



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 82

P1335/25

OPINION OF LADY TAIT

in the Petition of

THE SCOTTISH MINISTERS

Petitioners

for

an order under section 46 of the Court of Session Act 1988 and for interdict and interdict
ad interim

Petitioners: Mure KC, Brown, advocate; Morton Fraser MacRoberts LLP

Respondent: Pugh KC, Breen, advocate; Drummond Miller LLP

First Interested Party: Scottish Human Rights Commission

27 August 2026

Introduction

[1] The petitioners are the Scottish Ministers. The respondent is an Irish Traveller. The petitioners are the proprietors of an area of land extending to 3.831ha at Waterfront Avenue, Granton, Edinburgh, registered under Title Numbers MID108834 and MID159034 (“the site”). The respondent and his family (“the family”) have occupied an area of the site since 2024. A distinct area of the site is occupied by itinerant workers. Neither the family nor the itinerant workers have right or entitlement to occupy the site. The petitioners seek an order under section 46 of the Court of Session Act 1988 (i) ordering the occupants to

remove themselves, their caravans and all other goods from the site to restore possession of the site to the petitioners; and (ii) to interdict the occupants from entering the site.

[2] Planning permission has been granted for the development of the site to form The Art Works, a development including buildings for the collection, storage and conservation of works contained within the national collections. The development will include space for public and community uses. The planning permission requires that development begins before 8 November 2026, failing which it will lapse. Lar Housing Trust has planning permission for a social housing development at the former Madelvic factory adjacent to the site.

[3] The respondent and his partner have 11 children who live with them on the site between three caravans. Some of the children attend local schools and others have places for the academic year 2026-27. The family has registered with local medical and dental practices.

[4] The respondent submits that in circumstances where no culturally appropriate accommodation will be made available on eviction, the orders would constitute an unlawful interference with the respondent's rights under Articles 8 and 14 of the European Convention on Human Rights ("the ECHR"). They would also be incompatible with the respondent's children's rights under the United Nations Convention on the Rights of the Child ("the UNCRC"). In such circumstances, the orders sought should be refused.

[5] The Scottish Human Rights Commission ("the SHRC") produced a Minute of Written Submission.

Applicable law

The Court of Session Act 1988 ("the 1988 Act")

[6] Section 46 of the 1988 Act provides:

"Specific relief may be granted in interdict proceedings.

Where a respondent in any application or proceedings in the Court, whether before or after the institution of such proceedings or application, has done any act which the Court might have prohibited by interdict, the Court may ordain the respondent to perform any act which may be necessary for reinstating the petitioner in his possessory right, or for granting specific relief against the illegal act complained of."

European Convention on Human Rights ("ECHR")

[7] Articles 8 and 14 provide:

"Article 8: Right to respect for private and family life

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Act 2024 ("the 2024 Act")

[8] Section 6(1) of the 2024 Act provides: "It is unlawful for a public authority to act, or fail to act, in connection with a relevant function in a way which is incompatible with the UNCRC requirements."

[9] The term “relevant function” is defined by section 6(2) as a function that:

- “(a) it is within the legislative competence of the Scottish Parliament to confer on the authority, and
- (b) is conferred by —
 - (i) an Act of the Scottish Parliament,
 - (ii) a Scottish statutory instrument originally made wholly under a relevant enabling power,
 - (iii) a provision in a Scottish statutory instrument originally made partly under a relevant enabling power, provided that the provision itself was either —
 - (A) originally made under the relevant enabling power, or
 - (B) inserted into the instrument by an Act of the Scottish Parliament or subordinate legislation made under a relevant enabling power, or
 - (iv) a rule of law not created by an enactment.

Equality Act 2010 (“the 2010 Act”)

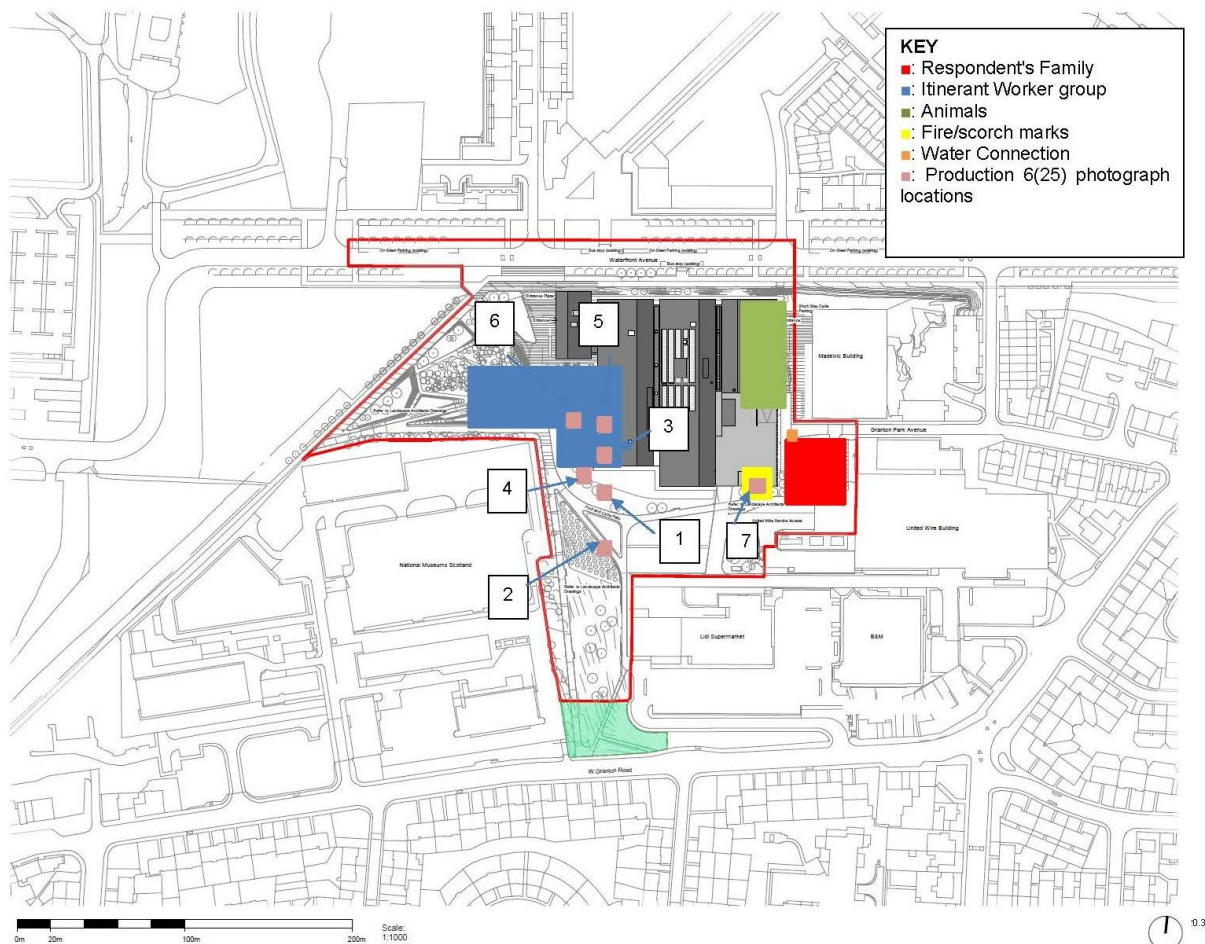
[10] Section 149 of the 2010 Act provides in subsection (1):

“A public authority must, in the exercise of its functions, have due regard to the need to-

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

Site plan

[11] The site plan below is 6/23 of process.



Agreed facts

[12] The petitioners are the proprietors of the site. To the north, the site is bounded by Waterfront Avenue. To the east, the site is bounded by the former Madelvic car factory and by the United Wire building, with a vehicular access to the site by means of Granton Park Avenue. To the west, the site is bounded by land occupied by Granton Art Centre, which forms part of the National Museums Scotland Collections Centre. It is an existing store for 12 million artworks forming part of the national collections of Scotland and which are not

currently on display in the National Museum's venues. A Lidl Supermarket and B&M store lie to the south. The site is more generally surrounded by residential accommodation.

[13] On 8 November 2023, the City of Edinburgh Council ("CEC") granted planning permission for the development of the site to form The Art Works, a development including buildings for the collection, storage and conservation of works contained within the national collections. The development will include space for public and community uses, including collection viewing rooms and study spaces, a community studio, community support space and further education and learning rooms. The planning permission requires that development begins before 8 November 2026, failing which it will lapse. Financial provision for the project has now been made in the Scottish budget.

[14] There are currently two principal sets of occupiers on the site. (i) On the area within the site marked blue on the plan at [11], there is a community of itinerant workers. The number and identity of those workers are subject to change. An Iranian man also resides there. These persons have no right or entitlement to occupy the site or any part of it. (ii) The respondent and his family occupy the area marked red on the plan, with other Irish Travellers visiting from time to time. The family has no right or entitlement to occupy the site or any part of it.

[15] The site is an open tract of former car park and scrub land. It lacks sanitation, washing facilities, running water and electricity. Unauthorised persons have interfered with utility services at the site. Unauthorised connections have been made to Scottish Water's pipe network within the site. There have been fires on the site. Some of those fires had been set by the respondent in a controlled manner to dispose of waste. Cables and other waste have been burnt on the site. Fly-tipping has taken place at the site.

[16] The family has the status of Irish Travellers which is a distinct ethnic or racial group for the purpose of section 9 of the Equality Act 2010.

[17] Three of the respondent's children, TM (born in 2016), CM (born in 2019) and JoM (born in 2020), attend a local primary school. EM (born in 2014) attended that school until June 2026 when he completed primary 7. Four of the respondent's children have been allocated places at a secondary school in the local area from August 2026: MaM (born in 2011), MiM (born in 2012), JiM (born in 2013) and the said EM (born in 2014).

[18] The family is registered with a local general practitioner and with a local dentist.

Evidence

[19] Each party lodged affidavits as listed below. The affidavits are agreed to stand as the respective witness' evidence in chief without the need for cross-examination subject to all questions of competency, relevancy and weight.

[20] The petitioners lodged the following affidavits:

- Vivienne Johnston (Sheriff Officer and Messenger-at-Arms, Scott & Co) number 28 of process;
- David Dourley (Area Commander for the City of Edinburgh Fire and Rescue Service) number 35 of process;
- Mark Hunter (General Manager of Development and Operational Services at Scottish Water) number 32 of process;
- Rebecca Salter (Environment Protection Officer at the Scottish Environment Protection Agency ("SEPA")) number 36 of process;
- Robert Cook (Senior Operations Manager at Mitie) number 29 of process;

- Anne Lyden (Director General at the National Galleries of Scotland) number 38 of process;
- Keith Pentland (Director of Finance and Resources for National Museums Scotland) number 27 of process;
- Derek McGowan (Service Director for Housing and Homelessness Services at CEC) number 37 of process;
- Gordon Thomson (Encampment Liaison Officer Travelling Site Manager and Roadside at CEC) number 34 of process;
- Nastassja Beaton (National Collections and Capital Projects team leader with the Scottish Government) number 31 of process;
- Jamie MacDougall (Deputy Director for Culture and Historic Environment at the Scottish Government) number 33 of process;
- Quentin Russell (Police Inspector) number 30 of process;
- Quentin Russell (as above) supplementary affidavit number 43 of process.

[21] The respondent lodged the following affidavits:

- the respondent number 23 of process;
- the respondent supplementary affidavit number 44 of process;
- SS (the respondent's partner) number 26 of process;
- Alys Mumford (Scottish Green Party Councillor for Portobello/Craigmillar) number 24 of process;
- Ashleigh Mullen (Creative Director at Romano Lav) number 25 of process;
- David Barclay (Granton Boxing Club) number 45 of process.

Evidence for the petitioners

The Art Works

[22] The Art Works project finds support in the following public documents: (i) National Planning Framework 4 (6/6); (ii) the CEC's City Plan 2030 (6/7); (iii) the Granton Waterfront Development Framework (6/8); and (iv) the National Galleries of Scotland Strategic Plan 2026-2030 (6/10). Budgetary provision for the project was recently announced in the petitioners' Scottish Spending Review 2026 (6/14). The importance of the project for the nation's collections, for the public and for the local community, is explained in the foregoing documents and in the affidavits of (i) Anne Lyden at paragraphs 4-12; (ii) Keith Pentland at paragraphs 4-8; (iii) Jamie MacDougall at paragraphs 4-7 and paragraphs 28-32; and (iv) Nastassja Beaton at paragraphs 3-6 and paragraphs 38-40.

[23] There is an urgent need to clear and secure the site for the purpose of starting the development of The Art Works for the following reasons:

- (i) The current arrangements for the storage of the nation's collections are inadequate. The Mound Galleries Project requires the availability of the new storage facility: affidavits of (i) Jamie MacDougall at paragraph 6; (ii) Nastassja Beaton at paragraphs 4 & 6; and (iii) Anne Lyden at paragraphs 4-6, 21, 23 & 24.
- (ii) The local community and nation will benefit from the new development. It is part of the wider regeneration of the Granton area. There is a great level of community support and willingness to see the project happen: affidavits of (i) Jamie MacDougall at paragraphs 6-7 on access to the collections; (ii) Nastassja Beaton at paragraphs 5-6 on access to the collections and also

regeneration; (iii) Anne Lyden at paragraphs 4-8, 12 & 19-20; and (iv) Keith Pentland at paragraphs 20-22.

- (iii) Financial provision for the project has now been made in the Scottish budget.

With every delay there are rising costs. Any further delay seriously jeopardises the ability to deliver the project. With every calendar quarter there is a delay, there is an estimated £1.5 to 2 million uplift in costs relating to build cost, associated design team fees plus additional costs of the extended gap period.

The cost of extending the current storage arrangements is additional: affidavits of (i) Jamie MacDougall at paragraphs 5 (budget) paragraphs 30-32 (delay); (ii) Nastassja Beaton at paragraphs 3, 38 & 40; (iii) Anne Lyden at paragraphs 3 & 25-30; and (iv) Keith Pentland at paragraphs 20-22.

- (iv) The National Lottery Heritage Fund has awarded funding to National Galleries of Scotland of £8.5 million as 10% of a total approved project cost

of £83,874,944. It is to be used for the delivery phase of The Art Works project.

The Fund normally expects the grantee to submit their signed Permission to Start form and supporting documents within 3 months of the grant award. If there are substantial delays and it has not been received within 6 months, the Fund may decide to withdraw the offer of the grant (6/50).

- (v) The project design is ready to be built. The planning permission requires that development begins before 8 November 2026. It is not possible to start development without clearing and securing the site (including high voltage and archaeological works): affidavit of (i) Jamie MacDougall at paragraph 28; (ii) Nastassja Beaton at paragraphs 29 & 39-40; (iii) Robert Cook at paragraph 11; and (iv) Anne Lyden at paragraph 13.

- (vi) Site clearance and security is also necessary to protect the collections already stored at the adjacent Granton Art Centre. The fires on site are an ongoing issue. Smoke poses serious risk to museum collections. The Centre stores internationally significant collections of natural sciences, decorative arts, design and fashion, world cultures, science and technology, and Scottish history and archaeology: affidavit of Keith Pentland at paragraphs 17-19.

EQIA and CRWIA

[24] A Child's Rights and Wellbeing Impact Assessment ("CRWIA") would not normally be required for decisions which are operational or routine (such as in the planning, consenting and licensing sectors). The CRWIA prepared as part of the Equality Impact Assessment ("EQIA"), and updated in June 2026, was therefore not a statutory requirement. It was a tool utilised to identify impacts. In this case, there was a clear rationale for undertaking the EQIA where the intention is to remove people who are occupying land (albeit unlawfully) which is owned by the petitioners. Having balanced the needs and interests of those concerned, the EQIA concluded that given the significant health, safety and legal risks from unlawful occupation of the land, the petitioners would be advised to seek authority from the court to remove the occupiers and thereafter secure the site in the same manner as if protected characteristics were not present. CEC should continue its engagement with the occupiers to ensure continuity of service provision and homelessness advice. The advice to proceed in that way weighed up the competing issues that is, on the one hand, the fact there are ethnic minority occupiers (some of whom are children) residing on the site; and on the other hand, the need to ensure the land is made safe and secure; the need to reduce the risk of physical harm to those living in unsafe conditions; the need to

address the adverse impact on the local community of the fire raising and anti-social behaviour on site; the need to improve relations with the local community; and the requirement to develop The Art Works project – a project which is part of the regeneration of the Granton area (which is a national development under NPF4) and which will deliver significant socio-economic benefits. Officials therefore advised Ministers that it was, and is, appropriate to move forward with the eviction as the site occupiers need to live in a safer environment. The site is not fit for human habitation (due to the lack of sanitation, fresh water and electricity) and the continued occupation is causing significant issues with the local community.

