

Name: Ian Horgan
Date: 16/08/2022
Statement No.: 1
Exhibit: "IH1-8"

**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 IAN HORGAN

I, IAN HORGAN of Surrey County Council, Woodhatch Place, 11 Cockshot Hill, Woodhatch,
Reigate, RH2 8EF 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 "IH1" 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 "IH1" without the express written permission of the Claimant as Landowner.

and against the Second Defendant that:

- (iii) they be forbidden from depositing waste or fly-tipping within the boundaries of Chobham Common as identified by the attached Map at Exhibit "IH1" 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.

Personal Background:

4. I have considerable experience working for the Council, having commenced my employment in August 2014. Prior to that I was a serving police officer for 32 years, specialising in crime prevention design and counter-terrorism. Over the last 7 to 8 years, I have held varying roles with the Council, including Facilities Officer, Project Manager and for the last three years I have taken on the role of Technical Team Manager. This role involves managing a team of four technical team surveyors who in turn manage the

seventeen permanent Gypsy, Roma, Traveller sites across the County as well as the small business centres and encroachments onto Surrey land and unauthorised encampments.

5. My team and I have been directly involved in the problems that have arisen in relation to occupation and encampments on the Common by virtue of our responsibilities for unauthorised encampments.

The Benefit of the 2019 Injunction:

6. Since the 2019 Injunction has been in place, the Council has had just one unauthorised encampment on the Common. This encampment involved one wagon that arrived on the 23 April 2022 at Burrow Hill and left on the 25 April 2022, one day after being informed of the existence of the injunction by the police. As far as I am aware, there were no clean-up costs to the Council as a result of this encampment.
7. This record compares very favourably with the number of incidents involving unauthorised encampments across the County. I now have produced and shown to me Exhibit “IH2” a spreadsheet containing information regarding the number of incursions over the last three years. This shows that in 2020 there were 104 unauthorised encampments, none of which were on the Common, in 2021 there were 79 unauthorised encampments, none of which were on the Common and up to 5 June 2022 of this year there have been 30 unauthorised encampments, with just the one unauthorised encampment on the Common, which I have detailed in paragraph 6 above. The one occasion of an unauthorised encampment on the Common over the last three years is extremely low compared with the 14 such incidents in the three years prior to obtaining the 2019 Injunction.

The Proposed Application:

8. It is important to appreciate that this application is not a blanket wide injunction. It simply seeks a preventative anticipatory injunction for one area of land; the Common. The Council is seeking no more nor any less protection, than it was granted by the Court in 2019.
9. It is also to be noted that there in pursuing a fresh injunction, it is not intended to single out any one particular group, however it would not be credible if I did not observe that people of the Travelling Community are most likely to be affected by the injunctive relief

being sought. I am aware of the fact that Travellers are from a nationally recognised ethnicity and have their own distinct identity and culture. I am therefore aware of the importance of treating the Travellers needs with respect and dignity. I am especially aware of any potential conflicts between the way of life of Travellers and the need to uphold their rights under the Human Rights Act and the need to balance this with the laws of the land, local bye-laws and the rights and entitlements of the local residents affected by Traveller movements. After all, the land that the Council is seeking to protect with this preventative injunction is designated public land, intended for the greater benefit of all who come to the County of Surrey.

10. As part of the assessment between the Gypsy and Traveller way of life and the needs of the Council and those that reside and work within the County, it is inevitable that financial factors have to be taken into account, particularly in these times of austerity and high demand on local authority budgets. As I shall endeavour to explain the cost involved in recovering and restoring land that has been the subject of an encampment, whether involving fly-tipping or not can be extremely significant and can have a long-term detriment to the community in terms of budget restrictions for other programmes and responsibilities that fall within the Council's remit. In addition, the time involved in recovering land is lost, when officers and other agencies would be better engaged in advancing positives in the Council.

11. It is with that balance in mind that myself, together with assistance from colleagues at the Council have completed an Equality Impact Assessment (the Assessment"), a copy of which is produced and shown to me marked "IH3". As can be seen the Assessment has taken into account the harm and adverse effect that unlawful encampments and fly-tipping has had in the past on the Council and its residents and visitors and balanced that with an assessment of the welfare and occupation needs of Persons Unknown. The Assessment makes, amongst other things, the following conclusions:
 - (i) There is a considerable amount of evidence of the impacts the incursions and associated antisocial behaviour are having on local settled communities and on Council resources.
 - (ii) This evidence has to be balanced against the possibility of any negative impact there may be on particular groups involved with the occupation of Council owned or maintained land.
 - (iii) Consideration of these equality and human rights issues have been taken into account in applying for this Order.

