



Neutral Citation Number: [2024] EWHC 2688 (KB)

Case No: KB-2022-003453

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16/10/2024

**Before :**

**HHJ RAJEEV SHETTY SITTING AS A JUDGE OF THE HIGH COURT**

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**Between :**

**WEALDEN DISTRICT COUNCIL**  
**- and -**  
**(1) NADINE AMY STREVETT**  
**(2) NIMA CHAM**

**Claimant**

**Defendants**

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**Mr Wayne Beglan (instructed by Sharpe Pritchard) for the Claimant**  
**The Defendants did not attend and were not represented**

Hearing dates: 16<sup>th</sup> October 2024  
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**Approved Judgment**

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**HHJ RAJEEV SHETTY SITTING AS A JUDGE OF THE HIGH COURT**

**HIS HONOUR JUDGE SHETTY:**

1. This is an application by the Claimant for committal of the Defendants for breaches of a final injunction order made by HHJ Ambrose, sitting as a High Court Judge, following a hearing on 1 March 2023. The Claimant alleges that the Defendants have continued to be in breach of the terms of the injunction order up until April 2024 and even thereafter.
2. The injunction was imposed by the Court following an application by the Claimant in its function as a local planning authority. The First and Second Defendants own land to the north of Lewes Road, A27, Wilmington, Wealden (the Land). The Land comprises part of the title ESX67429 registered at the Land Registry.
3. There are some permitted residential buildings to the north of the Land but the remainder has no planning for residential use. What had happened that prompted the injunction application was the laying of a substantial volume of hardcore material; the formation of an accessway directly on to the A27 and the importation of further volumes of hardcore. The Claimant apprehended that the work was a precursor to cause or facilitate a material change of use of the Land, for commercial purpose or alternatively for the use for the stationing of caravans or some other kind of residential use. That apprehension culminated in the Claimant issuing an enforcement notice against access in January 2022 that came into effect on 15 February 2022. It required work to be done to restore the land. That was not done and the Claimant issued injunctive proceedings.
4. It is alleged that following the obtaining of an injunction directing that the Defendants do perform restorative work, that the Defendants have not complied with the order and continue to ignore it.
5. The hearing for committal proceedings was listed on this date for 1 day before a Judge of the High Court by a direction of the Judges Listing Office Team Leader, Mr Subash Vasudevan, on 16<sup>th</sup> September 2024. Today there has been no attendance by the Defendants. There has been no communication by them to the Court at all and no request for an adjournment to obtain legal representation or such matters.
6. There are two preliminary applications made by the Claimant. The first relates to service and alternative methods of service. The second relates to proceeding with the hearing in the absence of the Defendants.

**SERVICE**

7. Rule 81.5 of the Civil Procedure Rules (CPR) states as follows:
  - (1) Unless the court directs otherwise in accordance with Part 6 and except as provided in paragraph (2), a contempt application and evidence in support must be served on the defendant personally.
  - (2) ...[no application]
8. Rule 6.5(3) describes personal service on an individual as leaving it with that individual.

9. I have read the affidavits of service by Mr Neil Buchanan dated 31<sup>st</sup> March 2023 and 10<sup>th</sup> October 2024.
10. I am wholly satisfied that in accordance with the terms of the Injunction Order paragraph 6, service has been effected by affixing a copy of it to a prominent position on the Land; namely to all the gate entrances to that Land and delivering a copy of the of the order to the Defendants at Milton Gate Stables, Milton Gate, Wilmington, East Sussex. I am further satisfied that the Claimant, and in particular Mr Buchanan, has done all he can to serve the current contempt application on the Defendants. This includes, amongst other steps, by fixing the applications and associated documents onto one both gates to the premises in waterproof wallets with the use of adhesive tape and taking pictures of the same. Further copies were posted under the front gate to Milton Gate Stables. It was observed on that same date that a man drove a horse box onto the road leading to the gate to the stables and ripped off the notices fixed on the gates. Mr Buchanan was waiting in a car with a colleague, Ms Deborah Woledge. The man threw all the notices into the footwell of the car and said “You, take these and fuck off” and said other obscenities. That male has been recognised as Nima Cham, the Second Defendant. Further to the above and in light of the difficulties, Mr Joseph Walker who is a solicitor for the Claimant, emailed the same copy documents to the First and Second Defendants to their email address of [lsc scaffolding.limited@gmail.com](mailto:lsc scaffolding.limited@gmail.com) and [nadinestrev@icloud.com](mailto:nadinestrev@icloud.com).
11. I am satisfied that the court documents have been served on the Defendants by leaving the aforementioned with them. It makes no difference that the Second Defendant decided to throw them back into the face of the Claimant’s process server. In any event, copy documents were attached on the other gate. Even if I am wrong about that, I exercise my power under CPR, r6.15 for service to be effected by leaving the documents as they have been, attached to the A27 gate and for the documents to be served by email at the two last known email addresses of the Defendants which has also been done. I am satisfied that the Defendants are deliberately taking steps to evade service whilst also accepting that that attitude is more explicitly displayed by the Second Defendant rather than the First Defendant.

