



Neutral Citation Number: [2021] EWHC 2734 (QB)

Case No: QB-2020-004209

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 October 2021

Before :

MR JUSTICE RITCHIE

Between :

BASILDON BOROUGH COUNCIL

Claimants

- and -

CHARLIE ANDERSON (D3) AND ORS

Defendants

Mr Wayne Beglan (instructed by Basildon Borough Council Legal Department) for the
Claimants

Ms Sophia Kerridge (instructed by Ewing Law) for the Third Defendant

Hearing dates: 6 and 7 October 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is 2:00 pm on Wednesday, 13 October 2021.

Mr Justice Ritchie:

The Parties

[1] The Claimant in this case is Basildon Borough Council. There are 11 named Defendants and the 12th Defendant consists of “persons unknown” affected by the injunction orders made in this case. The relevant Defendant is Charlie Anderson who I shall refer to as D3.

The Summary of the Claim and Defence

[2] The claim concerns Land registered at the Land Registry with title EX 710339 (the Land). This Land lies on the Southside of Hovefields Drive, Wickford, Basildon. The owner of the Land used to be William Thomas Anderson before November 2020 when he transferred or sold the Land in 11 plots to various of the Defendants. This hearing is concerned with plots one and two (the Plots) which are owned by or in the control of D3.

[3] The Land is situated in the green belt.

[4] In brief summary the Defendants split the Land up into 11 plots and started developing it thereby converting it from a green field into 11 plots with parking areas, fenced off areas perhaps for animals and underground services for residences.

[5] The Claimant, in pursuance of its obligations, has been trying to prevent this development by the Defendants.

[6] Pursuant to section 187B of the *Town and Country Planning Act 1990* the Claimant has power to apply for an injunction to prevent actual or intended breaches of planning control measures if such is necessary and expedient.

[7] Various injunction orders have been obtained by the Claimant with 2 main objectives. The first is to prevent further development works and the second is to mandate removal of the development works done to the date of each injunction.

[8] The application to commit for contempt before me also has two parts. The first is an application for committal for contempt by D3 for breaching various sections of the injunctive orders. The second is an allegation that D3 breached the terms of a suspended sentence of imprisonment of 4 months passed in the spring of 2021 at the first committal hearing against D3.

The Issues

[9] The first issue raised at the hearing was an application to adjourn for D3 to obtain further or better legal representation.

[10] The second issue is one of fact: whether D3 breached the terms of the injunctive orders and conditions of suspension as set out in the notice of application issued on the 17th of June 2021.

[11] The third issue is how D3 should be sentenced for any breaches found by this court.

Chronology

- [12] There is a long chronology in this case which I will now summarise.
- [13] **The First Order** On the 29th of November 2020 Mr Justice Garnham made an interim injunction ex-parte relating to the Land on undertakings that the Claimant would issue part 8 proceedings. In effect that order *prohibited* the Defendants and their agents from bringing caravans onto the Land; erecting structures on the Land; laying hard standing or doing development works on the Land; or allowing persons to occupy the Land. A power of arrest was attached. Alternative service was permitted by putting up notices at the Land. A return date was set. The evidence before the Court was provided by Mr Finn in an Affidavit dated 29 November 2020, Mr Cummings in an affidavit of the same date and Mr. Hadlow dated 28th November 2020.
- [14] I am informed by the Claimant's counsel that a claim form has been issued although I have not been able to find it on the court efile.
- [15] **The Second Order** The case next returned before the Court on the 30th of November 2020 ex-parte and was heard by Mr Justice Cutts. In addition to the order made by Mr Justice Garnham the judge granted *a mandatory injunction* and ordered the Defendants to remove caravans and mobile homes from the Land and attached a power of arrest. The return date was on or before the 8th of December 2020.
- [16] So by this stage there were prohibition orders in place and there were mandatory orders in place binding all 11 named Defendants and the 12th (unnamed persons) in effect to convert the Land and all 11 plots thereon back to a green field site. All of these injunctions were of course interim junctions pending the inter partes hearing of the claim.
- [17] **The Third Order** On the 9th of December 2020 Mr Justice Foxton heard the injunctions applications inter parties. The 11 Defendants were represented by counsel. The Defendant applied to vary the order of Mr Justice Cutts (mandatory) but did not apply to vary the order of Mr Justice Garnham (prohibitory). Mr Justice Foxton ordered that, until trial, the Defendants were still subject to mandatory orders and prohibitory orders as set out below. A power of arrest was attached. Alternative service by notices on the entrances to the Land was permitted. Costs were awarded to the Claimant in the sum of £5000 pounds to be paid on or before 6 January 2021.
- The Orders:
- “1. The Defendants are required, by 4pm on Monday 14 December 2020 to remove from the Land any static caravans, mobile home, and touring caravans.
 2. The Defendants be prohibited (whether by themselves, their servants or agents) from:
 - (a) bringing a caravan, a mobile home, or any other structure intended for or capable of habitation on to the Land; or
 - (b) erecting on the Land any structure or building capable of or intended to be put to residential use.
 - (c) from carrying out any works including but not limited to the laying of hard standing on the Land.
 - (d) allowing any persons to take up occupation of the Land.”

