



Neutral Citation Number: [2024] EWHC 3020 (KB)

Case No: KB-2022-003497

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/11/2024

**Before :**

**HIS HONOUR JUDGE AUERBACH**  
**(Sitting as a Judge of the High Court)**

-----  
**Between :**

**HART DISTRICT COUNCIL**  
**- and -**  
**HELEN FREEMAN**  
**MATTHEW SILVESTER**

**Claimant**

**Defendants**

-----  
**Robin Green** (instructed by **Hart District Council Legal Services**) for the **Claimant**  
**Mark Lorrell** (instructed by **Karen Todner Ltd**) for the **First Defendant**  
**Ulick Staunton** (instructed by **GSG Law**) for the **Second Defendant**

Hearing dates: 11 – 15 November 2024  
-----

**JUDGMENT**

**HIS HONOUR JUDGE AUERBACH:**

1. I have heard the application of the claimant in this action, Hart District Council, to commit the two defendants for contempt. They are alleged to have broken an injunction order made in this action in October 2022. To avoid any risk of confusion, when referring to either of the defendants, Helen Freeman and Matthew Silvester, individually, rather than as a pair, I will use their names. The application is contested by both defendants. There is a formal reply from Mr Silvester's solicitors of 22 July 2024.

2. The relevant background of which I am sure is this.
3. The defendants are both personal and business partners. They trade through an LLP as the Woodland Pig Company. They breed, rear and produce free range Saddleback pigs, primarily for pork. They sell their produce online and at local markets, and offer catering at local community and private events. They started the business in around 2020 and have steadily grown it since then.
4. The defendants' first child was born in January 2022. In July 2022, the defendants bought agricultural land lying to the east of Pickaxe Lane, South Warnborough, Hampshire, which they have called Hares Farm. The overall parcel that they bought consists of two adjacent plots with two titles at HM Land Registry. I will call these plot 1 and plot 2. The western edge of plot 1 is Pickaxe Lane. Plot 2 lies to the east of plot 1.
5. The land comprising Hares Farm benefits from permitted use as agricultural land. There is no dispute that there was, and is presently, no planning permission for residential occupation of any part of Hares Farm.
6. In August 2022 the landlord of the accommodation in which the defendants were then living gave notice to quit, with effect on 1 November. In September, they purchased a twin-unit caravan and brought it on to Hares Farm. The adjective "twin-unit" denotes that it was assembled from two units, but, once assembled, it is a single structure. It has a pitched roof and resembles a lodge and has sometimes been described in these proceedings as "the lodge." Mr Silvester, in his evidence, calls it "the Unit." I will refer to it as the twin-unit caravan, to distinguish it from a touring caravan to which I will later refer.
7. After installing the twin-unit caravan on a prepared standing, the defendants refurbished it, linked it to water and electricity supplies and drainage, and put up a TV aerial. It has a fitted kitchen, bedroom, bathroom, living room and other space. A gravel drive was created, which led to the twin-unit caravan from the entrance on Pickaxe Lane.
8. On 20 September 2022 the defendants emailed the claimant, which is the relevant planning authority, that they "have temporarily been forced into moving on to our farm in a twin static lodge." They wrote that they would work with their planning consultant immediately to submit a planning application.
9. On 10 October 2022 employees of the claimant paid a site visit and met the defendants. At the time, the twin-unit caravan was on site and being refurbished. On or around 15 or 16 October the defendants moved into it.
10. On or around 17 October the claimant began this claim under CPR part 8. The claim form identified that it sought an injunction pursuant to section 187B Town and Country Planning Act 1990 "to prevent an apprehended breach of planning control for residential use or for the stationing of caravans for human habitation on land south of Beechcroft, Pickaxe Lane, South Warnborough, Hook, RG29 1SD."
11. On 19 October 2022 the claimant obtained an interim injunction without notice. There was a further hearing on the return date of 24 October 2022, before Anthony Metzger QC (as then styled) sitting as a Deputy Judge of the High Court. At that hearing, the judge granted the injunction to which the present application relates.
12. The operative part of the order defines "the Land" as "land accessed off the eastern side of Pickaxe Lane, South Warnborough ('the Land'), as more particularly shown on the first plan attached to this Order, edged and cross-hatched purple." The attached plan shows Pickaxe Lane running roughly north to south, and the land edged and cross-hatched purple in

the shape of a trapezoid, with its western edge running along the eastern side of Pickaxe Lane. That western edge runs roughly north to south. The longer northern and southern edges run roughly parallel to each other and roughly from west to east. The eastern edge is set on a diagonal, so that its northern end is appreciably further east than its southern end.

13. This definition and plan of the Land in the injunction correspond to plot 1. Plot 2, as I have noted, lies to the east of plot 1, with what I have described as the diagonal eastern edge of plot 1 being the western edge of plot 2. However, where this boundary lies is not apparent, physically, on the ground.

14. The operative part of the injunction included the following at paragraphs 2, 3 and 5:

“2. The Defendants shall cease residential occupation of the twin-unit caravan and any other structures on the Land by 4pm on 31 October 2022.