#### **PROCEEDING IN THE ABSENCE OF THE DEFENDANTS**

12. Having decided that there has been good service, I have to then decide whether to proceed in the absence of the Defendants. I am satisfied as a matter of fact that the Defendants both know about this hearing. The information of the hearing date was communicated in the documents still affixed to the A27 gate of the premises; by email individually enclosing the court papers to the Defendants; and by text message sent by the Claimant’s solicitors to the last known telephone number of the Second Defendant. There is a photograph of that text message which shows that it was delivered without response (P258-259 of the bundle). The telephone number that the Claimant had for the Second Defendant goes back to a planning application submitted by the Second Defendant in 2017. Whilst this was some time ago, I am satisfied in conjunction with every other means of communication that the Defendants know about this hearing.
13. There are authorities on this subject which include *Pirtek (UK) Limited v Robert Jackson* [2018] EWHC 1004 (QB) in which Warby J considered whether proceedings should be adjourned. In this case he directed himself to previous authorities such as

*Calderdale and Huddersfield NHS Foundation Trust v Atwal* [2018] EWHC 961 (QB) which was derived from *R v Jones* [2003] 1 AC 1 (HL) and *Sanchez v Oboz* [2015] EWHC 235 (Fam).

14. I have considered the principles and decided to proceed in the Defendants' absence. I gave brief details in an extempore judgment. The factors and my reason are as follows:
- (i) The reason why the Defendants are not present. No reasons have been given for why the Defendants are not present.
  - (ii) Whether an adjournment might mean that the Defendants will turn up. Given the absence of reasons, there is no guarantee or assurance that the Defendants would attend.
  - (iii) How long any adjournment would need to be. This is conjoined with (ii) above. There is no way of knowing whether a short or lengthy adjournment would cure the problem of the Defendants' non-attendance.
  - (iv) Any evidence as to the Defendants' wish to be legally represented. The paperwork in compliance with CPR, r81.4 sets out what the Defendants were required to be notified about which includes under (i), (j), (l) and (o) of that rule the Defendants' rights to be legally represented as well as entitlement to time and the consequences of not attending. The Defendants do not appear to have taken any advantage of those allowances or warnings.
  - (v) The interests of the Claimant and the public in the expeditious resolution of the issue. This hearing is listed for 1 day. No other court work is listed. There is a clear public interest in allegations like this being determined expeditiously and close to the alleged time of the alleged breach. It could be said that this is only the first substantive date but the courts do not operate on a presumption that every first substantively listed hearing must be ineffective or will inevitably fail to get off the ground. Far too much in the way of court and judicial resources would be expended if that practice was permitted. That is especially the case where there is simply no understanding of why the Defendants have failed to attend except for a presumption that they do not care or are indifferent.
15. In all the circumstances I come to the conclusion that the Defendants have waived their right to attend. I have considered whether issuing a Bench Warrant under rule 81.7(2) to secure the attendance of the Defendants but there is no information as to when that could be executed and therefore when an effective hearing might take place. In all the circumstances, I have decided to proceed in the absence of the Defendants.

**DID THE DEFENDANTS BREACH THE TERMS OF THE INJUNCTION?**

16. The injunction order provided that the Defendants be prohibited (whether by themselves, their servants or agents) from:

- 1(a) Using the Access[ meaning the access from the Land on to the A27 trunk road in the area marked green on the Plan] to access the A27 trunk road as a vehicular access;
- (b) bringing any hardcore or any other material for the preparation of hard surfaces on to the Land;
- (c) bringing more than 10 cubic meters of any material onto the Land, save fencing
- (d) carrying out any Operational Development on the Land including but not limited to the laying of hard standing on the Land;
- (e) using the land for storage of building materials.

AND directed under paragraph 2 that the Defendants should take the following steps:

- (a) by March 2023 the Defendants shall stop up the Access;
  - (b) by 18 September 2023 the Defendants shall remove from the Land the hardstanding and any other materials comprising the Access in the approximate area marked green on the Plan, and any material arising as a result of these works;
  - (c) by 17 April 2024 the Defendants shall reinstate the grass verge previously located on the Land, to a depth from the highway of not less than 1.5 metres at any point and a width adjacent to the highway of 20 metres.
  - (d) by 18 September 2023 the Defendants shall remove from the land the hardstanding, hardcore and any other building materials brought on to the Land in the approximate area marked pink on the plan, and any material arising as a result of these works.
  - (e) by 17 April 2024 the Defendants shall reinstate that area by covering it with top soil and seeding with grass seed the areas where the imported materials have been removed, to marry in with the contours of adjacent undisturbed land
  - (f) by 17 April 2024 the Defendants shall remove from the Land the material used to comprise the track in the approximate area marked yellow on the Plan, and any material arising as a result of these works.
  - (g) by 17 April 2024 the Defendants shall reinstate that area by covering it with top soil and seeding with grass seed the areas where the imported materials have been removed, to marry in with the contours of adjacent undisturbed land.
17. I have read the First and Second Affidavits of Mr John Honeysett, both dated 3<sup>rd</sup> September 2024. Mr Honeysett has attended the hearing and has confirmed on oath/affirmation that the contents of those sworn statements are true to the best of his knowledge and belief. By virtue of no representations or cross examination by the Defendants or any other legal representation, his evidence is undisputed.
  18. Mr Honeysett is a Planning Enforcement Team Leader. Although he details formal visits to the premises, he has confirmed that he actually goes past the relevant Land and site on an almost daily basis. In any event he visited the Land on 18<sup>th</sup> April 2024 in order to obtain up to date photographic evidence which he exhibits. He agrees that