- [18] The evidence before Mr Justice Foxton included the evidence before Mr Justice Garnham but in addition there were witness statements from Mr Shelton dated 30th November 2020 and an additional witness statement from Mr Cummings dated 30th November another dated 3rd December and another dated 8th December 2020 and a witness statement from Christine Lyons dated 7th December 2020. The Defendants' witness statements are listed in schedule A to the order and one of them was from Charlie Anderson (D3) dated the 4th of December. I have not seen a copy of this witness statement or the other Defendants' witness statements.
- [19] In his judgement Mr Justice Foxton considered the evidence from both parties and noted that the Defendants had retained experts to make planning applications to convert the use of the Land to residential which were submitted on the 27th of November 2020 to the planning authority. On the 28th of November the police visited the Land and found 80 to 100 people working on the Land with diggers. It was being divided into plots. Mr Cummings, who is employed by the planning department, visited on the 29th of November and saw work being carried out and served an Enforcement Notice and a Stop Notice. Threats of violence were made to Mr Cummings, on his evidence, when the notices were delivered to the Land. At this time there were no caravans or other residential buildings on the site. The Defendants' planning experts were informed of the notices. The judge noted that the prohibitory and mandatory injunctions made by Mr Justice Garnham and Mr Justice Cutts were served on the 1st of December 2020. By the time of the application before him 24 mobile or static homes were on the Land as were other residential units despite the injunctions. Mr Justice Foxton went through the planning law powers and the power to grant interim injunctions and the grounds. He noted that the Defendants did not resist the continuation of the prohibitory injunction of Mr Justice Garnham but did apply to amend the mandatory injunction of Mr Justice Cutts. He did not accede to that application. He ruled that the Claimant had a serious issue to be tried and that the Defendants had potentially deliberately broken planning restrictions. He considered damages would not be an adequate remedy. He considered there was a serious concern that green belt land would be changed forever. He rejected the Defendants' assertions of ignorance of the existence of the green belt provisions binding the Land and noted the rapid development attempt which he thought was equivalent to a "fait accompli".
- [20] On the 23rd of December 2020 a notice of application for committal for contempt was filed against the third Defendant and issued on the 1st of January 2021. The substance of that application was an allegation that D3 had broken the injunctions granted by Cutts J and Foxton J, preventing him from bringing residential units onto the Land. It was also alleged that D3 broke the mandatory injunction to remove residential units from the Land in early December 2020. The factual assertion was that D3 brought a touring caravan and trailer onto the Land.
- [21] A second notice of application to commit was drafted on the 1st of February and issued on the 2nd of February 2021 against the third Defendant. It alleged that D3 had broken the order of Foxton J. The rider relevant to the third Defendant states that the allegations consisted of bringing a touring caravan and storage trailer onto plots 1 & 2 and failing to remove them. So it appears that the second notice of application covered the same ground as the first notice of application.

