TANDRIDGE DISTRICT COUNCIL v. MICHAEL DELANEY; PATRICK CONNORS and MICHAEL CONNORS [1999] EWHC Admin 781 (3rd August, 1999)

IN THE HIGH COURT OF JUSTICE CO/5070/98

QUEEN'S BENCH DIVISION
(CROWN OFFICE LIST)

Royal Courts of Justice
Strand
London WC2

Tuesday, 3rd August 1999

B e f o r e:
MR ROBIN PURCHAS QC
(Sitting as a Deputy Judge of the Queen's Bench Division)
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TANDRIDGE DISTRICT COUNCIL

-v-

(1) MICHAEL DELANEY

(2) PATRICK CONNORS

(3) MICHAEL CONNORS
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MR P BROWN (instructed by the Assistant Chief Executive (Legal), Tandridge District Council, Oxted, Surrey RH8 0BT) appeared on behalf of the Applicant.

MR C HUTCHINSON (instructed by the Community Law Partnership, Birmingham B4 6RP) appeared on behalf of the 1st Respondent.

THE SECOND RESPONDENT appeared in person.

THE THIRD RESPONDENT did not appear and was unrepresented.

J U D G M E N T
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Tuesday, 3rd August 1999 .

MR ROBIN PURCHAS QC:
Introduction

1. In this application Tandridge District Council applies under section 187B of the Town and Country Planning Act 1990 for a permanent injunction to prevent the defendants from using land at Oaklands, Green Lane, Burstow, Surrey for the stationing of mobile homes and caravans. The claimant, who is the Local Planning Authority for the area, also seeks Orders for removal of certain structures connected with that use of the land. Enforcement Notices against continuation of the use and requiring removal of the relevant structures became effective on 13th October 1993, following a public inquiry into the defendants' appeals against the notices. It is accepted, accordingly, that the uses are in breach of the notices and, as such, unlawful. The issue in this case is whether, having regard to Article 8 of the European Convention on Human Rights and otherwise in my discretion, I should grant the injunctive relief sought.

Legislative Background

2. Section 187B of the 1990 Act provides, so far as relevant:

"(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. The local authority does not have to pursue other means of enforcement, including criminal prosecution, under section 179 of the Act before seeking injunctive relief under that section.

4. While the relevant provisions of the Human Rights Act 1998 are as yet not in force in this country, having regard to the potentially retrospective provisions of sections 7(1) and 22(4) of that Act, it is material to the exercise of my discretion to determine whether or not the grant of an injunction would be contrary to, in particular, Article 8 of the Convention: see R v DPP, ex parte Kebilene [1999] 3 WLR, 175.

5. Article 8 provides:

"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

6. The relationship between planning control and Article 8 was considered by the European Court in Buckley v United Kingdom (1996) 23 EHRR 101. The court there held that the denial of planning permission and enforcement action was in accordance with law (paragraph 61). The court accepted that the enforcement of planning control aimed at, among other things, furthering the preservation of the environment and was a legitimate aim in the interest of the economic well-being of the country, the protection of health and the protection of the rights of others (paragraph 62). On the question whether the interference pursued a legitimate aim, the court held (paragraph 74):

"As is well established in the Court's case law, it is for the national authorities to make the initial assessment of the 'necessity' for an interference, as regards both the legislative framework and the particular measure of implementation. Although a margin of appreciation is thereby left to the national authorities, their decision remains subject to review by the Court for conformity with the requirements of the Convention.

The scope of this margin of appreciation is not identical in each case but will vary according to the context. Relevant factors include the nature of the Convention right in issue, its importance for the individual and the nature of the activities concerned.

75. The Court has already had the occasion to note that town and country planning schemes involve the exercise of discretionary judgment in the implementation of policies adopted in the interest of the community. It is not for the Court to substitute its own view of what would be the best policy in the planning sphere or the most appropriate individual measure in planning cases. By reason of their direct and continuous contact with the vital forces of their countries, the national authorities are in principle better placed than an international court to evaluate local needs and conditions. In so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation.

76. The Court cannot ignore, however, that in the instant case the interests of the community are to be balanced against the applicant's right to respect for her 'home', a right which is pertinent to her and her children's personal security and well-being. The importance of that right for the applicant and her family must also to be taken into account in determining the scope of the margin of appreciation allowed to the respondent State.

Whenever discretion capable of interfering with the enjoyment of a Convention right such as the one at issue in the present case is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. Indeed it is settled case law that, whilst Article 8 contains no explicit procedural requirements, decision making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8.

77. The Court's task is to determine on the basis of the above principles, whether the reasons relied on to justify the interference in question are relevant and sufficient under Article 8(2)."

7. In applying these principles, the court held that the appeal procedures were such as to afford due respect to the Applicant's rights under Article 8, including the consideration of the special needs of the Applicant as a gypsy albeit in that case an alternative pitch had been offered to the Applicant. At paragraph 84 the court concluded:

"In the light of the foregoing, the Court considers that proper regard was had to the applicant's predicament both under the terms of the regulatory framework, which contained adequate procedural safeguards protecting her interest under Article 8, and by the responsible planning authorities when exercising their discretion in relation to the particular circumstances of her case. The latter authorities arrived at the contested decision after weighing in the balance of the various competing interests at issue. As pointed out above it is not the Court's task to sit in appeal on the merits of that decision. Although facts were adduced arguing in favour of another outcome at national level, the Court is satisfied that the reasons relied on by the responsible planning authorities were relevant and sufficient, for the purposes of Article 8, to justify the resultant interference with the exercise by the applicant of her right to respect for her home. In particular, the means employed to achieve the legitimate aims pursued cannot be regarded as disproportionate. In sum, the Court does not find that in the present case the national authorities exceeded their margin of appreciation."

In R v Beard [1997] 1 PLR 64, it was contended that prosecution for the breach of an Enforcement Notice requiring a gypsy to cease occupation of a site for the stationing of a caravan was contrary to Article 8. Hobhouse LJ (as he then was), giving the judgment of the court, stated at page 72G:

"There is no inconsistency between the scheme of the United Kingdom planning legislation and the convention. The legislative scheme allows for the legitimate rights and expectations of gypsies to be taken into account at the appropriate stages of the procedure, including at the stage of deciding whether or not an enforcement notice should be upheld. Once an appropriate decision has been made in accordance with the law to uphold the enforcement notice, its enforcement involves no conflict with article 8. ..."