2(a) has been complied with in that the access to the land has been stopped up by a gate and reinstatement of a grass verge. However, the photos also show the land with the aggregate surface still in place. There is a marked commercial vehicle on site and large mounds of aggregate in situ. He describes that no other works to remove the scalplings or hardstanding have taken place. It is his view that the Defendants have not complied with paragraphs 2(b), 2(d), 2(e), 2(f) and 2(g) of the Injunction Order. This was supposed to be done by no later than 17<sup>th</sup> April 2024. He also sent a letter to the defendants via first class mail requesting that they put forward a proposal on timeframes with the injunction and to facilitate a site visit. No reply has been received. He performed a second visit on 30<sup>th</sup> July 2024 to carry out a visual inspection. The Land remained in the same condition.

19. Mr Honeysett answered a few supplemental questions as well. He confirmed that the track that can be seen in the photographs from the A27 gate runs to the residential house situated at the other end of the property. The Claimant's primary concern is that the A27 gate access could be reinstated within half a day. That could compromise safety of highway users. Typically in his experience, the laying down of aggregate such as this is the precursor to the land being put for residential use via caravans or other such means. The import of his evidence is that bar the grass verge that has been reinstated, nothing else has changed about the condition of the land since the Injunction Order.
20. I have considered each ground of committal before proceeding to considering whether it is made out on the evidence to the criminal standard of proof, which is of course, being satisfied so that I am sure, that the ground of committal has been proved.

**Breach of paragraph 2(b) of the Injunction Order- have the Defendants removed from the Land the hardstanding and any other materials comprising the access in the approximate area marked green on the plan attached to the Injunction Order?**

21. Having read and heard the evidence of Mr Honeysett, I am sure that the hardstanding and associated materials in the approximate area of the plan have not been removed. This can be clearly seen on the photographs date stamped 18<sup>th</sup> April 2024 where a kind of road/lane has been created and allowed to continue in existence in the green area. Accordingly, I find this allegation proved to the criminal standard.

**Breach of paragraph 2(d) of the Injunction Order- have the Defendants removed from the Land the hardstanding, hardcore and any other building materials in the approximate area marked pink on the plan attached to the Injunction Order?**

22. Once again, having read and heard the evidence of Mr Honeysett, I am sure that the hardstanding/hardcore and associated materials have not been removed. They can be clearly seen on the photographs both on the surface of the filed and accumulated in a pile beyond the placement of a works van. Accordingly, I find this allegation proved to the criminal standard.

**Breach of paragraph 2(e) of the Injunction Order- have the Defendants reinstated with topsoil and grass seed the area marked pink on the plan attached to the Injunction Order?**

23. Once again, having read and heard the evidence of Mr Honeysett, I am sure that the area has not been reinstated with either topsoil or seed. That conclusion goes hand in hand with my conclusion above on paragraph 2(b). It is beyond any doubt from the photographs that the area has not been reinstated save for the grass verge in front of the gate. I find this breach proven to the criminal standard.

**Breach of paragraph 2(f) of the Injunction Order- have the Defendants removed from the Land the material used to comprise the track in the approximate area marked yellow on the plan attached to the Injunction Order?**

24. Once again, having read and heard the evidence of Mr Honeysett, I am sure that this allegation has been proven. This aspect is not as well served by photographs due to the area where Mr Honeysett could get perspective due to the presence of the busy A27 road. However, the photographs do show the track to some extent and the witness has confirmed it. I have no doubt that the track which has been created is still in existence and I find this breach proven to the criminal standard.

**Breach of paragraph 2(g) of the Injunction Order- have the Defendants failed to reinstate with topsoil and grass seed where the imported materials have been removed, to marry in with the contours of adjacent undisturbed land.**

25. Once again, having read and heard the evidence of Mr Honeysett, I am sure that this allegation has been proven. I make the same remarks concerning photographs. However, once again, this allegation goes somewhat hand in hand with my findings about 2(f). The track has not been removed. It stands to reason that it has not therefore been restored as directed. I find this breach proven to the criminal standard.
26. Therefore I have come to the conclusion that the Defendants have breached the terms of the injunction as set out. They are guilty of contempt of court. The next step is to consider the sanction and whether to proceed with that part of the procedure today or on another occasion.

**HHJ Rajeev Shetty**

**16<sup>th</sup> October 2024**