Lar Housing Trust

[25] An independent housing charity, Lar Housing Trust, plans a social housing development at the former Madelvic factory adjacent to the site: affidavit of Derek McGowan at paragraph 4. The Trust received planning permission in April 2026 to convert the derelict category B listed factory buildings into 28 houses. Planning permission is also in place to construct 65 flats and 2,000sqm of commercial space on land adjoining the factory buildings, fronting Waterfront Avenue. In an email dated 31 July 2026 (6/49), the Trust's Project Director states that the developments are urgently needed to provide affordable housing and help tackle the housing crisis and provide opportunities for community facilities and employment in the immediate area. Both projects are currently on hold awaiting the commencement of work on the adjacent site for The Art Works project which is a pre-requisite for the viability of both developments. Both sites will be accessed for construction and operational purposes from the public road at Granton Park Avenue.

Engagement with occupiers of the site

[26] Officials from the petitioners and CEC have engaged with members of the itinerant workers' community who have stated that they will leave the site when evicted, and several have engaged with the CEC's homelessness services.

[27] The family arrived on the site in the first half of 2024. The family has 11 children, of whom the eldest is aged 15 years and the youngest is aged 4 months. CEC has regularly engaged and supported the occupiers of the site since 2024, principally through the work of Gordon Thomson (affidavit at paragraphs 3-17) and Derek McGowan (affidavit at paragraphs 12-15). In addition, CEC has sought, and continues to seek, a safe and sanitary site where the family may be permitted to pitch their caravans. To date, CEC has not identified a site within its jurisdiction that is currently available for the family. There is work to explore the viability of creating additional travelling people sites: affidavit of Gordon Thomson at paragraph 22 and CEC Local Housing Strategy 2025-2030 (6/45). By letter dated 3 August 2026 (6/52), CEC's Chief Executive set out that CEC is "in continuing dialogue with the Government regarding potential alternative locations for the current occupants although identifying suitable sites is by no means straightforward." He stated that CEC is "committed to intensifying this dialogue to find an optimal location, recognising regulatory and other constraints." He declared that his team "will continue to work with the occupants and the Government urgently to try to find a temporary or longer term solution."

[28] The petitioners have mainly relied upon the expertise and engagement of CEC with the family. Officials from the petitioners have also visited the site on several occasions: the affidavits of Jamie MacDougall at paragraphs 11-17; and Nastassja Beaton at paragraphs 14-23.

[29] CEC has a statutory duty to provide free transport to children and young people who are entitled to receive it. This duty means CEC has to provide transport from their home to school and the return journey. CEC has agreed to provide transport for all primary aged children living over 2 miles from their catchment school and 3 miles for secondary pupils (6/53/3).

Problems with the site for the occupiers and the local community

[30] The site is not suitable or safe for the family, in particular the children. It is not an authorised location for an encampment and lacks all the necessary services and facilities that an authorised site should provide. It is not secure. It is an open tract of former car park and scrub land. It lacks sanitation, washing facilities, running water and electricity.

Unauthorised persons have interfered with utility services in unsafe ways; have deposited waste and have lit fires. The petitioners rely specifically upon the affidavit evidence of the following witnesses and productions:

- *Water:* Mark Hunter, Scottish Water; email correspondence dated 9 March to 24 April 2026 at 6/33 (PDF233) and 6/34 (PDF237); and Scottish Water's document showing unauthorised connections and broken fire hydrant at 6/38 (PDF253).
- *Electricity:* Robert Cook at paragraph 2.
- *Fires:* David Dourley, Fire and Rescue Service; letter dated 10 March 2026 at 6/28 (PDF221). Some of the fires are set by the respondent: his affidavit at paragraph 26.
- *Waste:* there is a problem with fly-tipping at the site, and with the burning of waste and of cables: (i) Robert Cook at paragraphs 2-6; (ii) Vivienne Johnston,

Scott & Co. at paragraphs 3-4; (iii) Rebecca Salter, SEPA at paragraphs 3-13; and correspondence at 6/29 (PDF223), 6/30 (PDF225), 6/31 (PDF227) and 6/32 (PDF230).

[31] The local community has expressed serious concerns about the site and the behaviour of those occupying and visiting it. Local residents, and those working for public services and utilities, are concerned about anti-social behaviour, the setting of fires, and threatening and intimidating behaviour. The petitioners rely upon the affidavit evidence of: (i) David Dourley at paragraphs 4, 6-7; (ii) Robert Cook at paragraph 12; (iii) Mark Hunter at paragraphs 12-13; (iv) Vivienne Johnston at paragraphs 9 & 14; (v) Police Inspector Quentin Russell at paragraph 34; (vi) Gordon Thomson at paragraph 33; (vii) Nastassja Beaton at paragraphs 34-37; and (viii) Jamie MacDougall at paragraphs 24-27.

[32] Police Scotland have recorded 37 separate incidents related to the site in the last 12 months. In total, between 2024 and 2026, police computer systems show that eight young people of the respondent's family and another family from the site have been identified as responsible for 95 offences in the community. Police have visited to discuss this with older family members. Police enquiries are typically initiated following reports of alleged criminality or anti-social behaviour received from members of the public, local retailers, transport providers including Lothian Buses, and other witnesses. There are a number of open referrals with the Scottish Children's Reporters Administration ("the SCRA"): affidavit at paragraphs 14 and 22 and supplementary affidavit at paragraph 6 of Police Inspector Quentin Russell.

Evidence for the respondent

[33] The circumstances of the respondent's family are fully set out in the affidavit and supplementary affidavit of the respondent and the affidavit of his partner SS. Those circumstances are reflected in the independent social worker's report as reported to its author (Ian Henderson) by the respondent and his partner. They are detailed below.

[34] In addition, the respondent's evidence is that he has struggled throughout his life with the lack of permanent and safe sites. Before coming to the present site, the family was evicted from multiple sites in Edinburgh. They were moved on every 5 to 6 weeks. They had to camp in unsafe places such as the roadside. They often faced racist behaviour at the roadside. Continuous moving has impacted the children's education.

[35] As there is no waste collection at the site, the respondent's only choice is to have occasional managed fires to burn household waste. Other fires at the site are not set by the family. The respondent has never burned any tyres, vehicles or any PVC to get copper cabling. They do have occasional small campfires which are central to Traveller culture. The respondent has accessed the water mains for safety in case of a fire. The family has not abused any fire officers; does not engage in fly-tipping; and was not abusive to sheriff officers or other officials.

[36] The family has not had much contact with CEC. The respondent has not been involved in any discussion about an alternative site. There are no Traveller sites with spaces in the Edinburgh area. The family is willing to go to an alternative site in the area but this has not been offered. No-one from the Scottish Government has spoken to the family except for a recent meeting. The family knows that it has to move but there is nowhere to go. They would happily go to a new site which is safe, secure and with access to services. An official from CEC stated that the only housing would split the family between two properties. The

family does not want to live in a house or flat. The respondent has experience of Travellers being forced into housing with a negative impact on their mental health. It is becoming increasingly difficult to live the Traveller way of life as there are no legal sites and sites used previously have been locked up or built upon. That impacts on Travellers' history and culture.

[37] There are lots of bits of empty land in Granton. There is a nearby site called Gypsy Brae where Travellers have camped for centuries. A site for homeless people is being built there which only takes up a small area. There is lots of other space to make a Traveller site. Any alternative site would have to be near enough to the children's schools and health services. The family requires tarmacked land with electricity, a toilet block with showers and laundry facilities. They require security on any site. If moved on, the family will return to a cycle of being continuously moved on and having to stop at unsafe places. The children would be negatively impacted.

[38] The respondent swore a supplementary affidavit in response to the petitioners' affidavits. He accepts that he has met Gordon Thomson from CEC. Mr Thomson visited when the family was on another site to try to arrange a site for them. They did not speak about traditional housing or the North Cairntow site which is full. Irish Travellers do not live there. Scottish or English Travellers live there. It can be difficult for Travellers who do not know each other to live on the same site.

[39] In relation to reports to police and police involvement with Travellers spoken to by Inspector Quentin Russell, members of the public may not know there are other groups on the site. The police have attended numerous times to the other group on site. There was an incident in August 2025 involving other Irish Travellers but no weapons were involved. There have been some arguments but no violence. There has been no domestic abuse.

[40] In relation to alleged offences involving the children, there have been other families with the same surname at the site. The police claim there have been 95 offences. The respondent is aware of around ten incidents. The police have not spoken to the family about the children having weapons. If the children do wrong, the respondent deals with it.

Independent social worker's report

[41] Ian Henderson is an independent consultant social worker who has worked for over 30 years, primarily in children and families work, as a social worker, manager and inspector. He was instructed on behalf of the respondent to give an opinion on the impact on the family of eviction from the site without a culturally appropriate alternative site. He was asked to consider (i) the barriers that the family may face when attempting to access services (education and health care) if they were forced to return to a situation where they faced continuous eviction from unauthorised encampments; (ii) the potential impact on the family if they were forced to move into temporary homelessness accommodation, which is not culturally appropriate, and if they were split up across two local authority houses or flats; and (iii) any other relevant matters. Mr Henderson's report is dated 5 June 2026 and is number 7/23.

[42] The respondent has been in a relationship with his partner, SS, for approximately 18 years and they have 11 children aged 15, 14, 13, 12, 11, 10, 7, 6, 5, 2 and 5 months. The respondent and his partner ("the couple") originate from Ireland but moved to England around 2015, citing concerns over discrimination in Ireland. They moved to Scotland around 2022. There were challenges, particularly being moved on by the police, which made it difficult to establish routines and stability for the children. They have experienced the stresses of threatened evictions.

[43] It is important to provide stability for the children. While being able to move is part of their culture, this should be their choice. Constant evictions are unsettling. The stress of the proposed eviction has had an impact on the respondent's mental health and he is currently on medication for depression and sleep problems. He is consulting a psychologist. The respondent is not currently working due to poor mental health.

[44] The family has three caravans at the site: one occupied by the parents and younger children, one occupied by the older boys and one smaller caravan occupied by their eldest daughter. They are closely located. There is regular movement between the caravans and regular oversight and visits by the children's parents. Other caravans nearby are those of close family members. The caravans are of a good standard, comfortable and well furnished. The couple are concerned about rubbish and fly-tipping occurring at a neighbouring encampment.

[45] A significant concern is that, as the site is unauthorised, there is no connection to mains water. There are no toilet facilities, washing facilities or ability to have a washing machine. This has a detrimental effect on the family. The respondent uses a water tap nearby. The family use the local supermarket toilet when in use or drive to a public toilet at night. CEC cannot provide a chemical toilet as the site does not belong to CEC. Showering and washing can be a challenge. The parents take the children to a public shower facility twice per week which is expensive. The family finds this challenging and it has resulted in name calling of the children, leading to fights. Laundry tasks are undertaken at a laundrette which is expensive. These additional costs have a significant impact on the family budget.

[46] The younger children have been on the roll of a local primary school since January 2026. They had previously been enrolled at another local school but the placements were ended when the school was informed of the threatened eviction. Attendance is an

issue for all the children, ranging from 44% to 49%. There are difficulties in engagement of the two older children and only the youngest of the primary age children can read and write. None of the secondary school age children attended school at the date of the report. As the children have literacy issues, additional support will be required.

[47] Despite some of these challenges, the family appear well integrated into the local community. The older boys attend boxing and football clubs, where they have made friends, who often visit them and have sleepovers. The parents are keen to help the children develop local friendships. Evidence of the families' integration and connection with the local community was the support they received to resist an eviction attempt earlier this year.

[48] The family is registered with a doctor and a dentist. Two of the children have been diagnosed with holes in the heart, for which they do not presently require treatment but attend six monthly reviews at hospital. There are no health visitor concerns in respect of the youngest child who is developing well. There are concerns over whether two of the boys may have Attention Deficit and Hyperactive Disorder (ADHD) and there is involvement of Child and Adolescent Mental Health Services (CAMHS).

[49] In relation to the children's views, clear themes emerged. All the children advised that they wished to continue living as Travellers and not live in a permanent tenancy. They all seemed to like the freedom associated with this lifestyle. All the boys spoke positively about friendships through boxing and football clubs. All the boys were keen to continue at school or get a school placement but the eldest child did not want to go back to school. The lack of toilets and washing facilities is challenging. The children spoke about how difficult it was, not having toilet or washing facilities and the impact in terms of their health, hygiene and ability to form friendships. This has a detrimental impact on everyone in the family.

[50] The older boys advised that, even though they know their parents are next door, it could be scary at night, especially if they heard noises or needed to go outside to find a toilet. The children are anxious about the threatened eviction. They do not want to move to other unauthorised encampments, and wished to be in a Travellers' site with a toilet, washing facilities and running water.

Assessment of wellbeing needs of the children

[51] Mr Henderson considered current and potential future needs, using the wellbeing indicators identified in the Scottish Government policy Getting It Right For Every Child (GIRFEC) (2006):

- *Safe*: the children, most of the time, feel safe. The only time this is compromised is at night, when current sleeping arrangements may leave the older children feeling vulnerable. Their parents, within the limitations of the current living arrangements, have done their best to make sure the children feel safe.
- *Healthy*: the children's health needs are being met. They are all enrolled with a doctor and dentist; the health visiting service is happy with the younger children's development and there is good, pro-active engagement with health services. However, the lack of running water, and no toilet or washing facilities is unacceptable and could have a significant impact on the health of the entire family. As well as making physical health problems more likely, it could also impact on hygiene and the associated ability to form appropriate peer relationships. Fights after being called names could lead to a risk of the

children being criminalised. The lack of water, toilets and washing facilities must be addressed as a matter of urgency.

- *Active:* the children have areas to play and the boys attend football and boxing clubs which they enjoy.
- *Nurtured:* Mr Henderson was struck by the positive relationships which exist within the family and the importance of family cohesion.
- *Achieving:* there are clear concerns over the educational attainment of some of the children, particularly the older children who struggle with literacy. If not addressed, it could have a significant impact on employment prospects and present challenges in daily living. It may also impact self-esteem. Significant additional support will be required from education services.
- *Respected:* the children's parents have worked hard to encourage the children to develop positive relationships and friendships. There are examples of discrimination which they have experienced everywhere they have been.
- *Responsible:* while there has been some low-level offending, such as retaliatory fighting with other youths, this has not led to any formal criminal charges or referral to the SCRA. The parents disapprove of any such behaviour and address it.
- *Included:* the family has tried to integrate into the local community and there has been significant progress, with the children developing friendships and the community generally being supportive of the family.

Analysis

[52] If eviction were to occur, it would have a significant and detrimental impact on the family. It would probably lead to the family moving to unauthorised encampments, which in all probability would not have access to facilities, the lack of which is presently having a negative effect. It would be likely to sever friendships, links with schools and support networks. This would be particularly devastating for children who, because of their traveller status and discrimination, have found it difficult to form relationships. The importance of positive peer relationships during adolescence is well documented, and for those relationships to be fractured could lead to the children viewing friendships as transient and disposable. In later years, this could lead to difficulty in trusting others and cause insecure attachment.

[53] The family expressed fear about being forced to live in unauthorised encampments. They have memories of continually being moved on by the police. The family would be unable to form reliable relationships and to engage with schools, health services, support agencies or the wider community. The children's educational needs are unlikely to be addressed. It would be difficult for services to be aware of the family's whereabouts and to provide appropriate support. Essentially, the family could "go missing" to the agencies who are meant to support them.

[54] None of the family wish to reside in a house. The respondent reported past trauma when forced to move into a permanent property. The family was not made welcome, was abused and victimised by neighbours. The respondent's current mental health struggles may worsen. The respondent did accept that there are challenges associated with the family's current environment, particularly around the lack of toilet or washing facilities. He would always prioritise the children's needs. If it were better for them to live in a house, he

would put aside his own anxieties and needs. No properties are available to house the family together. It would be devastating to split the family and would have a significant detrimental impact on the children and their emotional wellbeing.