8. In the light of those authorities I conclude that it is material to the exercise of the court's discretion whether or not, in all the circumstances, an injunction to enforce the provisions of the confirmed Enforcement Notices would be in breach of Article 8 (R v Lincolnshire County Council, ex parte Atkinson [1997] JPL 65; R v Kerrier District Council, ex parte Uzell, Blythe and Sons [1996] JPL 837). However, I should be careful, in exercising my discretion, not to usurp the functions of the planning authorities and the Secretary of State or his Inspector on appeal.

9. I would also refer to the judgment of Pill LJ in Hambleton District Council v Bird and Another [1996] 2 JPL 675 where he said at page 677:

"The granting of an injunction in any particular case was dependent upon the court's discretion. This did not, however, entitle a judge in the present context to act as a court of appeal against a planning decision or to base a refusal to grant an injunction upon his view of the overall interest. Whilst disclaiming any such role it was clear from his reasoning that the learned judge assumed it. To take upon himself the role of assessing the benefits and disbenefits to the public as a whole was erroneous. The learned judge was taking upon himself the planning function of the planning authorities and housing authorities and their powers and duties. The existence of the court's discretion to refuse to enforce an injunction was confirmed in Guildford Borough Council v Smith [1994] JPL 734. That decision did not empower a court to approach an application for an injunction the way the judge did in this particular case.

As to the lapse of time and the possibility of a future planning permission, the lapse of time occurred because the planning authority declined to seek an injunction until the Seamer site was available, the respondents had had an opportunity to seek planning permission and the sanction of proceedings in the Magistrates' Court had been attempted. No expectation can have been created that the respondents' breach of the law was tolerated or condoned. In the circumstances of the case the possibility of a future grant of planning permission was not a legitimate reason for refusing an injunction to restrain a breach of the law. So far as the planning policy documents were concerned, it was for the planning authorities, not the courts, to consider the planning application recently made and to do so in the light of relevant policy documentation."

10. I accept and apply those principles in dealing with the present case.

The Facts

11. This matter came before Mr Nigel Macleod QC sitting as Deputy High Court judge on an application for an interlocutory injunction on 28th and 29th January 1999. He delivered a full judgment which sets out the relevant history of this matter, and which I gratefully adopt as part of this judgment without repeating it. The learned deputy judge granted injunctions which required the use as a mobile home or caravan site to cease and the removal of all caravans and mobile homes, hard standings and hard surfacing forming access onto Green Lane.

12. Features of the history of this matter which are of particular materiality include:

1. On 13th April 1993 an Inspector on behalf of the Secretary of State for the Environment dismissed an appeal against the Enforcement Notices with respect to the use of land as a caravan site, subject to the extension of the time for compliance from three to six months.

13. At paragraph 30 of the decision letter the Inspector said:

"From the submitted photographs of the changes which have taken place to the use and appearance of the appeal site, I consider that this part of a predominately rural stretch of Green Lane has been transformed into something akin to a suburban residential estate complete with imposing entrance walls and gates. The development has encroached onto the open field in a harmful way which is quite contrary to one of the main purposes of the Green Belt. The restrictive regime which operates in the Green Belt is intended to prevent such environment."

14. At paragraph 31, he concluded that there were potential alternative pitches available in the area. He continued at paragraph 32:

"You point out that your clients are Irish gypsies who are unlikely to be accepted on such sites and that this increases the weight of the need for accommodation argument. It probably does, but not, in my opinion, to a degree where it constitutes a compelling consideration. My conclusion is that the factors found in this case are not very special circumstances of sufficient weight to override the harm caused to the purposes of the Green Belt."

2. According to the affidavit of Judith Rice, sworn on 17th April 1998, by September 1994 the site had been vacated and remained vacant until September 1995 when a number of mobile homes and touring caravans were brought onto the site.

3. On 21st May 1996, following refusal of further applications for planning permission for use of the land as a mobile home park and other ancillary development, the claimant's Planning Committee resolved not to take enforcement action pursuant to the Enforcement Notices pending the decision of the European Court in Buckley, to which I have referred above.

4. Following an inquiry held over five days in 1997, an appeal against the refusals of planning permission was dismissed by letter dated 21st January 1998. In coming to his decision that Inspector concluded at paragraph 9:

"The Inspector in the 1993 appeal considered that your clients caravan site had encroached onto the open field in a harmful way which is quite contrary to one of the main purposes of the Green Belt. The situation has remained much the same since that date. I agree with him that the development has changed the character and appearance of the lane by adding to the built form along it. Moreover, it conflicts with the most important attribute of the Green Belt which is its openness, as well as infringing one of the 5

purposes which to assist in safeguarding the countryside from encroachment. Consequently, for these reasons, I find the development seriously harmful."

15. At paragraph 10 he continued:

"... [The authority] manages 3 sites with a total of 39 pitches, and there are almost always spare pitches available. It also helps gypsies to settle in permanent housing where they wish to do so. Your clients have refused a previous offer on one of these sites. It was explained that Irish gypsies, which your clients are, do not mix successfully with English ones who normally occupy these authorised sites. It seems to me that, whereas such a difficulty cannot be an overriding factor, it does appear as if any future option for your clients to integrate onto existing sites if such an opportunity were to arise, would not be realistic.

11. I am mindful of advice in paragraph 21 of Circular 1/94 that private applications for gypsy sites should not be refused on the grounds that public provision in the area is adequate or because alternative accommodation is available elsewhere on the authority's own sites. Schedules were presented of half-yearly counts of gypsy caravans over the last 2 or 3 years which are compiled by the Department. Tandridge consistently shows an average of 9 unauthorised caravans over the period, which partly reflects the caravans on your clients' site. Figures for the immediately adjoining districts in Surrey, Sussex and Kent show authorised gypsy caravans in only Mid Sussex and Sevenoaks Districts, and none in Reigate and Banstead or Crawley. I noticed that a number of unauthorised caravans appeared in Crawley and in Sevenoaks during 1997. However, as these figures only give a snapshot on 2 days in any one year, it is not possible to tell whether gypsies are merely in transit, or wishing to settle on a longer-term basis. Little other evidence of need was presented, apart from that of your clients. Therefore, I am not convinced that there is a high level of demand either in Tandridge or in the immediate surrounding Districts for permanent gypsy caravan sites."

