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Prime Minister (1)

The Home Secretary suggests a discussion on the next steps.

PRIME MINISTER

Yes no

Agree we set this up, with colleagues listed in the last para?

PROTESTERS AT GREENHAM COMMON

DMB  
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....  
....

Following my minute of 17 January you agreed that more work should be done on the prospects for concerted civil action. Attached is a further paper by officials and attached to that is a note of the joint advice by three Counsel. Counsels' advice is that, on the assumption that the councils will join in the action, there should be no insuperable problems in obtaining orders for possession under Order 113. They foresee greater difficulty about enforcement and, because of their judgment about the likely reaction of the protesters, they are pessimistic about the efficacy of using civil proceedings to secure the permanent removal of the relevant protesters. We must now decide what to do.

In the light of the advice from Counsel the judgment as to whether to proceed with concerted action is finely balanced. There is a strong case for going ahead. For over two years protesters have been in breach of the law at Greenham. Although some action has been taken to uphold the rule of law no concerted action has been taken. The protest has cost the taxpayer and ratepayer large sums of money and at times has tied up many military personnel and police officers. Local residents have been upset by the impact on the environment. Following major protests, such as that on 10 - 12 December, we come under strong pressure from our supporters to do something. The Lord President's minute of 18 January drew attention to this aspect.

Against that, particularly in the light of Counsels' advice, there are likely to be problems associated with a decision to take concerted civil action. Action may be misrepresented and criticised as an attempt to stifle the free expression of opinion. The

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current level of protest is low. By creating extra publicity, and because of resentment about the initiative, concerted action could increase support for the protest. Given Berkshire County Council's composition it might not be a completely reliable partner in an action. Counsels' advice is that the outcome of concerted civil action could be unsatisfactory, and if this were the case it would be argued that we should not have begun the action. Even if civil action were as successful as it could be, some form of protest would be likely to continue at Greenham and action could have the effect of encouraging further protest at other sites. There would also be added strains on the courts and on the prison system.

My officials have discussed the attached paper and Counsels' advice with the Chief Constable of Thames Valley. He is under pressure locally to "do something" and on 19 December at a meeting where emotions were high, his police authority passed a resolution calling upon the Government to co-ordinate action to deal with the protesters. I understand that on 13 February the Clerk to the Authority sent the resolution to Sir Robert Armstrong. The Chief Constable has himself comprehensively surveyed his own powers, and has not identified any offence or power under the criminal law which would enable more effective action by the police than they have already managed. For these reasons, he welcomed the initiative we have taken in exploring the scope for concerted civil action.

The Chief Constable was disappointed that Counsels' analysis of the prospects for effective enforcement is disheartening. Equally, he could see no way round the difficulties (although he mentioned the possibility that the protesters might be left with a small, harmless area of land as a safety valve, lessening their persistence in challenging enforcement action). The Chief Constable also referred to the possibility that action might displace the protest to another base where it could be even more difficult to police: he mentioned RAF Upper Heyford which is also in his force area, but there are plenty of other possibilities.

Our decision on concerted civil action will also need to have regard to recent developments and some which are in prospect in any event. You will no doubt have seen reports that Newbury

District Council have now taken action under their byelaws against the principal camp. There were twelve separate tents. On 14 February council officers removed ten of them. The protesters burnt another, and moved the twelfth on to adjacent Department of Transport land. On 8 February, in a Written Answer, the Secretary of State for Transport announced that he would shortly be improving the road junction which bisects that land, and that the campers would be required to vacate it. Parallel action by the Council and the Department of Transport cannot achieve the total clearance at which concerted civil action would aim. It would, however, represent a step forward since colleagues and I met on 16 January.

Another development will be the pattern of off-base deployment of cruise from Greenham for training purposes. This may be expected to raise the protest from its current low level. Assuming that the deployment is accomplished successfully, there will, however, then be no further occasions or new developments to prompt wider support for the protest. One approach could be to defer taking concerted civil action until the level of protest increases, although that could make enforcement more difficult, as there would be more protesters to be dealt with.

These factors lead me to conclude that the arguments for and against concerted civil action are finely balanced, and rest essentially upon political judgments which we should consider together. I should be grateful to know if you judge that the way forward is for us to discuss this with colleagues having a direct interest.

I am copying this minute and the enclosures to the Lord President, the Lord Chancellor, the Foreign and Commonwealth Secretary, the Secretaries of State for Northern Ireland, Defence, Scotland, Wales, the Environment and Transport, the Attorney General and the Lord Advocate, and to Sir Robert Armstrong.

L.B.

21 February 1984

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PROTESTORS AT GREENHAM COMMON: FURTHER ANALYSIS  
PAPER BY OFFICIALS

INTRODUCTION

Following the Ministerial meeting on 16 January the Home Secretary sent a minute to the Prime Minister on 17 January setting out the conclusions of the meeting: that concerted action to remove the protestors using the existing law had considerable attractions, and that officials should be tasked to provide further analysis, charting the steps which might be taken together with the possible outcomes, on the basis of which Ministers could take a final view. The Prime Minister agreed that such work should be undertaken, and in his minute of 18 January the Lord President of the Council indicated that from a press and public relations point of view he welcomed the Home Secretary's minute, and hoped that coordinated civil action would proceed quickly, as continued acceptance of the present situation would do the Government increasing damage. Drawing on advice from Counsel (the Joint Opinion signed by Simon Brown and John Mummery (Junior Treasury Counsel), and Christopher Simons is attached at Annex A) this paper sets out the further analysis requested by Ministers together with the option for coordinated action favoured by Counsel. The contents of the paper have been agreed by officials of the Department of Transport (DTp), the Ministry of Defence (MOD) the Home Office, the Treasury Solicitors, the Law Officers' Department, the Lord Chancellor's Department (LCD) and the Department of the Environment.

Factual background

2. A copy of an up to date account of the factual background is attached at Annex B. The salient points are set out here. There are four public bodies owning land in the immediate vicinity of the perimeter fence of RAF Greenham Common which has been subject to encampment by the protestors:

(a) the perimeter fence around the base does not follow the boundary of the MOD land. The Secretary of State for Defence therefore owns a number of relatively small strips of land outside the fence, on at least one of which protestors are camped;

(b) as highway authority for the A339 trunk road which runs by the south of the base DTp owns the land occupied by the road and its verges together with a comparatively small triangle of land on either side of the access road linking the A339 to the main gate. Part of the

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main encampment of the protestors is on this land;

(c) again as highway authority, Berkshire County Council (Berkshire) owns or administers the land occupied by the other roads in the area, and their verges. In particular Berkshire is responsible for Bury's Bank Road which runs along the northern perimeter of RAF Greenham Common and those parts of the verge which are part of the highway. Protestors are encamped on the verge to the south of Bury's Bank Road;

(d) Newbury District Council (Newbury) owns some 410 acres of Greenham and Crookham Commons. The main encampment of the protestors, near the main gate to the base, is situated partly on common land (with the remainder on DTp land, see (b) above). Three other encampments on Newbury's land have recently been removed as a result of action taken under the byelaws made last year by Newbury. Byelaw 13 empowers an officer of the council to remove structures etc placed on the common in contravention of the byelaws.

3. Partly as a result of the action being taken by Newbury the siting of the various protestors' encampments is fluid. As with previous attempts to remove encampments Newbury's action has simply led to the movement of those affected to other land, for example that owned by MOD, to which the byelaws do not apply. It has only recently been established that MOD owns the strips of land mentioned in paragraph (a) above. MOD Ministers are considering whether, as has been the case with protestors' encampments elsewhere, MOD personnel should remove the protestors, using self-help. Alternatively, the removal could be effected as part of concerted action through the civil courts.

#### The Advice of Counsel

4. Counsel's advice is that if concerted action is to be undertaken it should take the form of a joint action or concurrent actions for trespass by the four landowners concerned - MOD, DTp, Berkshire and Newbury. Counsel are satisfied that the status of the land involved (as highway and common land) would not pose difficulties. Although the public and certain commoners have certain rights over some of the land, none of these provides any justification for the protestors' occupation of it.

#### An approach to Berkshire and Newbury

5. Joint action by the four landowners would call for an approach to Berkshire

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and Newbury at an early stage to seek their agreement. Newbury has written to the Home Secretary and to the Secretaries of State for Defence and the Environment seeking assurances that local ratepayers will be indemnified from the costs of policing the protests at Greenham and the costs of enforcing the byelaws. The Home Secretary has already made available £1.5 million to the Thames Valley Police Authority in recognition of the exceptional and unforeseeable police costs. Any suggestion of action to Berkshire and Newbury is likely to be greeted with a request for the local authorities' costs to be met by central government. If a joint civil action were taken by the Secretary of State for Defence, DTp, Berkshire and Newbury the costs could be borne by central government without any difficulty.

