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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
[2020] EWHC 1811 (QB)



No. QB-2020-001932

Royal Courts of Justice
Strand
London, WC2A 2LL
(remote hearing by Skype for Business)
Thursday, 11 June 2020

Before:

MRS JUSTICE EADY

B E T W E E N :

BUCKINGHAMSHIRE COUNTY COUNCIL

Claimant

- and -

(1) JAMES JOSEPH SWEENEY
(2) PERSONS UNKNOWN

Defendants

MS C BOLTON (instructed by Sharpe Pritchard) appeared on behalf of the Claimant.

THE DEFENDANTS did not attend and were not represented.

J U D G M E N T

MRS JUSTICE EADY:

Introduction

- 1 This is the return date hearing of the claimant's application for an injunction, pursuant to section 187B of the Town and Country Planning Act 1990 ("the TCPA 1990"). The injunction is sought to prevent and prohibit actual and apprehended breaches of planning control, the apprehended breaches being further unlawful development of land known as The Willows ("the land").
- 2 The claimant is the local planning authority for the land, which is registered at the Land Registry in the name of the first defendant, who lives in the adjoining Willows Caravan Park. The claimant initially issued a without notice application on Friday, 5 June 2020 and this matter came before me as the out of hours judge that evening. Having heard counsel for the claimant on that occasion, I was prepared to grant urgent injunctive relief, with a return date for today. Given the restrictions necessitated by the current coronavirus pandemic, today's hearing has taken place remotely by Skype for Business. It has, however, remained a public hearing and its mode, and timing, published in the cause list, giving an email contact for any persons wishing to attend.
- 3 The claimant has today been represented by Ms Bolton of counsel, who also appeared for it at the earlier hearing. No defendant has attended, either in person or by a representative. It has, however, been confirmed to me that service was affected as required by the order of 5 June 2020 (see the certificate of service, signed by Ms Gemma Davies of the claimant on 9 June 2020). It is also apparent that the first defendant is aware of the hearing and the arrangements for it.
- 4 First, a Ms Angela Banks yesterday contacted the solicitor for the claimant to introduce herself as the planning agent instructed by the first defendant and confirmed that her client had received the injunction papers and that she too had received the bundle. Asked whether the first defendant would agree to the continuation of the court order, Ms Banks said that she would take her client's instructions. A summary of that discussion was communicated to my clerk and her email to the claimant, with joining instructions and contact details for the hearing listed for 2.00 p.m. today, was copied into Ms Banks.
- 5 Secondly, during the course of the morning, I was updated as to a communication that had been received directly from the first defendant, recorded by Mr Rose, solicitor for the claimant, as follows:

"I [that is, the first defendant] have a tape telling me that Gemma [that is, Ms Davies] will not be seeking an injunction. The only thing I have put on the ground is the road planning to keep the dust from going into the air. I do not agree to the continuation of the injunction. A planning application has been submitted. There has been no time to get legal representation and it would be wrong to grant an injunction without allowing me to get legal advice. It would take me four to five weeks to get legal advice for a hearing such as this. Should just put the matter back for six weeks. Not going to put any hardcore on."
- 6 Thirdly, a further communication was received directly from Ms Banks this morning, who emailed as follows:

“I did speak to William Rose [that is, the solicitor for the claimant] yesterday and I have received the bundle, though I have not looked at it. I am not a legal expert. I can confirm that Mr Sweeney approached me on 28 May 2020 after communications from the council enforcement officer prior to this action. He asked me to prepare a planning application and sent me via WhatsApp the notice he had from the council. At that point he said there was no rush and he had ceased all works. The intention was for me to wait until I returned from Spain where I am currently staying pending the return to the new normal everyone is waiting for. However, on 8 June he contacted me again, very upset and having received the injunction papers. I submitted a planning application yesterday, 10 June, and attach a copy of the receipt from the planning portal. It should now be with the council pending registration. I have spoken to Mr Sweeney this morning, who remains upset at this action and he wanted to speak to Mr Rose himself.”

Attached to Ms Banks’ email is indeed a copy of a receipt from the claimant’s planning portal, as she indicated.