16. The Inspector then considered the case advanced on behalf of the Appellants to establish very special circumstances as follows:

"12. In terms of your clients' own personal circumstances, the fact that they have bought, lived on and returned to the land over the last 7 years, is proof that they wish to have a permanent base. Some of the 19 children of the families attend, and others are likely to attend in the future, Roman Catholic schools in Crawley during the winter months when they are not travelling. This stability helps towards meeting the 100 days per year which is the minimum requirement for a basic education for gypsy children. No serious health problems with the families living here were specifically brought to my attention.

13. From the available evidence I consider that, in terms of both schooling and the area of south-east England the families cover when travelling, it is convenient, but not essential for them to be based here in this sensitive Green Belt area. As the site is close to the outer edge of the Green Belt, there are other extensive areas of countrysides around Crawley which are not so designated. I appreciate that, if this appeal is dismissed, they would have to seek land elsewhere and avoid eviction from temporary sites in the meantime, such as they endured this summer when travelling for work. The decision in the enforcement appeal allowed some additional time to find alternative accommodation, but this appears either not to have been taken up, or they failed to find somewhere.

14. In conclusion on this first issue, in all the circumstances, I do not consider that the limited need for gypsy sites in the wider area nor the particular personal circumstances of your clients amount to very special circumstances sufficient to outweigh the general presumption against inappropriate development in the Green Belt, and the serious specific harm to this vulnerable area of the Green Belt. Nor do I consider there is sufficient argument to permit the scheme as an exception to current local plan policy. Planning permission should therefore be refused."

17. The Applicants made an application to this court to quash that decision, which was dismissed on 6th August 1998.

5. On 17th April 1998 the claimant's Director of Environmental Protection wrote to the defendants' agent, Michael Cox Associates, seeking compliance with the Enforcement Notices but adding:

"... Whilst the Council wishes to see early compliance with the Enforcement Notices, it is mindful of government advice contained within PPG 18 and Circulars 10/97, 1/94 and 18/94. Considerable information has already been obtained during the course of the 1997 Inquiry regarding the personal circumstances of the families living on the site, but I would be grateful if you will kindly let me know whether you are aware of any material changes in those circumstances."

6. In his reply to that letter, Michael Cox did not suggest any change in personal circumstances, but did explain that he was no longer retained to represent either the second or third defendants in the present proceedings. He further added that the first defendant would want to return to the site on a seasonal basis.

7. On 13th October 1998 the matter was reported to the claimants' Development Control Sub-Committee. The report described the history, referred to Circulars 1/94 and 18/94, including the advice in the latter as to a policy of tolerance in enforcement, and referred to legal authorities requiring consideration of the personal circumstances of occupiers before taking enforcement action. The report indicated that any change since the previous inquiries in the personal circumstances of the identified occupiers would be reported to the Committee. The report recommended proceedings for an injunction. That recommendation was accepted by the Committee, which led in due course to the issue of these proceedings on 21st December 1998. As I have indicated, on 28th and 29th January 1999 an application for interim relief was heard and the learned deputy judge made the injunctions to which I have referred above.

18. The first defendant has since removed the wall and gate fronting Green Lane on his part of the property in accordance with the Order. He has, however, continued to use his part of the site to station his mobile home and caravan, which are the home of himself and his family.

19. The second defendant and third defendant vacated their part of the site. The second defendant has told me that that was in the earlier part of this year. The second defendant then travelled until about two weeks ago, that is the third week of July 1999, when they returned to the site. There has been no attempt by the second or third defendants to remove the structures from their part of the site as required by the Order.

20. On 10th February 1999, Dr Angus Murdoch, acting on behalf of the first defendant, had written to the claimant, pointing out that the first defendant and his family were homeless for the purposes of section 7 of the Housing Act 1996. Having referred to the problems of housing nomadic persons, he continued:

"... This is not to say that my clients would reject conventional housing, were it to be offered to them by yourselves, but rather to raise the issue of suitability.

As with many gypsy people, my client continues to practise traditional gypsy customs, including the rearing of horses, a cultural dynamic which forms an integral part of his ethnic identity. Any accommodation offered should take account of this need to stable his horses."

21. I have an affidavit from Sharon Eaton, the claimant's Housing Needs Officer, dealing with an interview of the first defendant on 24th February 1999. She deposes:

"4. In the course of the meeting I advised Michael Delaney, in the event he was evicted from the site, he could make an application under the Homeless Legislation. I explained in very simple terms that, if the Plaintiff accepted any claim he made, he would be offered temporary accommodation, put on the Housing Register and offered permanent accommodation at a later day. I also advised Michael Delaney that, since his mobile home was sited illegally, he could be considered homeless and make a claim there and then. Alternatively, I advised that he could wait for an eviction date to be set before he made a homeless claim.

5. Michael Delaney repeatedly stated that he did not understand why the Council were evicting him and the interview became very confused because he kept changing his mind as to whether or not he wanted to make a homeless claim. I confirmed that he did not have to make a homeless claim if he did not want to and that I was merely offering advice. He said his Solicitor had told him that he would have to fill out papers today but that he should not sign anything.

6. After nearly an hour I explained that I had another appointment soon and offered a future appointment to Michael Delaney if he wanted to return at a later date to make a homeless claim. Michael Delaney was not happy with this suggestion and insisted that I should speak to his Solicitor for confirmation that he should make a homeless claim immediately. I therefore telephoned his Solicitors, the Community Law Project in Birmingham, and spoke to a Dr Murdoch. I explained the situation to Dr Murdoch who confirmed that he had advised Michael Delaney to make a Homeless Application immediately, but not to sign any papers before his Solicitors had seen them first.

7. I explained to Dr Murdoch that homeless application forms are not usually released from the Council offices and that it was my role as a housing needs officer to help people complete the application forms. Dr Murdoch then asked me to assist Michael Delaney on his behalf to complete the relevant papers.

