

CLAIM NUMBER

IN THE COUNTY COURT SITTING AT GUILDFORD

IN THE MATTER OF SECTION 187B OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

BETWEEN :

SURREY COUNTY COUNCIL

and

LORRAINE CASTLE (aka Charmaine Lorraine Brown) (1)

EDWARD COOPER (2)

JOHN BRUCE (3)

JOHN SMITH (4)

MARK SULMAN (5)

THOMAS KEFFORD (6)

ALBERT HILDEN (7)

CALEB JONES (8)

FANNY EASTWOOD (9)

BEN BROWN (aka Benny Brown)(10)

FULLERS GRAB HIRE LIMITED (11)

PERSONS UNKNOWN (12)

DETAILS OF CLAIM

FACTS

1. The Claimant seeks an injunction pursuant to section 187B of the Town and Country Planning Act 1990 (as amended) in the form set out in the attached Draft Final Order. The Claimant relies on the witness statement and exhibits of Mr. Mitchel Pugh dated 19 February 2025 in support of this claim.
2. Section 187B of the Town and Country Planning Act 1990 provides :
 - (1) *Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.*
 - (2) *On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.*
 - (3) *Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.*
 - (4) *In this section “the court” means the High Court or the County Court*
3. Part 8 of the Civil Procedure Rules 1998 ('CPR') applies to this claim pursuant to paragraph 9.4 of Practice Direction 8A.
4. The Claim relates to land known as Land at Crosswinds, Collendean Lane, Norwood Hill, Surrey, RH6 0HS ('the Land') indicated by the red edged line on the attached plan. It comprises land registered under HM Land Registry Titles :-

SY494069	Lorraine Castle	1 st Defendant
SY570537	Edward Cooper	2 nd Defendant
SY570536	John Bruce	3 rd Defendant
SY570534	John Smith	4 th Defendant
SY570535	Mark Sulman	5 th Defendant
SY578083	Thomas Kefford	6 th Defendant

SY570538 Albert Hilden 7th Defendant

SY573687 Caleb Jones 8th Defendant

SY573688 Fanny Eastwood 9th Defendant

As shown on exhibit **MP 2** to Mitchel Pugh's witness statement

5. Defendant 10, Mr Ben (Benny) Brown is not a registered landowner. However, through the Claimant's investigation, officers have established that he is the husband of the First Defendant (who is herself the registered landowner of Land Registry Title SY494069 shown on exhibit **MP3** hatched blue). It is also understood that he has day to day conduct of operations on the Land, and when ongoing he gives direction as to the continued unlawful activity as if he were the owner with a controlling interest in the Land.
6. Defendant 11, Fuller Grab Hire Limited is not a registered landowner. However, upon the Claimant's Planning Enforcement Team visiting the site on 21st November 2024 a vehicle with livery stating Fuller Grab Hire Limited (FGH) was seen lowering its bed and heading out to the entrance gate. Furthermore the road sweeper that was present beside the Land similarly had the same FGH livery, as outlined in Mitchel Pugh's witness statement paragraph 43.
7. The Claimant is the County Planning Authority (CPA) within the Administrative area of Surrey. This area has a two-tier structure whereby the County Council is the Minerals and Waste Planning Authority (MWPA) and the Highway Authority and the District or Borough Council, here, Reigate and Banstead Borough Council (RBBC) is the Local Planning Authority (LPA) . In part, the role of the MWPA is to ensure that the impacts of mineral working and waste management are controlled to acceptable levels. The importation and deposit of waste materials that comprise the breach of planning control, are considered to be 'County Matters' in accordance with the definition found at Regulation 2 of The Town and Country Planning (Prescription of County Matters) (England) Regulations 2003.