3. From 4pm on 31 October 2022 the Defendants are prohibited (whether by themselves, their servants or agents) from:

a) Residentially occupying the twin-unit caravan, shipping containers or other structures on the Land;

b) Bringing any other residential caravans, mobile homes or other structures capable of human habitation on to the Land;

c) Carrying out any works of development on the Land for the purpose of facilitating the residential use of the Land;

d) Taking up, or allowing any other person to take up, residential occupation of the Land.

... ..

5. Nothing in this Order shall prevent the Defendants from using the land for a purpose which has planning permission; or causing any operational development to take place for which there is planning permission.”

15. Following the grant of the injunction, the defendants moved to a hotel and then to a property owned by Mr Silvester’s uncle.

16. In December 2022 the claimant issued an enforcement notice in respect of what I have called plot 1, citing “unauthorised change of use from agriculture to mixed use” by way of, among other things, the siting of the twin-unit caravan. In February 2023 the defendants appealed that notice.

17. Also during February 2023 the defendants brought pigs on to the farm for the purposes of their business. The pigs are bred on the farm but graze on other farmland nearby. As of July 2024, according to Ms Freeman’s evidence, which I accept, the business has 35 sows, two boars and hundreds of other pigs. They now produce around 500 pigs a year.

18. On 12 April 2023, as they had to leave the property owned by Mr Silvester’s uncle, the defendants went to live with his mother and stepfather, but they too could only accommodate them for a limited period.

19. On 19 April 2023 the defendants applied to vary the terms of the injunction so as to permit them to live in the twin-unit caravan pending the outcome of their appeal against the enforcement order. The application to vary was heard by Farbey J on 9 May 2023. By an order sealed on 26 May 2023 she refused that application. Her reasoned judgment was handed down that day. Farbey J summarised the basis on which the application was advanced in the following way at paragraph 25:

“The defendants say that, from a personal perspective, they need to live on the land as they have nowhere else to live. There are also agricultural and business reasons for wanting to live on the land: they need to stay up all night when their pigs give birth, which happens all year round. They say that some piglets have died because they have not been on site.”

20. Further on in her decision, Farbey J concluded that the defendants had failed to demonstrate that they were unable to afford to live in rental accommodation, or were imminently homeless. Directing herself in accordance with well-established authority, she refused to step into the shoes of the planning inspector. She considered that the mere exercise of a right of appeal from the enforcement notice also was not a material change of circumstances. In any event, she considered, for reasons that she set out, that the balance of convenience fell in favour of the injunction being maintained, and so the application to vary was refused.

21. On a date, which I accept in light of Ms Freeman’s evidence was between late May and 7 June 2023, the defendants brought a touring caravan on to plot 2, near its far north-eastern corner. The claimant, once it became aware of this, considered this also to be a planning breach.

22. On 12 July 2023 the first enforcement notice was withdrawn and a new enforcement notice was issued on 13 July in respect of both plot 1 and plot 2. On 13 July 2023 the defendants then moved the touring caravan off plot 2 to a caravan site, about four and a half miles away, called Keepers Lodge. They also appealed against the new enforcement notice.

23. Following a visit by the claimant’s employees to the farm on 14 March 2024, and further correspondence, on 13 May 2024 the claimant applied to commit the defendants for breach of the October 2022 injunction, pursuant to CPR 81. Specifically, they are alleged to have breached paragraphs 3(a) and 3(d). At paragraph 12 of the application, it is alleged that the defendants “have on numerous occasions since 31 October 2022 residentially occupied the twin-unit caravan, including on the following dates.” There follows a list of dated periods, the earliest being 21 to 23 May 2023 and the latest being 25 to 26 March 2024.

24. By order sealed on 29 July 2024 HH Judge Picton, sitting as a judge of the High Court, directed that the application be heard over three days from 12 November 2024. It has now been heard by me this week. The claimant has been represented by Mr Green of counsel, Mark Lorrell of counsel has appeared for Ms Freeman, and Ulick Staunton of counsel for Mr Silvester. Evidence and submissions were completed by lunchtime on day 3 and I am giving my present decision on the afternoon of what is now day 4.

25. It was confirmed at the start that there is no issue that the defendants were properly served with the injunction. As this is a contempt application, and although they are both professionally advised and had already put in affidavits, I reminded both defendants at the start of the right to choose whether or not to give evidence, and the right not to say anything which might self-incriminate.

26. I must first decide whether either or both of the defendants were in breach in any of the time periods particularised in the application. Mr Green accepted that I should treat that list of dates as exhaustive. If so, I must decide upon the sanction. My present decision is concerned solely with the question of breach.

27. There was no dispute before me, and I remind myself, that as this is an application to commit, the onus is on the claimant to show that each of the defendants has broken the injunction on one or more of the alleged occasions, and to do so to the criminal standard. It has to make me sure of that. While the burden of proof lies on the claimant, and the defendants put it to proof, they have also advanced a positive factual case in response, and each of them has given evidence. They have also raised issues as to the interpretation and scope of the injunction. I will now give an overview of these areas of dispute.