8. I ascertained that Michael Delaney has poor literacy skills and I therefore explained the forms in simple terms to him and read out to him the full provisions of Section 214 of the Housing Act 1996 regarding false statements, withholding information and failure to disclose change of circumstances. At this point Michael Delaney became agitated and enquired whether I had read these provisions to Dr Murdoch. I

confirmed that I had not and Michael Delaney again stated that he did not want to sign this or any other form regarding a homeless claim without his Solicitors seeing it first."

22. She confirms, that since then, there has been no further request for assistance and no application forms have been submitted.

23. On 3rd March 1999 Dr Murdoch made an application on behalf of the first defendant to use part of the land as a "private residential gypsy caravan site limited to personal lifetime consent for family caravans". There has been some delay in providing the additional information required for that application. However, it has now been completed so that the application can be registered.

24. On 18th March 1999, the first defendant filed a defence, asserting that if he were compelled to cease using the land for siting the caravan, he had no other site where he could lawfully place the caravan and there would be a real prospect of disruption to his children's education.

25. On 15th July 1999, Michael Cox submitted an application on behalf of the second defendant, Patrick Connors, for planning permission to use another part of the land as a transit gypsy caravan site.

26. In his affidavit sworn on 22nd July 1999, Dr Murdoch refers to his letter dated 10th February 1999 (to which I have referred above) and states that the first defendant was willing to consider moving into conventional bricks and mortar development but asserts that no offer of local authority housing has been forthcoming. He then refers to a telephone conversation with the Surrey Council Gypsy Liason Officer, subsequently confirmed in a letter dated 28th July 1999, that there were no suitable local authority pitches available in the county.

27. In his first affidavit, sworn on 30th June 1999, the first defendant deposes:

"1. I am a traditional gypsy traveller in that I was born on the road to gypsy parents and have had a nomadic existence most of my life, living in caravans and other moveable structures. I live on Oaklands 2, Green Lane, Burstow on land owned by my wife, Mrs Elizabeth Delaney. We live here in one mobile home in which we are raising our six children, 2 of whom are in continuous education locally, and one of whom attends although less regularly.

2. My family moved here in 1990 and my wife subsequently purchased our plot. Since we have moved here, we have lived as a separate family group to the residents of Oaklands and Oaklands 1 and have made considerable improvements to the land and environs. ..."

28. At paragraph 3, he explains:

"We moved here and purchased this land because life on the open road was becoming increasingly difficult for travellers, and we were being moved on with increasing regularity. We did try living in a conventional house for couple of years although, like with many gypsy people, this proves ultimately unsuccessful. It was a very significant thing for us to buy land on which to reside in our caravans because previously we had lived a roadside existence. It was also significant for us because purchasing the land and making it presentable exhausted our life's savings. ..."

29. In paragraph 4 he explains that they had bought the land so that their children might benefit from prolonged periods of education. He produces evidence of the progress made by his children at school. He explains that he was aware of the Enforcement Notices and that he had approached the Council officers to find out if there were spare pitches without success. He was aware of others who had searched for sites in the area to no avail. He states that he visited a number of privately owned gypsy sites without success. He says that he has done everything he reasonably could to comply with the Enforcement Notices.

30. At paragraph 11 he records that his wife has found the strain of proceedings a great burden, and has had to take medical advice.

31. In a second affidavit, sworn on 26th July 1999, the first defendant explains that he has made considerable efforts to find suitable sites and produced some 67 letters of support from neighbours. One letter, from Dr Conaty, states:

"Mr Delaney has asked me to write in support of his application for planning approval to reside on Green Lane, Shipley Bridge. He and his family have been registered here as patients for a number of years. They are finding it difficult to cope with the prospect of having to return to life as travellers and are looking to establish a life for themselves in this area."

32. Mr Colin Hutchinson, who appears for the first defendant, explained to me that his client had acquired the site to station his caravan as a permanent base during the children's education, but that he intended to resume travelling when the children ceased education. The youngest child is now six. Rehousing by the local authority would result in his client abandoning his traditional way of life, that is living in a caravan.

33. In his third affidavit sworn on 2nd August 1999, the first defendant sought to enlarge on the search for accommodation to which he referred in his early affidavit. At paragraph 2 he refers to inquiries he had made of the claimant's officers prior to the public inquiry which was held in 1997. He provides no detail of any other enquiry.

34. At paragraph 3, he explains that in May 1999 his 18-year old daughter gave birth to a premature baby. The baby was in intensive care until the end of July. Both the baby and the daughter are now living with the first defendant and his family. He produces letters from medical practitioners. One, relating to the first defendant's wife, confirms her treatment for anxiety and depression in September 1998. I have also been

shown a copy of the gypsy caravan count on 20th January 1999, which shows no authorised private sites in Tandridge over the period from January 1997.

Submissions

35. Mr Michael Connors, the third defendant, does not appear in this court. Mr Patrick Connors has appeared in person. The court is indebted to the clear and helpful way in which he presented his case. He made a number of points, including that he had been to some nine estate agents in Crawley. He produced a bundle of letters from eight of them. It appears that the inquiries were all made on 20th July 1999 and were all unsuccessful. Some indicated a shortage of available plots of land in the Crawley area. The letter from Underwood, Payne and Company states:

"We do from time to time have normal building plots for sale. We have noted your inquiry and will advise you when one becomes available for sale in case it might be interest to you."

36. He explained that he returned to the site two-and-a-half weeks ago, that is the third week in July, and that he had been away for three-and-a-half months, moving from site to site. He produced proceedings for eviction relating to two sites, one at Crawley and another at Horsham. He explained that the life of a traveller is no longer practicable. He explained that he has five children, three of school age, and that his daughter-in-law, who is aged 18, is expecting a baby in five months time, the prognosis for which is that it require ceasarean section. He is anxious that she is able to continue regularly seeing the midwife. He is concerned about the problems in maintaining his children's education. He also confirms the absence of available sites to what he can relocate onto. He explained that his return to the site was because the police in the adjoining county had advised him to do so.

