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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION



No. QB-2017-007303

NEUTRAL CITATION NUMBER: [2021] EWHC 1978 (QB)

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Tuesday, 22 June 2021

Before:

MR JUSTICE LINDEN

B E T W E E N :

CHELMSFORD CITY COUNCIL

Claimant

- and -

(1) LEISURE PARKS REAL ESTATE (HOLDINGS) LIMITED

(2) JAMES ROBERT CRICKMORE

(3) COLIN CRICKMORE

(4) MAURICE SINES

(5) PERSONS UNKNOWN (being persons occupying caravans or persons causing or permitting the occupation of caravans on land adjoining Hayes Country Park, Hayes Chase,

Battlesbridge, Wickford, Essex, SS11 7QT

Defendants

MR J CANNON (instructed by Chelmsford City Council) appeared on behalf of the Claimant.

MR M RUDD (instructed by Sharpe Pritchard) appeared on behalf of the First to Fourth Defendants.

THE FIFTH DEFENDANTS did not attend and were not represented.

J U D G M E N T

**(Via Microsoft TEAMS)**

MR JUSTICE LINDEN:

### **Introduction**

- 1 By notice dated 25 February 2021, the claimant applied to commit the defendants for contempt of court, or alternatively a lesser penalty, for breach of an injunction ordered by Andrews J, as she then was, on 23 January 2017, pursuant to s.117B of the Town and Country Planning Act 1990. I will refer to Andrews J's order as "the Order."
- 2 This is the hearing of that application. Mr Josef Cannon appeared on behalf of the claimant and Mr Michael Rudd appeared for the defendants, and I am grateful to them both, and indeed to the parties, for the constructive way in which they have approached this hearing.
- 3 The claimant's application was listed to be heard on 21 April 2021 but was adjourned to allow for further evidence to be prepared. As a result of further exchanges between the parties, they have reached agreement in relation to a number of matters:
  - (a) The application against the third and fifth defendants is not pursued by the claimant and can therefore be dismissed as against them. Where I refer to "the defendants", I therefore mean the first, second and fourth defendants.
  - (b) The Order is to be varied so that it does not apply to the fifth defendants. In effect, therefore, the injunction against them is to be discharged.
  - (c) There is an agreed schedule of facts and breaches of the Order by the first, second and fourth defendants.
  - (d) The defendants have agreed to pay costs in the sum of £20,000.
  - (e) The defendants are content for me to sentence them accordingly.
- 4 In the course of today's hearing, the defendants have also given an undertaking that I will come to in due course.

### **The evidence**

- 5 With its application, the claimant submitted two affidavits made by Mr James Stubbs, the planning enforcement manager of the claimant, dated 12 February and 13 May 2021. These set out the case against the defendants. The defendants provided witness statements in two tranches:
  - a. Firstly, witness statements dated 19 April 2021 for each of the second to fourth defendants, who are all directors of the first defendant. There were also witness statements for Ms Michelle Ryder (the manager of Hayes Country Park), for Mr Clinton Wood (a building contractor), and for Mr Matthew Green of Green Planning Studio Limited.

- b. Secondly, responsive witness statements dated 25 May 2021 were served, those witness statements being made by the second defendant and Mr Green.

6 These statements contained a good deal more detail than I intend to set out in my judgment, but I read them carefully in preparing for this hearing and took them into account in coming to my decision.

### **The Hearing**

7 At the beginning of the hearing I enquired of counsel as to whether either party wished to call or cross-examine any witness and was told that neither party wished to do so. Mr Cannon then briefly summarised the case against the defendants and dealt with questions from the court. Mr Rudd then responded and made pleas in mitigation on the defendants' behalf.

### **The Background**

8 The claimant is the relevant local planning authority for present purposes. The first defendant is the owner and operator of four mobile home parks, the relevant one for present purposes being Hayes Country Park, which is on a site in Wickford in Essex. As I have indicated, the second and fourth defendants are directors of the first defendant, and they are shareholders of that company.

9 The majority of the site is licensed for 390 mobile homes. I understand that in fact there are around 307 on site and that many of the occupants of the mobile homes are elderly or vulnerable people.