28. First, while the defendants admit to having made frequent use of the twin-unit caravan during the relevant periods, they say that such use has, at all times, been solely for the purposes of, or ancillary to, their business. In particular, they say that arises because of the need for human engagement with the pigs before, during and after farrowing, which they say can occur at any time, but very often in the middle of the night. They also say that the twin-unit caravan is used as an office for the running of the business.

29. The defendants say that in 2023, after leaving the home of Mr Silvester's mother and stepfather, they moved into the touring caravan, which, as I have described, was initially sited on plot 2. The siting of the touring caravan there was not, as such, a breach of the injunction. They also say that from 14 July 2023 they and their family continued to live in the touring caravan at Keepers Lodge throughout and beyond the period covered by this application.

30. This first area of dispute gives rise to a number of sub-issues. First, what use in the relevant periods covered by this application have the defendants in fact been making of the twin-unit caravan? Secondly, in light of that factual position, has there been what amounts to residential occupation of it, in the sense meant by this injunction, during one or more of those periods? Thirdly, if any residential occupation was only for the purposes of, or ancillary to, the business, is that covered by the permitted agricultural use and hence, by virtue of paragraph 5 of the injunction, not a breach?

31. The second area of dispute arises from the fact, not in dispute as such, that it transpires that the precise physical location of the twin unit caravan has at all times straddled the boundary between plot 1 and plot 2. It is rectangular in footprint and stands oriented roughly in a north-south line. Its footprint straddles what I have referred to as the diagonal common boundary, and so it is situated partly on the land to which the injunction pertains, and partly not. The defendants contend that on a correct construction, the injunction only bites in respect of that part of the twin-unit caravan which lies within plot 1. It is convenient to start with this point.

32. It is well established that an injunction should be expressed in terms which are clear, so that the person who is bound by it knows with certainty what they must or must not do. Orders that have penal consequences are accordingly to be strictly construed. See: *JSC BTA Bank v Ablyazov* [2015] UKSC 64, [2015] WLR 4754 at [19]. A party seeking to commit cannot rely upon a provision which is ambiguous or open to reasonable dispute as to its meaning, on the basis that their preferred interpretation is a possible one. See, for a recent discussion of this ambiguity principle, *ADM International SARL v Grain House International SA* [2024] EWCA Civ 33, [2024] 1 WLR 3262 at [73] to [80].

33. It was not disputed before me that the words of an injunction order must be construed as to their objective and ordinary meaning in the relevant context known to all concerned at the time when the order was made.

34. Turning then to the present case, Mr Staunton contended that the words used in paragraph 3(a) referred to residentially occupying the twin unit caravan “on the Land” and not “on the Land or the adjacent property of the defendants,” nor “partially on the Land.” He submitted that the words used objectively referred *only* to the part of the twin unit caravan that was actually on plot 1; the claimant could not rely on additional words that were not there. Alternatively, he submitted that the words were ambiguous and the claimant could not rely upon the interpretation of them that it contended was more favourable to it.

35. I do not accept this argument. I consider that the relevant wording of the injunction was clear and unambiguous. The plain purpose of paragraphs 2 and 3(a) referring to a twin-unit caravan was to refer to the particular structure that the defendants were, at that point, living in, and to require them to stop living in it by the given deadline and not thereafter to start living in it again.

36. There was only one twin-unit caravan at Hares Farm. It was the one the defendants had put there. Objectively, in the context of what was known to all concerned, including the defendants, there was no ambiguity as to what the injunction required of them. I do not think that the use of the words “on the Land” alters that. Those words confirm, albeit perhaps that such confirmation was not really needed, that it was indeed the twin-unit caravan that the defendants were currently living in that was being referred to, as opposed, perhaps, to some other twin-unit caravan. These words do not affect the fact that the prohibition itself is plainly on residentially occupying that caravan, not on residentially occupying only some part of it. The objective meaning of the order was not that it bit only on the part of the twin-unit caravan on the Land. There is nothing at all in the words of the order to suggest to the objective reader that this was intended or meant. There was also nothing in the context to suggest that the purpose of the injunction was, or might have been, for some reason, to stop the defendants from living in only part of the twin-unit caravan, but not the whole of it.

37. The fact that it later transpired that the twin-unit caravan was both on the Land, or what I call plot 1, *and* on plot 2, does not alter this. It cannot change or render ambiguous the meaning of the injunction when it was granted. The words “on the Land” still simply served to confirm which twin-unit caravan it meant. The fact of the siting of the caravan on both plots 1 and 2 also does not, in context, render false the statement that the twin-unit caravan was “on the Land”.

38. In short, I am satisfied and sure that the relevant wording of the injunction was such that it objectively, clearly and unambiguously, conveyed to the defendants what, in this regard, they were required to do and not to do.

39. I turn next to the concept of residentially occupying. Like a lot of concepts, it cannot be defined by reference to a definitive list of hallmark activities which are either necessary or sufficient for the definition to be fulfilled. But it is important to note, as a starting point, that it was not contended for the defendants, that the phrase “residentially occupy” as such is inherently ambiguous or uncertain, such that its use in the injunction inherently offended the certainty principle.