The Factual Background

- 7 The claimant relies on the evidence set out in the witness statement of Ms Davies filed on 5 June 2020. The claim relates to land known as The Willows Caravan Park, Marsh Lane, Bishopstone, Buckinghamshire, Land Registry title number BN352036 (“the land”). The land is marked in a red outline on the title plan attached to the draft order. As I have already recorded, the first defendant is registered as the owner of the land and he has a connection with the caravan site adjacent to it.
- 8 In support of this application, the claimant relies on the following matters, which it contends constitute unlawful action by and/or on behalf of the defendants.
- 9 On or around 22 and 23 May 2020, it became apparent to the claimant that development had taken place on the land, which included the laying of hardcore or hardstanding, creating a track or road through the land, approximately 7m in width and 500mm in depth. I should say that the work in question is apparent from the photographs taken by Ms Davies when she visited the land on 23 May 2020; these are attached to her statement as exhibit GD5.
- 10 On that occasion, Ms Davies noted a plan attached to a timber post on the land, which indicated a proposed layout for the site to be known as “The Willows Site 2”. She took a photograph of the plan, which is exhibited to her statement as GD6. It seems to suggest that a number of dwellings, presumably caravans, are to be placed on the site. Ms Davies notes that further development of the residential caravan site on the land would constitute operational development and/or a material change in use, and would require planning permission. She confirms that no such permission has been granted and that this would therefore represent a breach of planning controls.
- 11 On 23 May 2020, the claimant served a 28-day temporary stop notice (“TSN”), to prevent further works. This is exhibited to Ms Davies’ statement as GD4.
- 12 There were communications between Ms Davies and the first defendant on 27 and 29 May, which I return to below, but, on 4 June 2020, the claimant became aware that further works, which it says are in breach of planning control and the TSN, had been undertaken on the Land. These include tarmacking of the hardcore, and further compacting it to make a finished track,

or road, through the land. Ms Davies again took photographs of what she witnessed on that occasion, and these are exhibited at GD7.

- 13 Returning to the conversations that have taken place between the first defendant and Ms Davies, Ms Davies' account of her first conversation with the first defendant is set out at paras.20 to 23 of her witness statement, as follows:

“20 I explained to Mr Sweeney that I had left copies of the injunction that was served on the Willows Site in 2009 because it remained in force and related to the access track that had been formed along the boundary of the site. Mr Sweeney told me that, as far as he was concerned, the injunction had been lifted, that everything on site had planning permission. I explained to Mr Sweeney that the planning permission only related to what was approved on the plans. It did not in turn lift the injunction. He told me he understood but as far as he was concerned, he had done nothing wrong and was not aware of the injunction.

21 I then explained the implications of the TSN to him and explained that no further work to the hardstanding should be undertaken and that caravans should not be brought onto the site. He told me that he would stop work and no further development would be undertaken. He advised that the only additional work that had been undertaken since my visit was that tar had been sprayed on the top of the hardcore to prevent dust spread.

22 Mr Sweeney explained to me that because of the size of his family, he needed more room for everyone and so he planned to expand the site and he did not think that planning permission was required because he had obtained permission previously for the Willows Site.”

- 14 Ms Davies' reference to an earlier injunction is that exhibited at GD3. The injunction does not name the first defendant - as I understand it, he has only been the registered owner of the land since January 2019 and the order dates back to June 2009 and relates to the then owner, a Mr Brown, and to 'persons unknown'. I understand that subsequently planning permission was granted for the Willows Caravan Park, which adjoins the land, but that was limited to the plans approved at that time.

- 15 In any event, on 29 May 2020, Ms Davies had a further conversation with the first defendant, which she records at para.24 of her statement, as follows:

“I spoke to Mr Sweeney again on 29 May 2020 at 12.14 and he advised me that he had appointed a planning agent to act on his behalf to submit a planning application to extend the site. To date no planning application has been received.”

- 16 In fact, it seems that Ms Banks, acting on behalf of the first defendant, submitted an application on 10 June 2020.

- 17 I note that the first defendant - communicated to and through those acting for the claimant (I should say that I have received nothing directly from the first defendant) - contends that Ms

Davies in fact assured him that the claimant would not seek an injunction and he has said that he has a recording of that conversation. In her skeleton argument for today's hearing, however, Ms Bolton has stated that her instructions are clear, and the first defendant's account is not accepted. On the contrary, Ms Davies stated only that the claimant would not seek an injunction provided the first defendant undertook no further works to the road, or track, following service of the TSN. As it was apparent from her visit to the site on 4 June that the first defendant had undertaken further works - tarmacking the road - the claimant made its application of 5 June.

Preliminary Decision as to How to Proceed Today

- 18 I have reflected on whether I should proceed with the hearing today in the absence of the first defendant. Although no formal application for an adjournment has been made, I consider that such an application might be inferred from the first defendant's communications with those acting for the claimant. I further note what has been said as to the first defendant's wish to obtain legal advice and I appreciate the particular difficulties that might face him in this regard at this time (although I have assumed such difficulties; they have not been identified by the first defendant himself). That said, it is apparent that the first defendant was properly served with the papers in this matter and has been able to at least take advice, albeit not legal advice, from Ms Banks, who acts as his planning agent. Although the first defendant apparently contends that Ms Davies gave an assurance that the claimant would not seek an injunction, he has provided me with no evidence of that assertion, whereas I have a statement from Ms Davies, which the first defendant has also seen.
- 19 I cannot resolve any dispute on the evidence at this stage, but do consider it likely that any assurance given by Ms Davies was limited to there being no further work carried out on the land. At this stage, the claimant is seeking an interim injunction and accepts that any order granted should permit the first defendant liberty to apply, should he be advised at a later date to seek to vary or to apply to discharge the order. In the circumstances, and having regard to the overriding objective and the need to do justice to both sides, I do not consider that it is unfair on the first defendant to proceed with the hearing today. Accordingly, I now turn to the questions on which I must be satisfied if I am to make the order requested by the claimant.