Conclusion

[55] The children have been living, for a number of years, in an environment which lacks the basic essentials of clean running water, toilet and washing facilities. In Mr Henderson's opinion, such an intolerable situation has arisen from the fact that Scottish society is not equipped to meet the needs of the Travelling community. There is currently one designated Traveller site in Edinburgh which is full, unlikely to have any vacancies for some time and for which there is a long waiting list. CEC advised that the site at Gypsy Brae, mentioned as an option by the respondent, is not for Travellers. A new fund set up by the Scottish Government called the Gypsy /Traveller Accommodation Fund to improve Travellers' sites and develop more has not produced new sites. There is a disconnect between the policy ambition and the practice reality. It is not an active choice by the family to live on unauthorised encampments with no appropriate facilities. Rather, this has been forced on them by the lack of investment in appropriate Traveller sites with basic amenities. The family advises that it has had no communication from the Scottish Government over their specific circumstances or needs. The needs of the family can only be met by placement in a Travelling site, with access to running water, toilets and washing facilities. This would provide a suitable environment for the children; they would be able to maintain their culture; and it would allow them to access universal services such as health and education. The education department should be proactive in ensuring the children receive support to gain appropriate literacy skills and achieve their educational potential.

[56] Mr Henderson acknowledges the challenges that making the above plan a reality present, given there are limited resources available for the Travelling community. He is aware of engagement between the respondent and senior management within CEC during June 2026 to develop a way forward.

Psychologist's report

[57] Dr Olivia Gomes Bell is an independent registered forensic psychologist. She was instructed on behalf of the respondent to provide an opinion on the impact on the family of eviction from the site without provision of an alternative site. Her report is number 7/24 and is dated 30 June 2026. Dr Bell visited the site when family members were present. She interviewed the respondent and the eldest child, KM.

[58] The child KM described feeling lonely and disconnected from her cultural identity when living previously in traditional accommodation in London and is “scared” at the thought of returning to a bricks-and-mortar property. She expressed pride and a sense of identity as a Traveller and described the Traveller community as close and supportive. She feels safe and settled at the site and had felt unsafe when they parked at the roadside. She has cousins who also live at the site and friends in Granton. She expressed discomfort with the lack of facilities. She wishes that the family could continue living at the site but with electricity and running water or portable toilets and showers.

Summary of Assessment

[59] Based on the available information, Dr Bell concludes that the family will be significantly impacted psychologically by the proposed eviction in the following ways:

- (i) The family benefits from practical support from the Traveller community of friends and extended family on site. In the absence of another suitable local site, the community would disperse and the current close support network would be lost. The respondent would be unable to fulfil his role as the financial provider if rendered a single parent in homeless accommodation with some of his children.
- (ii) The respondent's partner SS expresses concern for the respondent's mental health and the wellbeing of their children. The notion of being physically separated from her children is profoundly distressing. It is not appropriate to separate any of the children from their parents, especially their mother.
- (iii) The children have finally accessed health care and education. They would lose this progress if they had to move from the area. A number of the children have physical and mental health conditions which require assessment, ongoing treatment and support. They have failed previously to access healthcare due to discrimination and a lack of understanding of the Traveller nomadic lifestyle.
- (iv) The children feel settled at the site. They feel supported by the Traveller community of extended family and friends. They have non-Traveller friends locally and feel valued and part of the Granton community. The family has received support through a petition of around 80 names against the proposed eviction. Every time they are moved on, the children feel profound loss of friends, schools and community. They are proud of their nomadic identity but also want to have friends, an education and to feel safe.
- (v) The respondent is extremely distressed at having to uproot his family again. He is experiencing a major depressive episode with a moderate risk of suicide.

Symptoms have escalated since notice of the proposed eviction in January 2026. His support network is crucial to help him manage these difficulties. Under the proposed move to separate homeless accommodation, the respondent would lose the immediate emotional support within his relationship, wider social circle, and current psychiatry treatment. Removal of these factors would be likely to increase the risk of suicide.

Recommendations

- [60] (i) The family should have access to health care, education and safety with minimum standards of living which include running water, waste disposal and electricity.
- (ii) The respondent should seek urgent support if he experiences any suicidal thoughts.
- (iii) The King's Trust Scotland can help young people from Traveller communities to gain personal development and employability skills.

Other witnesses for the respondent

[61] David Barclay helps run Granton Boxing Club. The club addresses mental health awareness, community and discipline. Two of the respondent's sons show real talent. All the children are an important part of the club family. As a Traveller, Mr Barclay speaks to the importance of Travellers' culture and the lack of appropriate provision for Travellers.

[62] Alys Mumford is a Scottish Green Party councillor for Portobello/Craigmillar and the equalities and social care spokesperson. She sat on the planning committee until May 2026. She identifies a need for better provision for Travellers in Edinburgh. Waste and sanitation facilities should be provided even pending eviction proceedings. The issue of lack of culturally appropriate accommodation for Gypsy/Travellers has been taken more seriously

by CEC (following a motion at Ms Mumford's instance) but is tied into the City Plan 2040 and so progress can be slow. Ms Mumford has raised the family's situation at full council meetings.

[63] Work has previously been done to identify available land but the view has been that there is no culturally appropriate land available. This is partly due to the general lack of available land which has not been allocated for other uses under the City Plan 2030 and due to the need to comply with site standards. She has been pushing for more creative thinking, even on a temporary basis. There has been movement. The focus on longer term solutions may have taken precedence over a short-term solution. If the family were evicted and had to move into temporary accommodation, CEC would do what is necessary to support the children going to school such as providing taxis.

[64] Ashleigh Mullen is the creative director at Romano Lav which is a community-based organisation and charity working in Glasgow with the local migrant Roma communities. Romano Lav recognises that Traveller communities in the UK have experienced similar prejudice and structural barriers as Roma communities. Romano Lav engaged with Museums Galleries Scotland ("MGS") and National Galleries Scotland ("NGS") about eviction of the family. It requested that an EQIA was undertaken; that culturally appropriate mediation take place; and that MGS and NGS seek assurances from the Scottish Government around an alternative site. Ms Mullen sets out concerns about the perceived lack of engagement with the requests; the procedures adopted; and the non-involvement of the Scottish Government Strategic Team for Anti-racism. In those circumstances, she referred the family for legal support.

Curator *ad litem*'s report: children's views

[65] By interlocutor dated 15 July 2026, the court appointed John Laing advocate as curator *ad litem* to the children to inquire into and report to the court on the views of the children, insofar as practicable, on the prayer of the petition. The curator was appointed to report by 27 July 2026. The court acknowledges the short timescale within which the curator undertook his duties and records its gratitude. The report is number 40 of process.

[66] The curator met with the children at the site on 20 July 2026. He did not consider it practicable to take the views of the two youngest children, aged 2 years and 4 months. The curator was not able to engage in any form of discussion with NM aged 5 years and did not consider it was practicable to obtain her views. He did not consider it was practicable to obtain the views of JoM aged 6 years.

[67] The curator recorded the views of the oldest seven children in the order of meeting them as follows:

- **MaM** aged 14 years: MaM does not attend school. His main hobby is boxing. He boxes at Granton Boxing Club. He also attends the Youth Club. He likes to spend time there and enjoys playing pool. He likes living at the site. There are three separate families who live there but he considers they are one big family. He estimates that around 40 people live there. Asked for his views on the potential to leave the site, "Oh no good" was his immediate response. He considers it to be his home. He has lived there for "three to four year". If he left, he would like to come back because it is his home. MaM said that he has encountered "racism and stuff" in the wider community. He referred to the site being petrol bombed 3 years ago which appeared to be a particularly vivid and painful memory. He clarified that there have been no similar incidents.

Asked how he would feel if he had to leave the site, he appeared teary and said he “really” wants to stay. He wants to stay together with his family in a “proper environment”. He does not know where he would go. It would be up to his parents. He is concerned about leaving Granton Boxing Club where he gets on well with his coaches. He mentioned the possibility of living in a house but recognised that that would involve separation from some of his family. That would be too hard and upset him.

- **KM** aged 15 years: KM does not attend school. Her days are ordinarily spent hanging out with and going to the beach with friends. She is close to her family and has two other friends who live on the site. She has around ten friends in the community, mostly in Granton. Asked about being removed from the site, she responded: “there is nowhere for us to go, we don’t know where to go, probably the street or something”. She paused, appeared upset and concluded by saying “not happy”. She wants to stay at the site. She is accepted there and ended by saying “not many people accept us”. She then explained that she has lived in other places but has not felt welcome by members of those communities. She has experienced racism in other places but said it is “rare that happens here... don’t get treated like...”. She appeared upset. After she stopped crying, she said the situation was “heartbreaking” and then she immediately cried again. She appeared devastated at the prospect of leaving the site. She wants to stay in the Granton area. She wants to live somewhere with a shower. There is not a shower on site. She has a weekly shower at the local swimming pool. Asked about how she found the lack of toilet facilities at the site, KM was quiet,

screwed her face and shook her head. She would not want to live in a house as that would involve being separate from some of her family.

- JiM** aged 12 years: JiM likes football. He goes to the astro turf at the local secondary school four or five times per week. He is a keen football supporter. He does not go to school. He would like to go to school to see friends, play football and to learn. He has a few good friends in the community who stay in Drylaw. He also has a separate group of friends from the Boxing Club. He is close to all his friends. The absence of a shower on site is “not nice”. He usually showers once a week at the leisure centre at Ainslie Park. For toileting, he will typically go to the Anchor Inn before 7.00pm. After 7.00pm children are not allowed in. These arrangements are no good. He mentioned “upset” and appeared to look sad. JiM was aware of the court case and said “they were trying to get us out”. His views are: “I don’t want to leave - I’m used to this place. I’ve been here three year”. Asked why, “friends” was his immediate answer. He then expanded, “this place feels like home. It’s nice here. Feel like I’m with family”. In the community, he said , “some people call us stuff like a gypsy, pikey, tramps and I get upset like”. That does not happen at the boxing club. His demeanour changed as he spoke about the boxing club. He appeared to have a positive relationship with his coaches. JiM wants this site; does not like houses; will not be able to see cousins; and will be very said to leave.
- MiM** aged 13 years: MiM does not attend school. He hopes to join the local secondary school in August 2026. In absence of school, he goes to the “astro” and plays football. He had visible open wounds to his hand and right knee. The wounds appeared to be infected. He had fallen off a scooter a few weeks

ago. He has several friends in Drylaw and Granton. He is a football supporter. He described the site as “good, good” and the “longest ever stayed anywhere”. It was the favourite place he has stayed. He has stayed “lots of places”. He has “loads of pals” in Drylaw and Muirhouse. He sees his friends most days. He would be sad if he had to leave the site, saying “like, its leaving pals”. He would miss the boxing club and the coaches. Alternative living arrangements would be up to his parents. MiM wanted the court to know that he wants to stay at the site and not to go anywhere else.

- **TM** aged 10 years and **EM** aged 11 years: Both were happy to speak together. TM goes to school and is in primary 6. He likes school. He boxes twice per week. He has friends who stay in Granton and at the Waterfront. He is a football supporter. EM also attends primary school and is “probably” going to secondary school but does not know if there is a space for him. Asked about the court case, he said that “they are trying to kick us out and take us away from friends, school, boxing and our culture”. Asked what he meant by his culture, he explained living in caravans and living together as a big family. TM indicated that he had the same view as EM. The site feels like home. EM said that this site is better than others. TM had lived at other sites but he did not have friends and the other sites did not have a boxing club. EM agreed about the boxing club; it is “very important”. He likes having fights to look forward to and the coaches are good. He excitedly said that he had a fight in Musselburgh in April. It would be “very bad leaving boxing, it would be like leaving everything – all my housing, family”. Asked about the community, EM said there was “no abuse, sometimes they do but it’s like random people,

pikeys about 50 times". Asked about toileting and showering, TM said that it was "bad". Sometimes they go to a friend's house or to the sports centre but if not, they have to go "out the back" as he pointed behind the caravan. It is an area of burned grass with bushes and a fence which separates the site from a road before the supermarket car park. TM seemed upset that this is the area he requires to use. They use it at night. Before 7.00pm, they go to the pub. TM looked embarrassed. Asked about leaving the site, TM looked sad and said "bad, leaving friends, boxing and home and that". EM agreed. If they were to live somewhere else, they would want it to be a site like the present site and "close to here". TM would want to live somewhere with a toilet and showers. EM asked the curator to tell the court, "Let us stay". TM said, "just don't take us out of our...friends, boxing, football pitch". They both want to live at the site.

- **CM** aged 7 years: CM goes to school where she has friends and a best friend. She likes to do gymnastics at school. Asked whether she liked where she lives, she smiled and said she gets to play. Asked what she thought about living here, she said "good" and smiled. She said that people bully her and smiled broadly in the direction of her mother.

[68] In his role as curator, Mr Laing considers it appropriate to highlight the following welfare issues which caused him particular concern:

- (i) The four oldest children do not attend school. There was some uncertainty as to whether the older children would have places for the academic session beginning in August 2026 (since confirmed). Education is plainly linked to the

children's welfare. The curator highlights the children's right to education and, in particular, the terms of Article 28 of the UNCRC.

- (ii) The position in relation to the children's personal care (their access to shower and toilet facilities) appears to be sub-optimal. The area where the children urinate and defecate was observed to be not hygienic and it was ill-suited to offer adequate privacy to the children. Before 7.00pm, they can use the toilets at the Anchor Inn pub. There is no assurance that facility will remain available.
- (iii) The eldest child KM is 15 years old. At points in the discussion, she was upset and cried. While the curator did not probe into issues relating to her menstruation, her access to and use of sanitary products are important to her welfare. Safe, hygienic facilities which afford proper privacy are undoubtedly required. The absence of adequate showering facilities is of concern for her.
- (iv) While not offering a clinical view, the wounds to the child MiM's hand and knee appeared to be infected. Had he had immediate and regular access to clean water, there would have been greater scope to wash and clean his wounds.

Submissions for the petitioners

Broad legal and policy background

[69] There is no suggestion that those occupying the site have (or have ever had) any right or entitlement to occupy it. The petitioners could seek interdict against any person from doing so. The question for this court is whether any of the arguments made on behalf of the respondent justify any delay in granting the orders sought.

ECHR

[70] The respondent argues that removal of his family from the site, without a suitable alternative site to go to, would breach their rights under Article 8 ECHR. Further, he argues that the interference with the family's private lives amounts to discrimination on the basis of their status as Irish Travellers, contrary to Articles 8 and 14. Similar arguments were recently considered in *Glasgow City Council v Stringfellow and others* [2026] CSOH 19. In that case, however, the defenders had in the past been granted certain leasehold rights which no longer existed; and were also found by the court to possess rights under the Mobile Homes Act 1983 in the light of actions by the pursuer local authority concerning those leasehold rights.

[71] In terms of Article 14, and for the purpose of these proceedings, the petitioners recognise that the family has the status of Irish Travellers as a distinct ethnic or racial group for the purpose of section 9 of the 2010 Act. However, there can be no suggestion that in bringing the present proceedings the petitioners seek to evict the family because of their status as Irish Travellers. The petitioners seek to vindicate their property rights; to take steps to make the site safe and secure for the local community and for those requiring to work on the site; and to construct The Art Works, which is an important development for the nation as well as the public and the local community, and for which planning permission was obtained before the family came to the site. The family is not therefore the victim of discrimination at the hands of the petitioners. The petitioners are acting equally towards other persons unlawfully occupying the site.

[72] In respect of proportionality and Article 8, the case law is clear. Rights under Article 8 are not absolute. Interferences with family life may be justified. Proportionality must be determined by an independent tribunal. This court has the power to assess the

proportionality of granting the orders sought in the prayer of the petition. As expressed by the Supreme Court in *Manchester City Council v Pinnock* (Nos. 1 and 2) [2011] 2 AC 104 at paragraph 52: “The question is always whether the eviction is a proportionate means of achieving a legitimate aim.” The court in that case noted that where a person has no right in domestic law to remain in occupation of his home, the proportionality of making an order for possession will be supported by the fact that it would serve to vindicate the authority’s ownership rights; and may be supported by other cogent reasons, such as the need to remove a source of nuisance to neighbours. At paragraph 54, the court added: “Unencumbered property rights, even where they are enjoyed by a public body such as a local authority, are of real weight when it comes to proportionality.” That case, like many others, concerned the reasonableness of removal of a tenant from housing stock owned and managed by a local authority or other social landlord. In the present case, the site is not part of any housing stock but the same principles will apply. This court is also referred to the principles set out in (i) *Bank Mellat v H M Treasury* (No. 2) [2014] 1 AC 700 at paragraph 74 per Lord Reed; and (ii) *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2026] AC 607 at paragraphs 120-125 per Lord Sales and Lady Rose.