6. The best method of broaching the proposal with Berkshire and Newbury might be for a Minister to see the leaders of the councils on an informal, confidential basis. They would need to be given a realistic assessment of the various steps which concerted action might involve (see paragraphs 10 to 20 below). If this went well officials might explain the details orally and in writing to the officers of Berkshire and Newbury. Informed consent to involvement would help to reduce the danger that the local authorities might consent to take part in concerted action at an early stage but withdraw as the scale of the commitment involved became apparent. Joint action by the four plaintiffs, with central government taking a dominant role, could also reduce this risk. Berkshire and Newbury might be able to deflect any local criticism onto the Government.

7. There are no local elections planned for 1984 which would affect the political composition of either Berkshire or Newbury. Berkshire has 87 elected members of whom 43 are Conservative, 27 Labour, 16 Liberal and one independent. The Conservative group has control of the council which has a Conservative Chairman and Vice-Chairman. The protestors have only recently moved onto land owned by Berkshire and its attitude to action against them is unclear. Informal contacts between DTp officials and Berkshire officials suggest that the council is considering taking civil action for an order for possession of land under Order 113 of the Rules of the Supreme Court. It seems that previous attempts by various committees of the council to reach a decision to take action have been abortive, and that a decision must await the next meeting of the full council which is due to take place in mid-February.

8. Newbury has 45 elected members, of whom 35 are Conservative and 10 Labour.

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Newbury took civil action to remove the protestors from the common land in 1983 and since the byelaws came into force on 21 November has taken action to enforce them. This, and informal contacts with Newbury officials on related issues, suggest that it might be willing to join in concerted action. Approval is likely to require a meeting of the full councils, so if informal approaches to the Conservative leaders of the councils were encouraging it would probably take two to three weeks before the participation of the councils was confirmed.

9. One aspect which needs to be considered is how the Government might proceed if one or both of the councils refused to take part in concerted action. Newbury's decision would appear to be the more critical as it owns by far the largest area of the land involved. If that happened, the options for analysis would be to proceed with the one cooperative council (provided both were not uncooperative), to take steps to move the protestors off all MOD and DTp land, or to restrict action to what is required by, for example, the road widening scheme. There would be pressure on Berkshire and Newbury to participate because of the risk that action by the remaining landowners might result in the transfer of the protestors' camps onto the land of any non-participant.

#### POSSIBLE PLAN FOR ACTION

##### The scope of the action

10. The following paragraphs set out the steps which might be taken, and the possible consequences, if Ministers decided to take action for trespass under the civil law to remove the encamped protestors, and Newbury and Berkshire agreed to take part. In the case of the MOD land the presence of the protestors on the land amounts to trespass. In the case of Newbury's land there is a legal right of access but the current occupation amounts to trespass. Similarly, in the case of the highway land (which is the responsibility of DTp and Berkshire) there is a legal right of passage and repassage but the current occupation involves trespass. Thus, in the case of all the non-MOD land, action would not be effective against those (including protestors) simply exercising a lawful right of access or passage.

##### An order for possession of land

11. The first step would be for the four plaintiffs to bring a joint action, in respect of all the land involved, for an order for possession of land under Order 113 of the Rules of the Supreme Court. This could be made against persons unnamed where those in adverse possession could not be named, although anyone

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who could be named would have to be. We understand that the police have made efforts to maintain an up to date list of the protestors in semi-permanent residence. Counsel are confident that, in the light of the judgment in University of Essex v Djemal and Others, an order for possession of land could be obtained in respect of the whole of the land and not just those parts actually occupied by trespassers. An order could only be obtained by each plaintiff if there were trespassers on some part of the land it owned. This is relevant to the question as to whether MOD should take prior action to remove protestors on their land, by self-help.

12. Allowing time for the collection of names, the establishment of boundaries and the preparation of the case by Counsel the plaintiffs would probably be in a position to commence proceedings within two weeks of deciding to take action. It is recommended that for a case of this significance proceedings should be taken in the High Court, and at the Royal Courts of Justice rather than a provincial centre. The Royal Courts of Justice would be able to absorb any commotion which might be associated with the proceedings rather better than a provincial centre. Order 113 provides for five days' notice to be given of proceedings, either to the named defendants or by displaying notices on the land concerned in the case of unnamed defendants, although this can be abridged in appropriate cases. Counsel have advised that as all persons<sup>who</sup> are on the land have a right to be joined as defendants the proceedings could be lengthy and disruptive.

13. Assuming that the proceedings were successful the four landowners would be able to obtain a writ for enforcement of the possession order by the Sheriff. If, as is suggested, the proceedings were taken in the High Court the Sheriff's officers for the whole county could be called upon to enforce the order. Given the joint nature of the action by the landowners, enforcement of the order on each area of land could coincide. The Sheriff's officers would remove those in adverse possession of the land, using reasonable force if that proved necessary. In relation to the MOD land it ought to be easy to decide who is in adverse possession as only commoners would have a right to be on the land. There could, however, be difficulty in differentiating the trespassers from those exercising their legal right of access on the common land owned by Newbury and similar difficulties might arise in relation to the highways. On a normal day at Greenham a visitor would have little difficulty in identifying the protestors, but once notice had been given of proceedings, and a judgment had been issued, sympathisers might well arrive in large numbers to confuse the situation. The police could be expected to attend during the enforcement of the order against the possibility



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of a breach of the peace. If breaches occurred the police would help in the removal of those responsible from the land and might well arrest them. If not arrested the trespassers would simply be removed to the boundary of land covered by the order.

14. The effective enforcement of the order could involve the deployment of considerable resources if the protestors resisted and were assisted by large numbers of sympathisers not normally present. The relatively small number of protestors present at the moment (less than fifty) might be relatively easily cleared from the areas they now occupy but there could obviously be more difficulty in clearing all the land (which covers an area well in excess of 400 acres) if the protestors moved into other, less accessible parts of the common or if more protestors arrived. If, once the land had been cleared and the Sheriff and his officers had left, the same protestors returned to camp again the landowners would be able to apply in the same proceedings to a Master for a writ of restitution requiring the Sheriff to remove the trespassers again. If different protestors went onto the land after the original writ of possession had been enforced a writ of restitution would not be available and fresh proceedings would be necessary under Order 113. Even if the same women went back onto the land it might be difficult for the Sheriff and his officers to satisfy themselves that those concerned had previously been removed. As Counsel point out, the limitation of Order 113 is that it could become a frustrating exercise seeking to enforce it, particularly since no penalty attaches to subsequent trespass simply because an order under Order 113 has been made.

#### An injunction

15. The prospect could therefore be one of a succession of writs and subsequent evictions under Order 113, followed by the return of encamped protestors. Action through the civil courts could be stopped at that stage. But it would be difficult to counter the impression that the Government had embarked upon action to end the trespass and then surrendered in face of the protestors' determination. This could be the more so, since the civil law provides the remedy of an injunction.

16. The landowners might bring a joint action for a permanent injunction

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restraining those involved from further trespass. Continued trespass would then involve contempt of court. Counsel do not think that representative proceedings could be brought against a disparate group such as the Greenham Peace Women, and therefore proceedings for an injunction could only be brought against named individuals. Again proceedings should be brought in the High Court at the Royal Courts of Justice. Counsel advise that no proceedings for an injunction should be taken until an order for possession had been obtained and flouted. The original application to the court for the injunction would have to be served on each defendant two days prior to the proceedings, but the notice might be dispensed with, and in any event a hearing could be arranged without delay. The application for an injunction could be disposed of by one High Court judge in the course of two or three days.

17. Assuming an injunction were granted the order of the court would have to be served on the named defendants. If trespass continued it would be for the plaintiffs to apply to the court for an order for committal of a defendant for breach of the injunction and to prove to the court that all the necessary documents had been served on the individual concerned and that the individual had breached the injunction. The application for committal would have to be served personally on each defendant. A large body of process servers would be needed to ensure that the service of the various documents could be proven in the case of each individual. The judge hearing an application to commit would have to hear argument about service and liability, and would have to consider the appropriate penalty. Officials of LCD have estimated that this might take an average of one hour for each individual.