12. In reliance upon the conclusions reached by the Assessment, the Council has decided to apply for a fresh preventative protective injunction over the Common. It is hoped that based on the very positive experience found by the Council over the last three years, following the obtaining of the 2019 Injunction, the Council will be able to maintain the success it has experienced thus ensuring its direct and indirect costs associated with unlawful encampments and fly-tipping, do not return to the levels experienced prior to November 2019. In doing so, the Council can spend time, energy and money on positives to enhance the Common for all users.

The County of Surrey and Chobham Common:

13. The County has a population of approximately 1.2 million. A huge amount of the County is green space. The Common is approximately 1620 acres in size. It is located in the north of the County. I now have produced and shown to me at page 1 and 2 of Exhibit "IH4" a local map, identifying the Common and its location within the greater area of Surrey and a plan with the Common edged in red, but with areas marked in green. The areas marked in green are not owned by the Council and are not to be part of the injunction application. I also attach Office Copy Entries at pages [3-] of "IH4" showing the various parcels of land that make up the Common; namely Title No. SY676014 (Common land at Chobham), Title No. SY779824 (land on north east side of Windsor Road) and Title No. SY676315 (common land at Chobham Common).
14. Although the Common is owned by the Council, it is managed on our behalf by the Surrey Wildlife Trust, albeit the Council retains responsibility for incursions of the types described in this statement.
15. The Common is a site of Special Scientific Interest. It is a Grade 1, [Nature Conservation Review Site](#) and a [National Nature Reserve](#). It is part of the Thames Basin Heaths [Special Protection Area](#) and the Thursley, Ash, Pirbright and Chobham [Special Area of Conservation](#). Most of the site is managed by the [Surrey Wildlife Trust](#) as the Chobham Common Nature Reserve. I now have produced and shown to me marked "IH5" an exhibit containing detailed information about the Common.

Unlawful Occupation / Waste Depositing / Fly-Tipping on the Common:

16. The acts of unlawful occupation, of the type that this application seeks to address have not occurred for some time, due to the success of the 2019 Injunction and the reduction of travelling by the Gypsy and Travelling Community over the period of the pandemic. However, I believe it would be useful for the Court to understand the problems that have

been experienced in the past, as that will inform the Court as to whether there is a risk of the problems returning and if the problems did return, the effect it would have on the Common and those persons that use the Common for their leisure activities.

17. Many of the past incursions involved a large number of vehicles. In addition to simple occupation by caravans and mobile homes, fly-tipping and the depositing of waste, most commonly green vegetation waste has taken place, as well as building waste. The green waste is particularly concerning because of the fear that the ecological table might be unbalanced. I understand that a further statement will be produced in support of this application from a member of the Surrey Wildlife Trust who will be able to give more precise and expert evidence in relation to the potential damage that is caused where vegetation from an outside source is mixed with the natural vegetation on the Common.
18. It has always been difficult to identify with any certainty the persons who have occupied the Common and who might do so in the future. This is because although we are aware of the names of some persons who have in the past established unlawful encampments and been responsible for domestic and commercial waste being tipped, we do not have reliable information as to the identities of those people, as the names they may have provided to officers who have attended the Common and the site of an encampment, may not necessarily be truthful. It is not uncommon to be given clearly fictitious names, when undertaking welfare checks or site assessments.
19. It is for that reason why the proposed Defendants to this Application are as stated on the heading to this statement. I am advised that it is appropriate to refer to the Defendants in this way so as to differentiate between those that seek to occupy the Common for residential purposes and those that are carrying on depositing waste or fly-tipping activities. Although there is some overlap as to the people doing this, it is accepted that some persons who occupy are not active in the illegal commercial waste operation.
20. Further, the Council does not wish and does not consider it appropriate to single out named individuals or any groups of people. The injunction is sought against anyone who is seeking to establish encampments and / or depositing waste and fly-tipping regardless of their background.

The Effect of Past Unlawful Occupations:

21. As I have indicated the Common has suffered damage, particularly as a result of waste depositing and fly-tipping. It has also suffered damage due to the being driven on by heavy vehicles. The damage to the ground and vegetation caused by vehicles can be significant, particularly if the ground is wet.
22. Photographs attached at “**IH6**” show some examples of the damage caused to the land prior to the 2019 Injunction being obtained. Nothing like that has happened since the 2019 Injunction and the hope is that with the grant of a new injunction, the Common will continue to be protected and safe from the damage that has been caused in the past. The photographs show the number of occupiers in caravans that can sometimes arrive and fire damage to the land. In addition, examples of the fly-tipping waste can be seen, particularly the green waste, fencing and glass
23. Litter takes many forms. Personal litter is offensive and horrendous for local residents to have to experience. There have been numerous incidents of human and dog waste being deposited. A number of the photographs exhibited at “**IH6**” show this. This creates a significant public health hazard especially on land that is intended to be used for recreational and leisure activity. It is generally accepted that the *toxicity in dog waste is harmful to grass* causing burned areas, but is also potentially dangerous to people as it is estimated that a single gram of dog waste can contain 23 million faecal coliform bacteria, which are known to cause serious unpleasant medical conditions.
24. The second type of litter is what I would describe as domestic litter, commonly within black bin liners, but it is not uncommon for this type of waste to be strewn all over the areas being occupied. For example, I have seen food cartons/wrappers just abandoned on site. Other debris includes drink bottles, cereal boxes and nappies. In addition to domestic litter, there are occasions where dangerous materials such as broken glass and tins are discarded on the grass and planting areas. Again, I have exhibited some photographs that illustrate this type of waste.
25. The third type of waste can best be described as commercial fly-tipping waste. This involves in the main part green vegetation waste but from time-to-time builders’ rubble, glass, concrete, hazardous materials and domestic rubbish. It is this waste that causes the greatest clearance expense as it is usually necessary to engage independent waste clearance contractors, often with specialist protective clothing to collect and then remove to official waste sites. The scale of the green vegetation fly-tipping is often difficult to imagine. However, some of the photographs exhibited will give the Court a flavour of the problems that have been experienced in the past. The waste depositing is known to be part of a highly commercialised and profitable operation generating anything from

£1000 plus per day in revenue to the fly-tippers who collect a vehicle load for £200 plus and then discard it on open sites owned by the Council and other private landowners.

26. Overall, the photographs at “**IH6**” do not show the extent of the litter, but it will be appreciated there is a lot of clearing up to do once the Persons have departed, especially as the Council want to get the areas occupied back into public use as quickly as possible. I anticipate these photographs, all taken on the Common in 2019 will give the Court a flavour of the problems that were faced in the past and could be faced by the Council and its officers in the future, if the 2019 Injunction is not renewed.

27. When dealing with the unlawful encampments, the Council introduced chicanes on the roadways of the Common. I now have produced and shown to me marked “**IH7**” photographs of the blockers. The blockers did act as a very effective barrier as they were strategically placed far enough apart to allow vehicles to pass through but sufficiently close to avoid vehicles towing trucks or caravans being able to easily manoeuvre. The placement of these barriers had a significant effect on reducing the number of incursions at the Common but were extremely unpopular with residents of the area, because they were quite an eye-sore. They were considered as visually horrendous to be in a site of natural beauty. Disquiet surrounding the fact that the Common, which is a location open to everyone to enjoy has been blighted with the existence of these barriers, led in large part to the 2019 Injunction being sought. With the success of the 2019 Injunction, the chicanes have, much to the delight of the users of the Common, been removed in all locations except for at the Roundabout car park. I have read the witness statement of my colleague Steve Mitchell, who explains why this chicane has remained in situ.

28. The last thing that the Council would want to do is to have to return to the more extensive use of chicanes on the Common. Not only are the barriers unsightly, but they are very costly. In 2019 when they were first introduced the cost to the Council was approximately £1260 per month as the daily hire rate was £7.50 and the Council had hired 42 blockers. I have not sought to discover the cost now, but would imagine like most things the cost of hiring will have gone up since 2019. To return to that type of expenditure would be very unfortunate, especially as the money saved over the last few years has been allocated to enhance the quality of the experience at the Common, but there is always more to do.

28. However, re-introducing the blockers indefinitely is prohibitively expensive, the more important point is that their continued placement is entirely contrary to the aesthetic enjoyment that the Common should provide. It is a balance between securing the sites and not adversely affecting the natural beauty on the Common. As can be seen from the photographs exhibited the blockers are unsightly. It is in part due to the unsightly nature

of the blockers and the desire not to return to their use, that this fresh injunction into protect the Common is being pursued.

A Balanced Approach for the Future:

29. Obviously obtaining a protective injunction over the Common will reduce the green space that Persons Unknown and in particular the Gypsy & Traveller Community can occupy, however even with the Common protected there would be many other green spaces within the County that could be occupied as an alternative, which would not have such an adverse effect on a site designated of special interest and natural beauty. This application is not of the type that I am aware other authorities have applied for, which covers all green spaces in the area. I am obviously not inviting acts of trespass, but I appreciate that the particular nomadic lifestyle that the Gypsy and Travelling Community adopt has to be respected, but not on the Common.
30. It is also important that the Court is made aware that if, following the grant of a fresh injunction Persons Unknown come onto the Common, the Council will recognise that they still have an ongoing responsibility to undertake an assessment to determine whether there is any possible health and welfare needs that need to be addressed. It should not be thought that just because we may secure the future protection of the Common by virtue of a fresh injunction, we will not carry out our duties and undertake appropriate enquiries and assessments so as to ensure where a particular need arises it is properly addressed. For that reason, the proposed Injunction Order, makes clear that even if someone comes onto the Common, the Council will undertake a welfare assessment. This will include properly assessing any person who is in need, even if they have come onto the Common, in breach of this Order.