[73] The legitimate aims being pursued by the petitioners include the following:

- (i) vindicating their property rights as owners of the site;
- (ii) public safety, including securing the site against unauthorised persons taking entry and causing nuisance to the local community and damage to the site;
- (iii) ensuring the construction of The Art Works, a major project for the nation’s cultural heritage, the public and the local community; and
- (iv) the related Lar Housing Trust social housing development.

These are all submitted to be cogent reasons supporting a very strong case for concluding that the prayer of the petition should be granted. The orders sought in the prayer would pursue and achieve these legitimate aims.

UNCRC

[74] The respondent also asserts the rights of his children in terms of the UNCRC requirements under the 2024 Act.

[75] While the 2024 Act does not define the term “function”, its meaning includes powers or duties: definition of “functions” in Schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010. The petitioners are a public authority for the purposes of section 6: subsection (5)(a)(i). The respondent and (through the respondent) his children rely on the UNCRC requirements (so far as they apply) when claiming that the petitioners are acting in a way made unlawful by section 6(1): section 7(1); and section 38 of the explanatory notes to the 2024 Act.

[76] The first question is therefore submitted to be: in connection with what function are the petitioners acting? As proprietors of land, the petitioners have the power under Scots common law to vindicate their rights of ownership by taking steps to secure the removal of persons occupying that land without any right or entitlement and to interdict further unlawful occupation. That power is conferred upon the petitioners by a rule of Scots common law not created by an enactment: *Stair Memorial Encyclopaedia* Vol 18 at paragraph 141 (Prof. Kenneth Reid); *Interdict* (Burn-Murdoch, 1933) at paragraphs 3-9. The power is therefore a relevant function for the purpose of section 6 of the 2024 Act.

A decision to exercise that power by raising and maintaining the present proceedings is an

act in connection with a relevant function. The UNCRC requirements may therefore be relied upon, so far as applicable in the present circumstances.

[77] This court itself is also a public authority for the purposes of the 2024 Act. The petitioners seek an order under section 46 of the 1988 Act, together with an order for interdict. That section empowers the court to grant the remedy of an order against the site's occupants requiring them to remove themselves and their goods from the site. That is the court's function, and is conferred by an Act of the United Kingdom Parliament. Therefore, it is not a relevant function. In any event, on a proper construction section 6 is drafted on the basis that it precludes a public authority from acting incompatibly with UNCRC requirements in connection with a relevant function that is conferred upon it. However, the court's function of granting interdict in these proceedings is a function conferred upon the court by a rule of law not created by an enactment. Accordingly, so far as the court might act in connection with that function, the respondent may rely upon the UNCRC requirements so far as applicable in the present circumstances.

[78] The persons occupying the site are currently homeless because although they have accommodation "it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it": section 24(3)(c) of the Housing (Scotland) Act 1987 ("the 1987 Act"); *The Queen on the application of McDonagh v Newport City Council* [2019] EWHC 3886 (Admin) at paragraph 54. The duties to persons found to be homeless, or threatened with homelessness, fall upon local authorities which in the present case is CEC: Part II of the 1987 Act.

[79] Local authorities such as CEC have a statutory duty to assess the accommodation needs of Travellers in their area: section 16B of the Town and Country Planning (Scotland)

Act 1997 (action to be taken to meet the accommodation needs of travellers in their area, as part of the preparation of a local development plan); and sections 1 and 89 of the Housing (Scotland) Act 2001 (“2001 Act”) (providing respectively for homelessness strategies and local housing strategies). The petitioners issue statutory guidance to local authorities about their obligations under section 89 of the 2001 Act: “Local Housing Strategy Guidance” at 7/16 (PDF167) and 6/46 (PDF372); and “Local Housing Strategy Guidance 2026” at 6/47 (PDF385). These publications direct local authorities on what is expected to be contained within their local housing strategies, including an assessment of the special needs of Traveller communities: 6/47/9-13 at PDF393-397. The CEC’s Local Housing Strategy 2025-30 is at 7/17 (PDF233) and 6/45 (PDF367) and describes its provision at pages 74-76 of the document.

[80] Local authorities also have the power to grant licences for the use of land as a caravan site; and the power themselves to use land as caravan sites: the Caravan Sites and Control of Development Act 1960, section 24; the Caravan Sites Act 1968; and the Mobile Homes Act 1983. CEC presently provides a permanent site for the Gypsy/Traveller community at North Cairntow in the northeast of the city: the Council’s Local Housing Strategy 6/45 at PDF370. That site is currently full. The family has not applied for a place at North Cairntow.

[81] In order to ensure that local authorities use their powers appropriately, the petitioners issue guidance: (i) “Guidance for Local Authorities on Managing Unauthorised Camping by Gypsy/Travellers in Scotland” 6/42 (PDF291); (ii) “Improving Gypsy/Traveller Sites 6/41 (PDF263); (iii) “Improving the Lives of Scotland’s Gypsy/Travellers 2 – Action Plan 2024 2026” 7/11 (PDF46); and (iv) “Interim Site Design Guide for Gypsy/Traveller Sites in Scotland provided by Local Authorities and Registered Social Landlords” 6/43 (PDF328).

The petitioners' wider policy position on Gypsy/Travellers is summarised on their website: 6/44 (PDF353). Recent policy includes the paper "Improving the Lives of Scotland's Gypsy/Travellers 2 – Action Plan 2024-2025" at 7/11 (PDF46). This guidance, added to the statutory powers that local authorities have, ensures that councils know what is required and expected of them. The powers and duties to make appropriate provision, however, rest with local authorities and not with the petitioners.

The balancing of rights: testing the defences contained in the respondent's answers

Articles 8 and 14 of the ECHR

[82] There is submitted to be no evidence to support the argument that the petitioners have discriminated against the family on the basis of their status as Irish Travellers. The present proceedings have been raised against all persons occupying the site without any right or entitlement. All such persons currently live in caravans or chalets. There is no basis for an argument under Article 14.

[83] Under Article 8, the question for this court is whether the respondent's arguments discharge the burden of proving that the orders sought would not be proportionate in all the circumstances of this case. When regard is had to all of the factors relevant to proportionality, the orders sought would plainly be proportionate, and the respondent has offered no evidence to show why it would not be proportionate to grant them. In particular, the following factors are relevant:

- (i) *ownership rights*: The orders would vindicate the petitioners' unencumbered ownership rights in the site. This alone has been recognised as a very weighty factor in favour of the grant of an order for eviction: *Pinnock* above at paragraph 54.

- (ii) *need to remove a source of nuisance to neighbours:* The local community is concerned about anti-social behaviour at the site. It is not possible to secure and clear the site while it is being occupied by the family and itinerant workers.
- (iii) *purpose of redevelopment: The Art Works:* The development will be of great benefit to the safe storage and care of the nation's cultural collections, as well as providing employment and the opportunity for the public to access these collections. The development, which has been a decade or more in preparation, has already been delayed by the unlawful occupation of the site. Further delay will add to the eventual costs of the project, including additional storage costs and delays to the Mound Galleries project.
- (iv) *engagement with the occupiers:* The petitioners have engaged with the occupiers of the site over the past year or more. In cooperation with the petitioners, specialist officers of CEC have engaged with the occupiers, to assist them with local services such as health, education, dental registration and homelessness support. Council officers have discussed with the occupiers the provision of alternative accommodation.
- (v) *consideration of the occupiers' needs and interests:* In cooperation with officers of CEC, the petitioners have prepared an EQIA. This demonstrates that the petitioners have had regard to the occupiers' needs and interests and have engaged closely with CEC. They also serve to show that the petitioners have had due regard to their public sector equality duty under section 149 of the 2010 Act. It has long been accepted that the application of the public sector equality duty does not import the necessity to conduct an EQIA. However, the fact that the petitioners carried out an EQIA and maintained a related record,

points toward their taking a proportionate approach: *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043 (CA) at paragraph 52. Similarly, with the assistance of CEC's Family and Household Support Service and its Roadside Encampment Liaison Officer, the petitioners have prepared a CRWIA. The petitioners' decision to seek orders for the eviction of the occupiers does not engage the obligation to prepare a CRWIA in terms of section 17 of the 2024 Act, which applies to the likely effects (if any) of "a legislative provision on, or a decision of a strategic nature relating to, the rights and wellbeing of children". As the assessments note, they are "intended to provide transparency on how the rights and wellbeing of children have been considered" in the particular context of this case. Together, these assessments demonstrate that the petitioners have had regard to key rights under the UNCRC as incorporated into domestic law by the 2024 Act.

- (vi) *the occupiers are already homeless*: Unlike many of the reported cases, in the present circumstances the occupiers have never had any right or entitlement to pitch their caravans at the site. Accordingly, the orders sought in the prayer would not render the occupiers homeless, since they are already in that condition. Nor would the orders sought deprive them of their caravans, chalets and other property, which would remain theirs to use at other locations.

Article 8 does not confer the right to pitch one's home at any specific location.

- (vii) *CEC owes obligations to the occupiers before and after eviction*: CEC has engaged with the occupiers, providing a variety of support services. In the event that the occupiers are ordered to remove from the site, CEC will be obliged to offer

them homelessness support and accommodation. There exists a clear framework of policy and statute to ensure that such support is in place.

(viii) *alternative accommodation*: Alternative accommodation must be provided by CEC to applicants under Part II of the 1987 Act. The accommodation should be suitable for the homeless persons to whom CEC owes its statutory duties: *Codona v Mid-Bedfordshire District Council* (2005) HLR 1 (CA); *Glasgow City Council v X* 2025 SLT 525 at paragraphs 37-54; and *Y v Glasgow City Council* 2026 SLT 49 (IH). The occupiers may request a review of decisions taken by CEC in relation to its homelessness duties: section 35A of the 1987 Act. If dissatisfied with a decision reached on review, the occupiers may seek judicial review. When considering the type of accommodation to offer to Travellers who demonstrate a genuine aversion to bricks and mortar accommodation, CEC must give special consideration to securing accommodation that will facilitate their traditional way of life: *Codona* above at paragraph 49. If no site is available for a Traveller to station his caravan, it is open to the local authority to provide conventional accommodation: *Codona* at paragraphs 38, 59-60; *Sheridan v Basildon Borough Council* (2012) HLR 39 (CA). Article 8 does not oblige contracting states to make available to their Traveller communities an adequate number of suitably equipped sites: *Chapman v United Kingdom* (2001) 33 EHRR 18 at paragraphs 96 & 98. In the present case, CEC has to date failed to find alternative accommodation in the form of a site where the family can pitch their caravans and chalets. If, on eviction, the family applies for homelessness support but refuses an offer of alternative accommodation in traditional housing, they would likely move initially to roadside or other

unauthorised encampment within Edinburgh. CEC would continue to be obliged to provide homelessness support and assistance to the family. In doing so, it must have regard to the need to prevent homelessness, and to all of the petitioners' statutory guidance: sections 36E and 37 of the 1987 Act; and the petitioners' "Code of Guidance on Homelessness" which references the particular position of Travellers at pages 53-54. CEC also owes a duty to applicants for homelessness support to protect their property: section 36 of the 1987 Act. The position of the itinerant workers is that they will leave when evicted, and it appears that they will apply for homelessness support and alternative accommodation. These are all matters for CEC. The petitioners do not retain surplus land that could be devoted to providing accommodation: affidavit of Jamie MacDougall at section 39.

- (ix) *procedural rights*: The petitioners have raised these proceedings in accordance with law, ensuring that the occupiers of the site have the opportunity to be heard and to raise any defences they may wish. This enables the court to rule upon the petitioners' justification for seeking possession of their land, and to take into account the needs and interests of the occupiers, the respondent, the petitioners and the wider public.

[84] Allowing the petitioners as proprietor to possess its site and put it to good use in the public interest is rationally connected to the petitioners' legitimate aims. There is no less intrusive measure that could be pursued without unacceptably compromising the achievement of the petitioners' legitimate aims. The importance and urgency of the petitioners' aims and objectives outweigh the interference with the occupiers' rights under Article 8. In any event, the site is a wholly inappropriate and unsafe location for occupation

by the family. The affidavit evidence demonstrates that it is not realistic to remain in the site during works, involving archaeological works and high voltage cables. The balance is overwhelmingly in favour of the petitioners being restored to possession of their land.

[85] The petitioners submit that in all these circumstances, the interference with the occupiers' Article 8 rights would be proportionate.

The respondent's invocation of his children's rights under the 2024 Act

[86] The respondent cites Articles 2, 3, 8, 12, 14, 16, 24 and 27 to 30 of the UNCRC as set out as requirements in Part 1 of Schedule 1 to the 2024 Act. The test under section 6 of that Act is whether, in connection with one of their relevant functions, the petitioners or the court would be acting (or failing to act) in a way which is incompatible with the requirements.

The test of incompatibility connotes being inconsistent with the UNCRC articles.

Specific UNCRC requirements

[87] Article 2 requires state parties to respect and ensure the rights set out in the UNCRC in respect of each child in their jurisdiction. Even if this is engaged in general terms, it does not bring any substantive content into play. The 2024 Act makes provision for the UNCRC requirements to apply in domestic law. It cannot be said that this requirement would be infringed by the grant of the orders sought.

[88] Article 3 requires that the best interests of the child shall be a primary consideration. This was accepted in *Stringfellow* above at paragraph 113 and is a concept that the court deals with regularly. The court has the benefit of both an independent social work assessment and a psychological assessment, which deal with the impacts of eviction on the children. The court also has the benefit of pleadings, productions and affidavits from the

children's father, who asserts the children's UNCRC rights on their behalf. The court has the EQIA and CRWIAs carried out by the petitioners, which address the position of the children on the basis of CEC's close engagement with the family over the past 2 years.

Finally, on 15 July 2026 the Court *ex proprio motu* appointed a curator to report on the views of the children. The court will have proper regard to this information when reaching its judgment.

[89] Article 8 concerns respect for the identity of a child and their family. This article does not make it unlawful for the proprietor of land to recover possession from the child's parent. CEC will continue to owe duties to the occupiers of the site, including the children, following implementation of any decree for eviction. Any interference with this right in this case would not be unlawful and hence would not be incompatible.

[90] Article 12 requires that children who are capable of forming their own views be allowed to express those views, which are to be given due weight in accordance with each child's age and maturity. The respondent has defended this petition and asserted his children's UNCRC rights on their behalf. As legal representative of his children, and with the benefit of legal aid and representation by both senior and junior counsel, the respondent and his advisers (both legal and other) are in a position to present the views of his children to the court, in a manner consistent with the requirements of the article. The court also has the benefit of the reports referred to at [88] above. Both the independent social worker and psychologist were instructed to interview the family members and report on their wishes and the potential impact on them of eviction. Certain children chose to have their views heard by these experts; others declined that opportunity. The court can therefore consider the children's views and accord them due weight. In all the circumstances, where the children's parents have camped on the site without any right or entitlement, the petitioners

submit that so far as the children express a wish to remain on the site, those views may (though deserving of respect) have relatively little weight in the overall balancing exercise.

[91] Article 14 concerns respect for the child's right to freedom of thought, conscience and religion. The proposed eviction would not interfere at all with any child's freedom of thought, conscience or religion, nor with the right of the children's parents to provide direction on such matters. This article is not engaged.

[92] Article 16 provides that there be no arbitrary or unlawful interference with a child's family or home. This article is engaged. However, recovery of possession of the site obliges the petitioners to obtain specific authority from this court, which involves a fair and impartial hearing according to law. In these circumstances, it cannot be said that any interference would be arbitrary or unlawful.

[93] Article 24 concerns access to health care services for the treatment of illness and rehabilitation of health. Through CEC's support, the children of the family have access to health care provision from the NHS under the National Health Service (Scotland) Act 1978. The grant of decree in this case would not infringe the rights to such access, which CEC would remain obliged to facilitate.