18. If contempt is proven a warrant for committal for contempt would be issued, addressed to the officials of the court and to "all constables and other peace officers whom it may concern". Thus, if necessary, police assistance may be invoked to bring individuals before the court. The penalty would be a fine or imprisonment as the protestors do not belong to a formal body with funds of its own which could be sequestered. The court would probably prefer, in the first instance, to fine rather than imprison. Enforcement of fines would be a matter for the Queen's Remembrancer, who could look to the Treasury Solicitor for assistance. The business of enforcing fines, by the usual remedies available to collect debts, may prove difficult in the case of the protestors at Greenham and there are likely to be abortive attempts to enforce, leading the court to consider imprisonment.

19. The principal advantage of proceedings for an injunction as opposed to an

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order for possession of land is that those who return to the land can be committed for contempt, with the serious sanctions this entails. The disadvantage is that proceedings for an injunction relate to persons rather than to the land so that an injunction would only be effective against named persons. If the changing character of the population at Greenham meant that some of the encamped protestors could not be named the injunction would be wholly ineffective against them. And if injuncted persons were effectively removed - perhaps by imprisonment for contempt - and were replaced by others the replacements would have to be named and new proceedings undertaken. Obviously if large numbers of persons were involved the court time occupied (LCD estimate that proceedings for the committal of 25 persons might occupy one High Court judge for a week) and the burden on the female prison system (which is relatively inflexible, and can be put under strain by marginal increases in number, perhaps necessitating the use of police cells) could be considerable. Counsel express serious doubts as to whether an injunction could be effectively enforced in such circumstances.

20. Much, of course, depends upon an estimation of the reaction of the protestors and their supporters to the making of an injunction. The best outcome from the Government's point of view would be for the protestors simply to decide that it was not worthwhile fighting, and to leave the land. The worst case would be for the protestors to refuse to leave, with large numbers being brought before the courts for contempt and being imprisoned, while others arrived at Greenham to take their place, to be proceeded against in due course if they could be named. If this continued on a sufficiently large scale for a sufficient period of time the point would quickly come where the scale of the proceedings and committals to prison would cause difficulties and might even be counter productive. In this event the net effect of concerted action might be to stimulate larger protests and demonstrations at Greenham. A less extreme outcome might involve the continued trespass by relatively small numbers of protestors with demonstrations in sympathy with the protestors gradually declining as time passed. On this analysis the protestors might ultimately decide to leave the land, continuing their protest perhaps by other means.

21. In the past the protestors have tended to acquiesce to enforcement action taken against their encampments, simply moving onto other land. A new situation would arise if the four landowners involved took concerted action. The protestors would either have to move onto the private land in the area, such as the golf course to the north of the base, or give up camping in the immediate vicinity of the base. In the past the protestors have apparently shown some reluctance

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to trespass on private land. Faced with these choices they might decide to ignore any injunction granted, with the possible consequences set out in paragraph 20. Perhaps one important factor which would affect the reaction of the protestors would be their assessment of the consequences of acquiescing. If compliance with an injunction meant an effective end to their protest they might well be less inclined to comply than if it did not (see paragraphs 23 and 24 below).

Possible timetable for action

22. Assuming that the various steps set out above were to be gone through a possible timetable for action might be:

mid February	:	Ministers decide to proceed with concerted action. Informal approaches to the councils are made.
early March	:	councils confirm that they are willing to participate.
mid March	:	case ready, notice of proceedings for an order for possession under Order 113 served on named women, and by posting notices on the land.
five days later	:	proceedings heard, order and writ for possession of land obtained. Sheriff's officers (and police) clear land.
late March/early April	:	series of writs of restitution obtained as protestors return. Proceedings for an injunction begun by service of notice on protestors.
mid April	:	action for injunction heard, injunction granted, copies served on protestors.
mid May onwards	:	proceedings to have protestors who return committed for contempt.

Consequences of the removal of the encampments

23. As indicated in paragraph 10 the protestors are trespassers on Newbury's common land only because their current occupation goes beyond the right of access under the Scheme of Management. Effective civil action could end the encampment of the protestors on the land but could not prevent them from simply being present on the common land. Similarly action in respect of the highway land by DTp and Berkshire could ensure the removal of encampments from the land, but could not prevent protestors from exercising the legal right of passage and repassage along the highway. This means that the net effect of successful

civil action would simply be to deny the protestors their present place of abode in the immediate vicinity of the base.

24. Thus the action could end the physical spectacle of the 'peace camps' around the base which has taken on a symbolic significance for some. This would remove an obvious focus for the large, set piece, demonstrations, and would end over two years acquiescence to adverse possession. But it would not necessarily bring an end to the continued presence of protestors at Greenham, and would certainly be most unlikely to result in an end to all demonstrations. The protestors already have available to them the facilities of a house in Newbury which is owned by a sympathiser, and a number of vehicles which provide transport. If effective action prevented the protestors camping at the base it would be open to them to find accommodation further afield, travelling to the base daily on a shift basis to continue their 'cruise watch' for signs of the deployment of cruise missiles. It is not, for example, impossible that sympathisers would purchase land for the use of the protestors. If this were to occur the practical consequences of effective civil action would have been limited to the creation of a slightly more difficult lifestyle for the protestors.

#### Handling of coordinated action

25. If Ministers conclude that concerted action should be undertaken arrangements would have to be made for its coordination. These might take the form of a small group of officials including representatives of the plaintiffs (DTp, MOD and, once enlisted, Berkshire and Newbury), perhaps chaired by the Home Office which might continue its coordinating role.

26. One important aspect of handling would be the presentation of the concerted action to the public through Parliament and the media.

IN THE MATTER OF LAND AT GREENHAM COMMON,  
BERKSHIRE.  
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A D V I C E

The Factual Position

The present position (as observed on 31st January 1984) at the Greenham Common Airbase is that there are 6 separate encampments at gates into the airbase occupied by at most about 30 women. None of those women has any right to occupy any part of the land upon which the encampments are sited. While that number of encampments and women appears to be the normal position there have been in the past very large numbers of women over short periods of time demonstrating against the deployment of cruise missiles and for the purpose of this Advice it is

assumed that they intend to hold similar demonstrations in the future.

#### The Ownership of the Land

The land occupied by the women is not all in the same ownership. The area around the main gate is owned in part by the Department of Transport and in part by Newbury District Council ("Newbury") it being part of the Common. Other encampments are on land owned by the Ministry of Defence possibly by Berkshire County Council ("Berkshire"), as highway authority and by Newbury. In the past Newbury have taken court action to remove women from their land which has resulted in them moving on to other land in different ownership.

#### The Ambit of this Advice

We understand that our advice is sought as to the possibilities of effective further action against the women to remove them permanently from all the land in the vicinity of the airbase which is in public ownership. There is a small amount of land in the immediate vicinity which is in private ownership, but it is not contemplated that those owners would be involved in any joint action taken by central and local government. Whether the women would resort to private gardens and other land is open to doubt.

### Court Action

There are two phases involved in any action before the Courts. In the first place a Court order is needed requiring the women to move from the land and/or enjoining them against returning to it. In the second place that order has to be enforced. It is the second phase that is likely to cause the major problem, albeit the first phase may well incur difficulties, not least in securing the cooperation of the local government authorities for the necessary concerted action.

### Removal Orders

We have considered and rejected prosecuting under the Highways Act 1980 and also enforcing the byelaws on the Common. Neither result in removing the women nor can they alone deal with all the encampments some of which are on neither highway nor common land. In any event, both courses lead to fines in the Magistrates' Court which have not dissuaded the women from continuing their vigil in the past. Non-payment of the fines has led to terms of imprisonment which indeed the women appear to welcome for the attendant publicity.