Seeking an Injunction

31. I am advised that when a Court considers an interlocutory injunction, whether the injunction is seeking to prevent a trespass or breach or is reacting to an act of trespass or breach, the Court is obliged to have regards to the tests set out in the case of *American Cyanamide v Ethicon* which broadly states that (1) if there is a serious issue is identified which cannot be addressed by the recovery of damages and (2) the balance of convenience is more in favour of the granting of an injunction than against doing so, then an injunction will be ordered. In addition, the Court takes into account the fact that there is no real defendant in opposition as it is not as if there is any claim to an entitlement to occupy on public land or fly-tip. That said, I did instruct the Council's solicitor to inform the Secretary of the Surrey Gypsy Traveller Community Forum of our intention to seek a new injunction to protect the Common. A copy of the letter sent to Mr. Harte dated 13 July 2022 is now produced and shown to me marked "IH8".

32. There can be no question that a serious issue is before the Court; namely the strong probability that with the expiry of the 2019 Injunction, the problems that that injunction so successfully addressed could arise again. That would be very unfortunate because there can be no doubt that any acts of occupation or waste depositing by persons trespassing and causing a nuisance on the Common, would seriously affect the quality of the Common. . This arises not just by virtue of the trespassing encampments being established, but also as a result of littering and fly-tipping. Even if, which of course is not the case, the trespass could be met by the payment of fees, giving the person a right to occupy, the devastation to the lawful users of the Common could not be reimbursed to the Council. Nor obviously could damages ever reimburse for the ecological damage to the vegetation and animals on the Common.

The Proposed Order

33. Since there is very clearly a serious issue, where damages cannot act as an adequate remedy and the balance of convenience is firmly in the Council's favour, I do respectfully request the Court grant the fresh injunction sought in the terms of the draft Order presented as part of the application paperwork.
34. The proposed Order seeks to prevent vehicles such as caravans and mobile homes as well as vans and lorries coming onto the Common for the purposes of residing or depositing waste. Nothing in the proposed Order restricts driving on the Common, to gain access to various areas of natural beauty. It is simply seeking to prevent the Common from being occupied as an encampment and / or waste depositing. The proposed Order does not have the effect of restricting in any way the lawful activities of anyone outside the terms of the Order.
35. The proposed Order is sought for an initial period of 3 months. I understand that this is slightly longer than is commonly the case where an initial interim injunction is obtained. The three-month period will enable the Council to assess whether the injunction is working. It will also assist anyone who wishes to join the proceedings as a defendant to prepare for a hearing. Of course, there would be nothing to stop any individual applying on short notice (the Order proposes 72 hours) to the Court to set aside or vary the existing Order if it felt the order was unfair and needed to be set aside as having been wrongly obtained over all the protected areas or specified areas.

Conclusion:

36. As I have explained the number of camps on the Common over the last three years, whilst the 2019 Injunction has been in place, has been limited to the one solitary incident. However, it should not be thought that the problem has gone away as the statistics set out in paragraph 7 indicate. It is for that reason that the Council are very concerned that if the 2019 Injunction expires and is not replaced by a new injunction, the problems experienced in other parts of Surrey and which were experienced on the Common prior to 2019, will return.

37. It will be appreciated that camps of this nature are established in a matter of minutes, but can take days and in some cases weeks to remove. The process is slow and laborious and the time that it takes to remove is time where the occupiers are damaging the land and causing waste to accumulate. The occupiers know they can stay put until such time as a removal or possession order is obtained. If, as would be the case this application was to be successful, an injunction would be in place before any unlawful occupier / depositor arrives, and they would therefore be dealt with much more swiftly, although always with an assessment of needs taking place.

38. I am very confident, particularly based on the experiences of the Council over the last three years, that an injunction to protect the Common will have the desired effect and will continue to protect the Common from persons wanting to occupy and / or fly-tip on the Common.

39. The benefits to everyone resident or visiting the Common will be significant. It is hoped that the huge amounts of money that would have had to be used containing, controlling and recovering parts of the Common unlawfully occupied can continue to be better placed and used to enhance the quality of the Common.

40. A new injunction will also assist the local police who do not have the resources to fully police the problem, but who are constantly being contacted with reports of criminal and anti-social behaviour.

41. In all the circumstances the Council respectfully seeks the Order requested.

42. I confirm the contents of this Witness Statement is true.



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IAN HORGAN

Dated 16th day of August 2022