[94] Article 27 concerns recognition of the child's right to an adequate standard of living for the child's development. The primary obligation to secure the conditions of living necessary for the child's development is placed upon the child's parents: paragraph 2 of the Article. In the case of need, the article requires the state to take appropriate measures to assist parents and others responsible for the child through "material assistance and support programmes, particularly with regard to nutrition, clothing and housing". The grant of decree would not change the primary obligation of the children's parents towards their

children, nor interfere with the obligation of the state to support them, wherever they may be. Through homelessness support by CEC, the state will continue to assist the family.

[95] Article 28 concerns the right of the child to education, including an obligation to make primary education compulsory and available to all. Scotland has a compulsory system of education that is free to all. Wherever the family lives, the children will have access to compulsory free primary and secondary education. CEC has assisted the family to secure places for the children, and this will continue in the event that they are removed from the site. This article is not therefore engaged in the present circumstances.

[96] Article 29 concerns the content of the education to be provided by the state. It is not engaged by the circumstances of this case. There is no suggestion that the content of any child's education would be interfered with.

[97] Article 30 provides that children belonging to an ethnic minority shall not be denied the right, in community with other members of their minority group, to enjoy their own culture. This does not place a positive obligation upon the state. In any event, the present proceedings do not deny any child such a right. The grant of decree would only remove the children and their family from land which they have no right to occupy. CEC's homelessness obligations would remain in place, as would the family's rights under Article 8 of the Convention and also under the domestic legislation referred to above. Accordingly, decree would in no way infringe this right.

The children's voices and their best interests

[98] In respect of consultation with children and young people on the site, the petitioners' CRWIA at 6/20 PDF197:

“Engagement has been extensive and ongoing since 2024, including repeated site visits and multi-agency involvement. While direct engagement with children was delivered by City of Edinburgh Council and relevant services, their needs and circumstances have been captured through family engagement and professional assessments.”

It is CEC that has the specialist expertise and responsibility to provide homelessness support to the family.

[99] More recently, the children have had the opportunity to voice their views to an independent social worker and psychologist. Further, the curator obtained the children’s views so far as that was possible and recorded them. The children have therefore been able to express their opinions on the matters in issue, and these views are to be given due weight according to the age and maturity of each child.

[100] In all the circumstances, the petitioners submit that removal from the site would be consistent with the children’s best interests, which should be treated as a primary consideration. *Separatim*, safety and other public interest considerations outweigh the best interests of the children. Reference is made to the discussion of proportionality in the context of Article 8 above, and to the following particular considerations:

- (i) In general terms, the children express the wish to remain on the site or at least in the Granton area where they feel settled. However, at the same time several children have expressed their concern about the lack of facilities at the site.
- (ii) The children wish to continue living as a family unit, with some expressing a particular preference for living in a caravan. While the decision as to future accommodation would be for the children’s parents, it presently seems that after removal from the site the family will continue to live together, most likely in their current caravans which will continue to be available to them.

- (iii) The site is clearly not a safe and secure place for the children. As the second CRWIA concluded, the site presents “sustained and serious risks to children’s health and safety”.
- (iv) Removal from the site would not in itself prevent the children from having access to education, health and other public services. CEC continues to have ongoing responsibilities towards the family and such public services are available throughout Scotland. It is, however, possible that the younger children may find it difficult to attend their current primary school.
- (v) The site lacks planning permission for the operation of a Traveller encampment. Planning permission exists for the construction of a major public development. It is in the public interest that the project proceeds.
- (vi) The needs of the family can best be met by finding a pitch at an authorised site, with running water, toilets and washing facilities: report of Ian Henderson (7/23 at PDF660). Continued homelessness at this insecure site is not in the children’s best interests. To this end, the petitioners have engaged closely with CEC to encourage provision of appropriate accommodation for the family in line with the petitioners’ guidance.

[101] For the foregoing reasons, none of the UNCRC articles, so far as engaged by the present case, would be infringed by the court granting the orders sought. Neither the court nor the petitioners would be acting incompatibly with any rights that are engaged.

The public sector equality duty under section 149 of the 2010 Act

[102] The respondent’s suggestion that the petitioners have failed to have due regard to the duty set out in section 149 (the public sector equality duty (“PSED”)) is ill founded. The

petitioners accept that the respondent and his family possess the protected characteristic of race. However, the respondent's averments in answer 5 are wholly without specification. Nor does any evidence lodged by the respondent support this argument. The legal background to the PSED has to be considered carefully.

[103] The PSED does not import a duty to achieve a result but only a duty to have regard to the need to achieve the identified goals: *Hotak v Southwark LBC* [2016] AC 811 at paragraph 74; *Glasgow City Council v X* 2025 SLT 525 (Supreme Court) at paragraph 44.

[104] The nature of the requirement to have "due regard" to the specified factors is:

"the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing." (*Baker v Secretary of State for Communities and Local Government* [2009] PTSR 809 at para 31)

[105] As to the question of what weight should be accorded to the PSED, the

Supreme Court in *Hotak* above explained as follows at paragraph 75 per Lord Neuberger:

"As was made clear in a passage quoted in the *Bracking* case [2014] Eq LR 60, para 60, the duty 'must be exercised in 'substance, with rigour and with an open mind': per Aikens LJ in *R (Brown) v Secretary of State for Work and Pensions (Equality and Human Rights Commission intervening)* [2009] PTSR 1506, para 92. And, as Elias LJ said in the *Hurley* case [2012] HRLR 13, paras 77-78, it is for the decision-maker to determine how much weight to give to the duty: the court simply has to be satisfied that 'there has been a rigorous consideration of the duty'. Provided that there has been 'a proper and conscientious focus on the statutory criteria', he said 'the court cannot interfere ... simply because it would have given greater weight to the equality implications of the decision.'"

[106] With the cooperation of CEC, the petitioners completed an EQIA for the decision to seek orders from the court for the eviction of the occupiers of the site. The steps taken in preparing that document are recorded in the EQIA Record. Together, these documents show that the petitioners had regard to the status of the respondent and his family as Travellers. They show that, through the preparation of a CRWIA (although not required)

the petitioners considered the needs and interests of the children living on the site. The EQIA also identified relevant countervailing factors, including the promotion of public health, safety and community cohesion, and the positive public benefits to be delivered through The Art Works project. In all the circumstances, the petitioners have clearly had due regard to the need to achieve the goals identified in section 149.

Reply to the respondent's oral submissions

General

[107] The logic of the respondent's submissions was submitted to be: Travellers may set up an unauthorised encampment, make no application to the local authority for accommodation, obtain support services in respect of health and education, and then refuse to move without the provision of appropriate accommodation at a secure authorised site in the same area. That is not what the law dictates, and in any event is not what is justified on a proper analysis of proportionality in all the circumstances.

[108] The precise options that may be available from CEC have never been fully explored, since the respondent did not wish to work with the relevant official to identify any bricks and mortar accommodation, which may have been available even on a temporary basis.

Article 8 ECHR

[109] The respondent referred to the case of *Winterstein* below. The report does not contain all submissions by the parties. The judgment is fact sensitive. At the time of the domestic court proceedings, the applicants had been living on the land for many years. At paragraph 148(f), it is notable that in respect of Travellers the Court states that "some special consideration should be given to their needs and their different lifestyle" but does not

suggest that there is an obligation in every case to provide a secure authorised site, let alone one at a particular location or area. The European Court of Human Rights (“ECtHR”) cites *Chapman* above, in which paragraph 98 makes clear that there is no obligation on states to make available an adequate number of suitably equipped sites.

[110] The respondent also referred to *Medway Council* below. It is important to recall that the case concerned eviction proceedings at the instance of a local authority owing direct statutory responsibilities and duties towards the site occupants, and which had no plans for the land where the defendants were camped (paragraph 65). These were two key points leading to the court’s judgment on proportionality using the *Bank Mellat* test. As the authority having the function of providing sites for Travellers, the claimant council had failed to consider whether it could offer any of its non-operational land to the defendants instead of an already designated site (paragraph 172). It had therefore failed to consider a less intrusive measure (stage 3 of the test). Since the only benefit to the council was the likelihood of a sale sometime in the near future, that slight benefit was outweighed by the greater impact on the defendants (paragraphs 174-175) (stage 4 of the test). The facts are submitted to be quite different in the present case of an authority lacking the function of providing sites and having planning permission for a major regeneration project already at RIBA Stage 5 and with budgetary support and lottery funding. Moreover, CEC will continue to provide key support services to the family.

UNCRC requirements

[111] In oral submissions the respondent addressed Article 27 of the UNCRC. In considering the application of this article to housing, the court should bear in mind that the caravan accommodation used by the family at the present site will remain available for them

to use at any unauthorised or managed unauthorised site, as well as at any future authorised site. A risk identified within the CRWIA is that “the family move to a location which is similar to that of Scottish Government owned land”, that is to another unauthorised site. That would not entail their being deprived of accommodation.

[112] The respondent suggested that the petitioners were seeking to force the hand of either the respondent or CEC. However, the functions in play are those of CEC; while the ultimate decision makers about where the family chooses to locate are the respondent and his partner as the persons having parental rights and responsibilities.

Proportionality

[113] In discussion with the court, the respondent accepted that if the prayer of the petition were not granted now, then the regeneration projects at Granton would be delayed; and that the court may have regard to this matter. The petitioners’ position is that delay (i) would cause extra storage costs, delays to the Mound Galleries project and continuing inflation of the project costs; (ii) would most likely require further applications to the council to renew or vary the planning permission for the project, causing further delay; (iii) might cause the £8.5 million of lottery funding to be lost given the conditions and timeframes noted in the email at 6/50; and (iv) would cause consequent delay to the delivery by the Lar Housing Trust of their affordable housing development. Moreover, where such projects have been given budgetary support but do not proceed within a reasonable time, the relevant monies may either be moved to other projects or inflation may threaten the viability of the project.

[114] As for the interpretation of the planning permission at 6/13 at PDF106, it is clear that development must begin by 7 November 2026; and that no development may take place

until the archaeological works have been implemented (condition 3). Site clearance and security is needed before even these pre-development works can be carried out.

[115] The respondent referred to the petitioners' Guidance on managing unauthorised camping (6/42). At paragraph 52, contrary to what appeared to be the respondent's interpretation, the bullet points are neither cumulative nor matters which require to be considered in every case before taking legal action to reclaim possession of their land. Rather, they are a non-exhaustive list of particular and separate circumstances in which local authorities may want to consider taking such legal action. The Guidance makes clear that it is for local authorities to decide whether to manage an unauthorised site (that is a site established without planning permission), noting the need for regular welfare visits and consideration of assistance with waste and sanitation. CEC has not only the statutory functions and responsibilities provided for in Guidance but also the expertise of specialist officers. The petitioners were aware of CEC providing support and welfare services, and officials made joint visits to the site in 2025.

[116] The respondent referred to the submission to the Cabinet Secretary for Constitution, External Affairs and Culture on Unauthorised Encampments on Scottish Government land in Granton, Edinburgh at 6/15. Neither the EQIA nor the CRWIA were afterthoughts, as the respondent submitted. The submission is clear that the aim to secure and clear the site by the end of January 2026 depended upon the completion of an EQIA and the identification of accommodation. It is not unlawful to pursue these proceedings in the absence of specific accommodation being identified: (i) *Sheridan v Basildon Borough Council* [2012] HLR 29 (CA); and (ii) the petitioners' proportionality analysis as set out above. The CRWIA process began in August 2025 and was an assessment carried out not because of any statutory requirement but as a useful analysis tool alongside the EQIA, ensuring that the rights of children were

considered and the probable impacts articulated. These documents were prepared before the submission was sent to the Cabinet Secretary, to whom the EQIA and EQIA Record were provided. The anticipation was, and remains, that alternative land will be found for the family. That may be an authorised site provided by CEC or another local authority; or it may be an unauthorised site managed by a local authority. The purpose of the EQIA was to identify any impacts on equality groups brought about by the planned eviction of two unauthorised encampments at the site. On the specific issue of nuisance and safety, CEC has ample evidence that the site is an unsafe place for Travellers, particularly for children. The petitioners do not invite the court to attribute all problems to the family. However, the evidence clearly supports findings of anti-social behaviour on the part of family members. The problems for the family at the site are evident from the curator's report and from the social work assessment.

UNCRC requirements

[117] The respondent referred to the Article 12 duty to obtain and take into account the views of the children. The context includes (i) a continuing duty to have regard to the children's views and (ii) a continuing court process. The petitioners relied upon CEC's specialist homelessness support team to liaise with the family and obtain their views. Given CEC's existing relationship with the family, its statutory role and expertise, and the content of guidance, this was a reasonable and sensible approach for the petitioners to take. The petitioners had a reasonably clear understanding of the family's needs and interests, as the two CRWIA's show. The views of the children are before the court through the curator's, the social worker's and the psychologist's reports.

[118] The respondent submitted that decisions by the petitioners in September and December 2025 were taken in breach of Article 12. The first of these decisions, mentioned in 6/15 of process at paragraph 2, was in fact a ministerial agreement to “aim to secure and clear the site by the end of January 2026”. It was a contingent decision and did not involve any decision to raise proceedings. The operative decisions are more properly (i) the decision taken in December 2025 to serve the present petition and (ii) the ongoing prosecution of these proceedings to date in the knowledge of the children’s expressed views.

[119] The petitioners accept that the present proceedings fall within the concept in Article 12(1). The particular requirement in Article 12(2) has been met. The petitioners cannot obtain possession of the site without taking judicial proceedings. The petitioners are continuing to prosecute these proceedings in the knowledge that the children’s views have been obtained, so far as practicable; are before the court; and will be given due weight by the court as decision maker, in all the circumstances of this case. The state has a discretion as to the measures to be adopted to enable children’s views to be taken into account, and when and how that is to be done. The decision that will ultimately affect these children is the decision to be taken by the court. It is not therefore in breach of Article 12 for the petitioners to move the court to grant the prayer of the petition. The petitioners did take steps to evaluate the possible impact of removal on the children, by means of discussions with CEC’s officers, and the preparation of the EQIA and of two CRWIAs.

[120] If in all the circumstances the court were to consider that any prior decision in December 2025 was taken in breach of Article 12, it would be for the court to decide whether, in the exercise of its broad discretion under section 8(1) of the 2024 Act, it was appropriate to grant any particular form of relief or remedy. If the court were to be considering what relief or remedy to grant (having decided to grant some relief or remedy),

it would be obliged under section 9(1), in so far as it is practicable to do so, to give the children an opportunity to express their views about the effectiveness of that relief or remedy. The petitioners submit that in all the circumstances of this case, it is the proposed removal from the site under the terms of the orders sought in the petition, that would affect the children. The children's views being before the court, the petitioners are entitled to decide to continue to prosecute these proceedings and the court is entitled to take a decision on the merits of the petition in the knowledge that the children's voices have been heard so far as they wish to express them. No relief is necessary or appropriate in the present case. Neither refusal of decree in favour of the petitioners, nor suspension of the operation of such a decree, would be a proportionate response to this issue, given the whole circumstances of this case.

[121] The case of *Aldwyck Housing Group Ltd v Forward* [2020] 1 WLR 584 (CA) provides some assistance. The case concerned the effect of a breach of the PSED under section 149 of the 2010 Act. Delivering the leading judgment, Longmore LJ held that there was no general rule that any decision taken following a breach of the PSED had to be quashed or set aside. If, on an assessment of the facts of the case, the court concluded that it was highly likely that the decision would not have been substantially different if the breach of the PSED had not occurred, then subject to any other relevant considerations there would be no need for a quashing order to be made (sections 21ff). Longmore LJ concludes at paragraph 24:

“In the context therefore of a typical possession action the court, while having regard to the importance of the PSED, will also have available to it the facts of the particular dispute and be able to assess the consequence of any breach of the duty more easily than in the context of a wide-ranging ministerial decision.”

Bracking above was precisely of the latter type: a ministerial decision of wide-ranging application, namely to close down The Independent Living Fund, with consequences for persons with disabilities.

Conclusion

[122] In all these circumstances, the petitioners move the court to grant the prayer of the petition and to pronounce the orders sought.