X We have also considered <sup>and</sup> the rejected injunction proceedings against the women in a representative action under the provisions of Order 15, rule 12 of the Rules of the Supreme Court. Recent authorities suggest a fairly liberal approach



by the Courts allowing representative actions to proceed even where the interest of the Defendants was not identical (see. e.g. John v. Rees 1970 1 Ch. 345; E.M.I. Records Ltd. v. Kudhail and Others, The Times, June 28th, 1983; M. Michaels (Furriers) Ltd. v. Askew and Others, The Times, June 25th, 1983). However, there must be real doubt as to whether such an action would succeed here where the women would no doubt argue that they each belonged to separate organisations each having different aims. So far as we are aware, there is no official organisation known as the Greenham Common Women, which could add to the difficulties. Further an unreported decision of the Court of Appeal (Winder v. Ward 1957) referred to in the notes to Order 15 rule 12 (15/12/2A) suggests that the rule does not apply to actions of trespass. We have not had an opportunity to see a transcript of that case. An injunction is a discretionary remedy and the women would no doubt argue, if properly advised, that it would be wrong to make such an order where another remedy was available, namely possession proceedings. While that argument might well fail by reason of the history at Greenham, it is nevertheless another hurdle to be surmounted. In any event if the first phase were successful, and a suitable Court Order was obtained, there would be considerable problems of enforcement. Order 15, rule 12(3) requires the leave of the Court to be obtained before enforcement against

any person and personal service is required (rule 12 (4)). There is also a right for that person to dispute liability if he or she feels they are entitled to be exempt from such an order (rule 12 (5)). The advantages of such proceedings are thus more apparent than real.

Order 113 of the Rules of the Supreme Court

We have reached the view that if any action is to be taken against the women then initially it should be by way of possession proceedings under Order 113. That Order provides as follows :-

"1. Where a person claims possession of land which he alleges is occupied solely by a person or persons (...) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order."

The proceedings may be brought against named persons, who have to be served, and unnamed persons and the Order for Possession can be used to evict any person found on the land by the bailiff, acting under a warrant of possession.

(R. v. Wandsworth County Court, ex.p. London

Borough of Wandsworth 1975 1 W.L.R. 1314 applying

Re: Wykeham Terrace, Brighton 1971 Ch.204 at 209

and McPhail v. Persons, Names Unknown 1973 Ch.447 at

458). A concerted action, or perhaps separate concurrent actions, would need to be brought by Newbury,

Berkshire and the Secretaries of State for Transport and Defence. The actions would have to seek possession of an ascertained area of land which would need to cover a sufficient area to keep the women some way away from the airbase. Clearly an order for possession in respect of the existing six camps alone would merely result in the women moving to adjoining land. The Court has power in a proper case to make an order over the whole of a landowner's land even when the occupation is limited to one or more areas of it. See University of Essex v. Djemal & Others 1980 1 W.L.R. 1301. That was a case of evicting students from certain buildings on a university campus where the students threatened to occupy other buildings in the future. The order was made in the terms :-

"that they do recover possession of the premises at the University of Essex, Wivenhoe Park, Colchester, in the County of Essex"

and as Shaw, L.J. said that was without any geographic limitation.

Djemal was followed by the Court of Appeal in Wiltshire County Council and Others v. Frazer and Others, 5th July 1983 unreported. That case involved the recovery of possession of about one mile of a highway and land either side of it which was occupied intermittently by squatters. Although the Court of Appeal were considering whether an order for possession could

be made over highway land (which they unanimously decided it could) Stephenson, L.J. said :-

"... I do not see how it can be argued that the Defendants are not persons who entered into and remained in occupation without the Plaintiffs' licence and consent. They are the only occupiers of this highway, and their occupation of many parts of the highway affects the authority's right of possession of the whole highway, including its unoccupied parts, and entitles the authority to possession of the whole highway: see University of Essex v. Djemal."

(A copy of the Judgments in this case is attached to this Advice.).

While the area of land contemplated in these proceedings may well be larger than other areas over which orders for possession have been made we can see little difficulty, in the circumstances here, in persuading a judge to make a suitable order. However, all persons who are on the land have a right to be joined as defendants (Order 113, rule 5) and if all the women in occupation, and perhaps other recruits brought in, were to ask to be joined as defendants the proceedings could be lengthy and possibly disruptive. (Newspaper reports of the proceedings brought by Newbury suggest that orders were made against 161 named women on 10th March 1983, see report in The Times, 11th March 1983).

### Enforcement

While we do not anticipate insuperable problems in successfully completing the first phase of this action the second phase, enforcement, will in our view be a different matter.

The writ of possession can be issued at any stage up to 3 months after the date of the Order. Thereafter the leave of the Court is required (Order 113, rule 7). That writ, as we have said, operates against any person in occupation of the land at the time of execution. People lawfully using the highway or the Common are not in occupation of the land and there may be an attempt by the women to avoid eviction by "lawfully" using the land over which the Order operates. We do not feel that will present great difficulties. The land can, in theory at least, be cleared of the women and their belongings. However, it is a very large area of land and there will certainly be considerable difficulty in clearing the whole of it. The writ of possession continues to operate until the land is cleared and vacant possession given. If the women, who would almost certainly by that time be in greater numbers than at present, decided to refuse to leave the land it might well be physically impossible to remove them.

However, assuming they could be removed and vacant possession was given, the difficulty then

arises as to how to keep them off the land. If the same persons were to go back on the land a writ of restitution could be applied for ex parte and the land could then be cleared again. If different women went on to the land after the writ of possession has been executed and the land cleared the only remedy would then appear to be fresh Order 113 proceedings. Even if the same women went back on to the land it might be difficult for the Sheriff and his officers to satisfy themselves that they had previously been removed. The alternative procedure to the writ of restitution would be to move to commit the offending women for contempt of court. Although that is not the normal way to proceed (see Alliance Building Society v. Austen 1951 2 A.E.R. 1068) in these circumstances the court would probably entertain such an action. However, that action requires identifying the women, serving them and proving that they had knowledge of the original order and that they were in breach of it. On a large scale that would be an almost impossible task.

Assuming that some at least of the women remain on the land further action could be taken by way of an injunction. If the women have taken the step of identifying themselves in the possession action the problem of identification will be eased, but will by no means have been removed. To obtain an effective injunction against an individual it will

be necessary to :-

- (i) identify that person;
- (ii) serve them with the proceedings;
- (iii) obtain the Order for the injunction;
- (iv) serve the Order personally on the person.

If that person is believed to be in breach of the injunction before that person can be committed for contempt it will be necessary to :-

- (i) serve the committal papers on the person;
- (ii) prove service of the original order;
- (iii) prove a breach of that order;
- (iv) persuade a judge that that person ought to be sent to prison rather than be fined.

All that assumes that the same women are at the airbase all the time. It is known that apart from a few "residents" the population changes all the time. It is difficult to see how the area round the airbase could ever be completely cleared of the women if they were determined to keep a presence there. It would be possible to short circuit part of the action outlined above by

bringing injunction proceedings, based on trespass, against some of the women presently in occupation, concurrently with proceedings under Order 113. They would have to be identified and served and all the steps set out above would thereafter have to be taken. Those proceedings would take longer to bring to court than the possession proceedings because of the need to identify and serve the women personally. The injunction would probably be granted if the women concerned made it clear they intended to ignore the Order for Possession. In the absence of such an intent it is doubtful whether an injunction would be granted in addition to the Order for Possession. On balance, we take the view that no proceedings should be taken for an injunction until an Order for Possession has been made and flouted.

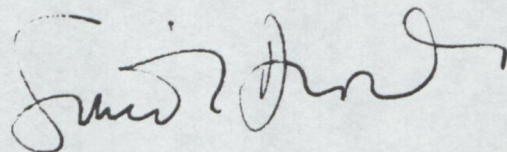
What we have said above is dealing with the relatively small number of women who occupy the land around the airbase. While that has on occasions gone up to a few hundred that is still relatively small in comparison with the large demonstrations which have occurred when many thousands are present. In these situations the criminal law can be, and has been, invoked. However, it is quite impossible to see how any civil action in the Courts can stop these demonstrations. Even if the writ of possession (which *ex facie* only relates to those in "occupation") took effect on persons, like demonstrators, who come



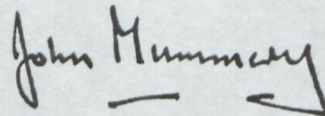
onto the land for a relatively short time, which must be doubtful, attempting to clear the land of that number of people would be impossible.

To summarize our views, to attempt the permanent removal of the "residents" around the airbase would be difficult, would take a long time, would occupy much court time, would be likely to involve the imprisonment of a large number of people and even then is unlikely to be successfully achieved. It must be borne in mind that the existing "residents" would all too inevitably be replaced by others and that each fresh wave would need in turn to be the subject of enforcement proceedings. Moreover, the prevention of demonstrations of many thousands of people cannot be achieved through the civil courts.

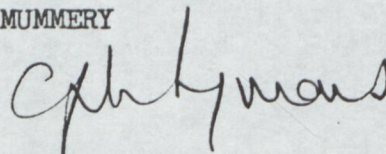
We are, therefore, pessimistic about the efficacy of using civil proceedings to secure the permanent removal of "residents" from the Greenham Common Airbase let alone demonstrators in that vicinity.