37. Mr Paul Brown, who appears for the claimant, relies upon the reasons accepted by Mr Nigel Macleod QC in granting interlocutory relief as equally applicable to the grant of a permanent injunction. In summary, they were: (i) that it was reasonable for the claimant to conclude that the prosecution will be unlikely to result in removal of the caravans and mobile homes from the site; (ii) that there had been a continuous and continuing failure to comply with the law or the Enforcement Notices; (iii) that the personal circumstances of the defendants were considered at the two previous planning appeals; (iv) that there was no conflict with Article 8 of the Convention, because the interference with the defendants' rights was in accordance with law, and the question whether the defendants' rights were outweighed by the public interest in the preservation of the Green Belt was primarily for the authority and the Inspectors on behalf of the Secretary of State on appeal; and (v) that there was a strong case for saying that an injunction was necessary to bring about compliance with the law.

38. He submits that since the grant of the injunction the first defendant has taken no effective steps to comply with the substantive requirement of the injunction, that is to cease using the site for the stationing of the mobile home and caravans, thus reinforcing the conclusion that firm injunctive relief is essential. While the second and third defendants had vacated the site, the second defendant had now returned, again

demonstrating the importance of the remedy. He submits that the defendants are plainly in breach of the Enforcement Notices, as indeed they accept. The right to respect for private and family life at home is not absolute. It is subject to interference by the authority, which is in accordance with law and is necessary in a democratic society for the legitimate aims under Article 8(2).

39. In the present case, he submits, the interference is in accordance with the law. The question whether the interference is necessary for the protection of the rights and freedoms of others or any other legitimate aim has been considered and weighed against the public interest in the preservation of the Green Belt both by the Inspectors on appeal and by the Authority in deciding whether to take these proceedings and otherwise.

40. The sufficiency of the appellate procedures in the High Court, and the planning appeal system was fully considered in Buckley. In accordance with that decision, it can be seen that there are adequate safeguards for the defendants' rights under Article 8 within the margin of appreciation for the national authority to evaluate the balance to be struck between the competing public and private interests. Thus, he submits, there is no breach of Article 8.

41. As to discretion generally, Mr Brown submits that in the light of the planning history there is no realistic prospect that the first defendant will be granted planning permission on his application for planning permission. The question of the children's educational needs was specifically considered by the Inspector on the second appeal. Crawley is not surrounded by Green Belt. If the first defendant did not wish to be re-housed by the claimant, there is no good reason why he should not be able to find accommodation. The evidence of any search for alternative accommodation was, he submits, slender. Certainly, so far as the first defendant was concerned, there was no specific evidence of a search in the Crawley area. As to the second defendant, it was unrealistic to think that visiting estate agents on one day in July two weeks ago would be sufficient for a proper search for appropriate alternative sites, although he does accept the difficulty of securing alternative locations in this area. The claimant, he submits, have shown the utmost tolerance towards the defendant in accordance with policy and law. The time has now come when they should be required to comply with the law.

42. Mr Colin Hutchinson, who, as I have said, appears for the first defendant, submits that the prospect of infringement of the first defendant's rights under Article 8 is a relevant factor in the exercise of the court's discretion. In particular, the first defendant uses the land to provide a home for himself and his family. The earlier planning decisions can be distinguished because the first defendant's site is one part of the land, the subject of those decisions. There is no suitable authorised Council site and no prospect of an alternative site becoming available in the foreseeable future. Over the last five counts, no authorised private site has been shown to be available in the claimant's district, which is wholly within the Green Belt. Thus, if the first defendant is evicted, there will be nowhere else for him to go on a permanent or other basis. That would be particularly detrimental to his children's education and for the health of his wife and welfare of his daughter and her baby. Alternatively, the defendant and his family would have to abandon their traditional way of life, that is living in a caravan, if they wish to remain in the area. He draws attention to the support from neighbours for the first defendants's continued occupation and points

out that no objection is taken to the condition of the land. There is, he submits, some prospect that personal permission might be granted. Thus, it can be seen that compelling the first defendant and his family to leave the site would be an unwarranted interference with the first defendant's right to respect for his private and family life and home.

43. He relies upon the decision of the Court of Appeal in Guildford Borough Council v Smith [1994] JPL 734. He submits that no Order should be made unless the court would intend committal to deal with any breach, which, he submits, would be unconscionable on the facts of the present case. Thus, he submits, the claim should be rejected.

Decision

44. It is not in dispute between the parties that the defendants' use of the land for the stationing of mobile homes and caravans and the other structures, the subject of the Enforcement Notices, constitute a breach of planning control for the purposes of section 187B of the Act. The injunction sought in the claimant's application is to restrain the breaches or their repetition. Thus, the requirements of a section are fulfilled, but it remains subject to my discretion whether I should grant the injunctive relief sought. It is axiomatic that, as in any case of this kind, I should consider the exercise of my discretion in the light of all the relevant considerations as at the time of my decision.

45. I hope that it will help if I first set out the approach that I believe should be taken and the considerations which I consider are particularly relevant:

1. The starting point must be the existence and the nature of the breach or breaches to be restrained. It is not for this court to reassess or act as a Court of Appeal from the decisions that have already been made on the part of the authorities through the relevant planning procedures in determining whether or not planning permission should be granted or the Enforcement Notices confirmed: see Hambleton District Council v Bird (supra), per Pill LJ at page 677.

2. The defendants' rights under Article 8 of the Convention are a highly material consideration. Those rights are not, however, unqualified. Again, it seems to me that it is not for this court to act as a reviewing chamber for the decisions that have been made in the planning process as to the appropriate balance to be struck between those private rights and the public necessity: see Buckley v United Kingdom (supra); R v Beard (supra) Hobhouse LJ (as he then was) at page 72.

3. The same approach applies to the consideration of other humanitarian aspects, affecting the personal circumstances of the defendants as referred to by Sedley J (as he then was) in ex parte Atkinson (supra) and Latham J in ex parte Uzell (supra).

4. However, in respect of both the last two considerations, it is for this court carefully to examine any change in circumstances since the matter was previously considered as part of the planning process, not to revisit the decisions then taken but to see what effect any changes may have on the conclusions then reached.

5. Finally, to reach a conclusion whether in all the circumstances the grant of an injunction would be just and proportionate.