8. In this case, the Claimant has determined that action is required to remedy the breach of planning control at this site by way of injunctive action as previous enforcement action has not deterred the Defendants from further development.
9. The land lies in the Green Belt and has a lawful use of agriculture. Historically it could accurately be termed as an open grassland habitat with an undulating and uneven surface. Much of the surface of the land has now been covered by many layers of waste material having been imported and deposited over time. The land is approximately 3.24 hectares (ha) in size and has a mixture of hedgerows and trees on all of its boundaries, with Collendean Lane immediately to the south and Ironsbottom immediately to the east. To the north and west of the Land are agricultural fields.
10. There is no relevant planning history relating to this matter. The Planning History in relation to this Land, solely relates to planning consents which are unrelated to its use for the importation and depositing of materials.
11. Breaches of planning control on the Land first came to the attention of the Claimant in 2020 and have continued to date, with an intervening period of inactivity following the service of a Temporary Stop Notice in August 2021 and then a Stop Notice with Enforcement Notice in September 2021. This initial formal enforcement action resulted in the substantial cessation of the active importation and depositing of waste material between 16th September 2021 until more recently. Nevertheless, there had been no remediation works undertaken to achieve full compliance with the terms of the Enforcement Notice prior to recommencement activity.
12. In June 2024, following reports from the local Parish Council it appeared that the importation and depositing of waste materials had recommenced in earnest. Following a site visit on 1st July 2024 by Mitchel Pugh, Planning Enforcement Team Leader, this was confirmed. A Planning Contravention Notice was issued on 9th July 2024 and a further Temporary Stop Notice was issued initially on 6th August 2024 which was reissued on 16th August 2024, both of which expired on 1st October 2024. Reports were then received on 18th October 2024 and it was confirmed that activity had recommenced.

13. The Claimant considers that almost 80% of the land surface has been covered in waste. Given the enforcement history in this matter, and the Defendants' history of compliance for short periods before recommencing unlawful activity, the Claimant had resolved to make an application for an injunction to cease any further activity in the immediate interim cease before proceeding by way of final injunction requiring remedial action. The Claimant informed the Defendants of this intended action on 21st November 2024 which resulted in a cessation of activity on 28th November 2024. However, the Claimant is nonetheless concerned that there is a real risk of activity resuming as has been the pattern in the past, unless and until an injunction is secured. The Claimant therefore seeks an interim injunction in the immediacy, with a final injunction in due course, in the terms set out in the attached drafts.
14. The continued importation and deposit of waste materials over the majority of the site's surface over a period of 4 years (albeit with a period of cessation, as outlined) has raised the land profile over time. In some parts of the site the land exceeds the level of adjoining land by more than 0.5 metres. The materials appear to be of generally mixed composition and therefore it is necessary for the MWPA to interrogate the purpose of the deposited waste. There is no evidence to demonstrate that the deposit of waste materials has resulted in any benefit or improvement to the land; or that any such improvement or benefit cannot practicably and reasonably be met in any other way; or that the waste cannot practicably and reasonably be re-used, recycled or processed in any other way; or the use the waste replaces the need for non-waste materials; or that the breach of planning control involves the minimum quantity of waste necessary. On that basis the development is considered to be contrary to policies 1, 5 and 6 of the Surrey Waste Local Plan (SWLP) 2019-2033.
15. Thus, it is possible to identify harm by way of the direct loss of open grassland habitat (pasture) which has been compounded by multiple layering of waste deposits over time, leading to an increased risk of contamination of the residual historic land/substrates, residing beneath. It is reluctantly accepted that even with effective substantive remediation measures, the complete restoration of the affected land to a grassland habitat can only have a marginal impact on seeking to reverse the damage caused.

16. The development is thus considered harmful to the openness of the Green Belt contrary to policy 9 of the Surrey Waste Local Plan 2019-2033 and Policy NHE5 of RBDMP. Furthermore, the development changes the landscape character and amenity in a materially harmful way in terms of its visual, noise and dust impacts, contrary to policy 14 of the SWLP and policy DES1 of the RBDMP.
17. The most recent activity gave rise to concerns as to the quality and safety of the adjoining highway for other users. This was both as a result of the access and egress arrangements being unsuitable by obscuring normal passage along Collendean Lane and also the depositing of significant amounts of mud which during adverse weather conditions would cause a significant risk, also being contrary to Policies 14 and 15 of the SWLP. Were activity to resume such concerns would reoccur.
18. It is considered that an interim injunction would prevent a worsening of the situation, whilst causing limited or no prejudice to the Defendants who will have the opportunity to attend and be represented at a return hearing whereby they can fairly make submissions as to the effect of a full injunction upon them.
19. It is considered necessary and proportionate to include persons unknown on the proposed interim and final injunction orders sought.
20. In relation to "Persons Unknown", *Boyd & Anor v Ineos Upstream Ltd & Ors* [2019] EWCA Civ 515 sets out a 6-fold legal test for when the Court comes to decide whether an injunction ought to apply against unnamed defendants. The claimant submits that these limbs are satisfied as follows:
 - a) The evidence shows that there is sufficient and imminent risk of a tortious act being committed such as to justify the application of this 'quia timet' relief.
 - b) It is impossible to identify the perpetrator of the apprehended breaches of planning control unless they were restrained. The Council has no way of knowing the names of those people who might be tempted to undertake further unlawful development in the future and nor is there any way for the Council to elicit this information. It is a "known unknown".