SIMON BROWN



JOHN MUMMERY



CHRISTOPHER SYMONS

5 July 1983

COUNSEL:

D Wood QC and G Aldous for the Appellants; D Levy QC and G Laurence for the Plaintiffs.

PANEL: Stephenson, Griffiths and May LJJ.

JUDGMENTBY-1: MAY LJ

JUDGMENT-1:

MAY LJ: This is an appeal from a judgment and order of Mr. Justice Mann given on 23rd March 1983. He had before him an originating summons issued under order 113 of the Rules of the Supreme Court, seeking possession of premises

(Transcript:Association)

described as a "Public Highway known as Green Lane, otherwise a road used as a Public Path No. 17, Britford, Near Salisbury, Wiltshire and the land adjacent thereto". On that summons he made an order for possession against a substantial number of named defendants and also against any persons unknown who might also be in occupation of it. Of those many defendants, nine now appeal against that order.

There is an agreed statement of facts in this case, but I think that it is really sufficient for the purposes of the appeal to cull the limited facts that one needs from the judgment of the learned judge.

Green Lane, South of Salisbury, is one of the green roads of England and is an ancient highway. It is a highway properly so-called and by virtue of the Highways Act 1980 it is vested in the first plaintiff, the Wiltshire County Council, as the relevant highway authority. Both the first plaintiff and the other four plaintiffs are, in addition, owners of land adjacent to the highway. In so far as the order for possession made by the learned judge concerned land other than the highway itself - that is to say, in so far as it ordered possession of land adjacent to the highway - no complaint is made. This appeal is concerned solely with the order for possession made in favour of the first plaintiff alone in respect of the highway itself, Green Lane. As I shall mention in a moment, the nature of the first plaintiff's interest in the

(Transcript:Association)

I therefore refer immediately to the provisions of order 113 rule 1; they are in these terms:

"Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this order".

Rule 3 of the Order lays down the necessary contents of the affidavit to be sworn by a plaintiff in such proceedings in support of the originating summons. Rules 6 and 7 provide for the use of Form 42A as the form of the appropriate order for possession if one is made under the special procedure, and of Form 66A, which is the writ of possession which will issue to enforce the order for possession.

It is well known that the procedure laid down in order 113 was added to the Rules of the Supreme Court in order to enable the courts, and through them those entitled to the possession of land, to deal expeditiously and efficiently with the modern phenomenon of squatters. It has also been used, for instance, in respect of student sit-ins in universities. One particular aspect of the procedure under order 113 different from other procedures contemplated by the

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Rules of the Supreme Court, is that proceedings can be taken against persons unknown - solely, or in addition to known defendants. Again this is to deal with one aspect of the squatting problem. It is frequently proved impossible to discover the identity of those who were wrongfully in occupation of premises. In addition, such is the nature of such occupation, that it may very well change from day to day, or at any rate frequently, and those in possession when the proceedings are originally served may well not be those in possession when the proceedings are ultimately heard.

Because of this and the summary nature of the procedure provided for by order 113, Mr. Wood first submits, in my judgment entirely correctly, that the provisions of the Order must be construed strictly. Orders for possession under this procedure should not be made unless its requirements are strictly and fully complied with. However, it is with the second and third submissions that Mr. Wood makes in support of the appeal, seeking to contend that the order 113 procedure is not available to the plaintiffs in the circumstances of the present case, that I respectfully disagree.

Mr. Wood submits that the remedy under order 113 is only available to a plaintiff where, as he puts it, the cause of action is in reality a cause of action for the recovery of possession. That being so, on the facts of this case there has been no real obstruction of passage along the highway by the Queen's

(Transcript:Association)

subjects; all that has happened is that a number of caravans have been parked, no doubt towards the verge of the highway, at various points along it. There is thus, he submits, no possession in any of the defendants inconsistent with the right to possession of the highway by the highway authority. Thus, his argument continues, use of the procedure under order 113 is inappropriate. He submits that the local authority should proceed by way of s 143 of the Highways Act 1980, which gives them statutory powers to remove obstructions from the highway.

However, Mr. Wood, very properly as I think, felt driven to make two concessions which in my view destroy his case entirely. He first accepts, as I have already mentioned, that the highway authority, the first plaintiff, has a fee simple in the surface of the highway, determinable in the event to which I have referred. That that is so is amply borne out by the judgments of this court in *Tithe Redemption Commission v Runcorn Urban District Council* and *Another* [1954] 1 Ch 383, [1954] 1 All ER 653. That was a case in which, by the Local Government Act 1929 it was provided that certain highways should vest in the local highway authority - phraseology which has appeared in similar legislation, at least as far back as 1835 and is used again word for word in s 263 of the Highways Act of 1980.

At p 398 of the report, when considering the nature and extent of the interest of the local authority, Lord Evershed, Master of the Rolls, referring

(Transcript:Association)

to the Act of 1929, said:

"... we are bound by authority to hold that a vesting, according to a formula such as that of the Act of 1929, did operate to confer upon a highway authority in respect of some part of the land, which although indefinite in extent included the essential surface (that is, essential for the purpose of tithe, tithe rentcharges and the Tithe Redemption Act), a legal estate known to the law, namely, a fee simple determinable on the happening of a particular event - the event of the land in question ceasing to be used as a highway". And in similar terms, at p 403, the learned Master of the Rolls continued:

"I think, therefore, that these cases show" - he had been referring to a number of the authorities to which our attention has also been drawn - "that a highway authority, which had vested in its highways in that statutory form which I have already mentioned, acquired an estate known to the law, namely, a fee simple determinable."

The second concession which Mr. Wood made was that the remedies possessed by a highway authority by virtue of the Highways Act 1980 are additional to any common law powers it may possess. Again, I need only refer to one brief passage in one of the cases that was cited to us, that of *Reynolds v Presteign Urban District Council* [1896] 1 QB 604, where Lord Russell of Killowen at p.609 said

(Transcript:Association)

"I think, however, that if they are able to shew that there is an obstruction or encroachment, they have the same right as a private individual has to protect his own property. Where there is an encroachment on or obstruction to private property, the owner is entitled to remove it. As regards the cutting of trees, the House of Lords, in the recent case of Lemmon v Webb, held that it was not even necessary to give notice to the owner of trees overhanging the land of an adjoining owner before the latter cut the branches which overhung. With respect to encroachments on or obstructions to highways, it is undoubtedly true that there are statutory provisions pointing out particular means which the local authority may adopt in order to obtain the removal of the encroachment or obstruction; but, in my opinion, those provisions are not intended to be exclusive. They are provisions not necessary but supplementary to the right to remove - provisions to which the local authority can resort if they so desire".

I think that it is also helpful to quote a short passage from the judgment of Lord Diplock in Greater London Council v Jenkins [1975] 1 All ER 354, [1975] 1 WLR 155. The facts are not material for present purposes. There the learned Law Lord, sitting in this court, referred to an earlier suggestion by the then Vice Chancellor that the court had a discretion in so far as order 113 was concerned, but said at p 157:

(Transcript:Association)

"For my part, I am unable to see that the court has any discretion to prevent a plaintiff using this procedure where the circumstances are those described in the rule. So, while agreeing, as I do, with the Vice-Chancellor's construction of the rule, I personally would disagree that the court has any discretion to prevent the use of this procedure where circumstances are such as to bring them within its terms"

With that introduction, I turn back to order 113, rule 1. In the instant case the highway authority is a person claiming possession of land. Their affidavit, which is in the papers and which was filed pursuant to rule 3 of the order, clearly shows their interest in the land. Being entitled to that interest then, prima facie at least, the highway authority is entitled to possession of this particular highway.

Continuing, this highway authority does allege that it is occupied solely by a person or persons who entered into or remained in occupation of the highway without the authority's licence or consent. By the affidavits in support of the originating summons which have been filed, the circumstances in which this land has come to be occupied by the defendants and other persons unknown without the licence or consent of the highway authority, have been set out in detail. It seems to me clear beyond a peradventure that no other interpretation of the facts is possible than that these defendants and the other persons unknown are

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wrongly in occupation of the highway. I think it matters not that each several caravan is at a separate point on the highway. In the course of the argument the court put to Mr. Wood the circumstances in which squatters occupy one particular room in a larger house containing a number of rooms. I see no reason why an order for possession under order 113 cannot be made against those squatters in respect of the house as a whole, even though on the evidence they can be shown only to be in occupation of the particular room in that house. Quite clearly they are trespassers in the house, just as I think that each and every one of these defendants named and unnamed are trespassers on the highway. It is in respect of trespassers who are wrongly in occupation of land that the order provides a summary, expeditious, efficient and economic method of obtaining possession. cf. University of Essex v Djemal [1980] 2 All ER 742, [1980] 1 WLR 1301.