46. Taking those considerations in turn:

1. The Breach

47. The use of the land and the structures in the present case were plainly contrary to Green Belt policy. The 1993 Inspector concluded that the breaches were "quite contrary to one of the main purposes of the Green Belt". The 1998 Inspector concluded that they were "seriously harmful". Green Belt policy is a strategic policy of public importance. These are not technical or nominal breaches. Maintenance of an effective Green Belt depends to a considerable degree on its consistent application. Thus, the policy is only to allow an exception in very special circumstances. It must be borne in mind that the refusal of relief in a case such as this is likely to result in what would in effect amount to a grant of planning permission.

2. Article 8

48. I accept that the site is the home of the first defendant and his family and also home for the time being for the second defendant. Thus, its retention is of importance for the continuance of their private and family life. Eviction would constitute, at least without the prospect of suitable relocation, interference with their right to respect for their private and family life and home. I do, however, bear in mind that in the case of the first defendant it is not a case where, at least for the next seven or eight years, the way of life is said to involve nomadic travelling, but it is to be able to live in the mobile home and caravan on this site during the period of his children's education.

49. It is accepted that both the Enforcement Notices and the denial of planning permission were in accordance with law. The issue of necessity in a democratic society for a legitimate aim under Article 8(2) is to be determined in this country through the planning system - in this case, most recently by the 1998 Inspector. That inquiry took place over five days. While I do not have details of the evidence presented, it is not suggested that the defendants were prevented from putting forward a full case as to the implications of an adverse decision on their human or other rights. As I have indicated above, the Inspector concluded that the public interest in protection of the Green Belt outweighed the defendants' personal interests. This court concluded that the Inspector's conclusion was supported on the evidence and disclosed no error of law. The effect of that decision was that, at least at that time, denial of permission and with it the likely enforcement of the earlier notices would not involve any unjustified infringement of the defendants' rights under Article 8. I see no basis or justification for this court to re-evaluate the evidence and considerations before that Inspector or indeed the earlier Inspector in 1993. I will consider relevant changes later in this judgment.

3. Other Human Considerations

50. My conclusions in this respect are similar to those I have expressed above in respect of Article 8. It is apparent that the defendants had the opportunity of putting their personal circumstances so far as relevant, before the planning inspectors. The 1998 Inspector expressly took those matters into account in coming to his decision. I do not consider that it is for this court to review that decision so far as it was made on the material before the Inspector at that time.

4. Changes

51. There are a number of matters identified on the evidence before me that have occurred since the earlier decisions. First, there is evidence, which I accept, that there is no suitable public site available within the County of Surrey and no private site in Tandridge. That is be a change from the position considered in 1993 and from the conclusion reached by the 1998 Inspector at paragraph 10 of his decision letter. However, as indicated above, the 1998 Inspector considered the position on the basis that "any future option for the defendants to integrate onto existing (Council) sites ... would not be realistic". The Inspector made his decision (see paragraph 13) on the basis that it was "convenient", but not "essential", for the defendants to be based in that "sensitive Green Belt area". He appreciated that, if the appeal was dismissed, "they would have to seek land elsewhere and avoid eviction from temporary sites in the meantime". He particularly referred to the extensive area of non-Green Belt land around Crawley. Taking the evidence before this court as a whole, I am not persuaded that there has been any material change in the circumstances relevant to those conclusions by that Inspector.

52. I note that the first defendant has been interviewed by the claimant's housing officer. While I welcome the positive steps taken to assist the first defendant, I recognise that rehousing on that basis would itself represent a significant change in the first defendant's and his family's chosen way of life.

53. The evidence of any search on the first defendant's part or alternative locations is not extensive. Specific reference has been made, as I have indicated, to the absence of public sites in Surrey and private sites in Tandridge. There is no other specific evidence of any search on his behalf in the non-Green Belt area around Crawley, to which the 1998 Inspector drew attention. Overall, I am not persuaded that the first defendant has fully explored alternatives in that area. In coming to that conclusion I appreciate his difficulties, his reluctance to move and his lack of resources.

54. It does not seem to me that the position, so far as the education of the first defendant's children's is concerned, has materially altered.

55. In my judgment, the application for personal planning permission for the retention of the mobile home on part of the site by the first defendant has no realistic prospect of success, insofar as that is relevant at all to my consideration in the light of Hambleton. In effect, the 1998 Inspector was considering the development, at least in part, on the basis of the defendants personal circumstances. Had he concluded that those considerations outweighed the Green Belt objections, he might, albeit exceptionally, have

imposed a personal condition. His conclusions were, in my judgment, equally applicable to development of part of the site on a personal basis as now proposed. Thus, I am not persuaded that there is any material difference in, or change from, the circumstances considered by the 1998 Inspector on that account.

56. I have evidence of the depression suffered by the first defendant's wife and the difficulties faced by his daughter and the baby, who are now living with him at his home. Those are matters to which I have had careful regard. However, it seems to me that they are themselves examples, albeit examples of particular force, of precisely those concerns that lie behind Article 8, that is the right to respect for private and family life and home. In my judgment, the considerations to which I have referred relating to Article 8 encompass those concerns, albeit that, in considering any Order that this court might make, account should be taken of that particular aspect. I also note that, when I raised the question of period for the suspension of an injunction if an injunction was to be made, Mr Hutchinson did not suggest that three months would be inadequate having regard to the particular position of the first defendant's daughter and her baby.

57. So far as the second defendant is concerned, I have taken careful account of the matters to which he has drawn my attention in respect of the education of his children, the absence of sites that he has been able to discover around Crawley and the difficulties faced by travellers. Also, however, I accept the submission made by Mr Brown that a search for alternative sites on this area cannot realistically be expected to be successful if it takes place on one day two weeks before the hearing.

58. So far as the other matters are concerned, they all seem to me to fall within the scope of the matter already determined by the 1998 Inspector. My conclusions, accordingly, in that respect are similar to those that I have reached with regard to the first defendant.

59. I have no information in respect of the third defendant and no suggestion has been made to me that there have been any relevant changes in that respect.

60. Thus, overall I conclude that there has been no relevant change which would justify my forming a different conclusion on the relevant balance from that reached by the Inspectors on the previous appeals.

5. Proportionality

61. Given the nature of the breach, it does not seem to me that the scope of the Orders sought exceed what would reasonably be required to ensure compliance. In the light of the importance of Green Belt policy and the nature of the development, those Orders would, in my judgment, be proportionate. It is plain, in my view, that without an injunction there is little, if any, prospect of compliance, so far as ceasing the use of the site on the first defendant's part is concerned, and, in my judgment, a real risk of continued or repeated non-compliance on the part of the other defendants.

