

The recent High Court decision in *Vastint Leeds BV v Persons Unknown Entering or Remaining Without the Consent of the Claimant on Land and Buildings Comprising Part of a Development Site Known as the Former Tetley Brewery Site, Leeds* [2018] EWHC 2456 (Ch) demonstrates the strict application of the two-stage test for granting final injunctions and highlights the importance of properly drafting the wording of orders to ensure they are no wider than necessary.

The *Vastint Leeds* case concerned the application for a final injunction against persons unknown, preventing them from accessing or remaining on the claimant's industrial site. The claimant had already undertaken various measures to secure the site and had health and safety concerns regarding unlawful access to the site throughout various stages of development. There had previously been trespass incidents involving caravans and concerns about actual or attempted illegal raves, following a similar occurrence at a different site owned by a sister company of the claimant. The claimant also had concerns of large fly-tipping operations inferred from incidents on other non-related sites. Interim relief had already been obtained, but the claimant sought a final injunction against the continued risk of caravans, raves and fly-tipping.

The High Court held that the claimant could apply for a final injunction against "persons unknown" where no one was actually party to the proceedings until an act of infringement occurred. Similarly, the claimant was held to have correctly followed previous guidance in not referring to "trespassers", nor subjectively assuming the defendants' intentions in the wording of the proposed order.

In discussing the granting of the injunction, the court employed the well-known two-stage test:

1. Was there a strong probability that the anticipated defendant would act in breach of the claimant's rights unless restrained?
2. Would the harm caused by such a breach be so grave that damages would be an inadequate remedy?

The first stage was satisfied in relation to the caravans as, despite the claimant's use of preventative steps to secure the site, there had previously been actual entry. The evidence of other sites owned by a sister company being used by rave organisers, coupled with the fact the site in question was an attractive spot for ravers, was enough to satisfy the probability of a future breach in relation to illegal raves. However, the limited evidence in relation to fly-tipping elsewhere did not amount to a substantial risk of infringement on the claimant's site. Therefore, only the caravans and ravers could be restrained under stage one of the test. In relation to the second stage, the court held that there were serious health and safety risks to the life and limb of trespassers, staff and contractors. Moreover, whilst the significant costs incurred for removing trespassers is eligible for compensation in theory, the court held that, in reality, such costs were unlikely to be recovered and damages would be an inadequate remedy.

Finally, the High Court held that the claimant's wording of the order extended to any person entering the site without its written consent and was, therefore, not workable in practice. As a result, the draft order needed to be explicitly confined to the two classes of unknown defendants, which satisfied the first arm of the usual test, and the order's proposed recital "carv[ing] out" application to emergency services should be removed. The High Court refused to grant the final injunction in its current form and instead only extended interim relief on this basis.

Whilst the *Vastint Leeds* decision does not provide new law regarding the granting of *quia timet* injunctions, it does highlight strict application of the two-stage test and the requirement for tailoring a final order to the specific threat, drafting it no wider than absolutely necessary and proportionate. In the current climate, where trespassers and caravans on development sites are common issues for landowners, and where injunctions such as these are key to preventing delays to the developments, these are both elements that should be remembered when applying for and drafting final injunctions.

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