10 Part of the Hayes Country Park is a strip of land which runs along its northern boundary ("the Land"). The Land is within the metropolitan greenbelt and there is no planning permission for its use. It is designated agricultural land and local and national planning policies have deemed any other use of the land to be inappropriate and harmful. The first defendant is therefore not permitted to place caravans or mobile homes or any of the infrastructure connected with such units on this area.

11 The Order was made in the context of an application by the first defendant for planning permission to use the protected area as part of the caravan site. That application was made in November 2016 after preparations for the use of the land for these purposes had already begun and had then continued despite the defendants being told that they did not have permission to do so and should desist. The aim of the Order was to prevent continuing breaches of planning control by the first defendant, pending the outcome of its application for planning permission.

12 The Order was by consent and it continued an order which had been made by Soole J on 11 January 2017. It was in these terms:

- (a) The protected area was referred to in the Order as "The Land".

(b) The Land was defined as follows, “Land known as land adjoining Hayes Farm Caravan Park, Hayes Chase, Battlesbridge, Wickford, Essex, and outlined in red on the attached plan.”

(c) Under paragraph.1 of the Order, the defendants were forbidden:

“...whether by themselves (separately or together) or by instructing or encouraging or permitting any other person, from:

a. bringing (or causing or allowing to be brought) onto the Land any mobile home, caravan or any other form of residential accommodation without the written consent of the Claimant;

b. carrying out (or causing or allowing to be carried out) any further development on the Land without leave of the Court;

until trial or further order of the court.”

(d) There was then attached to the Order a plan which marked out the protected area by use of a red line.

- 13 The first defendant’s application for planning permission was refused on 13 February 2017. This decision was appealed, and the appeal was rejected on 15 January 2018. The planning inspector cited the harm caused by the development and awarded costs against the defendants on the grounds of unreasonable behaviour.
- 14 On 18 June 2018 an enforcement notice was served, requiring the removal of mobile homes stationed on the Land as well as the associated works which had been carried out on the Land to facilitate its use as a mobile home site. That enforcement notice was appealed by the defendants, but the notice was upheld on 1 May 2019 with certain amendments and an extension of time for compliance.
- 15 On 13 May 2019, Mr Stubbs then wrote to the first defendant setting out a series of deadlines for the different stages of compliance with the enforcement notice, with the date for full restoration of the Land specified as 28 February 2020. The defendants did not comply with this timetable, and the exchanges in relation to this matter and the question of compliance with the Order continued over the course of 2020 and into 2021.
- 16 As far as compliance with the Order is concerned, unfortunately, for reasons which I need not go into in any detail, the precise boundary between the Land and the part of the mobile home site where it was permitted to station mobile homes was not as clear as the parties may have thought at the time of the Order. It is now agreed that prior to 26 June (the defendants say on 25 June) 2019, there was a meeting between Mr Stubbs and Mr Chitty of the claimant on the one hand and Mr Wood and the second and fourth defendants on the other, at which a line was painted in red on the ground which all parties believed at the time to indicate the boundary between the protected strip of land and the rest of the site.
- 17 Acting on this mistaken belief, between September 2019 and 23 December 2019, the defendants caused or permitted eleven mobile homes to be stationed wholly or partly on the

Land. I understand that these homes are generally fairly large: on most cases in the order of 45 feet by 14 feet. They are truly the homes of the residents and they require a concrete hardstanding rather than being placed on grass. They typically include a patio and, of course infrastructure is required to provide the general utilities to the occupants.

18 Connected to the eleven mobile homes, therefore, eleven hardstanding base units were also built on which to station those mobile homes. The defendants also carried out certain other works which encroached on the protected area, namely:

- “(i) Erection of close-board timber fencing, subdividing some of the Land to the north of the caravans;
- (ii) Construction of eleven hardstanding ‘base units’ (between September 2019 and mid-December 2019);
- (iii) Construction of seventeen brick-built patio platforms;
- (iv) Construction of a brick-built utility block;
- (v) Erection of a domestic shed; and
- (vi) The change of use of a part of the Land to a domestic garden, to the north of unit 201.”

I will refer to these works as “the development work.”