Submissions for the respondent

Introduction

[123] The petitioners seek an order under section 46 of the 1988 Act requiring the respondent and his family to leave the site. The petitioners seek that order in circumstances where no other culturally appropriate accommodation will be made available to the respondent. Such an order would constitute an unlawful interference with the respondent's rights under Articles 8 and 14 of the ECHR. It would also be incompatible with the respondent's children's rights under the UNCRC. In such circumstances, the orders sought in the petition should be refused.

ECHR: Articles 8 and 14

Article 8- scope

[124] Article 8 enshrines the right to protection for an individual's "private and family life" and his "home". The respondent's Article 8 rights are engaged in the present circumstances. Jurisprudence of the ECtHR shows that the concept of "home" within the meaning of Article 8 is not limited to premises which are, or ever have been, lawfully occupied.

Whether or not particular premises constitute a “home” which attracts the protection of Article 8 is fact specific. It is necessary to establish “the existence of sufficient and continuous links with a specific place” (*Winterstein v France* (27013/07) at paragraph 141). The site should be regarded as the respondent’s “home” for the purpose of determining his Article 8 rights. In *Faulkner and McDonagh v Ireland* (30416/18), the ECtHR found that the applicants’ unlawful encampment on a site owned by the local authority constituted their “home” for the purposes of Article 8. It was relevant to the ECtHR’s assessment that the applicants had been living on the site for more than 4 years, and their children had been enrolled in local schools (at paragraph 91). The ECtHR has also found a “home” to be established where the applicant has lived there for only one year: *Simonova v Bulgaria* (30782/16) (2024) 78 EHRR 5 at paragraph 31. The family has “clear and sufficient links” to the site such that it should be considered their “home”. The family has occupied the site for approximately 2 and a half years, having previously occupied it on a temporary basis in 2019. Four of the respondent’s younger children are enrolled in the local primary school. They are receiving one-to-one support there. The respondent’s older male children have been allocated a place at a local secondary school from the immediate term in August 2026. The children are registered with a local general practitioner and dentist. They attend a local boxing club and youth club. The family has established social links within the community. Viewed in the round, the respondent has “sufficient and continuous links” with the site within the meaning of the Strasbourg jurisprudence. His Article 8 right to protection of his “home” is engaged.

[125] Furthermore, irrespective of whether the site is the respondent’s “home”, his Article 8 rights to protection of his private and family life are engaged by the proposed eviction. In *Chapman* above at paragraph 73, the ECtHR (Grand Chamber) found that the

proposed removal of the applicant (a Gypsy) from a piece of land which she owned engaged not only her right to respect for her home but also her right to respect for her private and family life:

“the Court considers that the applicant's occupation of her caravan is an integral part of her ethnic identity as a [G]ypsy, reflecting the long tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or from their own volition, many [G]ypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures which affect the applicant's stationing of her caravans have therefore a wider impact than on the right to respect for home. They also affect her ability to maintain her identity as a [G]ypsy and to lead her private and family life in accordance with that tradition.”

[126] As an Irish Traveller, the respondent is in precisely the same position. If granted, the orders would have a direct, negative impact on the respondent's ability to maintain his identity as an Irish Traveller. That is because, as things stand, no other culturally appropriate accommodation will be made available. In that regard, the present circumstances are distinct from the eviction of a settled person from council housing where the local authority's duties to provide that person with other accommodation will be triggered.

[127] It follows that, even if this court is not satisfied that the site constitutes the respondent's “home” for Article 8 purposes, it should nevertheless go on to consider the proposed eviction as an interference with the respondent's right to private and family life. That is the approach adopted by the ECtHR in *Hirtu v France* (24720/13), in which an unlawful encampment for a matter of months was not considered to constitute the applicants' “home”. The court was nevertheless satisfied that the eviction of the applicants would have an inevitable impact on their family life, such as to engage Article 8 (at paragraph 66). The evidence before this court is to the effect that the family is likely to be

required to live separately if evicted. That provides a firm basis on which to conclude that the respondent's Article 8 right to respect for his private and family life is engaged.

Article 8– proportionality

[128] Standing that the respondent's Article 8 rights are engaged, it is necessary to consider whether the proposed interference with those rights (in the form of eviction) is a proportionate means of achieving a legitimate aim pursued by the petitioners.

[129] The Supreme Court considered Article 8 proportionality assessments in the context of eviction proceedings in *Pinnock* above. The court held:

“Unencumbered property rights, even where they are enjoyed by a public body such as a local authority, are of real weight when it comes to proportionality. So, too, is the right – indeed the obligation – of a local authority to decide who should occupy its residential property... Therefore, in virtually every case where a residential occupier has no contractual or statutory protection, and the local authority is entitled to possession as a matter of domestic law, there will be a very strong case for saying that making an order for possession would be proportionate. However, in some cases there may be factors which would tell the other way” (at para 54)....

[If] domestic law justifies an outright order for possession, the effect of article 8 may, albeit in exceptional cases, justify (in ascending order of effect) granting an extended period for possession, suspending the order for possession on the happening of an event, or even refusing an order altogether” (at para 62).

[130] The principles laid out in *Pinnock* (*ibid*) were affirmed by the Supreme Court in

Hounslow LBC v Powell [2011] 2 A.C. 186. The leading judgment was delivered by

Lord Hope of Craighead. His Lordship observed:

“The proportionality of making the order for possession at the suit of the local authority will be supported by the fact that making the order would (a) serve to vindicate the authority's ownership rights; and (b) enable the authority to comply with its public duties in relation to the allocation and management of its housing stock. Various examples were given of the scope of the duties that the second legitimate aim encompasses - the fair allocation of its housing, the redevelopment of the site, the refurbishing of sub-standard accommodation, the need to move people who are in accommodation that now exceeds their needs and the need to move vulnerable people into sheltered or warden-assisted housing. In *Kryvitska and*

Kryvitsky v Ukraine (Application No 30856/03) (unreported) given 2 December 2010, para 46 the Strasbourg court indicated that the first aim on its own will not suffice where the owner is the state itself. But, taken together, the twin aims will satisfy the legitimate aim requirement.” (at para 36).

The Court went on to note that:

“as was made clear in *Pinnock*, para 53, there will be no need, in the overwhelming majority of cases, for the local authority to explain and justify its reasons for seeking a possession order. It will be enough that the authority is entitled to possession because the statutory pre-requisites have been satisfied and that it is to be assumed to be acting in accordance with its duties in the distribution and management of its housing stock. The court need be concerned only with the occupier’s personal circumstances and any factual objections she may raise and (in the light only of what view it takes of them) with the question whether making the order for possession would be lawful and proportionate.” (at para 37).

[131] In *Pinnock* and *Powell*, the court developed, in line with developments in the ECtHR, a form of proportionality assessment where a local authority was seeking to evict an individual via a statutory scheme and was pursuing the “twin aims” of (i) vindicating its ownership rights; and (ii) “comply[ing] with its public duties in relation to the allocation and management of its housing stock” (*Powell* at paragraph 36). While the latter aim may include land regeneration, it is clear that the regeneration must concern public housing in order to come within the second of the “twin aims”.

[132] The present proceedings do not fall within the categories of case that were within the contemplation of the Supreme Court in *Pinnock* and *Powell*. This is not a case in which statute provides that the petitioners may evict the respondent as of right (subject to an arguable Article 8 defence) because of legitimate aims that are “baked in” to an eviction regime. Here, unlike in a case concerning statutory eviction, there has thus far been no consideration of the proportionality of the measure sought. Furthermore, the second of the “twin aims” identified by the Supreme Court is not here advanced by the petitioners. While the petitioners intend to regenerate the broader area that includes the site, the principal

reason relied on by the petitioners in support of an order for eviction is that The Art Works require to be developed. It is suggested that that should not weigh as heavily in the balancing exercise as the well-established legitimate aim of enabling appropriate distribution of housing stock.

[133] There is no dispute that the petitioners' redevelopment project is capable of constituting a legitimate aim, and that vacant possession of the site is rationally connected to that objective. The question for this court is whether an order to evict the respondent in the absence of appropriate alternative accommodation is a proportionate means of achieving that legitimate aim. That question is perhaps best addressed under reference to the final two stages of the test as formulated in *Bank Mellat* above: (i) is the eviction of the respondent no more than is necessary to accomplish the petitioners' objective; and (ii) balancing the severity of the effect of eviction on the respondent against the importance of the objective pursued by the petitioners (to the extent eviction will contribute to the achievement of that objective), does the former outweigh the latter? That, it is submitted, would be consistent with the developing proportionality assessment in cases such as *Pinnock* and *Powell*.

[134] In *Medway Council v Heron and Ors*, Claim no. K01ME613, the County Court (paragraph 178) determined a similar application under reference to the test in *Bank Mellat*, in particular those final two stages. That case resulted in immediate removal being deemed not to be proportionate, with the lack of an appropriate site being a critical part of the assessment (paragraphs 172-173).

[135] In *Winterstein* above, the ECtHR provided guidance on how to assess Article 8 proportionality in the context of eviction proceedings against Gypsy/Travellers:

“148(e). When considering whether an eviction measure is proportionate, the following considerations should be taken into account in particular. If the home was lawfully established, this factor would weigh against the legitimacy of requiring the

individual to move. Conversely, if the establishment of the home was unlawful, the position of the individual concerned would be less strong. If no alternative accommodation is available the interference is more serious than where such accommodation is available. The evaluation of the suitability of alternative accommodation will involve a consideration of, on the one hand, the particular needs of the person concerned and, on the other, the rights of the local community to environmental protection (see *Chapman*, cited above, paras 102-104).

148(f). Lastly, the vulnerable position of Roma and travellers as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases (see *Chapman*, cited above, para 96, and *Connors*, cited above, para 84); to this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the way of life of the Roma and travellers (see *Chapman*, cited above, para 96, and the case-law cited therein)...

159. The Court must additionally, as in the case of *Yordanova and Others*, take account of the following aspects. First, as the Government have pointed out, it is appropriate, in order to assess the proportionality of the interference, to examine the possibilities of alternative housing that exist (see *Chapman*, cited above, para 103). Admittedly, Article 8 does not in terms recognise a right to be provided with a home (*ibid.*, para 99), but in the specific circumstances of the case and in view of the long history of the presence of the applicants, their families and the community they had formed, the proportionality principle required, as the Court found in *Yordanova and Others* (cited above, para 126), that due consideration be given to the consequences of their removal and to the risk of their becoming homeless. The Court would emphasise in this context that numerous international instruments, some of which have been adopted within the Council of Europe, emphasise the necessity, in the event of the forced eviction of Roma and travellers, of providing them with alternative housing, except in cases of *force majeure*: see Recommendation (2005)4 of the Committee of Ministers, Resolution 1740(2010) of the Parliamentary Assembly and the Position Paper of the Commissioner for Human Rights dated 15 September 2010 ... and, in more general terms, General Comment no. 7 of the United Nations Committee on Economic, Social and Cultural Rights ...

160. In addition, it is necessary, as the Government have accepted, to take into account the fact that the applicants belong to a vulnerable minority. The Court would refer to its previous finding that the vulnerable position of Gypsies and travellers as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases (see *Connors*, cited above, para 84; *Chapman*, cited above, para 96; and *Stenegry and Adam*, cited above). It has also stated in *Yordanova and Others* (cited above, paras 129 and 133) that, in cases such as the present one, the applicants' specificity as an underprivileged social group and their resulting needs must be taken into account in the proportionality assessment that the national authorities are under a duty to undertake, not only when considering approaches to dealing with their unlawful settlement but also, if their

removal is necessary, when deciding on its timing and manner and, if possible, arrangements for alternative shelter.”

[136] No matter precisely which approach is taken as the starting point for the proportionality assessment, each case requires to be assessed on its facts. Those facts include both the specific, personal circumstances of the individuals facing eviction but also the surrounding circumstances including, crucially, the alternative options. If a less restrictive option can be exercised, whilst still accomplishing the petitioners’ aim, then as a matter of proportionality the petitioners ought to exercise it.

[137] There is no need to meet a threshold of “exceptionality” in order to establish that the respondent’s Article 8 rights justify refusing or delaying an order for eviction. This is, in any event, an exceptional case. What is proposed is the eviction from public land of two adults and 11 children. That is in circumstances where they are settled and have been given support to settle by the local authority and where, if evicted, there is no suggestion by the petitioners that the family could be provided culturally appropriate accommodation or even housed under one roof within the area in which they have settled. When one weighs the impact of eviction on the family against the aims pursued by the petitioners, it becomes apparent that eviction would be a disproportionate interference with the respondent’s Article 8 rights.

[138] The following are the relevant factors that must be weighed against enforcement of the petitioners’ property rights:

- (i) The family has become settled, as is evidenced in the careful report by the curator.
- (ii) The family has been told by CEC that their only option for social housing if evicted would be to live in bricks and mortar accommodation, across two

separate houses. Dr Bell, an independent psychologist, reached the firm conclusion that: “it is not appropriate to separate any of the children from their parents, especially their mother” (7/24 at page 9). The absence of suitable alternative accommodation enhances, perhaps to an insurmountable degree, the severity of the interference with the respondent’s Article 8 rights.

- (iii) Accommodating the family in traditional council housing would force them to abandon an integral part of their identity as Irish Travellers. There is a positive obligation on the UK to facilitate the Traveller way of life. That obligation has been specifically accepted by the petitioners in its own publications setting out its expectations of local authorities (for example, 6/41 at page 5). That obligation could not be complied with if the family were ejected from the site in these circumstances. The respondent and his partner have previously been housed in council housing but found it to be stressful and deleterious to their mental health as they “felt removed from [their] identity and way of life” (respondent’s affidavit at paragraph 42).
- (iv) The family is willing to accept any alternative suitable site in the local area, including upon payment of rent. Alternative, ostensibly suitable options, appear to be available with the application of some creative thinking (affidavit of Alys Mumford). The location of an alternative, suitable, site is however something that the petitioners ought to have fully considered prior to undertaking the present proceedings (*Medway* above).
- (v) Absent a suitable site and standing the significant cultural barriers to accepting council housing, the impact of being evicted from the site would be to force the family back into a cycle of being moved on from sites and having to stop in

unsafe locations. The children would no longer be able to attend school, and their medical and dental care would be interrupted. Dr Bell concluded that “the [] family will be significantly impacted psychologically by the proposed eviction from the Granton site” including through loss of practical support from the Traveller community and disruption in schooling and healthcare (7/24 at page 9).

- (vi) The impact of eviction on the respondent will be particularly acute. That is because of his ethnic identity as an Irish Traveller and the fact he would be forced to choose between living in council housing in a manner that is culturally inappropriate or to live unsafely in unauthorised encampments. Dr Bell concluded that: “ [the respondent} is extremely distressed at having to uproot and move his family again. He is currently experiencing a major depressive episode with a moderate risk of suicide” (7/24 at page 10). To this extent, the psychological impact of eviction on the respondent is directly related to his identity as an Irish Traveller and goes above and beyond mere distress at the prospect of eviction of the kind that one might expect to see from many individuals subject to eviction proceedings.

[139] The question for this court therefore becomes: is the eviction of the family in a manner that would either force them to abandon an integral part of their identity as Travellers or force them to live in unsafe unauthorised encampments, a proportionate means of achieving the legitimate aims pursued by the petitioners? The answer is submitted to be in the negative.

[140] Were the petition raised in circumstances where the family was being offered a culturally appropriate alternative site, the answer might be positive. But that is not the

position before the court. The proposed eviction in these circumstances is disproportionate to the aims pursued, which are not in furtherance of any social housing function performed by the petitioners. On one view, a less intrusive measure to eviction would be for the petitioners (working, as necessary, with CEC) voluntarily to resettle the family in a suitable alternative site. In any event, it is for the petitioners to satisfy the court that the development could not proceed in the absence of eviction (bearing in mind that the family occupy a small parcel of land on the edge of the earmarked development area, which area appears to be reserved for landscaping rather than for building).

[141] For the reasons set out above, the eviction in the absence of a suitable alternative site would amount to a grave interference with the respondent's Article 8 rights. This court should not conclude that that interference is justified by the petitioners' desire to press on with its planned redevelopment works. Furthermore, this is not a case where there are other factors that weigh in favour of eviction. The petitioners have advanced affidavit evidence to the effect that there is anti-social behaviour at the site. That evidence is unspecific as to who carried out such behaviour and to which parts of the site it relates. The clear evidence from the respondent is that he denies that he or his family present any public nuisance. The respondent denies starting fires, other than controlled fires that are necessary to burn household waste (the petitioners having refused to collect that waste and the local authority being unable to do so). He admits that his sons previously had two quad bikes but he allowed those to be taken by the police (respondent's affidavit at paragraph 36). Individuals unaffiliated with the family do use quad bikes in the area (*ibid* at paragraph 37).