40. Mr Lorrell made a different submission, although not with great vigour. This was that when the injunction was granted there were no pigs on the land and the defendants were undoubtedly residentially occupying the twin unit caravan; but after the pigs were introduced there began to be some uncertainty as to what use of the twin-unit caravan, which, on his client’s case, was for the purposes of the business, might be viewed as amounting to residential occupation. However, at the same time as making this submission, he at once acknowledged that, if so, it would have been open to the defendants to seek a variation to define specifically what particular uses or activities were or were not permitted, but they did

not do that. Instead, as I have recorded, they sought, unsuccessfully, simply to have the order varied to permit residential occupation of the twin-unit caravan.

41. Mr Lorrell, however, also had another and different argument. This had, as its twin starting points, the fact that agricultural use of the Land is permitted, and that paragraph 5 of the injunction indicates that it does not prevent the defendants from using the Land for a purpose for which there is planning permission, which would include any generally permitted purpose that does not therefore require specific permission to be granted. Mr Lorrell submitted that the permitted agricultural use must embrace any activity for the purposes of, or ancillary to, the defendants' agricultural business, including anything that might also be said otherwise to be indicative of residential occupation. The defendants' case was that all of their activities in the twin-unit caravan were for the purposes of the business. So, he submitted, I could not be sure that they had engaged in any unconnected activities, and this was, on this reasoning, a complete answer to the application.

42. I do not accept that analysis. I agree with Mr Green that the defendants' factual case amounts, in short, to the proposition that the twin-unit caravan was an agricultural dwelling. But the permitted planning use of agricultural use does not extend to permission for an agricultural dwelling. Specific permission would be required for that. There was, and is, none. Even if I were to accept that the defendants only used the twin-unit caravan for reasonable or even necessary purposes of their business, if what that activity also amounted to was residential occupation, then the permitted agricultural use would not cover it, and paragraph 5 of the injunction would be of no assistance to them.

43. In *Isbilen v Turk* [2024] EWCA Civ 568, there is discussion at paragraphs [36] to [48] of the necessary ingredients of a breach of an injunction. In particular at paragraph [39] reference is made to *Masri v Consolidated Contractors International Co SAL* [2011] EWHC 1024 at [150] where it is identified that to establish that someone is in contempt it is necessary to show (1) that he knew the terms of the order, (2) that he acted or failed to act in a manner which involved a breach of the order, and (3) that he knew of the facts which made his conduct a breach. It is not necessary, in addition, for it to be the case that the individual knew that what they were doing amounted to a breach of the order, though that may be highly relevant to sanction.

44. In this case, there is no dispute that both defendants knew of the order and, to the extent that it factually occurred, they both knew of the conduct relied upon as amounting to a breach. There was no suggestion, for example, that one of them did anything as alleged alone, of which the other was ignorant. I note also that the effect of paragraph 3(d) of this injunction in this case would be that each would be co-liable for any breach on the part of the other, which they knew of and suffered to occur.

45. The substantive issue, therefore, for me is whether each or both of them factually did what is alleged, and whether, if so, that in fact and law amounted to a breach or breaches of the injunction. I turn then to the evidence and my findings of fact.

46. For all of the witnesses before me, evidence in chief took the form of one or more affidavits with exhibits. All of them gave oral evidence and were cross-examined. For the claimant, Sharon Whittaker, one of its planning enforcement officers, gave evidence first. Her material affidavits were dated 18 July and 6 November 2024. She was followed by Justin Wilson and then Lisa Wilson, each of whom had sworn an affidavit in April 2024. They live in a property on the eastern side of Pickaxe Lane, called Westview, which is on a plot adjacent and to the south of Hares Farm. They were followed by Dawn Powell whose affidavit was dated 22 April 2024. Until 5 October 2023 she lived in a property on the eastern side of Pickaxe Lane, called Beechcroft, which is on a plot adjacent and to the north of Hares Farm. The claimant's final witness was Simon Lowndes who has lived at

Beechcroft since October 2023 and whose affidavit was sworn in April 2024. For the defendants, Mr Silvester gave evidence first. He swore his affidavit on 23 July 2024. Ms Freeman then gave evidence. She had sworn two affidavits, on 22 and 26 July 2024.

47. A brief overview and flavour of the witness evidence is as follows. Sharon Whittaker referred to the steps that the claimant took to issue the second enforcement notice after being alerted to the touring caravan having been brought on to the farm. She also referred to a visit that she made with a colleague, Ms Goldberg, on 14 March 2024, and her colleague's note of the visit, including conversations with the defendants. She also referred to having visited Keepers Lodge with someone from East Hampshire District Council on 16 July 2024 when they were able to inspect the touring caravan in situ, including looking and photographing inside, as it was unlocked. The burden of her evidence is that it did not appear at the time to be in residential use.

48. Justin Wilson stated that the defendants' land can be seen from the upstairs windows of Westview, in close proximity and line of sight. He did not depose to observations on particular dates, but said that the defendants appear to spend the majority of their time at the property, in particular in the twin-unit caravan, including staying overnight. He said that he had seen them entering and leaving it with their children. He had observed regular bin collections and Royal Mail and Amazon deliveries. He had seen them feed and move the pigs, but only, he said, for a small fraction of the time they were present on site, and that he had not observed any such activity overnight. He had observed them park vehicles and go into the twin-unit caravan with the vehicles not being moved until the next day. He had seen a notice posted up of a broadband connection application and a 4G or wi-fi antenna.