- [22] On the 8th of February 2021 Mr Justice Knowles dismissed an application, made by D3 with legal representation, to adjourn the hearing of the applications for his committal for contempt.
- [23] **The Suspended Sentence** On the 12th of February 2021 the committal hearing relating to D3 took place. The deputy High Court judge, Mr Metzer QC, considered the evidence put before him. D3 admitted that he was in breach of the 2nd Order and the 3rd Order in the ways set out in the relevant riders to the two application notices and D3 accepted that the gravity of those breaches passed the custody threshold. Foxton J found that the gravity of the breaches passed the custody threshold and sentenced D3 to serve four months in prison suspended for 12 months so long as he complied with each and every one of the conditions of suspension which were:
- “a. The Defendants shall by 4pm on 3 March 2021 remove from the Land any static caravans, mobile homes and touring caravans.
- b. The Defendants shall thereafter not (a) bring any caravan, mobile home or any other structure intended for or capable of habitation on to the Land; or (b) erect on the Land any structure or building capable of or intended to be put to residential use; or (c) allow any person to occupy the Land.
- c. The Defendants shall remove all of the works undertaken in relation to their respective individual plots by 10 April 2021.”
- [24] I note that the Defendants were represented by a solicitor advocate: Ms Hawksley at that hearing. The deputy High Court judge gave a judgment setting out his reasons which in summary consisted of his finding that the Defendants still hadn't complied with the mandatory and prohibitory orders so had not removed residential units from the Land or removed the development works carried out on the Land. D3 had made no apology until very late in the day and was in effect “putting two fingers up to the court”. He rejected D3's assertion that he feared breaching the covid laws were he to move off the Land and noted that D3 had not held such fear when he and the other Defendants moved onto the Land. D3 had the right to appeal (without permission) from that sentence.
- [25] D3 appealed.
- [26] By an application dated the 25th of February 2021 D3 applied to vary the order prohibiting residential use of the Land.
- [27] On the 1st of March 2021 Lady Justice Simler granted an order suspending the mandatory orders to move all residential homes off the Land until the hearing of the Defendants' appeals to the Court of Appeal which were urgently listed. She also gave directions for the Defendants to serve evidence in support.
- [28] On the 5th of March 2021 deputy High Court judge Mr Ter Haar heard a solicitor advocate for D3 and dismissed D3's application to vary the orders preventing him from living on the Land. Costs were awarded against the Defendants of £5,741 to be paid by 19th March 2021.

[29] On the 12th of March 2021 the Court of Appeal heard and dismissed the Defendants appeals. The Court extended the time for the removal of residential structures from the Land to the 22nd of March 2021. I note that the Defendants were represented at the appeal by Rebecca Hawksley, solicitor advocate. Lord Justice Peter Jackson gave the reasons for dismissing the appeal.

“26. The answer to this appeal brought as of right, is a simple one. These orders were an entirely proper response to the appellants calculated disobedience of the court orders against a background of serious, wholesale defiance of the planning laws.”

“29. I finally reject the submission that the judge did not take sufficient account of the appellants personal circumstances.”

[30] On the 17th of June 2021 the third notice of application to commit for contempt was issued by the Claimant against D3 and others. That is the application which forms part of the foundation for this hearing before me. The rider in that application that relates to the third Defendant bears repetition in full. It states as follows:

“The Third Order

2. The nature of the alleged contempt: The Third Defendant has failed to comply with the requirements of the order of Mr Justice Foxton dated 9 December 2020 and the order of Mr Metzer QC dated 12 February 2021.

3. The date and terms of the order allegedly breached: The relevant orders were made by Mr Justice Foxton dated 9 December 2020 (“the Third Order”) and Mr Metzer QC (“the First Committal Order”), as varied by the Court of Appeal.

4. The relevant terms of the Third Order are set out below:

“1. The Defendants are required, by 4pm on Monday 14 December 2020 to remove from the Land any static caravans, mobile home, and touring caravans.

2. The Defendants be prohibited (whether by themselves, their servants or agents) from:

(a) bringing a caravan, a mobile home, or any other structure intended for or capable of habitation on to the Land; or

(b) erecting on the Land any structure or building capable of or intended to be put to residential use.

(c) from carrying out any works including but not limited to the laying of hard standing on the Land.

(d) allowing any persons to take up occupation of the Land.

5. By the First Committal Order the Defendant was sentenced to prison for a period of four months, suspended for 12 months and upon certain conditions. The relevant terms of suspension of the First Committal Order (“the Conditions of Suspension”) are set out below:

a. The Defendants shall by 4pm on 3 March 2021 remove from the Land any static caravans, mobile homes and touring caravans. The Court of Appeal, by order dated 12 March 2021, varied the date in this requirement to midday on 22 March 2021.

b. The Defendants shall thereafter not (a) bring any caravan, mobile home or any other structure intended for or capable of habitation on to the Land; or (b) erect on the Land any structure or building capable of or intended to be put to residential use; or (c) allow any person to occupy the Land.

c. The Defendants shall remove all of the works undertaken in relation to their respective individual plots by 10 April 2021.”