[142] The vague nature of the allegations do not provide a sound basis on which to conclude that the family is engaged in anti-social behaviour of the kind that would weigh in favour of eviction being proportionate. Those allegations should be left out of account.

Article 14

[143] It is apparent from the foregoing that the respondent will be treated differently from other individuals in a relevantly similar situation. While others may also be evicted from the site, that eviction will occur in circumstances where those individuals will be offered culturally suitable accommodation. Eviction will not directly impact those individuals' ability to maintain their cultural identity in terms of Article 8 of the ECHR. The same is not true for the respondent. That is as a result of the respondent's identity as an Irish Traveller and the shortage of suitable accommodation, contrary to the petitioners' own guidance to local authorities. An order for eviction would contravene the respondent's rights under Article 14, read in conjunction with Article 8.

UNCRC rights

[144] Both the petitioners and the court are public authorities for the purpose of section 6(1) of the 2024 Act. A "relevant function" is defined in section 6(2). In raising this petition in its capacity as owner of the site, the petitioners are exercising a "relevant function". The court is also exercising a "relevant function". Section 7(1)(b) of the 2024 Act provides that "a person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may... rely on the UNCRC requirements concerned in any legal proceedings".

[145] If the orders sought were granted, that would be incompatible with the UNCRC rights of the respondent's children.

[146] Article 3(1) of the UNCRC (as incorporated by Schedule 1 of the 2024 Act) provides that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

It is accordingly necessary for this court to consider what is in the best interests of the respondent’s children, in order to give those interests appropriate prominence when deciding whether to grant the orders sought. As outlined above, Dr Bell reached the conclusion that it would not be in the children’s interests to be separated from either parent. It would also not be in the children’s interests to be uprooted from their education, social activities, or ongoing health and dental treatment. As outlined above, the proposed eviction would result either in the family being split across separate council houses (which would not, in any event, be culturally appropriate) or would result in them moving on to an unauthorised and potentially unsafe encampment elsewhere. The choice therefore is between the family being separated or the children being uprooted from their existing lives. Neither option is in the children’s best interests. All of the children whose views were taken expressed a desire to continue living as a family unit as Irish Travellers. Notwithstanding the evident difficulties with the existing site (which could broadly be remedied at the hands of the petitioners or CEC), an eviction order in the absence of culturally appropriate alternative accommodation would not be in the children’s best interests.

[147] It is pertinent to note that the petitioners were also under an obligation to consider the best interests of the respondent’s children as a primary consideration when deciding to require eviction and then raise and insist on these proceedings. The petitioners failed to discharge that obligation. As evidenced by their non-compliance with Article 12 (addressed below), the petitioners did not make suitable and sufficient enquiries in order to enable them

to take the children's interests into account. It was, remarkably, not until the appointment of a curator that steps were taken to ascertain the views of the children. By that point the present litigation was well progressed. Had those views been obtained at the correct stage, it is impossible to know how they might have impacted upon the petitioners' approach. However, an *ex post facto* ascertaining of those views is plainly not in accordance with the 2024 Act and is therefore unlawful.

[148] Article 8(1) of the UNCRC (as incorporated) provides that:

"State Parties undertake to respect the right of the child to preserve his or her identity, including name and family relations as recognized by law without unlawful interference".

[149] Furthermore, Article 30 provides that:

"In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language".

For the reasons outlined above, if evicted from the site the children may be forced to abandon an integral part of their identity as Irish Travellers.

[150] Article 16(1) provides that no child shall be subjected to arbitrary and unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation. As the SHRC explains in its written intervention, the Upper Tribunal determined in *City of Edinburgh Council v SP* 2026 UT 34 that compliance with Article 16 of the UNCRC falls to be assessed in the same manner as Article 8 of the ECHR. For the reasons given above in relation to Article 8, eviction would amount to an unlawful interference with the children's rights under Article 16.

[151] Article 12(1) provides that the child should be entitled to express his or her views on matters affecting them, "the views of the child being given due weight in accordance with

the age and maturity of the child". As noted above, the children expressed a desire to remain within the family unit and to continue living as Irish Travellers. These views, particularly those expressed by the older children, should be afforded appropriate weight. That lends itself to the conclusion that eviction in these circumstances is inappropriate. In any event, as with its obligations under Article 3, the petitioners were also required to take account of the children's views in raising and then insisting on these proceedings. It failed to do so and thereby acted unlawfully.

[152] An order for eviction in the absence of a culturally appropriate alternative site would be incompatible with the UNCRC rights of the respondent's children. For that reason, the order should be refused.

Conclusion

[153] The petitioners seek to evict the family from the site in circumstances where no alternative culturally appropriate site will be made available. The orders sought in the petition would, if granted, amount to an unlawful interference with the respondent's rights under Articles 8 and 14 of the ECHR. They would also be incompatible with the UNCRC rights of the respondent's children. As such, the petition should be refused at this time.

Submissions for the first interested party

[154] The SHRC produced a Minute of Written Submission. It confines its participation to written submissions. The SHRC has a general duty to promote human rights and to encourage best practice in relation to human rights.

[155] In particular, the SHRC draws the court's attention to the UNCRC requirements regarding: non-discrimination (Article 2); the best interests of the child as a primary

consideration (Article 3); and the importance of providing culturally appropriate accommodation (Article 27) under the 2024 Act.

UNCRC compatibility

[156] The SHRC endorses the purposive approach to the interpretation of section 6 of the 2024 Act taken by the High Court of Justiciary in *Lord Advocate's References* 2025 SLT 101 at paras [42] to [48] and in *Glasgow City Council v Stringfellow* above at paras [105] to [108] when determining whether a public authority is acting in connection with a relevant function. The SHRC proceeds on the assumption that the petitioners would be acting in connection with a relevant function.

[157] The SHRC takes no position directly in support of, or in opposition to, the orders sought by the petitioners.

Interpretation of the UNCRC requirements

Article 2

[158] Article 2 provides that the rights of the child set out in the UNCRC are to be respected without discrimination of any kind. The Committee on the Rights of the Child ("the Committee") has also identified Article 2 as one of the four general principles of the UNCRC, alongside Articles 3, 6 and 12. As a general principle, Article 2 is therefore not only a right in and of itself, but it is: (a) linked to those other general principles; and (b) should be considered in the interpretation and implementation of the other UNCRC requirements.

[159] Against a background where the Committee has expressed deep concern about persistent discrimination against Gypsy and Traveller children and recommended the elimination of that discrimination, the SHRC would stress the importance of Article 2 (non-

discrimination) and its relevance to these proceedings, both as a right in and of itself but also in the interpretation and implementation of the other UNCRC requirements, including Article 27.

Article 16

[160] Article 16 of the UNCRC requirements was the subject of recent judicial consideration in *Edinburgh Council v SP* above. The Upper Tribunal held at [34] that whilst Article 16 contained no express parallel provision to Article 8(2) of the ECHR, interferences could be justified in a similar way to the justification process under Article 8(2) ECHR. As reflected at [35], the parties in that case were agreed that the four-stage *Bank Mellat* proportionality test applicable in relation to Article 8 ECHR would also apply in the proportionality assessment under Article 16 of the UNCRC requirements.

Article 3

[161] The requirements of Article 3 are helpfully elaborated upon by the Committee General Comment 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. By virtue of section 4 of the 2024 Act, General Comment 14 has already been the subject of judicial consideration by the Scottish courts in *X, Principal Reporter* [2026] CSOH 15 at [20] and in *Glasgow City Council v Stringfellow* above at [112]. As a starting point, the Committee at paragraph 82 has observed:

“... [O]ne needs to bear in mind that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognized in the Convention and its Optional Protocols, and the holistic development of the child.”

Further, as recognised in *X, Principal Reporter* at [20], the Committee General Comment 14 at paragraph 6 has underlined that the child's best interests should be understood as a threefold concept:

- "6. The Committee underlines that the child's best interests is a threefold concept:
- (a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.
 - (b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.
 - (c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases."

[162] This third (rule of procedure) limb, under paragraph 6(c) of General Comment 14, is particularly instructive in the context of these proceedings. For example, in *X, Principal Reporter* above at [52], the court held that the impugned decision "fell foul" of paragraph 6(c) since it contained "no evaluation of the possible impact of the decision on the petitioner, nor does it show that his right to have his interests evaluated has explicitly been taken into account" and the decision was therefore not UNCRC compliant.

[163] In terms of treating the best interests of the child as a primary consideration, the Committee General Comment 14 at paragraph 39 has also recognised there may be a need for a careful balancing exercise with other interests:

“... If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.”

CRWIA

[164] The petitioners aver that prior to raising these proceedings, in partnership with CEC, they prepared an EQIA and CRWIA. The SHRC has no further detail on that CRWIA. Nevertheless, the SHRC emphasises the need for a public authority's decision concerning children to be sufficiently reasoned in order to satisfy Article 3, consistent with the procedural limb of paragraph 6(c) of General Comment 14. That decision must demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected.

[165] In this regard, the SHRC highlights paragraph 97 of General Comment 14 as instructive of the approach which must be taken by a public authority under the 2024 Act:

“97. In order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child or children must be motivated, justified and explained. The motivation should state explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child's best interests. If the decision differs from the views of the child, the reason for that should be clearly stated. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child's best interests were a primary consideration despite the result. It is not sufficient to state in general terms that other considerations override the best interests of the child; all considerations must be explicitly specified in relation to the case at hand, and the reason why they carry greater weight in the particular case must be explained. The reasoning must also demonstrate, in a

credible way, why the best interests of the child were not strong enough to be outweigh the other considerations. Account must be taken of those circumstances in which the best interests of the child must be the paramount consideration (see paragraph 38 above)".

Article 12

[166] The Committee General Comment 12 (2009) on the right of the child to be heard is helpful in elaborating upon the ambit of Article 12. As a starting point, paragraph 2 of General Comment 12 states:

"2. The right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 12 as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child's best interests, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights."

Article 12, like Article 2, is therefore not only a right in and of itself but should also be considered in the interpretation and implementation of the other UNCRC requirements. For example, ensuring that the views of children are properly taken into account is an essential element when assessing and determining a child's best interests under Article 3.

[167] The SHRC highlights the following aspects of General Comment 12 as elucidating how to interpret and apply Article 12:

- Article 12 stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views (paragraph 28, GC12).
- If the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue (paragraph 44, GC12).

- Article 12(1) provides that States Parties “shall assure” the right of the child to freely express his or her views. “Shall assure” is a legal term of special strength, which leaves no leeway for State Parties’ discretion; they are under strict obligation to undertake appropriate measures to fully implement this right for all children (paragraph 19, GC12).

Article 27

[168] When assessing the UNCRC requirements as a whole, culture is an important part of a child’s wellbeing. The respondent cites *inter alia* Articles 8 and 30 of the UNCRC requirements in seeking to assert the rights of his children.

[169] With respect to a child’s standard of living, the SHRC submits that it is clear from the terms of Article 27(3) of the UNCRC requirements itself that this includes housing:

“3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing”.

[170] The Committee General Comment 21 (2017) on children in street situations also reinforces, at paragraph 50, that “[t]he right to housing is an important component of article 27”. Further, paragraph 51 of General Comment 21 states that children, including those in informal or illegal housing, should not be subject to forced eviction prior to the provision of adequate alternative accommodation:

“51. States should take measures to address the structural causes of poverty and income inequalities to reduce pressure on and strengthen precarious families, as a means of offering better protection for children and reducing the likelihood of children ending up in street situations ... With regard to housing, security of tenure is essential for preventing children from coming into street situations. This includes access to adequate housing that is safe, with access to safe drinking water, sanitation and hygiene facilities. Children, including those living in informal or illegal housing, should not be subject to forced evictions prior to the provision of adequate

alternative accommodation: States are required to make appropriate provisions for affected children. Child and human rights impact assessments should be a prerequisite for development and infrastructure projects to minimize the negative impacts of displacement”.

[171] Section 4(2)(d) of the 2024 Act enables the court to take into account Concluding Observations, so far as relevant to the interpretation of the UNCRC requirements. With respect to how Article 27 should be interpreted and applied, the SHRC highlights the views expressed by the Committee in its Concluding Observations to the UK (2023) and paragraph 46(c) in particular:

“Standard of living

46. Noting with deep concern the large number of children living in poverty, food insecurity and homelessness, the Committee recommends that the State party:

...

(c) Ensure that the best interests of the child are given primary consideration in all eviction matters, that evictions are not targeted at families belonging to minority groups and that any evictions are always subject to adequate alternatives”.

Concluding Observations to the UK (2016)

[172] The earlier Committee Concluding Observations to the UK (2016) also stated at paragraph 70:

“Standard of living

70. The Committee is seriously concerned that:

...

(e) In Scotland, adequate and culturally sensitive accommodation for Roma, gypsy and traveller children remains insufficient.”

[173] Further, at paragraph 71 of those same Concluding Observations to the UK (2016):

“The Committee draws the attention of the State party to target 1.2 of the Sustainable Development Goals, on poverty reduction, and urges the State party to:

...

- (g) In Scotland, introduce a statutory duty for local authorities to provide safe and adequate sites for travellers, while ensuring meaningful participation of Roma, gypsy and traveller communities, including children, in planning and decision-making processes.”

[174] These Committee recommendations are submitted to be clear, specific and seek to give effect to Article 27, read together with Articles 2, 3 and 12 of the UNCRC requirements. It is plain that the Committee considers housing to be an important component of Article 27 and this includes the need for adequate and culturally appropriate alternative accommodation in the context of eviction.

[175] The International Covenant on Economic, Social and Cultural Rights (“ICESCR”) also provides an aid to interpreting Article 27 of the UNCRC requirements. Article 11 of the ICESCR guarantees the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The Committee General Comment 21 (2017) underlines the link between Article 27 of the UNCRC and Article 11 of the ICESCR, stating at paragraph 50:

“Adequate housing

50. The right to housing is an important component of article 27 that is particularly relevant for children in street situations. It has been interpreted broadly by the Committee on Economic, Social and Cultural Rights as the right to live somewhere in security, peace and dignity, which clarifies that the concept of ‘adequacy’ in relation to housing requires attention to: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. Children are among those who suffer disproportionately from the practice of forced eviction. Forced evictions, including through demolition of informal or illegal housing, can make life more precarious for children, forcing them to sleep on the streets and exposing them to further rights violations.”

Discussion

[176] The petitioners seek orders under section 46 of the 1988 Act for all occupants of the site to remove themselves and for interdict of the occupants from entering the site. It is admitted that the petitioners own the site; and that none of the occupants has any right or entitlement to occupy the site. The occupants include the respondent and his family. The respondent contends that the proposed removal, where no culturally appropriate accommodation will be made available, (i) constitutes an unlawful interference with his family's rights under Articles 8 and 14 of the ECHR; and (ii) is incompatible with his children's rights under the UNCRC. Further, the petitioners have failed to have due regard to the PSED set out in section 149 of the 2010 Act. In such circumstances, the orders ought to be refused at this time. The respondent is willing to remove from the site when culturally appropriate accommodation is made available. In essence, the respondent seeks to delay any removal from the site. Submissions on his behalf are necessarily realistic that he cannot remain on the site indefinitely.

ECHR

Article 8

[177] It is accepted that the respondent's Article 8 right to respect for his private and family life is engaged. The question, as formulated in *Pinnock* above at paragraph 52, is whether removal is a proportionate means of achieving a legitimate aim. Ultimately both parties addressed proportionality in terms of the four-stage test in *Bank Mellat* above at paragraph 74 per Lord Reed:

“...(1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without

unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter....In essence, the question at step four is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure."

It is not disputed that the redevelopment project is capable of constituting a legitimate aim and that vacant possession of the site is rationally connected to that objective. Is there then a less intrusive measure than eviction which could be pursued without unacceptably compromising the achievement of the petitioners' legitimate aims? Further, balancing the severity of the effect of eviction on the family against the importance of the objective pursued by the petitioners (to the extent eviction will contribute to the achievement of that objective), does the former outweigh the latter?