49. Lisa Wilson said that she cares for her three children, who are all of school age, and keeps the house. She does the school run, but spends the majority of her time at home. She says that Westview has a clear view of the defendants' land from the upstairs windows. She refers to having recorded her observations of their comings and goings in written notes and photos taken on her phone. She did this because she believed that the defendants were not complying with the injunction, of the existence of which she was aware, and to assist the claimant.

50. Mrs Wilson exhibited a summary of her observations and a table with dates, and in some cases times, with a narrative commentary for each entry, and in some cases photographs. She relied, in summary, on what she said she had observed of the defendants' comings and goings with their child or children, lights being on at the lodge, and vehicles being seen parked at night and then observed in the same position in the morning, and sometimes with overnight frost and condensation. She recorded other observations, such as steam coming from the boiler pipe and the bins being put out regularly. She said she could hear if vehicles were coming and going because it is a very quiet locality. The entrance from Pickaxe Lane is over a cattle grid, the drive is gravelled and the geese that were brought on to the land at a certain point will also react noisily to the arrival of a car. She says that she has not observed any farming activity during the night.

51. Dawn Powell stated that Beechcroft lies approximately 40 metres north of the defendants' land with windows along the whole length overlooking it. The bulk of her statement was a summary of events by date, which she said had been drawn from contemporaneous emails, texts, WhatsApp messages, photographs and associated time stamps. It covered the period 18 February 2022 to 5 October 2023, when she moved out of Beechcroft. She too compiled her log in order to assist the claimant. She too relied on sightings of comings and goings, vehicles apparently remaining in situ overnight, and lights and TV flicker being visible. She too said that she had not observed any farming activity during the night.



52. Simon Lowndes also compiled a log of observations, having been made aware of the injunction and in order to assist the claimant. His log only covered some dates in February 2024 and only recorded times when lights were observed to be on.

53. The most detailed evidence from these neighbours was that of Mrs Wilson. In respect of some dates, it was supported by the evidence of Ms Powell. While both of them clearly and frankly strongly object to what they believe are breaches of the injunction and specifically compiled their logs to assist the claimant, and it was put to them both that they had exaggerated their evidence, I accept that the logs of both of them are accurate logs of what they saw or heard on the dates and/or times that they recorded. Whilst they also both included some commentary, what inferences to draw from the facts recorded by them is a matter for me.

54. Mr Silvester's reply to the application accepts that the defendants "may" have been at the twin-unit caravan during every period cited in the committal application, but he says that this was, in all cases, for the purposes of the business. The reply also asserts that during every such period, the defendants only used the part of the twin-unit caravan on the land to the east of what I have called plot 1.

55. The burden of the evidence of both of the defendants was indeed that all of their activities at the twin-unit caravan were for the purposes of the business. In particular, farrowing typically occurs at night and involves sometimes long periods of human interaction and supervision of the pigs before, during and after. That might necessitate resting up at the twin-unit caravan overnight. They also described a packed calendar of farmer's market or other local events which often call for an early start, with produce or other materials being loaded up at the twin-unit caravan early in the morning and then returned later at night. Sometimes they would be cooking and preparing produce for such an event at the twin-unit caravan overnight. The twin-unit caravan was also a place to have something to eat when coming in from the field, or to shower. It was also the office from which all of the administrative work was done.

56. Mr Silvester refers in his affidavit of July 2024 to the twin-unit caravan enabling "Helen, the children and me to rest and prepare food and drinks and have bathing and toilet facilities." He says that when they cannot secure childcare during farming hours and farrowing "we have our children with us." He says that "Helen works from the lodge daily, managing many aspects of the administration, accounting and bookings, as well as being a full-time mum." Mr Silvester says in his affidavit that, when able, their parents babysit and take the kids out. "They often collect the grandchildren from Hares Farm as it is closer to them than Keepers Lodge." He says that the children "are with us on a daily basis" when they are working. He says: "Working hours are not predictable. In between and during farrowing, we often eat in between our breaks. Finding a used nappy would not be something out of the ordinary, it is a family working farm."

57. The defendants say that their home, after the injunction was granted, was first with relatives and then the touring caravan when located on plot 2, and thereafter, in the relevant period, the touring caravan when located at Keepers Lodge. They say that, except when they, or one of them, had to overnight at the twin-unit caravan for work, they returned to the touring caravan to sleep at night. They also say that the neighbours have made assumptions or drawn inferences, in particular about when they have or have not overnights at the twin-unit caravan, that are often wrong. When they are not there, the lights come off and on, on timers. So does the boiler. They use a large number of vehicles, so the presence of two cars overnight does not necessarily mean that they have overnights there. Parcel deliveries are overwhelmingly of equipment and supplies for the business. Unfortunately, they cannot receive post at Keepers Lodge.