19 I understand from the defendants’ witness statements that the siting of the caravans and the associated works cost in the order of £700,000. It is now common ground that the stationing of the eleven mobile homes breached paragraph 1(a) of the Order and that the development work breached paragraph 1(b) of the Order. However, it is also common ground that none of these breaches was intentional when it was committed. The stationing of the eleven mobile homes wholly or partly within the protected area and the construction of the base units were the result of a mutual mistake as to where the relevant boundary was. The defendants believed that they were permitted to site the caravans where they were sited and they genuinely believed that the development work was permitted as it related to the mobile homes, which they believed were lawfully sited. In the defendants’ view the work was turning agricultural use into garden use.

20 The position changed on or shortly before 12 June 2020, however. On 10 June 2020 a survey was carried out by the claimant which identified the true boundary relative to the eleven mobile homes and associated infrastructure on the site, and it was appreciated that all eleven, together with the hardstanding base units were within or partly within the protected area and were therefore breaching the Order. At the same time, it was appreciated that, contrary to the defendants’ mistaken belief, the development work to which I have referred was not permitted development and therefore was unlawful.

21 By this time, of course, the task of unwinding the steps which had been taken was not a simple one given that a significant amount of construction had taken place and given that four of the mobile homes were occupied, with respect to them, by elderly couples and/or

individuals. However, the defendants accepted that they were in breach of the Order and set about unwinding what they had done. As to broad timing, the fencing which formed part of the developments work was removed by 24 July 2020, seven mobile home units had been removed by 30 September 2020, so just over three months after the breach was appreciated, another three units had been removed by 9 March 2021, and the final unit, that is unit 201, was removed by 10 March 2021.

- 22 The four units removed in March 2021 were the ones which had been occupied. I am told and I accept that the removal of the development work followed on, as it were, from the removal of the mobile home units, given that significant aspects of those works were supporting or providing utilities to the mobile home units. The removal of the development work therefore could not be fully completed until all of the mobile home units had been removed. In the event, the Land was fully restored by 16 April 2021.
- 23 It will be noted, therefore, that the defendants' breaches of the Order have proved expensive in that they incurred substantial expense in siting the eleven mobile homes and in carrying out the development works. Not only was this expense wasted; the work of removing the associated infrastructure and making good the Land also resulted in significant cost.

### **The arguments of the parties**

- 24 In the light of the agreement between the parties as to facts and breaches, I asked Mr Cannon at the beginning of the hearing which of the criticisms of Mr Stubbs' affidavits were maintained by the claimant. He emphasised the following points. Firstly, by way of context rather than on the basis that they formed breaches of the Order, Mr Cannon said, and it is accepted by the defendants, that the requirements of the June 2018 enforcement notice have not yet been fully complied with. In particular, there is an outstanding requirement to reinstate a hedge and, secondly, to remove a utilities chamber. Mr Stubbs also points out that two further planning applications were made in November 2020, seeking retrospective permission for works which had been carried out but had not been reversed as required by the enforcement notice. He says that nothing had changed, and these applications were refused in September 2020 for the same reasons as have always applied. Thus, argues the claimant, the defendants were to some extent being difficult about compliance with the enforcement notice and this, it is said, is indicative of the defendants' overall approach to reversing, or unwinding, the breaches of the Order.
- 25 Secondly, Mr Cannon indicated that he maintained the criticism of the defendants to the effect that they had not moved sufficiently swiftly in unwinding what had been done once it was appreciated that various steps had been taken in breach of that Order. Mr Cannon argued that the mobile homes were just that: mobile homes. They could have been moved more swiftly. Once that had been done, Mr Cannon argued, the associated infrastructure could have been removed. Mr Cannon acknowledged that the pandemic may have caused difficulties and that there were particular issues that I will come to, but he maintained the argument that other contractors could have been brought in to do, or to assist with carrying out, the necessary works.
- 26 The third criticism maintained by Mr Cannon was to the effect that the error in respect of all elements of the development work, other than the eleven hardstanding base units, was not an error resulting from, or at least directly resulting from, the error in drawing the boundary line between the protected area and the authorised caravan site. The nature of the particular error, which involved works which were on the wrong side even of the mistaken line, was to

think that there could be use of the Land for the purposes for which it was used, given that it is a greenbelt site. Mr Cannon accepted that the defendants had made a genuine mistake, but he pointed out that this is a well-resourced company with considerable experience in the operation of mobile home sites and, in particular, considerable experience of dealing with the planning authorities. The defendants, he argued, conscious of the fact that the Order had been made, should have taken greater care and should therefore have sought advice as to the permissibility or otherwise of the work that they intended to carry out, not least given that they were indeed in the habit of taking planning advice from time to time. This, said Mr Cannon, was not a mere technical error.