62. As a matter of humanity, I consider that a final period for compliance should be allowed. I have in mind three months, but I will hear submissions on the precise form of Order. The defendants should be clear that this is to be a final Order. Subject to submissions made to me, there will be Orders to leave the site and otherwise to comply with the Orders by 12 noon on 4th November 1999 at the latest.

63. This application is, accordingly, allowed and the Orders will be made in accordance with a form upon which I would wish assistance.

64. MR BROWN: My Lord, in terms of the form, this very closely follows the form of the relief granted at the interlocutory application.

65. MR ROBIN PURCHAS QC: Can I just read it through? It says "the defendants".

66. MR BROWN: My Lord, it is a form I found slightly peculiar, but the answer lies in the interpretation section.

67. MR ROBIN PURCHAS QC: I think it is better to put a specific date and time in this sort of case. I think I said 12 noon on 4th November 1999. "It is ordered that by or after 12 noon on 4th November" ----

68. MR BROWN: My Lord, before one writes in "November", probably you would want to hear what counsel for the other side has to say. I have nothing to say about that.

69. MR ROBIN PURCHAS QC: That is the form I have in mind unless there is any special point. Although this is directed to all three defendants, what troubles me is that you want the Order to affect the whole land, right?

70. MR BROWN: Certainly, as far as the non-occupation and the stationing of caravans are concerned.

71. MR ROBIN PURCHAS QC: So (1) should affect the whole land. I am concerned that under Order (2) there seems to be certain differences between the families; do you follow me? I think, as it is stated there, this court knows that in fact it would not be possible for the first defendant reasonably to remove the second defendant's caravans or mobile homes. On that account I would wish that to be taken into account in the Order.

72. MR BROWN: My Lord, there are two different ways that might be done. One of them is to make it clear that the Order only applies to caravans and mobile homes or whatever within the ownership of that particular defendant; or alternatively to delineate separate areas on a plan and to redraft the Order so as to reflect that. I have not done it in the form because at the time I did this draft I was not sure what land

belonged to whom. I have to say that although I have seen a sketch today, that sketch does not relate either to the planning application that has been made or indeed to the register of title.

73. MR ROBIN PURCHAS QC: What I have in mind, and my intention I hope will be clear, is that you, Mr Hutchinson and Mr Connors can consider the form of Order. I am very loath to bring the parties back tomorrow and that is why I have given judgment this afternoon for very obvious reasons. My difficulty is that it is plainly important that Mr Patrick Connors is involved in this, so it is not really a matter of you submitting to me tomorrow and I just passing it. I think it has to be done today, and I think it would be better if that was agreed as a Minute and then, when it has been agreed between the three parties, you can submit the form of it to me and I can formally sign the Order without bringing the parties back into court.

74. MR BROWN: My Lord, I understand the sense of what your Lordship says to the extent that we are looking for an agreed Minute. I mean no disrespect to Mr Connors if I say that I do not know how easy that will be. It is the sort of thing he ought to have the benefit of legal advice before he agrees.

75. MR ROBIN PURCHAS QC: What I will do is that I will hear submissions about time, because I am anxious that Mr Hutchinson and Mr Connors should be able to help me finally on that point. My intention is that Order (2) should be separated so that the first defendant, the second defendant and the third defendant should be separately ordered to remove all of their caravans, mobile homes and other structures on their part of the land.

76. MR BROWN: In terms of a broad shape of the Order, does your Lordship then envisage separately delineated areas or simply a reference to a broader area, but only to those things which belonged to the particular defendants within the boarder area?

77. MR ROBIN PURCHAS QC: They should be identified as what is on the specific area, in respect of which we have the plan which generally shows the area, and the requirement should be to remove from the land as a whole.

78. MR BROWN: I am very grateful.

79. MR ROBIN PURCHAS QC: It is not just a matter of moving onto another part of the land. What I am anxious to do is to make clear to each defendant that he is not responsible for any other's land. It is simply that I want to avoid unnecessary problems between the parties.

80. So far as the hardstanding is concerned, I would have thought again that ought to be done with the reference to the different areas of the land. Do we have here the lavatory building or not?

81. MR BROWN: My Lord, we do. I am instructed that it is not within the first defendant's plot, and, therefore, in the same way that I do not pursue Part III as against the first defendant, I would be quite happy for the brick building, so far as only to Mr Patrick Connors. That is something that ----

82. MR ROBIN PURCHAS QC: That is something that you need to discuss.

83. MR BROWN: I can take instructions on that and make sure. It certainly does not apply to the first defendant, I am clear about that, but we can ensure that the Order reflects which of the second and third defendants it should apply to.

84. MR ROBIN PURCHAS QC: My anxiety is also that the Order should be made in open court in the presence of the parties, because being an injunction I think that is important. Is there anything else in the form of the Order? It seems to me that you can easily -- because you already have section 3 dealing with the second and third defendants for the reasons that you have explained, it should be reasonably capable of modification.

85. MR BROWN: My Lord, can I just take instructions while you hear from Mr Hutchinson?

86. MR ROBIN PURCHAS QC: My Hutchinson, I have given the indication that I have in mind three months, but, in the circumstances of this case, I am very happy to hear any further submissions you have to make.

87. MR HUTCHINSON: My Lord, I can take that very shortly. I have no further submissions. My client heard the indication that you were giving, that there was to be a further three months period and I am certainly not instructed to try and persuade you otherwise.

88. MR ROBIN PURCHAS QC: Mr Patrick Connors, is there anything that you want to add?

THE 2ND RESPONDENT (MR CONNORS): No.

89. MR BROWN: My Lord, the draft Order, as I put it, asks for costs and I have just been taking instructions on that question. I do not know if you would like me to deal with that now.

MR ROBIN PURCHAS QC: Yes.

90. MR BROWN: My Lord, as you know, the first defendant is legally aided, and the point that I have been just discussing with my instructing solicitors is the fact that the majority of my time and job here today has been really not ----. The reason we are here is largely because of the first defendant's opposition. In those circumstances, it would seem to me to be unfair to ask for costs as against the second

and third defendants. On that basis, I am not instructed to ask for my costs. Those behind me do ask for it to be taken on board that we have done that, as it were, as a gesture of goodwill on our side and we would hope for something positive from both sides.