58. Ms Freeman's second affidavit also gives some specific chronological commentary about what she says the defendants were doing during most, though not all, of the periods referred to in the committal application.

59. A further point they both elaborated on in evidence is that the delicate nature of farrowing means that they will not use bright torches, and avoid making any noise, so as not to distress the pigs, and so the fact that the neighbours did not detect such activity does not mean that it did not happen. On this point, Mr Green indicated in closing argument that the claimant accepted that the defendants were attending to the sows at night whenever they said they were. But for reasons I have explained, his position was that this merely provides a reason for why, on those occasions, they were residing in the twin-unit caravan. It does not affect the fact of the activities which the claimant says amount to residence.

60. I make two observations about my general approach to the evidence and my evaluation of it. Firstly, while I have to consider whether I am sure that there has been a breach by either or both of the defendants in relation to any of the particular time periods alleged, in reaching my conclusions about that, I draw also on the overall picture painted by the evidence, both in terms of the weight of accumulated evidence and the significance of the wider context and background where it seems to me to add probative colour to the picture.

61. Secondly, I have directed myself as I would direct a jury at a criminal trial, that I must be sure; and so my conclusion should not be informed by guesswork or speculation, but I may draw common sense inferences from the primary facts.

62. I will say a word more about the concept of residential occupation. As I have said, it cannot be reduced to a list of specific hallmarks that are either necessary or sufficient in every case. But in broad terms, it connotes treating and using a place as home. Relevant indicators might well include eating, washing, sleeping, taking leisure and keeping domestic possessions there, and the more of these activities that are present, the more it looks like home. Sleeping there at night might often be a particularly strong indicator, but its absence, or absence during a certain period, may not necessarily be fatal. A property can also be residentially occupied on a temporary or short-term basis, but the degree of permanence or continuity over time may be significant, particularly where other features are temporarily absent. Ultimately, it is what emerges from the overall picture casting light on what was going on during the relevant time period that matters.

63. I turn to my factual conclusions, building on the overview I have already given of the background and chronology earlier in this decision. I will start by going back to how events unfolded from when the defendants first acquired Hares Farm.

64. First, it is clear that the twin-unit caravan was originally brought on to the farm, refurbished and fitted out in order to be the defendants' family home. They first moved into it in 2022 for that purpose, hoping that they could regularise what they knew was the irregular position by obtaining retroactive planning permission.

65. I accept that, following the grant of the injunction, the defendants made arrangements, for some months, to stay elsewhere than in the twin-unit caravan; in particular, in the properties of two relatives. They then bought the touring caravan. However, there is an issue about the extent to which they did anything more than actually sleep elsewhere, and as to the extent to which, during the periods covered by this application, they even did that.

66. In February 2023 the pigs were first brought on to the farm. On or around 12 April the defendants had to leave the uncle's property and to take up temporary accommodation in Mr Silvester's mother's home. Against that backcloth, the application to vary the injunction was made in order for them to be permitted to move back into the twin-unit caravan. That

application having failed in May 2023, and once the arrangement with Mr Silvester's mother had come to an end, it is clear that the defendants, although Farbey J did not agree, considered that they had run out of viable options in terms of renting somewhere or finding some other bricks and mortar place to live. I have no doubt that this is what prompted them to buy the touring caravan and install it in the far corner of plot 2. In light of Ms Freeman's evidence, I proceed on the basis that it was put there between the end of May and 7 June, a date when she specifically refers to it being there. What use they made of it is a different matter.

67. The first period covered by the application to commit is 21 to 23 May 2023. Mrs Wilson says that she saw lights on late and cars parked all night. Ms Freeman says they attended a festival and a market during this period and went to the twin-unit caravan early in the morning to load up and returned late at night to unload. I note that the defendants still had the use of Mr Silvester's mother's home at this point. Bearing in mind my approach to the general concept of residential occupation, and the burden and standard of proof, I conclude that I cannot overall be sure that there was what amounted to residential occupation of the twin-unit caravan during this period.

68. Having to leave Mr Silvester's mother's home, however, was a material change of circumstance. Ms Freeman asserts that they began living in the touring caravan, starting from between the end of May and early June. However, the touring caravan was just that. By comparison with the twin-unit caravan, it is very small and its facilities are very basic. On the defendants' own evidence, it had very little storage space and the family's possessions were generally kept in the twin-unit caravan. Ms Freeman said in evidence that when they slept in the touring caravan, they took what they needed from the twin-unit caravan.

69. The next period is 7 to 17 June 2023. Mrs Wilson says that she saw lights on late at night during this period. Mr Silvester's reply accepts that the defendants may have been at the twin-unit caravan during this period. Ms Freeman's evidence refers to various local events during this period, but also says that on 9, 11 and 13 June, litters of piglets were born and "we may have been at the twin-unit caravan during the night to care for the piglets."

70. Keeping in mind the burden and standard of proof, and my approach to what amounts to residential occupation, and bearing in mind that at this point they may only just recently have moved out of Mr Silvester's mother's home, and that the touring caravan was at this point in the field, I am not quite sure that what would amount to residential occupation had been fully re-established in these early days of June. On 13 July, however, the defendants had to take the touring caravan off the field and move it to Keepers Lodge, which once again was not what they had planned, and in my view was plainly a further material change of circumstances.