[178] Standing that planning permission will lapse on 8 November 2026 and that enabling works require to be undertaken in advance, any delay in granting the orders sought is not without significant consequence. Any delay is likely to result in planning permission lapsing; a further application being required; additional costs estimated at £1.5 to 2 million per calendar quarter; and the potential loss of allocated public and lottery funding. The evidence raises the possibility of the family remaining on site during development works on the submitted basis that they occupy a small area on the margins of the site. The requirement for access to the site from Granton Park Avenue for construction and operational reasons and evident health and safety issues during a major construction project militate against continued occupation. Either (i) to allow additional time for appropriate alternative accommodation to be found; or (ii) to allow the family to remain during development works is not a less intrusive measure which could be pursued without unacceptably compromising the achievement of the petitioners' legitimate aims.

[179] The respondent relies upon *Winterstein* above at para 148(e) for the proposition that if there is no alternative accommodation, the interference is more serious than where such accommodation is available. In *Medway* above at paras 172 to 173, an immediate removal was deemed not to be proportionate and the lack of an appropriate site was a critical factor. As the authority having the function of providing sites for travellers, the claimant council had failed to consider whether it could offer any of its non-operational land to the defendants instead of an already designated site. Accordingly, it had failed to consider a less intrusive measure at stage 3 of the *Bank Mellat* test. It is conceded that the facts are quite distinct from the present case. The evidence before the court is that the petitioners do not retain surplus land and that so far CEC has failed to identify suitable land. The ongoing commitment to identify land is spoken to by CEC's Chief Executive. This is not a case where there has been a failure to consider a lesser interference.

[180] The petitioners do not seek to vindicate their property rights in isolation. In doing so, they seek to secure the site and thereby address persistent and varied public safety concerns; they seek to progress The Art Works with benefit not only for storage and display of a national collection but as part of a wider regeneration plan with social and economic benefits for the local community and wider public; and in consequence, the Lar Housing Trust development can proceed, providing affordable housing and commercial space with opportunities for community facilities and employment.

[181] While there was not significant factual dispute, it is necessary to determine the extent of anti-social behaviour at the site and public safety concerns. I have set out above the evidence on which the petitioners rely. The respondent disputes the family's involvement in anti-social or offending behaviour; attributes the claimed behaviour to others on the site; explains why the water supply has been accessed; the limited circumstances in which there

are fires; and observes that the public may not be aware that there are other occupiers of the site. He disputes the magnitude of offending behaviour attributed to the children by Police Scotland; calculates the number of incidents to be around 10; and provides context for what has taken place. While Police Inspector Russell speaks to the evidence on which he relies, it is beyond the scope of the present proceedings to make a determination of the precise level of offending. However, on the basis of the available evidence, I am satisfied that the respondent has lit fires at the site which give rise to safety concerns (albeit he perceives them as controlled or culturally appropriate); he has accessed the water supply; and some of the children's behaviour has resulted in referrals to SCRA. Such conduct gives rise to legitimate concern for police and fire services, SEPA and Scottish Water. Such conduct gives rise to legitimate concern in the immediate community.

[182] Unarguably, the orders sought will remove the family from the site which has been their home since 2024 and from which base (with the assistance of CEC) education, health and community links have been established. Alternative accommodation which would allow the family to live as Irish Travellers is not currently available. The respondent and his partner explain fully why it would be detrimental to their well-being and destructive of their identity to live in traditional or bricks and mortar housing. The size of the family precludes them living in one home (albeit they live across three caravans currently). Accordingly, they have not applied for homeless accommodation. Their position must be respected. Further, the respondent has not applied for accommodation on the authorised Travellers' site at North Cairntow. While the respondent elects not to do so as the existing Travellers are not Irish Travellers, the point becomes academic as there are currently no vacancies and unlikely to be any in the foreseeable future. On eviction, the family is likely to move to roadside or other unauthorised sites. I address the likely impact below in relation to the best interests

and views of the children and import the same reasoning into the present Article 8 proportionality assessment. Eviction will result in disruption to the family's perceived settled status, in uncertainty and may destabilise the supports recently established. The evidence of Dr Bell is that the family will be significantly impacted psychologically, in particular the respondent's mental health. The impact will not be mitigated by the immediate availability of alternative accommodation. However, it cannot be ignored that the family is presently homeless, occupying the site on a temporary and unauthorised basis and with no services. The site is inappropriate for the family. CEC officers have engaged with the family not only in relation to health and education services but to provide homelessness support. I prefer the evidence of Gordon Thomson (the Travelling Site Manager and Roadside Encampment Liaison Officer with CEC) to that of the respondent as to the duration and frequency of contact with the family. Mr Thomson details when contact first occurred and provides detail of specific instances. In the EQIA Record (6/17/13), the dates of the site visits are listed. In fairness, the respondent acknowledges that there has been some contact in his supplementary affidavit. On eviction, CEC will be obliged to offer homelessness support and accommodation in terms of the 1987 Act. In terms of CEC's Home to School Transport policy, free transport may be available to maintain the children at their schools. CEC's Chief Executive has specifically expressed commitment to finding an optimal location, recognising regulatory and other constraints; and "urgently to try to find a temporary or longer term solution". In her evidence, Alys Mumford not only advocates for Travellers and pushes for more creative thinking, she provides a balanced insight that CEC's focus may have been on a new site to provide permanent accommodation for the family rather than a short-term solution in the event of eviction. It will be open to the respondent to seek review of any decisions by CEC in relation to its homelessness duties and ultimately

he may seek judicial review. Article 8 does not oblige contracting states to make available an adequate number of suitably equipped sites: *Chapman* above at paragraphs 96 and 98.

[183] In these circumstances, I conclude that there is no less intrusive measure than eviction and that the importance and urgency of the petitioners' objectives outweigh the severity of the effect of the eviction. As observed by Lord Reed in *Bank Mellat* above at paragraphs 70, inherent in the Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. I conclude that such a balance favours recovery in the general interests of the community and, in particular, in light of CEC's continuing obligations and provision of key support services to the family. In these circumstances, the interference with the respondent's Article 8 rights is proportionate.

Article 14

[184] The respondent submits that while itinerant workers may also be evicted from the site, those individuals will be offered culturally suitable accommodation. Eviction will not directly impact their ability to maintain their cultural identity in terms of Article 8. The respondent will be treated differently from others in a relevantly similar situation as a result of his identity as an Irish Traveller and the shortage of suitable accommodation, contrary to the petitioners' own guidance. An order for eviction would contravene the respondent's Article 14 rights, read in conjunction with Article 8.

[185] It is not suggested that the petitioners seek to remove the family because of their ethnic or racial group, proceedings having been raised against all occupants who live in caravans or chalets, without any right or entitlement. The issue is one of unequal effect. I agree with the petitioners' submission that there is no evidence either as to the identity of

the other occupants or the likely effect on them. The only evidence is that some of the other occupants have engaged with homeless services. As such, there is no evidential basis to submit that the family has been discriminated against by the petitioners under Article 14.

UNCRC

[186] Section 6(1) of the 2024 Act provides that it is unlawful for a public authority to act, or fail to act, in connection with a relevant function in a way which is incompatible with the UNCRC requirements. It is accepted that the petitioners and the court are exercising a relevant function. Submissions ultimately focused on Articles 3, 8, 12, 16 and 27. The respondent commended the written submission of the SHRC. Although I address the Articles identified, I have had regard to the SHRC submission in full, in particular in respect of the interdependence between Articles and the wider interpretative context.

Children's views

[187] Article 12 provides:

- "1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

[188] I have set out fully the children's views as expressed to the curator, to the independent social worker and to the psychologist. Their views are unanimous about wanting to remain at the site; the importance of their Travellers' culture and lifestyle; the importance of close family; their sense of acceptance and belonging in the Granton

community; and their upset and fear at the prospect of eviction. Some speak to racial slurs directed towards them but that such behaviour has been encountered wherever they have lived. Equally, their views are near unanimous that they struggle with the lack of toilet and shower facilities at the site. Understandably, several of the children find the arrangements upsetting.

Children's best interests

[189] Article 3 of the UNCRC provides:

- "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

[190] The children's views are an essential element in my assessment of what is in their best interests. I am in no doubt of the strength and importance of their views and, as conveyed by the curator, that they are genuinely held. I take their views seriously. I acknowledge that while loyal to their family and Travellers' way of life, they have felt marginalised before coming to the present site. In Granton, they have formed friendships, gained a sense of belonging, joined clubs and for the older children have the prospect of starting secondary school.

[191] However, there is a tension between the children's wish to remain at the site and their upset at the lack of facilities. There is a tension between the children's views and how their interests are best served. The children do not have access to basic sanitation. Their

current living arrangements give rise to concerns for their safety as they live on an insecure site, occupied by an itinerant community, and they require to go outside for the toilet at night. The evidence speaks to some hostility (as well as support) from the community towards the family. On any view, the family's tenure at the site will be limited and they will require to move either in the short term to a temporary location or in the medium term to appropriate accommodation once identified. The respondent's evidence is that the family is willing to move to a new site. It is likely that a move to appropriate accommodation will result in some relocation even if within Edinburgh. The family has had the support of specialist officers of CEC to address the family's needs and that will continue. CEC is under a duty to provide such support and to provide home to school transport in exceptional and special circumstances. While any relocation will cause disruption to the children's lives, the court can be assured that the family will be assisted by CEC to meet the children's education and health needs. The respondent speaks to the importance of the children's links to Granton Boxing Club. In fulfilment of their parental responsibilities, it is reasonable to expect that the respondent and his partner will do their best to maintain the connection.

[192] Ultimately, I cannot conclude that remaining at the site is consistent with the children's best interests. The independent social worker describes the situation as intolerable. It is in the children's best interests to live in accommodation with suitable facilities and which is appropriate for the family's status as Irish Travellers. It is in their best interests for appropriate accommodation to be identified as quickly as possible. That is consistent with the evidence of the independent social worker and psychologist. However, the current absence of such accommodation does not elevate the present site into one which is appropriate for the family and which serves the children's best interests. Further, weighing the children's best interests in the balance with the aims of the wider regeneration

of the Granton area including community facilities, affordable housing and social and economic benefits in the circumstances of unauthorised occupation by the family, a fair balance favours the greater community interest.

Article 8

[193] Article 8 provides:

“1. States Parties undertake to respect the right of the child to preserve his or her identity, including name and family relations as recognized by law without unlawful interference”

[194] Article 30 provides that:

“In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language”.

[195] The respondent submits that if evicted from the site, the children may be forced to abandon an integral part of their identity as Irish Travellers. The petitioners respond that Article 8 does not make it unlawful for the proprietor of land to recover possession. CEC will continue to owe duties to the family following upon eviction and in terms of guidance issued by the petitioners. I agree that in such circumstances that there is no unlawful interference. Further, the evidence demonstrates respect for the family’s desire to preserve their identity as Irish Travellers and their decision not to seek traditional accommodation. It demonstrates the provision of specialist support to address any specific needs.

Article 16

[196] Article 16 provides:

“1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.”

[197] In the circumstances of the present proceedings in which an order is sought for recovery of possession of the site, it cannot be said that any interference with the children’s rights under Article 16 would be arbitrary or unlawful. The Upper Tribunal determined in *Edinburgh Council v SP* above at [34] that any interference could be justified in terms of a proportionality assessment as under Article 8 of the ECHR. Such an assessment has been undertaken in these proceedings.

Article 27

[198] Article 27 provides:

- “1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”

[199] The petitioners submit that the primary obligation is placed upon the children’s parents in accordance with Article 27(2) and in the case of need the state requires to take appropriate measures to assist parents. The grant of orders will not change the primary obligation nor interfere with the obligation of the state to support the children wherever

located. Such state support will continue to be provided through homelessness support by CEC.

[200] In its submission, SHRC emphasises through the Committee on the Rights of the Child General Comment 21 (2017) at paragraph 51 that:

“Children, including those living in informal or illegal housing, should not be subject to forced evictions prior to the provision of adequate alternative accommodation: States are required to make appropriate provisions for affected children. Child and human rights impact assessments should be a prerequisite for development and infrastructure projects to minimize the negative impacts of displacement. “

[201] Further, the court should have regard to the Committee’s Concluding Observations to the UK (2023) at paragraph 46(c) that the state party should:

“(c) Ensure that the best interests of the child are given primary consideration in all eviction matters, that evictions are not targeted at families belonging to minority groups and that any evictions are always subject to adequate alternatives”.

[202] The respondent does not suggest that there is a positive obligation upon the state (which would be contrary to *Chapman* above at paragraph 98) but places emphasis on the need for adequate and culturally appropriate alternative accommodation in the context of eviction. An order for eviction should not be pronounced until the court is satisfied that the family has been provided with adequate accommodation. In the context of Article 27, even greater weight has to be given to alternative adequate accommodation than in an Article 8 ECHR proportionality assessment. The petitioners are submitted to be wrong to frame the obligation as one which rests only on CEC as the local authority. The obligation under Article 27(3) rests on public bodies including the petitioners. That is submitted to be especially so in the context of the petitioners seeking to recover their own land. While I understand the force of the respondent’s submission, to agree with the submission would displace the local authority’s statutory obligations and arguably undermine its function. Further, in so far as the submission anticipates any orders being postponed pending

alternative accommodation being identified, for the reasons set out above any delay would not be proportionate. The respondent submits that the petitioners failed to ascertain the children's views; and did not make suitable and sufficient enquiries to enable it to take the children's interests into account. In raising and then insisting on the present proceedings, the petitioners failed to discharge its Article 3 and Article 12 obligations and thereby acted unlawfully. An *ex post facto* ascertaining of those views is submitted not to be in accordance with the 2024 Act and is therefore unlawful. The petitioners rely upon the CRWIA and input from CEC's specialist officers. That input was in general terms and related to the family's needs and the assistance provided. It was not specific to the children's views.

While there may be criticism of the CRWIA, it is artificial to suggest that the children's views are not available to and addressed by the petitioners in the proceedings. Importantly, they are available to the court and form an essential part of the court's assessment of the children's best interests and how those interests are weighed in the balance. If I am incorrect, any breach would not warrant refusal of the orders at this time in exercise of the court's discretion under section 8(1) of the 2024 Act.

[203] Having then regard to the children's rights under the UNCRC, I conclude that there is no less intrusive measure than eviction and that the importance and urgency of the petitioners' objectives outweigh the severity of the effect of the eviction.

Public Sector Equality Duty ("PSED")

[204] The respondent submits that the petitioners have failed to have due regard to their PSED although did not develop the submission beyond reference to *Bracking* above at paragraph 26. The petitioners submit that preparation of the EQIA demonstrates that they have had due regard to the duty.

[205] The PSED does not import a duty to achieve a result but only a duty to have regard to the need to achieve the identified goals: *Hotak* above at paragraph 74. The court simply has to be satisfied that there has been a rigorous consideration of the duty. Provided that there has been a proper and conscientious focus on the statutory criteria, the court cannot interfere simply because it would have given greater weight to the equality implications of the decision: *Hotak* at paragraph 75.

[206] The petitioners completed an EQIA for the decision to seek orders for the eviction. They had regard to the family's status as Irish Travellers and through the CRWIA considered the needs and interests of the children. The EQIA also identified relevant countervailing factors, including the promotion of public health, safety and community cohesion, and the positive public benefits to be delivered through The Art Works project. In these circumstances, I am not persuaded that the petitioners failed to have due regard to the need to achieve the goals identified in section 149 of the 2010 Act.

Decision

[207] For the foregoing reasons, I shall grant the prayer of the petition and (i) pronounce an order under section 46 of the Court of Session Act 1988 ordering the persons unknown presently residing in caravans and associated vehicles on those parts of the property marked by a blue box and a red box on the plan accompanying this petition (6/5 of process) without the permission of the petitioners to remove themselves, their caravans and all other goods and gear from the said property at Waterfront Avenue, Granton, Edinburgh and to leave the same void and redd, that the petitioners may be restored to possession of the same, with immediate effect; and further to grant warrant to messengers-at-arms to remove the said persons and their said property from the said heritable property; and to grant warrant to

open lockfast places for that purpose; and (ii) to interdict the said persons from entering the property at Waterfront Avenue, Granton Edinburgh.

[208] I reserve expenses meantime.