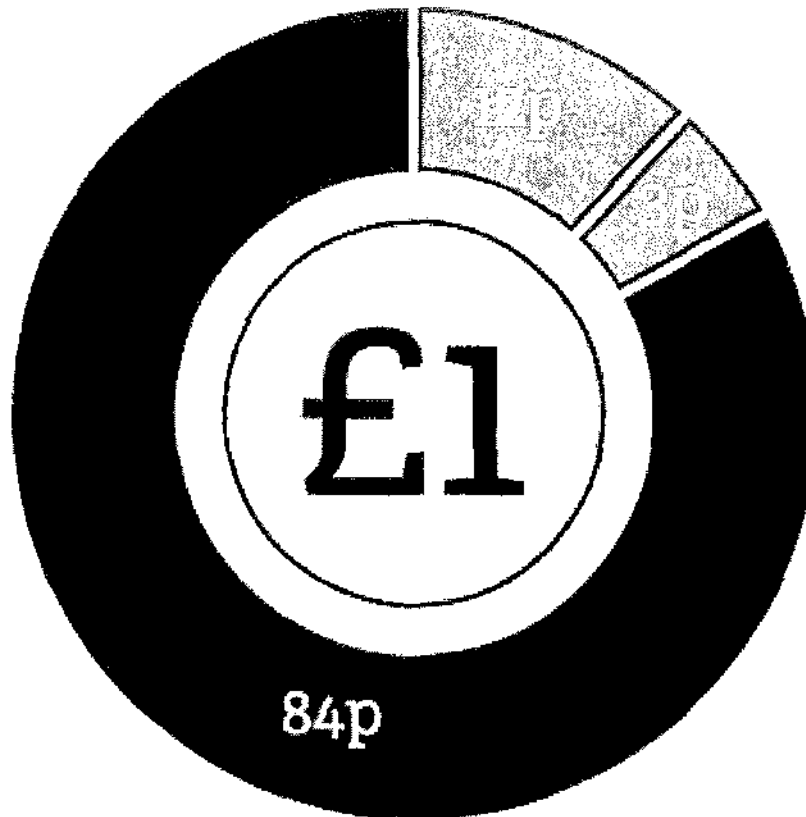
[More about our history](#)

How we're run

A group of elected Trustees oversee the governance and strategic leadership of the organisation. Our Trustees are

members of the Trust and give their experience and expertise for free.

[More about our governance](#)



How we're funded

Surrey Wildlife Trust is a charity, and as such we rely on the support of membership subscriptions, donations, grants, legacies and other funding sources to allow us to carry out our work caring for wildlife in Surrey.

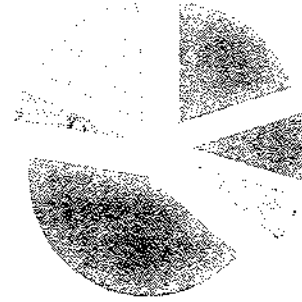
84p in every £1 is spent directly on nature conservation. 12p goes on securing extra funding for our work and 3p is spent on governance of the Trust.

[Support us](#)

How we raise funds

Surrey Wildlife Trust income 2018

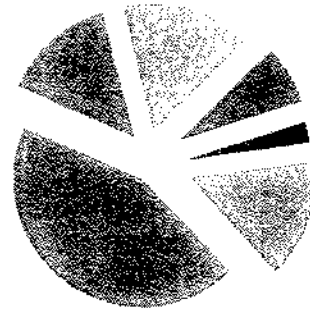
REVENUE	£	%
Membership Subscriptions	1,051,786	20%
Donations & Legacies	526,700	10%
Commercial Activities	742,724	14%
Land Management	1,247,131	24%
Education & Events Income	245,000	5%
Property Management & Sewage	810,659	15%
Investments	29,876	1%
Total	5,405,676	100%



How we spend money

Surrey Wildlife Trust expenditure 2018

EXPENDITURE	£	%
Membership Services	396,275	8%
Finance	144,765	3%
Conservation Activities	807,027	15%
Land Management	2,311,641	43%
Education & Events and Wildlife	768,417	14%
Property Management & Sewage	861,945	16%
Total	5,281,768	100%



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Restoring Surrey's nature

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