

Land adjacent to Culhams Mill – Unlawful Development

His Honour Judge Bidder finds against the traveller application to vary injunction

In the case of Basingstoke and Deane Borough Council vs Thompson (and others) which was recently held in the High Court of Justice Queen's Bench Division, His Honour Judge Bidder QC has now handed down his judgement.

The full judgement comprises a 59 page document and, as His Honour Judge Bidder stated at the opening of the case, probably represents an important legal landmark.

The full document can be found on the Calleva Society website at <https://callevasociety.org/>; however the following is an attempt at a brief summary.

The conclusions of the judgement are best summarised in the following extracts from His Honour's closing remarks of the judgement.

1. *There has, in this case, been very substantial environmental damage and there is urgency in the need to bring this unauthorised occupation to an end.*
2. *I have reviewed the interests of the children. It is very clear that stability is a pressing need in their lives and their best interest lie in a stable base, and continuous schooling and health care. However, the problems of providing that to them lie as well in the difficult decision of their parents as to whether they continue to hold by the tenets of their own culture. Moreover, while the best interests of the children must be a primary consideration they do not overtop other consideration and, similarly, while a decision not to vary the injunction may lead to interference with their and their parents article 8 rights, there are other competing interests and the court must assess proportionality.*
3. *To vary this injunction would be wholly to undermine the court's authority and the planning system and would give a green light to "strong arm" tactics designed to bypass or unfairly influence planning decisions.*
4. *I decline to vary the injunction and, apart from the adding of a defendant, I dismiss the Defendants' application.*

In outline, the Travellers' case was based on three basic pillars;

1. That they had been in residence on the site since before the High Court injunction was served (despite the slightly perverse recognition that they had not actually been present on the site for much of this time) and therefore, under article 8 of the United Nations Human Rights Act, should not be evicted from their homes.
2. That there was a good chance of obtaining planning permission in the near future through their retrospective planning application.

3. That the best interests of the children are served by remaining on the site and that the only option available to the traveller families is to return to the roadside.

Basingstoke & Deane Borough Council, together with Silchester Parish Council and the Calleva Society, produced several hundred pages of evidence to oppose the Travellers' application to vary the original High Court injunction which would allow them temporary residency until the planning application has been evaluated and determined. His Honour Judge Bidder has found against the three pillars shown above and instead found in favour of the Borough Council.

So what does this actually mean? It should be noted that this case was not the main planning application. Instead it was an application which would effectively mean that the High Court injunction was suspended. By refusing the application to vary the injunction, the Judge has determined that the injunction remains in place and is enforceable from the date that it was first served on the 21st February 2017. Therefore any individuals that have brought caravans onto the site or remain in residence on the site are doing so in contempt of court and risk imprisonment as a result.

From the perspective of Silchester Parish Council and the Calleva Society, the next steps will be to continue to apply pressure on Basingstoke & Deane Borough Council to apply for enforcement of the injunction and also to bring about a speedy determination of the planning decision.

We will continue to keep the community updated as things progress and we encourage residents to get in touch with us should they become aware of any new developments on the site. We would also encourage residents to contact Basingstoke & Deane Borough Council to ask them to enforce at the site; they can be contacted on 01256 844844, or via the website at <https://www.basingstoke.gov.uk/planning-enforcement>