- c) The likelihood of giving notice of the injunction and the method of doing can be set out on the face of the order. This has been done with the draft order.
- d) The terms of the injunction are not so wide as to prohibit lawful conduct and refer directly to the apprehended breaches of planning control. The interim injunction is tailored to the apprehended breaches and merely restrains unlawful conduct.
- e) The terms of the order are sufficiently clear to allow persons who could be affected by the injunction to know what they cannot do.
- f) There are clear temporal and geographical limits to the injunction as the restraint is limited to a single site and its terms will be fixed for a determinate (and relatively modest) period of time.

21. In the more recent case of *Wolverhampton City Council v London Gypsies and Travellers and Others* (2023) UKSC 47 listed the following safeguards, albeit that these evolve over time. The claimant submits that these safeguards are met as follows:

- i) **Compelling need:** There must be a compelling need, supported by evidence, for the protection of civil rights or the enforcement of specific statutory objectives within the locality that cannot be adequately addressed by other available measures, such as new byelaws. The case for enforcing against planning breaches on this Land cannot be addressed satisfactorily by other means and the evidence contained in the accompanying witness statement of Mitchel Pugh provides further detail.
- (ii) **Procedural protections:** There should be adequate procedural protections for the rights of the newcomers, such as bringing the injunction to the attention of those who might be affected by it, and giving them a full opportunity to challenge or vary the injunction. The likelihood of giving notice of the injunction

and the method of doing can be set out on the face of the order. This has been done with the draft order and will include provision for such an order to be displayed on the Land and also on the County Council and local Council (Reigate and Banstead Borough Council) website on the same day.

- (iii) Disclosure duty: Applicants must comply with their duty of full and frank disclosure, bringing to the court's attention any arguments against the injunction which the targeted newcomers might have raised if given the chance. The Applicants have disclosed all matters to date to the Court and undertake to act openly should arguments or other representations be forthcoming.
 - (iv) Territorial and temporal limitations: The injunction should be limited, both geographically and in duration, to ensure that it does not extend beyond the specific circumstances justifying its imposition. The injunction sought is limited to the area outlined in red and does not extend beyond that necessary to bring under control the ongoing unlawful activity.
 - (v) Justice and convenience: On the particular facts of the case, it must be just and convenient to grant the injunction. It might not, for example, be just to restrain certain activities if the local authority has not fulfilled its responsibilities, such as the duty to provide authorised sites. In this instance the County Council has no duty to provide other sites and its duty extends only to the consideration and provision of waste sites.
22. The Claimant applies for an Order for service of any Injunction Order the Court may grant by way of the alternative method in accordance with CPR Part 6.15 set out in the draft attached.
23. There is an urgent need to serve any Order granted to restrain a further breach of planning control. It is the Claimant's experience, given the service of past formal planning notices that service on Defendants 2-8 at the details provided at HM Land Registry at the Crosswinds address (being the Land) may not be reliable, with the Royal Mail unable to deliver or returning these since there are no postal acceptance facilities

on site. In relation to the address stated at HM Land Registry in respect of Defendant 1 in Tolworth this has previously not been able to be delivered or found. The Claimant is not clear whether the address is in existence upon further investigation. Service on Defendant 9 has also proved difficult since upon visiting the address stated, it is unclear whether the Defendant still resides at that address. The Claimant also has reason to believe that one of the landowners is deceased but has no details as to executors.

24 .The Claimant thereafter seeks a final injunction. The Claimant refers to the attached draft order for the proposed wording of the injunction Order that the Claimant seeks.

AND THE CLAIMANT CLAIMS

- i) An interim injunction in the terms of the attached Draft Interim Order;
- ii) A final injunction in the terms of the attached Draft Final Order;
- iii) Any other order that the Court determines to be appropriate;
- iv) An order that the Defendants pay the Claimant's costs of and incidental to this claim.

The Claimant believes that the facts stated in this Details of Claim are true. The Claimant understands 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.

Signed


MELISSA CLARKE

SURREY COUNTY COUNCIL

Dated 30 April 2025