- [31] The breaches alleged by the Claimant against the third Defendant were as follows:
“21. Between 23rd March 2021 and 19 April 2021 in breach of paragraph 2(c) of the third order, the Defendant caused or allowed groundworks to the plot and the creation of an area of hard standing.
22. Between 11 May 2021 and 24 May 2021 in breach of paragraph 2(c) of the third order, the Defendant caused or allowed further groundworks to the plot. A further area of hard standing was created. Service hatches were installed. Works were undertaken for the installation of a septic tank.
23. Between 24 May 2021 and 3 June 2021 in breach of paragraph 2(c) of the 3rd order, the Defendant caused or allowed further groundworks to the plot. Piles of road scalplings were brought onto and spread around the plot. Installation of the septic tank was completed.
24. As at 3 June 2021 in continuing breach of paragraph 2(c) of the third order and the third Condition of Suspension the Defendant had failed to remove all of the works undertaken to his plots.”
- [32] On the 5th of July 2021 D3’s solicitor, Rebecca Hawksley, applied for her firm, Hawksley Law Ltd, to come off record. Mr Gullick QC sitting as a deputy High Court judge granted the application to come off record and adjourned the committal application hearing to the 28th and 29th of July. He granted the Claimant permission to file and serve more evidence.
- [33] I have seen a certificate of service by Bernard James Hammond dated the 14th of July 2021 in which he attested to serving the Defendants (including D3) with a notice which clearly sets out the dates for the hearing of the committal for contempt application. Those dates being the 28th and 29th of July 2021. One of the many letters served was specifically addressed to the third Defendant. The statement of service contains photographs of the notices of the hearing date nailed to the gateposts on the Land for each of the various plots including plots 1 and 2.
- [34] I have also read another certificate of service from Bernard James Hammond dated the 26th of July 2021 which attests to service by attachment to fence posts at each of the individual plots, including the third Defendant’s plots, of copies of the further evidence filed by the Claimants including the 4th affidavit of Joseph Finn and the Court Order dated 11th July of Mr Gullick QC sitting as a deputy High Court judge. The documents served included letters informing the Defendants (including D3) of the date of the hearing of the committal application, namely the 28th and 29th of July at the Royal Courts of Justice in the Strand and were in the pack nailed to the fence posts. Once again photographs of those documents nailed to the fence posts in particular of plots one and two are included in the statement of service. I note that the photograph for the Plots shows three white lorries and a caravan on plots 1 and 2

together with brick built walls separating out two areas and a lot of road scalplings covering the ground. Also visible is a cream coloured plastic tube coming out of the ground at approximately the area where the septic tank is alleged to have been installed underground.

- [35] On the 28th of July 2021 the Defendants, and in particular D3, did not attend the hearing of the committal application issued on the 17th of June 2021. As a result a bench warrant was issued for the the arrest of D3 and no doubt for the other Defendants. However, the Defendants did file for that hearing a last minute witness statement from Rebecca Hawksley, their former but now released, solicitor advocate, from Camberley, Surrey who gave evidence that she had received a number of phone calls from the Defendants and she had been instructed that she could update the court with their circumstances. She wrote the witness statement “in order to pass that information on.” Stopping here, I don't really understand her legal position to put in any evidence because she had come off record on the 8th of July 2021. In any event she then proceeded to give a summary of the instructions she had been given by each of the Defendants. I note paragraph five in relation to Thomas Anderson. The solicitor had spoken to him in relation to himself and his children. She stated that he had sold the Land to the other Defendants. He is the father of D3. He asserted that “his children... are no longer on site according to him.” Further he asserted “the Land is no longer occupied and they are living away from the area with friends and family.” She went on to assert (without stating the source of the assertion) that that: “Charles is just about to marry and they will not have a home of their own but will be reliant on charity to allow them to stay.” this is a reference to D3.
- [36] I find as a fact that the bench warrant was received by the 3rd Defendant. I make this as a finding of fact because the third Defendant admits receiving it on the 13th of August 2021. This is set out in the third Defendant’s skeleton and he confirmed it in his evidence to me.
- [37] D3 did not surrender himself to the police.
- [38] On the 30th of September 2021 the Defendant was brought before Mr Justice Saini as a result of having been arrested on the 29th of September 2021 by the police at Gatwick Airport whilst he was trying to board a plane. D3 was represented by a new firm of solicitors whose employee/partner was Scott Ewing and his counsel was Miss Kerridge. Bail was refused and he was detained in custody at Pentonville prison until the hearing of the committal application.
- [39] On the 6th of September 2021 I heard the committal application. D3 was delivered to court at 11:15 am. I was informed by D3’s counsel that she was only instructed to deal with his incarceration and bail, not the committal application. An application was made to adjourn the committal proceedings for a short period so that D3 could instruct experienced planning counsel to argue his defence on the committal application. I granted time for defence counsel to take instructions from D3 because complaint was made by D3’s solicitors and counsel that they had been unable to communicate with D3 whilst he was in Pentonville prison. I had sympathy with that complaint.