So far as Mr. Wood's main contention is concerned, however, namely that the extent of the occupation by each of the several defendants does not constitute, as he put it, any ouster of the plaintiffs' possession of the whole or any part of the highway, effectively because the public still use it, in my judgment that matters not. As I have said earlier, these defendants are clearly trespassers on the highway, just as squatters are trespassers in derelict premises. That there has been no complete, or near complete, blockage of the highway by the large number of caravans that there are, spread over the length of about a

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mile, is, I think, of no relevance.

Allied to that point was the final point which Mr. Wood pressed upon the court, based upon the word "solely" in rule 1 of order 113. His submission was that as any one of these defendants does not occupy the whole highway, that defendant cannot be said "solely" to occupy the land of which the local authority now seek to obtain possession. For my part, I do not think that the word "solely" in rule 1 of order 113 is used in that sense at all. It contemplates premises that may be occupied by, let us say, one person who has a right to occupy, and a number of people, whom he may perhaps have let into occupation, but who do not have any right to occupy. In those circumstances - and one can very well understand the reason why - it has not been thought right to enable the courts to make a swift order for possession against one or more defendant who may have a right to be in possession. It is only when all those in occupation of the relevant premises are there without the licence or consent of the person entitled to possession that it is appropriate to proceed under order 113.

For the reasons which I have sought to give, in my judgment this is a clear case. These defendants are trespassers on the land in which the highway authority, the first plaintiff, has a fee simple determinable. The highway authority is entitled to possession. In my judgment the learned judge was

(Transcript:Association)

entirely right to make an order in their favour under the procedure provided by order 113 and I would dismiss this appeal.

JUDGMENTBY-2: GRIFFITHS LJ

JUDGMENT-2:

GRIFFITHS LJ: The facts of this case reveal that a large number of persons have encamped themselves on a part of the Green Lane and the land immediately adjoining it, near Salisbury. Some of them have been there for a long time; they are living in various types of dwellings, some in caravans, some in tents and some in other structures. They have no right to be there at all; they are all trespassers; they do not have the permission of the owners of the land adjoining the Green Lane, nor have they the permission of the local authority, who are the highway authority in whom Green Lane, which is an ancient highway, is vested.

It is conceded that, as they are trespassers, both the landowners and the Wiltshire County Council, the highway authority, are entitled to have them removed, and the only question before this court is whether or not the use of order 113 was the use of an appropriate process to obtain a court order for their removal.

(Transcript:Association)

They are squatters. Order 113 had to be introduced in order to provide landowners and others with a reasonably expeditious and inexpensive way of recovering their land when it is invaded by squatters; and I myself would be very troubled if I found that, in the circumstances of this case, where there has been a massive squatting, this summary and reasonably economical procedure was not available.

It is conceded on the authority of this court in *Tithe Redemption Commission v Runcorn Urban District Council* [1954], Ch 383, [1954] 1 All ER 653 that the highway authority are in possession of the surface of the highway and of so much of the subsoil beneath it as is necessary for the discharge of their function as a highway authority. It is conceded that if some persons went into occupation of the Green Lane so completely that it was utterly blocked and that no person could pass and repass along it, in those circumstances an action for possession would lie against those persons at the suit of the highway authority. It must follow from that, as order 113 is purely procedural and is intended to be an expeditious and economical way of recovering possession where the plaintiff would be entitled to proceed by a writ for possession, that order 113 procedure would lie in such circumstances. But as I understand the submission that has been made, it is that because the caravans, tents, structures and so forth are pitched on, and adjacent to, the highway but do not at any point completely obstruct it, neither a writ of possession nor a summons under order 113 will

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lie against those trespassers who have encamped on the highway.

For my part I entirely reject that submission. If the highway authority finds that some person has come upon their highway and set up house upon it, either in a caravan or in a tent, he is entitled to proceed against that person with a writ of possession, and furthermore he is entitled to use the procedure under order 113 if he so chooses. I regard that as decided, if a decision on such a point were necessary, by the decision of this court in *University of Essex v Djamal* [1980] 2 All ER 742, [1980] 1 WLR 1301, in which it was pointed out that where a part of land is occupied, nevertheless order 113 can be used to recover possession of the whole of the land.

Here, beyond doubt these people are occupying a part of the highway, possession of which is vested in the highway authority, and the highway authority is entitled to tell them to go; if they will not go, they are clearly in adverse possession of part of the highway. That is the situation here and, that being so, a writ of possession lies against them, or alternatively the expeditious procedure under order 113.

For these reasons, and for those given by my Lord, I agree that this appeal fails.

(Transcript:Association)

JUDGMENTBY-3: STEPHENSON LJ

JUDGMENT-3:

STEPHENSON LJ: I agree with both judgments.

For a party to avail himself of order 113 of the Rules of the Supreme Court he must bring himself within its words. If he does so the courts has, in my judgment, no discretion to refuse him possession, even if he is not using the rule for the purpose, or mainly for the purpose, of overcoming one of the two shortcomings of less summary procedures which are referred to in the Supreme Court Practice notes to order 113. It is not so much the object aimed at by the order, and rule 1 of it, which the court has to consider, as what its plain language fairly and squarely hits. This seems to me to be in line with what Lord Diplock said in the passage quoted by my Lord, Lord Justice May, from *Greater London Council v Jenkins* [1975] 1 All ER 354, [1975] 1 WLR 155.

What do the words of the rule require? (1) Of the plaintiff, that he should have a right to possession of the land in question and claim possession of land which he alleges to be occupied solely by the defendants. (2) That the defendant, whom he seeks to evict from his land, should be persons who have entered into or have remained in occupation of it without his licence or consent.

(Transcript:Association)

I agree that the plaintiff authority are qualified, by the peculiar interest which they have in the surface of the highway, on the authority of the decisions of this court in *Foley's Charity v Dudley Corporation* [1910] 1 KB 317 and in *Tithe Redemption Commission v Runcorn Urban District Council* [1954] 1 Ch 383, [1954] 1 All ER 653 which the learned judge followed. And the other plaintiffs have a right to possess their own land adjacent to the highway.

That, in my view, is the end of the appeal, because I do not see how it can be argued that the defendants are not persons who entered into and remained in occupation without the plaintiffs' licence and consent. They are the only occupiers of this highway, and their occupation of many parts of the highway affects the authority's right of possession of the whole highway, including its unoccupied parts, and entitles the authority to possession of the whole highway: see *University of Essex v Djamal* [1980] 2 All ER 742, [1980] 1 WLR 1301, in particular per Lord Justice Shaw at p 1305 D.

For these reasons I agree that the appeal should be dismissed.

DISPOSITION:

Appeal dismissed; no order as to costs, except that the costs be paid out of the legal aid fund unless the Law Society objects within ten weeks from today's date; legal aid taxation of costs of defendants who are legally aided.

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IN THE MATTER OF LAND AT GREENHAM COMMON,  
BERKSHIRE.

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A D V I C E

## FACTUAL BACKGROUND TO THE SITUATION AT GREENHAM

This paper sets out, for Ministers, the factual background to the situation at Greenham. A difficulty is that two of the potential litigants in any concerted action - Berkshire County Council (Berkshire) and Newbury District Council (Newbury) - cannot be approached at this stage. Thus although the contents of the paper have been agreed by officials of the Ministry of Defence (MOD) and the Department of Transport (DTp) which, together with Berkshire and Newbury would appear to be the potential instigators of any action, the information relating to the position of the councils is necessarily second hand and less detailed. The paper has also been agreed by officials of the Home Office (which is co-ordinating the current exercise), the Department of the Environment and the Lord Chancellor's Department.

The history and pattern of land ownership.