71. The next few periods covered by the committal application are 7 to 8, 16 to 17, 21 to 22 and 28 to 29 September, then 14 to 15 October, then 2 to 3 November, then 2 to 3, 15 to 17, 24 to 25 and 29 to 30 December. In summary, according to Mrs Wilson's evidence, in some instances supported by Ms Powell, the lights were seen on during the evenings during these periods, there was the repeated presence of the same cars at night and in the morning, and on occasions steam coming out of the boiler, all indicating to her that they were overnighing in the twin-unit caravan during these periods.

72. Mr Silvester's reply accepts that during all of these periods the defendants, or one of them, may have been at the twin-unit caravan. In oral evidence, he accepted that they did overnight there on 7 to 8 September and 16 to 17 September, but he said that this was associated with farrowing or markets. Ms Freeman refers to a number of markets and other local events coinciding with most of these dates, as well as some particular business-related Christmas activities. She says, however, that they stayed in the touring caravan during this

period, although she acknowledges two dates in November and two in December when litters were born; and when she says that they might have been, or were, at the twin-unit caravan overnight.

73. Ms Freeman said in oral evidence that the farm grew substantially in the period from summer of 2023, requiring them to put in substantially increased hours. Mr Silvester said that he worked seven days a week. They have some help, but it is limited. Both of them described how, although, on account of the young family, she has focused more on the administrative side, Ms Freeman has remained actively involved in working with the pigs as well. Her toddler loves being on the farm. She said that they live and breathe their work, and for her – living, breathing, eating, sleeping, pigs, children – it all blurs.

74. It is also clear that, at least from when they left Mr Silvester's mother's home, the twin-unit caravan became the family's hub for meals, washing, laundry and certainly the family's base of activities during the day. It was to and from there that they went about their daily business, whether farm-related or domestic. When Mr Silvester's mother came to pick up her grandchild, it was from the farm. Mr Silvester says in his affidavit that this was more convenient for her. In oral evidence, he added that it was safer. But it is still what happened.

75. I am sure from the totality of the evidence that during every one of these periods the defendants were at, and using, the twin-unit caravan, and certainly when there was farrowing, one or both of them also did stay overnight. I accept their evidence that they had an agreement permitting the siting of the touring caravan at Keepers Lodge and used that address for the purposes of Universal Credit (UC) claims. But neither the unsigned letter from the landlord of Keepers Lodge in my bundle, nor the fact of claiming UC from that address, is probative of any particular use having been made of the touring caravan. Even if, during this period in the autumn of 2023, they were, or were sometimes, returning to the caravan at Keepers Lodge at night to sleep, I am sure that they were not using it for any material activity beyond that.

76. All of that being so, as this period of the autumn of 2023 wears on, it becomes increasingly hard to maintain that they were not residentially occupying the twin unit caravan, that is to say living in it and using it as the family home, albeit whilst also making some use of the touring caravan as a place to sleep.

77. Ms Freeman, in her first affidavit, candidly stated, at [16]:

“Since we were served with committal proceedings, we have checked and realised that the living part of the lodge is not covered by the injunction so we have moved into there, being careful not to use any parts being covered by the injunction.”

78. That statement, that they had realised this point *since* the committal application was made, is consistent with the fact that where the boundary precisely lies is not visible on the ground, and the fact that no such point was raised when defending the original injunction application, nor in the application to vary heard by Farbey J. Mr Silvester, however, when asked in cross-examination when they first realised this point, said that they had spotted it from the very outset. But that was an opportunistic reply. It is contradicted by the evidence of Ms Freeman. I do not believe Mr Silvester's evidence on this point. I am sure that throughout the committal-application periods, the defendants used the twin-unit caravan when they did without it occurring to them that, as it transpires, it was partly on plot 1 and partly on plot 2. I do not accept, as the reply asserts, that throughout the period covered by this application, they were careful only to use the areas of the caravan that lay on plot 2.

79. Nevertheless, all of that said, there are appreciable gaps in the runs of dates during this period from September to December 2023. The dates during this particular period relied upon in the committal application, also between them account for, roughly, a total of 21 days out of 124. Standing back, and although I am, frankly, very close to sure of it, I cannot be quite sure that the defendants' overall presence at, and use of, the twin unit caravan during *these* months is such that they were residentially occupying it during each of these periods.

80. I turn then to 2024, and here, once again, the picture materially changes. The next few periods in the application cover, between them, almost the whole of January and February: 4 to 28 January, 1 to 3, 5 to 14, and 16 to 24 February and 27 February to 1 March. Mrs Wilson made entries in her log for almost every day during those two months. The range of her observations paints a compelling evidential picture of the family treating the twin-unit caravan as home during this period, including at least very frequent overnight stays.

81. Once again, Mr Silvester's reply accepts that the defendants may have been at the twin-unit caravan during every one of these periods. In oral evidence, he allowed that they overnights for farrowing and queried whether it would have been safe to leave at 3 am on a frosty night.