First issue: Adjournment

- [40] D3 applied to adjourn the hearing of the committal application. The grounds were professionally put forward by Miss Kerridge and arose from her skeleton and the witness statement of Scott Ewing dated 5.10.2021. Firstly, Miss Kerridge is a criminal practitioner not practised in planning law and submitted that she was not able to assist in defending the committal proceedings. D3 wished to instruct a planning barrister whose clerk had been contacted and who had quoted a fee for a written advice. The advice would be, I was told, that D3 should purge his contempt and that would assist in avoiding custody. It was submitted that it would be fair to adjourn so that the Defendant could get legal advice on planning law and mitigate properly. A one week adjournment was requested. It was also urged upon me that D3 was young and had been badly advised by his previous solicitor and was not a good reader and had simply been following bad legal advice.
- [41] The Claimant did not wish to agree to the adjournment. Mr Beglan of counsel reminded me that committal proceedings should be heard with expedition and that D3 had been represented at every hearing by lawyers to date including the hearing before Mr Justice Saini. He summarised the history of non compliance by D3 with the prohibitory and mandatory orders.
- [42] I dismissed the application to adjourn. I gave short reasons and I expand them here. I did so because on balance I considered that D3 was capable with his solicitors and counsel of being represented at the hearing effectively. This is not a planning application. Planning law is only the background. This is an application to commit the third Defendant for alleged contempt for alleged breaches of court orders.
- [43] I took into account the need for expedition in applications to commit for contempt. I took into account the need, as set out in the Supreme Court practise volume one at CPR r.84 for Defendants to be provided with legal representation and indeed legal aid (see the notes at 81.4.7). I took into account CPR 81.4 (2) and in particular that the Defendant is entitled but not obliged to give written and oral evidence in his defence; the Defendant has the right to remain silent and decline to answer any question. I also took into account that it was my responsibility to warn the Defendant that he had the right to remain silent. I took into account the case of *Barnet LBC v Hurst (Practice Note) (2002) EWCA Civ 1009* which is authority for the rule that committal proceedings should be promptly dealt with and without delay. I also took into account the guidance given by Andrew Baker J in *Double Negative v Mortelette (2018) EWHC 1811*. This case of course is not a second adjournment case, but it does involve D3 failing to attend on the 28th of July and failing to answer a bench warrant voluntarily and being arrested and being brought before Mr Justice Saini with legal representation.
- [44] It was also suggested to me that the third Defendant had difficulty reading and understanding written text. I took into account the chronology of D3 instructing lawyers, with others, throughout the whole of these proceedings. I took into account how D3 had managed to carry out considerable development works on his Land and had just got married and booked a honeymoon abroad. I took into account the support that D3 clearly gets from his fellow land owners.
- [45] I took into account how D3 managed by himself or through others to provide information through a solicitor to the court on the 28th of July. I find as a fact and

took into account that the assertions made by D3 through Ms Hawksley in her witness statement dated 28 July 2021 were factually incorrect. D3 had not left plots one and two in the sense that he was continuing to develop them.

- [46] I took into account that D3 had considerable time after the resignation of his first set of lawyers to instruct other lawyers. I took into account the service of so many notices, Orders, photos and letters nailed to the gate posts of D3's plots. I took into account the huge public expense that the Claimant has been put to for the many applications and orders that it has obtained and I took into account the fact that D3 has had the opportunity to speak to his new lawyers before Mr Justice Saini's hearing and indeed this morning.

The second issue: the alleged breaches

Agreed facts

- [47] As Claimant's counsel was opening the application I was given an indication that defence counsel was now instructed to represent D3 for the substantive hearing of the application. Further time to take instructions had been given to D3 over the luncheon adjournment. The Claimant's counsel had provided a bundle of the evidence.
- [48] I was then informed that D3 admitted all of the breaches set out in the rider to the committal application dated 17 June 2021.
- [49] For the sake of clarity and completeness I invited Claimant's counsel to go through line by line each photo and each allegation of breach. D3 confirmed both himself and through his counsel line by line each of the allegations of breach set out in the notice of application.
- [50] There was some lack of clarity on the extent of the expansion of the hard standing in allegation one, namely between the 23rd of March 2021 and the 19th of April 2021 but that is of no real relevance and I give D3 the benefit of the doubt in relation to the extent of hard standing that he had increased by groundwork during that period.
- [51] Therefore the breaches are admitted in full as set out in the notice of application subject to the preceding paragraph of these reasons. Those breaches in summary are breaches of the order of Mr Justice Foxton, the third Order, by D3 carrying out groundworks and the creation of hard standing and the installation of service hatches and a cesspit. D3 also admits that he failed to remove the development works from the Land which he had installed from the date of the third order of Mr Justice Foxton as set out in the notice of application and that he breached the conditions of suspension attached by Mr Meltzer QC.
- [52] I am informed by the Claimant that D3's planning application was refused. Certain appeals may be ongoing.