- 27 Mr Rudd responded to Mr Cannon's arguments as follows. In relation to the issue of the enforcement notice, he indicated that the works would be carried out in relatively short order. In answer to a question from the court, he took instructions and offered an undertaking that the enforcement notice of June 2018 would be fully complied with by 30 October 2021. That undertaking was acceptable to Mr Cannon and is acceptable to the court. It will be included in my order in due course.
- 28 As far as the breaches of the Order are concerned, Mr Rudd emphasised that they were not intentional. They were the result of mistaken reliance on what was effectively an agreed position as to the scope of the application of the Order and a mistaken understanding of the question whether the development work that I have referred to was permissible. Mr Rudd also emphasised that the defendants have accepted that they acted in breach of the Order, have put things right and have apologised unreservedly. He pointed out, as I have pointed out, that the error has proved costly to the defendants and that they have, in effect, already been penalised, given that they incurred substantial costs in reliance of what they understood to be the agreed position.
- 29 Mr Rudd said that, contrary to the suggestion that the defendants had dragged their heels, the evidence showed that when the mistake became known to the defendants, they proceeded as rapidly as reasonably possible to put things right, but that there were various factors which held them back, In particular, as I have noted, at least some of the associated development work could not be unwound until such time as the mobile home units could be removed and, of course, the removal or otherwise of those units was to some extent affected by the fact that four of them were occupied.
- 30 Mr Rudd pointed out that as soon as the defendants' professional advisors confirmed the position on 23 July 2020, the fences which had been put in were removed. The unoccupied mobile home units were then removed by September 2020, but the process of unwinding what had been done was more problematic in relation to the occupied units given that they were occupied by residents who could not simply be thrown out or relocated at short notice. Those units were the homes of the relevant individuals. There was, I am told, and I accept, no capacity elsewhere. The question of moving those individuals to a hotel was highly problematic and it was therefore necessary to find more long-term and appropriate accommodation for them.
- 31 Mr Rudd also reminded me of the evidence that there was the general problem of the pandemic but there were particular difficulties in recruiting workers to carry out the necessary works, given that there had been twenty one Covid 19 related deaths on the site and this made workers fearful of working on the site. The reason for the delay in the removal of the last of the units, that is unit 201, was that the occupiers contracted Covid 19, and, very sadly, one of them died in January 2021. Mr Wood, who is normally in charge of



such works or does them himself, was also having to take time off to care for his wife who was undergoing treatment for cancer, having been diagnosed in September 2020.

- 32 As far as the criticism of the defendants relating to their mistaken understanding of the planning position in relation to certain aspects of the development work is concerned, Mr Rudd pointed out that that was a genuine error, that the defendants were taking a view on the issue, albeit one which had subsequently proved a misjudgement. Finally, he pointed out that there was the hope that planning permission could be obtained, retrospectively at least, to authorise the works which had been carried out, and that is a reference to the application in November 2020.

### **The Legal Framework**

- 33 Section 14 of the Contempt of Court Act 1981 provides that a committal must be for a fixed term and that the term should not on any occasion exceed a fixed term of two years in the case of a committal by a superior court. In *JSC BTA Bank v Solodchenko No.2* [2012] 1 WLR 350 at paragraph 45, Jackson LJ explained the aims of sentencing where the contempt takes the form of failure to comply with a court order as follows:

“The sentence for such contempt performs a number of functions. First, it upholds the authority of the court by punishing the contemnor and deterring others. Such punishment has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed. Secondly, in some instances, it provides an incentive for belated compliance, because the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt by complying with the court order in question.”

