

Case Law Update

Birmingham City Council v Shafi & Ellis [2008] EWCA Civ 1186

Summary

This case addressed issues surrounding the circumstances when and if it was appropriate for Local Authorities, in this case Birmingham City Council, to use Civil Law Injunctions in order to tackle criminal behaviour. Birmingham City Council had sought to obtain an Injunction pursuant to Section 222 of the Local Government Act 1972 in order to deal with the growing problems of gang culture within Birmingham.

The above section states:

Where a Local Authority considers it expedient for the promotion of the interests of the inhabitants of their area –

- (a) They may prosecute or defend or appear in any legal proceedings and in the case of any civil proceedings may institute them in their own name.*

The Court of Appeal decided that the use of a S222 Injunction in this case was not appropriate and an ASBO should have been used instead. This decision will clearly have an impact on the way Local Authorities deal with anti-social behaviour.

Background

17th August 2007

Birmingham City Council obtained a Without Notice Injunction against three Defendants, namely Junior Cadogan, Marni Shafi and Tyrone Ellis. The proceedings against Mr Cadogan were adjourned and as such, the matter progressed against Marni Shafi and Tyrone Ellis. The terms of the original Without Notice Injunction Order were as follows:

The Court Ordered that the Defendant shall not (whether by himself or by instructing, encouraging or allowing any other person)

- 1. Be in any public place in the City of Birmingham with any of the following people – Courtney Jones, Courtney Moore, Junior Hollingshead, John Shafi, Nelson Junior, Christopher Boyd Clarke, Tristan Miles, Sheldon Wint, Junior Cadogan, Hassan Ali.*
- 2. Enter that part of the City of Birmingham shown on the plan (attached to the Order and lineated in red).*

3. *Assault, harass, intimidate or attempt to do any of the same to any person lawfully present in the City of Birmingham.*

Note: A plan was attached to this Without Notice Injunction Order.

3rd & 4th December 2007

The matter came before His Honour Judge MacDuff QC who held that the Court had no jurisdiction to grant the Injunction sought and, even if it had had such jurisdiction, based on the facts of the case before him he would have refused to grant Injunctions against Shafi and Ellis.

Appeal

Birmingham City Council appealed this decision to the Court of Appeal on the basis that the Judge was wrong on both of the points outlined above.

The Court of Appeal, by a majority of 2-to-1, dismissed Birmingham City Council's appeal for the following reasons:

Although it accepted that the Court did have jurisdiction to grant an Injunction, both Sir Anthony Clarke, Master of the Rolls and Justice Rix, believed that the terms of this injunction were *"to all intents and purposes identical or almost identical to an ASBO...."*

In the Judges' view, Parliament had legislated by introducing ASBOs via the Crime and Disorder Act to deal with issues of a kind which the Council had sought to address by the use of an Injunction. The Court should only grant Injunctions of this kind in exceptional circumstances and where it did (or where it thought it appropriate to grant an Injunction) it should apply a criminal standard of proof as that is the standard applied when making an application for an ASBO.

If, therefore, the case was not an exceptional one then the course of action by the Council should be to make an Application for an Anti-Social Behaviour Order.

The minority judgment in this case was given by Lord Justice Moore-Bick who dissented with the judgement of the majority on the issue surrounding the standard of proof to be applied when Applications for Injunctions were made. He drew comparisons and similarities between ASBOs and Injunctions but also highlighted the main differences, this being that breach of an ASBO was a criminal offence punishable by up to five years imprisonment. He also highlighted the differences in the Application process and further went on to point out that he believed that the

standard of proof in Civil Proceedings should only be departed from where there are strong grounds to do so. In this instance and considering the Trial Judge's decision he did not believe that this case gave rise to strong reasons for departing from the principle that a civil standard should be applied for Injunctions in Civil Proceedings.

Conclusion

Where Local Authorities are seeking to address issues of anti-social behaviour then the primary route which should be considered is an Application for an Anti-Social Behaviour Order. Only in exceptional circumstances should an Injunction Application pursuant to Section 222 of the Local Government Act be pursued but where it is, the Court should apply a Criminal standard to any evidence it considers.

Interpretation and Comment

Our reading of the Judgement, leads us to the following conclusions:

1. Firstly it is important to note that this case relates to Local Authority powers to obtain Section 222 Injunctions and does not refer to Injunctions obtained under the Housing Act 1996 (ASBIs), that are used by many RSLs.
2. We believe that there should be no impact on applications for ASBIs and Registered Social Landlords / Registered Providers of Social Housing should continue to pursue this remedy.
3. Defendant solicitors may suggest that this judgement on S222 Injunctions should be a precedent in cases where an ASBI is sought and they may ask Judges to dismiss applications and make Claimants re-apply for ASBOs.
4. Although ASBOs and ASBIs are both used to tackle anti-social behaviour, they are very different remedies and should be used in different circumstances.

Overall, our message is that RSLs should not panic and rush out applying for ASBOs instead of ASBIs. Each ASB remedy has its place and there is no denying that ASBOs are useful when the ASB relates to broad areas such as districts or even parts of cities, however the ASBI is a tool designed for tackling nuisance at a more local level.

As always, please get in touch if you have any queries or concerns about the above.

Paul Lloyd

Director. (November 2008)