2. RAF Greenham Common occupies some 860 acres of Greenham and Crookham Commons which, excluding the area now covered by the air base, extend to some 410 acres. In addition the base covers some 50 acres of land which is not common land. The land comprising Greenham Common (including that now occupied by MOD) was purchased by Newbury Borough Council from the estate of Mr L H Baxendale on 4 February 1939. Later that year the council executed a deed under section 193 of the Law of Property Act 1925 to grant public access for air and exercise. By virtue of section 193(4) of the 1925 Act the deed had the effect of making it an offence to drive vehicles, camp or light fires on the Common. In June 1930 Mr A S B Tull, the owner of Crookham Common (including that part now occupied by the base), had executed a similar deed in respect of that Common.

3. In 1943 the area now occupied by RAF Greenham Common (together with the 180 acres later sold to Newbury) was requisitioned by MOD under the Emergency Powers (Defence) Act 1939. Under powers conferred by section 9 of the Defence Act 1842 MOD purchased the requisitioned common land (Crookham Common in 1955, and Greenham Common in 1960) and by 1960 had purchased the remaining 50 acres of the land covered by the base from the various landowners concerned. During 1960 MOD revoked, in respect of the part of Greenham Common it owned, the deed under the Law of Property Act



giving public access. In 1982 180 acres of Crookham Common were sold by MoD to Newbury. During February 1983 Newbury revoked, in respect of the parts of Greenham and Cookham Commons now owned by MoD, the deeds previously executed under section 193 of the Law of Property Act 1925. It then proceeded on 26 July 1983 to make a Scheme of Management under section 1 of the Commons Act 1899 in order to be better able to regulate the Commons. Besides conferring a power to make byelaws, the Scheme provides that the Council shall maintain the common free from all encroachments and not permit any trespass, that all rights of common are unaffected, and that all inhabitants have a free right of access to every part of the Common. On 10 August 1983 the Council made byelaws, applying to both Greenham and Crookham Commons under the Scheme of Management. The byelaws were confirmed on behalf of the Home Secretary on 7 November and came into force on 21 November 1983. In March 1983 MoD had also revoked the deed executed under the Law of Property Act 1925 in respect of its part of Crookham Common - thus extinguishing the public right of access over the land owned by MoD.

4. The rights of common over Greenham and Crookham Commons were subject to registration under the Commons Registration Act 1965. Some 34 people have registered rights of common over Greenham Common, while there have been 29 such registrations in respect of Crookham Common. MoD are not aware that any of the rights of common over the land occupied by RAF Greenham Common have been exercised. While it cannot be established with certainty without approaching Berkshire, the likelihood seems to be that the rights of common over the land owned by MoD are still effective.

5. As highway authority in respect of the A339 trunk road which runs by the south of the base, DTp own a comparatively small triangle of land on either side of the access road linking the A339 to the main gate. In February 1964 this land was acquired by DTp from Newbury Municipal Corporation under the Provision and Improvement of Highways (Berkshire) Compulsory Purchase (No 1) Order 1959. The land was purchased in connection with the diversion of the A339 and the creation of a junction between the A339 and the access road to the base. Berkshire is the highway authority in respect of the remaining roads in the area, including Burys Bank Road which follows the northern perimeter of the base and Brackenhurst Lane which

runs from the A339 to the contractors gate at the south of the base. This does not necessarily mean that Berkshire owns the land covered by the highways (ie the road and its verges); but its powers as highway authority would allow it to undertake, for example, court proceedings against trespassers. (It should be noted that the section of the access road to the base between the highway boundary and the main gate is not part of the highway).

6. In addition to its ownership of the land within the base, MOD also owns two areas of land north of the base, and one to the south. The first, at Greenham Lodge, contains housing for United States' Air Force (USAF) personnel. The second, which contains the disused Butts ranges is in a densely wooded area and forms part of an area designated in 1983 as a site of special scientific interest under section 28(2) of the Wildlife and Countryside Act 1981. This designation effectively prevents any development and MoD are in the process of trying to dispose of the land.

7. There are no other significant areas of land in public ownership in the immediate vicinity of the base. The boundary of the privately owned golf course to the north of the base is close to the perimeter, but in the past protestors who have strayed onto the land have moved off when told by the police that they were on private, rather than public, land.

#### History of the protests at Greenham

8. On 17 June 1980 Francis Pym, the then Secretary of State for Defence, announced in the House of Commons that Ground Launched Cruise Missiles (GLCMs) would be deployed at two bases in England - RAF Greenham Common and RAF Molesworth. The first missiles were to arrive at Greenham in 1983. In August/September 1981 the first 'peace camp' was established near the main gate at RAF Greenham Common on common land owned by Newbury. The camp consisted of around a dozen women, with several children, living in seven or eight caravans. In the early part of 1982 Newbury evicted the protestors (we think using the entitlement of a person with a right to occupy land to use self help to remove trespassers, without resorting to civil proceedings) who then moved onto the DTp land alongside the junction between the A339 and the access road. During July 1982 DTp gave notice

that it intended to take action under section 143 of the Highways Act 1980 to remove the protestors' caravans from the DTp land as they were obstructing the line of sight of traffic using the junction. In late September DTp proceeded to remove the caravans under section 143 of the 1980 Act, and then banked up its land with earth and stones to prevent the return of the caravans. DTp have not taken any action against the protestors since then. As a result of the action by DTp in September 1982 the protestors moved back onto the common land owned by Newbury. On 9 March 1983 Newbury obtained a high court injunction against 21 protestors which required them to leave the common land, not to re-enter, and not to conspire with others to trespass (a further part prohibiting the women from conspiring to incite others to trespass was refused). On 10 March Newbury obtained from the high court an order for possession of land under Order 113 of the Rules of the Supreme Court against 161 named women "and persons unknown". The order was enforced by the Sheriff and the women subsequently moved the structures which had previously been on common land onto the DTp land near the junction between the A339 and the access road, (when, on occasion, the structures then erected on DTp land have obstructed sight lines at the junction the protestors have been willing to move them when asked to do so by the police, thus avoiding any obstruction of the highway). Informal contacts with Newbury have suggested some dissatisfaction with the efficacy of these proceedings. Difficulties were experienced in naming protestors for the purposes of the proceedings for an injunction, and the injunction was only, apparently, enforceable against the persons named. Newbury felt that the civil proceedings did not provide an effective remedy given the changing population of protestors and the surrounding events at Greenham (presumably the large set-piece demonstrations). Since March 1983 the council has relied upon their common law rights to remove trespassers (using reasonable force if necessary) and, more latterly, the byelaws (see paragraph 17 below).

9. Whilst the protestors have been encamped at Greenham there have been various instances of attempts to enter, and actual entry into, the air base. It would appear that from time to time the protestors weaken the perimeter fence by cutting away with bolt cutters at the supporting wires, thus making it easier for the fence to be breached during the large set-piece occasions, and at other times. This activity, and the resultant weaknesses

in the fence, are difficult to detect given the nine mile length of the perimeter. When protestors have been apprehended inside the fence it has sometimes been difficult to prove that they have been responsible for cutting the holes in the fence through which they have entered, as they have not been in possession of bolt cutters, and other people have committed the damage for them. In such cases the protestors can only be removed as trespassers. On 27 December 1983 two women entered the base having got through the external and internal security fences and broke into a control tower which is used only during the infrequent take-offs and landings at the base. On this occasion the women were charged with causing criminal damage in breaking into the building.

10. In addition to such small scale activity there has been a number of larger, set-piece, demonstrations at Greenham Common. Some have been peaceful and orderly, and caused no disruption of the base. Examples include the encirclement of the perimeter on Sunday 12 December 1982, and the events on 1 April 1983 when about 50,000 people formed a 14 mile human 'chain' between Greenham, Burghfield and Aldermaston. There have also been concerted attempts at obstruction. For example, between 4 and 8 July 1983 supporters of an "International Women's Blockade" attempted to blockade the gates. The maximum number of women involved at any time was about 550. The police maintained access to and from the base, making a total of 115 arrests for obstruction. And on 15 November 1983, 141 women were arrested for attempting to obstruct the gates.

11. The demonstrations between 4-8 July 1983 also saw the first serious attempt to cut the perimeter fence with bolt-cutters: on 6 July, 17 women entered the base by this means, and it was found that large sections of the fence could be cut down quickly. On 29 October, some 400 women managed to cut down about 2,000 yards of the 9 mile fence, despite the presence of 700 police officers and over 2,000 military personnel inside the base. 197 women were arrested, principally for criminal damage. On 11 December, between 3.00 pm and 5.00 pm some hundreds of 20-25,000 demonstrators round the base attacked the fence at various points sometimes using bolt-cutters but otherwise shaking and pulling sections down with their bare hands. About 1,000 officers, 30 of whom were injured, were deployed, and there were 57 arrests, principally for criminal damage.