- 34 In *Financial Conduct Authority v McKendrick* [2019] 4 WLR 60, the Court of Appeal approved a number of factors which should be considered when sentencing for contempt which takes the form of a breach of a court order. These factors were identified by the court in *Crystal Mews Limited v Metterick & Ors* [2006] EWHC 3087 (Ch) and augmented by Popplewell J, as he then was, in *Asia Islamic Trade Finance Fund Limited v Drum Risk Management Limited & Ors* [2015] EWHC 3748 Comm. At paragraph 7(6) Popplewell J said:

“The factors which may make the contempt more or less serious include...

(a) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) the extent to which the contemnor has acted under pressure;

(c) whether the breach of the order was deliberate or unintentional;

(d) the degree of culpability;

(e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;

(f) whether the contemnor appreciates the seriousness of the deliberate breach;

(g) whether the contemnor has co-operated... and

(h) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward.”

35 The Court of Appeal in *McKendrick* went on to say that the approach set out at paragraph 58 of its judgment in *London Victoria Insurance Company v Zafar* [2019] 1 WLR 3833 should be applied where a court is sentencing for breaches of an order of the court. At paragraph 39 the court in *McKendrick* said:

“The court should first consider, as a criminal court would do, the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order. In this regard, aggravating or mitigating factors which are likely to arise for consideration will often include some of those identified by Popplewell J in the *Asia Islamic Trade Finance Fund* case... Having determined the seriousness of the case, the court must consider whether a fine would be a sufficient penalty. If it would, committal to prison cannot be justified even if the contemnor’s means are so limited that the amount of the fine must be modest.”

### **Conclusions**

36 Having considered these matters, I have come to the conclusion that this is not a case in which an immediate or a suspended sentence of imprisonment is appropriate, essentially for the reasons given by Mr Rudd which I have summarised. Although in my view the breaches in this case were serious, it is common ground that they were unintentional and that the defendants were unaware that they were in breach until June 2020.

37 I accept, however, that the process of unwinding the breaches of the Order was slower than it ought to have been. The defendants could have proceeded more quickly in relation to the units other than those which were occupied. It is not the case that all of the development work related to all eleven units, as I have noted. Having said this, there were the difficulties identified by the defendants and it seems unlikely that it would have been possible fully to restore the Land much before February 2021, given the situation in relation to unit 201.

38 I also accept the criticism made of the defendants in relation to their belief, albeit their genuinely mistaken belief, that development work which was clearly the wrong side of even the mistaken line could go ahead, despite the fact that this was greenbelt land. This was a well-resourced company operating in the context of an order of the High Court, which was applicable to the Land in question, and in these circumstances questions should have been asked of the first defendant’s advisors before such steps were taken.

39 Having said that, I also accept that the first defendant in particular has been punished in the sense that the error in relation to compliance with the Order has been expensive. The defendants, as I have indicated, have accepted that they were in breach, have apologised and have put things right.

- 40 Taking all of these matters into account, I have concluded, bearing in mind the undertaking that has been given, that the appropriate course is to impose fines. The fines which I will provisionally impose, subject to submissions as to means, bear in mind the fact that, on the evidence I have been shown, the first defendant is a highly profitable company. The second defendant is a 25 per cent shareholder in the first defendant and the fourth defendant has a controlling shareholding. These considerations indicate to me that the defendants have sufficient resources to pay the fines which I am about to specify although, as I have indicated, I will hear submissions as to means if they wish to contend that the figures should be lower.
- 41 What I propose to do, therefore, is to impose a fine of £10,000 on each of the second and fourth defendants and no additional penalty on the first defendant. The reasoning behind that approach is that I have accepted criticisms of the defendants to the effect that they could have moved more quickly to unwind the works which were undertaken in breach of the Order, and that they should have asked questions of their advisors before taking steps in relation to the Development Works. To that extent, I accept that there was fault on the part of the defendants.
- 42 It seems to me that the first defendant, as I have indicated, has already in effect been substantially fined for its breaches of the Order. It seems to me, therefore, that no further penalty needs to be imposed on the first defendant. I impose the penalties in relation to the second and fourth defendants as a reminder to them as officers of the company of the importance of complying with court orders. I will hear submissions, if any are to be made, in relation to means.
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**CERTIFICATE**

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