

CA on appeal from the High Court QBD (Miss Nicola Davies QC) before Peter Gibson LJ, Rix LJ, Longmore LJ. 14<sup>th</sup> May 2004.

1. **LORD JUSTICE PETER GIBSON:** I will ask Lord Justice Longmore to give the first judgment.
2. **LORD JUSTICE LONGMORE:** This appeal is the culmination of a lengthy planning dispute in relation to land at Poyle Place, Horton Road, Slough. It became necessary for Slough Borough Council to obtain an injunction to restrain continued breaches of planning control. On 2nd December 2003 Miss Nicola Davies QC, having heard the parties whilst sitting as a deputy judge of the Queen's Bench Division, made an order in the following terms:  
*"1. The First, Second and Fourth Defendants, on the land known as Poyle Place, Horton Road, Slough, Berkshire, shown edged and variously hatched in black on the attached 'Plan 1', 'the Land' shall:*
  - 1) *by 12.00 noon on the 28th day following the date of the Order of the Court:*
    - (a) *cease the movement parking or storage of commercial vehicles and trailers;*
    - (b) *remove all commercial vehicles and trailers;*
    - (c) *be restrained whether by themselves or by their servants or agents, with others or through any company, from causing, suffering, permitting or assisting in*
      - (i) *the movement parking or storage of commercial vehicles and trailers; or*
      - (ii) *bringing onto the Land any hardcore, tarmacadam or any other materials for the construction of hard standings; and*
  - 2) *by 12.00 noon on the 120th day following the date of the Order of the Court:*
    - (a) *dismantle and remove all portable buildings and resulting materials and debris from the Land;*
    - (b) *break out the hard standings constructed on the Land and remove from the Land all the hardcore, tarmacadam and other materials used in the construction of the said hard standings."*

Then there were provisions about costs.

3. On 5th February 2004 Mance LJ gave permission to appeal on two points in respect of that order; viz (a) the inclusion in the order of the northern segment of Moor Lane, which was on the western boundary of the land as defined in the order, and (b) in relation to the movement of vehicles and trailers (together with material carried thereon) across the land, where Slough Borough Council exercised planning jurisdiction, in order that access could be obtained to land to the south within the planning jurisdiction of Spelthorne Borough Council.
4. These two matters on which Mance LJ gave permission to appeal were small matters in the context of the order as a whole. Naturally enough, he suggested that they could and should be dealt with consensually. He also drew the attention of the parties to the Court of Appeal mediation scheme. Steps towards mediation were taken, but it emerged that no mediation could take place before the date that had been fixed for this appeal in mid-March or so; viz today 14th May.
5. Mr Prashar, who is the second defendant and is the person who addressed Mance LJ and to whom permission to appeal was granted, has asked that this appeal be adjourned so that the mediation contemplated can take place. But my view about that is that that would require further unnecessary expense to be incurred by all the parties and I do not think it would be a productive use of the parties' time and means for this appeal to be adjourned to another date.
6. Mr Prashar then says that he is not in a position to respond to the two points that I have outlined today. But the points are very short and Mr Prashar himself persuaded Mance LJ that they were arguable points. He must therefore know what the points are. Indeed, Slough Borough Council say that on one of them he has turned out to be right. That is point (b) on which Mance LJ gave permission to appeal. The land over which Slough Borough Council exercises planning jurisdiction is used for the purpose of access to lands to the south within the Spelthorne Borough Council. It may be that there are concerns about whether the land within the area of Spelthorne Borough Council is being used in breach of planning control. But Spelthorne have certainly not, as far as we are aware, taken out any proceedings for an injunction and the current mode of access ought not, therefore, to be prohibited in these proceedings.

7. Mr Powell, on behalf of Slough Borough Council, accepts that. He has put before the court a suggested amendment to paragraphs 1(a) and 1(c) of the order, whereby the word "movement" where it occurs in paragraph (a) and (c)(i) is deleted, and after the word "*storage*" in those paragraphs the words "*including movement in connection with parking and storage*" are inserted. It seems to me that that meets the point which concerned Mr Prashar and on which Mance LJ gave permission. I, for my part, would amend the order of Miss Davies in that way, and to that extent Mr Prashar will have succeeded in his appeal.
8. Point (a) raises a somewhat different problem. The position is this. Mr Prashar says that the enforcement notices made by the council do not include the northern segment of Moor Lane and the injunction should be limited to the area covered by the enforcement notices.
9. The position as to that is that there was evidence before the court that there had been encroachment beyond the areas covered by the previously issued enforcement notices. That evidence was before the judge. She appears to have accepted that evidence, since under the heading of "Relevant Factors" in her judgment, the first paragraph says this: "*Since 1996 the Land has been developed in breach of planning control for commercial use, namely a lorry park. The area used has been increased during the period despite the existence of enforcement notices. The Defendants do not deny the use. The Second Defendant accepts no planning permission exists for such use.*"
10. In my view she was entitled to accept the evidence that was before her on that matter. There is no requirement that an injunction under section 187B of the Town and Country Planning Act 1990 has to be confined to the area in respect of which an enforcement notice has been issued.
11. So on that aspect of the matter on which Mance LJ gave permission to appeal, I would dismiss the appeal. It would, however, for the sake of clarity be sensible to add in paragraph 1 of the order, as is suggested in Mr Powell's draft, after the words "*in black*", the words "*and unhatched*", in order that it be entirely clear in respect of what land the injunction operates as set out on a plan attached to the order of the court.
12. To that extent I would order that paragraph 1 of the order of Miss Davies be amended as I have suggested, that otherwise there be no change to her order and, save in respect of the first point, the appeal be dismissed.
13. **LORD JUSTICE RIX:** I agree.
14. **LORD JUSTICE PETER GIBSON:** I also agree.

ORDER: Appeal dismissed; paragraph 1 of the order of Miss Davies be amended as set out in the judgment; no order as to costs; Mr Prashar's application for permission to appeal to the House of Lords refused.

(Order not part of approved judgment)

The Appellant appeared on his own behalf

MR JONATHAN POWELL (instructed by Solicitor for Slough Borough Council) appeared on behalf of the Respondent