12. The continued presence of the encamped protestors (with the resultant threat to the perimeter fence) combined with the large set-piece demonstrations, has placed a considerable burden upon the police and military resources. When the situation at the base is relatively quiet Thames Valley Police leave the area to be policed through regular visits by beat officers, with a sergeant and ten constables available in an emergency from Newbury police station. But during the demonstrations in late October and November connected with the deployment of cruise the police were using some 400 officers during each 24 hour period. During large demonstrations at the base last Easter, and on 11 December, some 1,000 officers were deployed. Estimates of the cost of the additional police deployment vary according to the basis used, but Thames Valley Police have estimated the cost to be in the region of £2.8 million in this financial year. Central government contributes some 65% of the cost of policing under normal arrangements, and the Home Secretary has made available to the police authority an additional £1.5 million from the contingency reserve in recognition of the exceptional and unforeseeable additional costs of policing at Greenham. As to MoD personnel, prior to the deployment of cruise and the large demonstrations in December over one hundred additional personnel were present at the air base as a result of the protests. Since then over four hundred additional personnel have been at the base. During large demonstrations up to 2,000 additional personnel have been on duty. Because servicemen receive no overtime, and would in any case be being paid if not on duty at Greenham, it is not possible to provide an estimate of the total cost of this additional manpower.

Previous court cases involving the protestors

13. Principally for offences committed during the demonstrations at Greenham, although also for offences committed on other occasions, Thames Valley Police have arrested over 1,000 people while MoD police have arrested in the region of 400 people. Some 800 cases have been brought to the courts so far. When prosecuted the protestors have tended to attempt to rely on novel defences which, they argue, justify their actions. Thus defendants have argued that although they are in breach of the law in this country, they are acting in accordance with

some higher authority, for example the law of God. Defendants have also argued that they are seeking to uphold peace (by preventing nuclear war), not to breach it, when charged with a breach of the peace. Thames Valley Police have indicated that the courts have tended to allow those involved to express their views in this way. The reports of Newbury District Council's civil actions against the protestors suggest that similar arguments may have been used by the defendants then.

14. On 9 November 13 women connected with the peace camps at Greenham Common together with two US Congressmen began proceedings in a District Court in New York against the US President and Government. They alleged that the deployment of cruise missiles breached the Hague and Geneva Conventions (because the Conventions required the non-combatants to be protected in the event of war); the US constitution; and the plaintiffs "right to survive". The plaintiffs had apparently received sympathetic advice from Ramsey Clark, an ex-US Attorney General. The court refused an application for a temporary order restraining the deployment of cruise - on the basis that the plaintiffs had not demonstrated that they would suffer irreparable harm if such an order was not granted. The judge deferred a decision as to whether there was a substantive case to answer, and as far as we are aware, there has been no further hearing. During the case 150 protestors demonstrated outside the court in New York, and in England and Wales peace campaigners set up 75 camps outside military installations as a show of support for the women in New York.

#### The current situation at Greenham

15. The character of the 1983 campaign and demonstrations was essentially to oppose the installation of GLCMs at Greenham. The first cruise missile equipment was delivered to Greenham in November/December 1983, although there will be a continuing programme of deliveries from March 1984. In 1984, convoys of vehicles are expected to leave and return to the base on training exercises. It is likely that protestors will seek to prevent these operations. Since the arrival of the missiles the number of camps around the base has increased. As part of a 'cruise watch' the protestors claim to be able to watch every gate for any attempt to deploy the GLCM

equipment. The position is, however, fluid and this tendency has been increased by the recent activity of Newbury in enforcing its byelaws (see paragraph 17). On 5 January there were nine camps situated at various points around the perimeter fence (all but one at gates). The Thames Valley Police estimated that in total there were some 145 tents and other structures, occupied by a total of an average of about 100 people. By 24 January three of these encampments had been removed from land owned by Newbury as a result of enforcement action by its officers under the byelaws. The police estimated that some 40 to 50 protestors were present.

16. The police have indicated that on 4 February there were six camps at Greenham;

- the main camp, situated either side of the access road from the A339. There were 29 tents and other structures (consisting of shelters constructed from plastic sheeting) and five vehicles. The camp was sited principally on Newbury land, with some spillage onto the contiguous land owned by DTp;
- a camp at Gate L. South of this gate, on MoD land between the fence and the road, were 15 structures, together with two vehicles;
- a camp at Gate F. To the west of the gate by the fence, there were seven tents or other structures. The camp was situated on land owned by Berkshire;
- a camp at Gate D. East of this gate, on land owned by Berkshire, there were six tents and structures and one vehicle;
- a camp at Gate A. East of the gate between the fence and the road on land owned by Berkshire, there were 16 tents and other structures, with two vehicles;
- a camp at the contractor's gate. 50 yards each of the gate, on common land, there were 28 tents and structures, together with three vehicles.

In total the tents and structures were occupied by an average of something fewer than 50 protestors. As this indicates not all the tents and structures are continually occupied. But it could be mistaken to interpret the current low level of activity as part of a general decline, as the numbers present have varied considerably since the first camp was established in 1981. The numbers can swell quickly on particular occasions when the call goes out for further support; numbers often reach 200 with weekend supporters and many more when the weather is pleasant. The police have reported that at the moment many of the long term residents at the camps are absent, having been replaced by other protestors. Apparently this has occurred before at this time of year, with the 'regulars' returning after a break of two or three weeks.

Recent action by Newbury District Council

17. It has already been indicated (paragraph 3 above) that Newbury has made byelaws regulating Greenham and Crookham Commons. The following byelaws appear to be relevant to the position of the protestors encamped on the common land;

byelaw no 12: A person shall not without lawful authority camp or light any fire on any part of the common.

byelaw no 13: An officer of the council may after due warning remove any structure etc erected or placed on the common in contravention of the byelaws.

byelaw no 15: A person shall not, without the consent of the council, or other lawful authority, erect on the common any building, shed, tent, fence, post railing or other structure or fix bills placards or notices on trees, fences, erections or notice boards on the common.

byelaw no 16: A person shall not intentionally obstruct or hinder any officer of the council in the exercise of his powers or duties under the byelaws.

byelaw no 17: Any person who contravenes the byelaws commits an offence with a maximum penalty of a fine of fifty pounds. (There is no power of arrest).



At a meeting of Newbury on 13 December the council was informed that there had been an increase in the number of camps on the common land, and that these could be expected to increase once DTp took action to clear its land in connection with its road improvement scheme (see paragraph 18 below). The council then decided to take action under byelaw 13 to remove the structures concerned. An existing employee has taken on the role of enforcement officer, whilst two bailiffs have been employed to patrol the common and report infringements. Prior to Christmas encampments near gates A and H were removed by the council's officers. The police were present, but there was no trouble. The protestors immediately began to reassemble their camps on other land. The structures near gate H were moved back onto common land but have now been removed again, whilst those near gate A are on land owned by Berkshire. Since Christmas officers of Newbury have taken action to remove structures on a number of occasions. As yet Newbury have not prosecuted any protestors for contravention of the byelaws and informal contacts suggest that they would be reluctant to do so. The MoD land immediately outside gate L has been treated as a refuge by the protestors since Newbury began to take action to enforce the byelaws.

Prospective action by the Department of Transport

18. DTp has in hand a road improvement scheme which, in widening and curving the access road from the A339 to the base, will consume part of their land on which the principal camp is at present sited. The remaining part of DTp's land is not covered by the scheme. The intention has been that part of the land would be exchanged with Newbury for a piece of common land, for use as a bus bay. However, on 10 January, Newbury informed DTp that they were not prepared to make this exchange because of the considerable inequality in the areas involved. (The road scheme will consume only a quarter of DTp's land and this would leave over 300 square metres of land to be given to Newbury in exchange for under 100 square metres of common land needed for the bus bay.) Newbury officials have now suggested that the council might be prepared to agree to an exchange of equal areas of land, and this is being explored. Once the road has been improved, any

attempt to camp on the land covered by it will be a criminal offence (of obstruction of the highway); but there will remain on either side DTp land to which that will not apply. Whilst the road is being improved, however, all the DTp land would be cleared of campers and structures fenced off. The scheme is at present due to start in mid-March, with completion possibly in late May/early June. Efforts to clear the land of protestors and structures would not be needed until the day on which work on the scheme was to begin.

Defence : Policing of Demos  
at Military Bases

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