91. MR ROBIN PURCHAS QC: The court certainly understands and I am sure the parties understand what lies behind it. It is a very responsible and proper course to take.

92. MR BROWN: My Lord, I do not pursue the fourth item on that list.

93. MR ROBIN PURCHAS QC: I will rise now. The problem is my room is rather far away, so I will give you five minutes and perhaps you can indicate when you are ready. Will five minutes be sufficient or will you need longer?

94. MR BROWN: Could my Lord say 10 minutes?

95. MR ROBIN PURCHAS QC: What I will do is that I will rise now until half-past the hour.

(The court adjourned and resumed)

96. MR BROWN: My Lord, we are grateful for the time. What I am about to say is what I agreed with Mr Hutchinson and explained to Mr Connors as best I can. My Lord, the first paragraph of the Order is much as it would be after the suggestion your Lordship made, the insertion "after 12 noon..."

97. MR ROBIN PURCHAS QC: "After 12 noon of 4th November 1999".

98. MR BROWN: Secondly, if I can just do this in a slightly different Order from the text, if one looks at (2)(b) and the words at the end of that "... and the brick building in the position shown coloured blue on the attached plan below" my Lord, given that applies only to the third defendant, it seems sensible to Mr Hutchinson and I too, as it were, to take that out of the body of subparagraph (2) and to create a new subparagraph (4) which would say, "by 12 noon on 4th November 1999 the third defendant shall remove ..." and then the text which is the latter part of (2)(b), "... the building in the position shown coloured blue on the attached plan".

99. Then, my Lord, one goes back to subparagraph (2) to the starting text. "Within 21 days" becomes "Before 12 noon on 4th November 1999", and the way in which we propose to deal with the point that your Lordship has made about ownership is to insert at the end of subparagraph (a) the following words, "... which are owned or occupied by him or are present on the land with his authority".

100. MR ROBIN PURCHAS QC: Yes, that is very sensible. That goes to the end of (a), does it not?

101. MR BROWN: That goes to the end of (a), and then at the end of (2)(b), now being "Green Lane", because we have moved "the brick building" down to subparagraph (4), after "Green Lane" insert the words, "... on land within his ownership, occupation or control".

102. My Lord, I think that should safeguard our concerns about people using bits of the sites round, but it would also mean that we could not, as it were, take action against someone for doing things or not doing things over which he has control.

103. My Lord, paragraph (3), as regards the walls and gates, there is no reason, in my submission, why they are necessary for the continued occupation of the land and, therefore, there is no reason why the 21 days should not stay as far as they are concerned.

104. MR ROBIN PURCHAS QC: They are being removed -- it was not my intention to enlarge that period. Is there anything else you want to add on that? Does that affect your clients, Mr Hutchinson?

MR HUTCHINSON: No, my Lord.

105. MR ROBIN PURCHAS QC: Mr Patrick Connors. It is simply to maintain the same period that Mr Nigel Macleod ordered on 26th January of this year.

106. THE 2ND RESPONDENT (MR CONNORS): I ain't got no walls and gates. I just got a field.

107. MR ROBIN PURCHAS QC: So far as the requirement to remove the walls and gates are concerned.

108. THE 2ND RESPONDENT (MR CONNORS): I ain't got no walls and gates.

109. MR ROBIN PURCHAS QC: Then you are not affected.

110. Is that right? Are there no walls and gates with effect to the second defendant?

111. MR BROWN: I am told there is a pillar left, but I do not know whether ----

112. THE 2ND RESPONDENT (MR CONNORS): Not mine. It is Micheal's.

113. MR ROBIN PURCHAS QC: On that plan it does not seem to abut onto Green Lane.

114. THE 2ND RESPONDENT (MR CONNORS): I own the field in the middle.

115. MR BROWN: My Lord, it abutts Green Lane at that part there.

116. MR ROBIN PURCHAS QC: Can we put the same qualification at the end of (b): "so far as they may be on land within that defendant's ownership or occupation or control"?

MR BROWN: Correct.

117. MR ROBIN PURCHAS QC: Does that do it then?

MR BROWN: I hope so, yes.

118. MR ROBIN PURCHAS QC: What I will so is to make that Order now. It would be very helpful to the court if a form of minute could be passed into the court in the course of the next few days.

119. MR BROWN: My Lord, I have it on disk, so it is very easy for me to make amendments.

RULING AS REGARDS THE FORM OF THE ORDER

120. MR ROBIN PURCHAS QC: This court will order, accordingly, that:

(1) After 12 noon on 4th November 1999 the defendant, as defined to include all or any of the defendants, must not, whether by himself or by instructing, permitting or encouraging any other person to use the land at Oaklands, 1 and 2 Green Lane, Burstow, Surrey, shown as red on the plan as a caravan site for the purposes of stationing any caravan.

(2) Before 12 noon on 4th November 1999 the defendant shall remove from the land all caravans, mobile homes (including any brick skirts thereto), timber outbuildings and other similar items associated with the use of the land as a caravan site, which are owned or occupied by him or are present on the land with his authority, and all hard standings hard surfacing forming access onto Green Lane on land within his ownership, occupation or control.

[(3) Within 21 -- I am going to ask for a date to be put in rather than 21 days. I am going to say by the 25th.]

(3) By 12 noon on 25th August 1999 the second and third defendants shall either remove from the land the walls and gates adjacent to Green Lane; or remove the gates and reduce the walls in height so as not to exceed 1 metre at any point so far as they may be on land within that defendant's ownership, occupation or control.

(4) By 12 noon on 4th November 1999 the third defendant shall remove the brick building in the position shown coloured blue on the plan attached to this Order.

121. There will be no Order for costs. The other relief is dealt with within the Order. Do you need legal aid taxation?

MR HUTCHINSON: I do, my Lord.

122. MR ROBIN PURCHAS QC: Then I will order legal aid taxation. Unless there are any other matters, can I thank the parties, Mr Brown and Mr Hutchinson, for your assistance, and Mr Delaney for the assistance you have given to the court.

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