82. Ms Freeman's affidavit commentary for this period has only three specific entries for January: one where they stayed overnight with someone else who they were visiting, one when they took pigs out for filming for a TV show and had to get them settled "before we were able to leave," and one when they went to a particular event and the truck broke down. She says that lights seen on in the caravan throughout January were a wi-fi timed security light. In January Ms Freeman was in the final month of pregnancy.

83. On 4 February Ms Freeman went in to hospital. She gave birth on the 5<sup>th</sup> and stayed in until the 7<sup>th</sup>. In her affidavit, she stated that they returned to the touring caravan thereafter and, of the period 16 – 24 February, that other than visiting family and friends "I stayed in the touring caravan during this time." It was put to Ms Freeman in cross-examination, however, that photographs showed her with her toddler and newborn baby arriving at the twin unit caravan on the 7<sup>th</sup> and being there also the next day. She responded that she was working at the farm but residing at Keepers Lodge. She said that the touring caravan was her "primary residence," that she was not able to take maternity leave and had to go straight back to work, and that the twin-unit caravan was used for "agricultural welfare." This was, in my judgment, an attempt materially to retreat and depart from what she had stated in her affidavit.

84. The overall picture painted by Mrs Wilson's log for January and February, of the twin-unit caravan being used as the family's base day-in and day-out is, as I have said, compelling. As to overnights, Mr Silvester maintained that Mrs Wilson's observations of vehicles parked overnight suffered from the fatal flaw that at any one time the defendants own, or have the use of, several vehicles, and, because of where some of them were parked, whether some or all of those vehicles were present would not have been visible to Mrs Wilson. But Mrs Wilson's log for this period refers to "his car" and "her car" and to "both cars." Having read and heard her evidence, I am satisfied that she had acquired a good acquaintance with which vehicles each of them habitually used from time to time, during any given time period, for general comings and goings, even though they will also both have used other vehicles. Mrs Wilson noted that she also sometimes saw another car, the driver of which she surmised, correctly, was one of their mothers. Her log also shows that she was aware that there were other vehicles which she could sometimes see. Mr Lowndes, in his affidavit, also identified which particular cars they were each habitually using during his observation period. I conclude that the evidence from the neighbours about the cars does support the commonsense inference about the extent of the family's overnights during this period that the claimant invites me to draw.

85. The final periods are from 7 to 22 and 25 to 26 March 2024. Mrs Wilson's log covers every day of these periods. Once again, it paints a persuasive picture of daily activity based at and from the twin-unit caravan and many overnight stays. Ms Freeman's log during this period refers only to 14 March when she says a litter was born and so they stayed overnight at the twin-unit caravan.

86. There is no dispute that on 14 March 2024 Mrs Whittaker and her colleague, Ms Goldberg, paid a site visit. Ms Goldberg's note of that visit includes the following entries:

"I asked [Mr Silvester] how often he has been living on site this week. He admitted that it has been a couple of times this week."

"Mr Silvester then walked us up to the twin unit caravan and invited us in. Inside was his partner, Helen, his oldest son ... and the three-week-old baby... . The caravan was clearly occupied, the heating was on, there was evidence of the kitchen being used for making food/meals. Washing was drying in a clothes horse, toys were in the lounge and toiletries, toothbrushes, towels and a baby bath were in the bathroom."

"Given that the business is increasing, Mr Silvester advised that at peak he will need to live on site 3 days a week."

87. Although Ms Goldberg has, I understand, left the claimant and was not called as a witness before me, Mr Silvester' reply says that he admits having stayed at the twin-unit caravan on 13 March, and admits having told Ms Goldberg that this was because of farrowing, and having told her that when sows were farrowing, he might be on site for two to three days. He acknowledged in oral evidence that the passages in her note to which I have referred reflected what he said to her. His reply also accepts that the defendants, or one of them, may have been at the twin-unit caravan during the period 25 to 26 March.

88. Standing back, even if there were some nights during the period January to March 2024 when they slept in the touring caravan, I am sure, in light of the overall picture of the extent and nature of the use made of the twin-unit caravan during these months, that in each of the periods during these months identified in the committal application, there was residential occupation of the twin-unit caravan by both defendants.

89. I referred earlier to evidence given by Mrs Whittaker about her visit to Keepers Lodge in July 2024. The defendants both swore their affidavits that same month and gave their accounts of where they were living at that time, about which they were also each cross-examined before me. Whilst this period, July 2024, was some time after the last date of the periods covered by the committal application, Mr Green submitted that this evidence cast light back on what was going on during those earlier periods, or the reliability of the defendants' evidence in relation to that. Both defendants' counsel took issue with that.

90. I have placed no weight on this evidence about what was or was not going on in July 2024 and I refrain from making any findings of fact about what the position was in any period after the most recent period covered by the committal application that is before me.

91. For all of the foregoing reasons, I am sure that each of the defendants was in breach of the injunction in respect of each of the periods relied upon in this application falling in January, February and March 2024. In respect of the earlier periods the application is dismissed. Why each of the defendants did what they did, and what they did or did not understand or believe at the time about the significance of their conduct with respect to the injunction, may be further considered when determining sanction.

