

**SOUTHERN OFFICERS ENFORCEMENT GROUP
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Planning Enforcement after South Bucks D.C. v. Porter



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Life Before *Porter*

Section 187B of the TCPA 1990 (as amended):

- “(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 sub-section (1) the court may grant such an injunction as the court thinks appropriate for the purpose **of** restraining the breach. ”

...

The Court’s approach prior the Human Rights Act 1998 coming into force:

Mole Valley District Council v Smith [1992] 3 PLR 22
Hambleton District Council v Bird [1995] 3 PLR 8

Human Rights Act 1998 - Section 6(1):

“It is **unlawful for** a public authority to **act** in a way which is incompatible with a Convention right. ”

European Convention of Human Rights and Fundamental Freedoms - Article 8

- “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. “

Chapman v United Kingdom 10 BHRC 48

R (Daly) v Home Secretary [2001] 2 WLR 1622:

“**Now**, following the incorporation of the Convention by the Human Rights Act 1998 and the bringing of that **Act fully** into force, domestic courts must themselves form a judgment whether a Convention right has been breached (conducting such inquiry as is necessary to form that judgment) and, so far as permissible under the Act, grant an effective remedy. ”

The Porter Decision

South Bucks DC v. Porter [2001] EWCA Civ 1549

Four joined appeals to the Court of Appeal from decisions of lower Courts.

Summary of the proper approach the Court should adopt when exercising its discretion to grant a section 187B injunction requiring persons to cease the occupation of land for residential purposes (paragraphs 38 to 42):

- a. The Court is not required, or even entitled, to reach its own independent view of the planning merits of the Defendants' case, which are to be taken as decided within the planning process (paragraph [38]);
- b. The planning history of the site is relevant (paragraph [38]);
- c. The degree and flagrancy of the postulated breach of planning control may well prove critical (paragraph [38]);
- d. The Court is bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end (paragraph [40]);
- e. Against this, the Court must consider for itself all questions of hardship for the Defendants and their families if required to move, including the availability of suitable alternative sites (paragraph [38]);
- f. Questions of the family's health and education will inevitably be of relevance (paragraph [38]);
- g. The order should not impose an excessive burden on the individual whose private interests (in the Porter case the gypsy's life, home and ethnic identity) are at stake (paragraph [41]);
- h. The decision of the local authority to seek injunctive relief is relevant to this balance, but the weight to be given to **their** decision will depend on the extent to which they have had regard to all material considerations and their approach to the Article 8(2) questions as to necessity and proportionality (paragraph [39]);
- i. The Court's discretion is absolute, and injunctive relief is unlikely unless it is proportionate (paragraph [41]);
- j. In the end, the Court should not grant injunctive relief unless it would be prepared if necessary to contemplate committing the Defendants to prison for breach of the order (paragraph [38]).

Three of the four appeals succeeded. Court of Appeal noted that difficulties Appellants would face if further injunctions sought.

Life After Porter

The **Porter** is relevant in wider context, it is not confined to cases involving Travellers.

Planning enforcement action involving an interference with individual's rights protected by the ECHR

Balance must be struck between the individual's rights and enforcing proper planning control in the wider interest.

The importance of proper enquiries:

- The need to make specific enquiries
- Health and education
- Suitable alternative accommodation
- Timing of the enquiries
- Effective enquiries
- **DoE Circular no. 18/94 "Gypsy Sites Policy and Unauthorised Camping"**
- **Local Authority Powers for Managing Unauthorised Camping: A Good Practice Guide (DETR/Home Office – October 1998/Revised 2000**

The importance of democratic decisions:

- The decision to seek the injunction
- Who carries out the balancing exercise?
- Delegated Authority
- Is the action both necessary and proportionate?
- Can the legitimate aim be *achieved* by means that will not interfere with the individual's human rights
- Can the legitimate aim be achieved by a lesser interference?

The importance of independent decisions on the planning merits:

- The planning history of the site
- The planning process (application and appeal)
- Inspector's Decisions
- Adequate provision for gypsy sites in locality (DOE **Circular 1/94**)
- Must the case be adjourned pending the outcome of the planning process?

Epping Forest District Council v. Mason (Unreported, 5th July 2002)