Discussion and Conclusions

- 20 By section 187B(1) of the TCPA 1990, the claimant, as the local planning authority, has power to apply for an injunction to restrain an apprehended breach of planning control, and the court may grant such an injunction as it thinks appropriate for the purpose of restraining any such breach, which may include an injunction issued against a person whose identity is unknown.
- 21 I am satisfied that the claimant has demonstrated a basis for this application. No planning permission currently exists for the work that has been undertaken on the land, or for further works or change of use. The only application was submitted yesterday and has not yet been considered, let alone granted. It is apparent that there is an intention to carry out further development on the land. The only real dispute is whether there has been further work, undertaken since the service of the TSN and contrary to the first defendant's assurances to Ms Davies.
- 22 The first defendant seems to state that, since service of the TSN, all he has done is to spray tar on the surface of the hardcore to prevent dust from the hardcore moving around the land. It is apparent from the photographs exhibited to Ms Davies's statement, however, that significantly more work than that has been undertaken. Tarmac has been laid and compacted over the entire track, or road, in apparent breach of the TSN. As a democratically elected and

accountable body principally responsible for planning control in this area, the claimant is entitled to seek the relief in question. I will return below to the question whether it is proportionate to grant that relief in this case.

23 I now, however, turn to the tests laid down in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.

24 First, is there a serious issue to be tried? On the material before me, I am satisfied this is not a frivolous application. The claimant has demonstrated that there is a serious issue to be tried, that the first defendant, and others unknown, have acted in breach of planning controls and have demonstrated an intention to continue to do so unless prevented by the court. In this regard, I note that the claimant's own attempt to stop work by means of the TSN was unsuccessful, in that tarmac was then still laid on the hardstanding, which, from the photographs I have seen, seems to go further than merely preventing the hardstanding being blown around the field and has turned a rough track into something that looks more like a road. Nothing that would constitute a defence to the claim has been raised by the defendants. It has not been suggested that the work that has already been undertaken, or has been proposed, would not be in breach of planning controls or is already covered by planning permission. The most that has been said is that the first defendant is now making an application for planning permission - although that postdates the without notice injunction - and also that the first defendant does not consider that the further works that he undertook after the TSN would, of themselves, amount to breaches of planning controls. As I have said, however, the evidence available to me suggests otherwise and I am satisfied that a triable issue has been established.

25 Second, are damages an appropriate alternative remedy? In these circumstances, the local authority is acting as custodian of the public interest, and I accept Ms Bolton's submission that there is no financial compensation capable of repairing the damage to that interest that might arise if there is no injunction and further works are carried out on the land. On the other hand, the claimant is plainly able to meet any losses that the defendants may be able to establish, although none have yet been identified to the court.

26 Thirdly, if so where does the balance of convenience lie in this case? This is a question that requires me to consider whether the application seeks to maintain the status quo and whether it is proportionate. In this regard, I take into account the evidence that suggests that the first defendant now seems to be applying for planning permission, and that counts in his favour. On the other hand, the work that was undertaken in late May and which continued, notwithstanding the TSN, provides a proper basis for the claimant's apprehension that, absent an order from the court, there may be future breaches. I further note that what the claimant seeks by this application is merely that which is required by law; that is, not to act in breach of planning controls. It endeavours to maintain the status quo in that regard and that is a relevant consideration in favour of granting the relief sought. Little, if any, prejudice can be caused in thus preserving the status quo and requiring the defendants to act in accordance with the law.

27 On the other hand, should the injunction be refused and the land be converted to use for caravans or other residential purposes, for which there is no planning permission, it is likely that it will cause further harm to the land, which is located in open countryside. It would further involve considerable inconvenience and expense to the council to seek to enforce the removal of further development and/or caravans or mobile homes from the land, and, indeed, any persons living on the land would have expended funds relocating onto it.

- 28 At this stage, it is appropriate for me to return to the question whether it is proportionate to make the order sought. I take into account what the first defendant has said to Ms Davies, in terms of his family's need for more living space and I accept that that might, in due course, engage the defendants' Convention rights. That said, the injunction does not seek to prevent the first defendant meeting his family's needs by lawful means. The claimant is entitled to seek this order in pursuit of its statutory obligations and its position as custodian of the public interest, and I am satisfied that it is proportionate for it to do so.
- 29 I include a liberty to apply provision within the order, so that if the first defendant, or any other person unknown, considers that there is a basis for applying for the terms of the order to be varied or revoked, then the appropriate application can be made on suitable notice to the claimant. For all those reasons, I grant the order sought.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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