Sentencing

- [53] The courts power to impose penalties for contempt is governed by *section 14 of the Contempt of Court Act 1981*. In that Act it is made clear that if I am to impose a sentence of imprisonment it must be for a fixed term and it cannot exceed 2 years. The court also has power to impose a fine which is unlimited. I take note of the guidance at paragraph B14.99 of Blackstone's that for persons between 18 and 20

“detention” is the appropriate wording for the sentence under the Powers of Criminal Courts (Sentencing) Act 2000 section 108.

- [54] I was originally concerned about the potential for imprisonment without legal representation which is covered by section 83(1) of the PCC(S)A 2000 but I note at Blackstone's paragraph B14.101 that the restriction does not apply to contempt proceedings and in any event D3 was represented before me at this hearing.
- [55] I also take into account CPR rule 81.9. I note that there is no rule that states that a custodial sentence cannot be combined with a fine.
- [56] I take into account the very serious nature of the breaches. D3 has persistently pursued a course of conduct which suits himself, breaches the Orders of this Court, causes huge expense to the taxpayers in Essex, wastes court time and (if that be the final conclusion of the substantive case) breaches the law relating to green belt preservation.
- [57] In mitigation the Defendant decided to give evidence and was questioned by Miss Kerridge. He informed me that he is 19. Others who are occupying plots on the Land include his brother, his nephew other members of his family and friends. Most are older than him. He does a bit of reading and writing but is not very good at either. He told me that if he receives a letter in the post he would probably show it to the nearest person to ask for it to be read to him. He said he was not trying to escape the country when he was arrested. He was going to Corfu for his honeymoon having married on the 27th of September 2021. He was coming back 10 days later.
- [58] D3 informed me that in relation to the arrest warrant he was made aware of it on the 13th of August 2021 but he didn't understand it. He didn't think he had to surrender. He thought the police would come and get him when they wanted to. He informed me that he didn't go anywhere. He still lived where he had always lived and if the police wanted to come and get him they could have got him at anytime.
- [59] In relation to the Land he knew of the Court's injunction Orders. By that I understood him to be saying he knew of the orders numbered 1-3. He said he didn't understand them. He said that Rebecca Hawksley had told him not to worry about them. She would deal with it. He accepted that he would speak to his father from time to time and get advice from his father and from the expert “planner lady”. I take that to be the professional who he has instructed to make his planning application.
- [60] He said he had paid Rebecca Hawksley five times, sometimes in cash, and he thought she would advise him correctly. He accepted he was aware of the mandatory order to remove the development work he had done on the Land. He said that Rebecca Hawksley had advised him not to follow it. She had advised him to keep on doing what he was doing. He complained that Rebecca Hawksley had not told him that she had “come off record” but she had said she couldn't represent him.
- [61] D3 accepted he had been educated at primary school for a few years. He accepted he owned the Land. He said he wasn't advised to leave the Land. He apologised for not leaving the Land. He didn't think it was a serious matter. He didn't think he would go to prison. He wanted to make a home for himself and his wife. He complained that

Rebecca Hawksley hadn't advised him properly about the letter of the 13th of August. I saw a transcript of a garbled Whatsapp message from Miss Hawksley to D3 in August 2021 but I did not fully understand the context nor was that adequately explained in D3's evidence.

- [62] D3 said that he worked in landscaping and he drove a van. He said he hadn't been arrested before, he hadn't been to prison before and he didn't like it in prison. He promised that if released he would definitely remove all the development he had carried out on the Land. He would turn it back into grassland. He said he could do that in seven days but then, thinking about it, he said he thought it might take 14 days. He said that others would help him do it.
- [63] Because the Defendant was giving evidence relating to mitigation of sentence I did not allow the Claimant's counsel to question him. It would have been a different position if D3 had been giving evidence in relation to disputed breaches.

The Conclusions

- [64] I was not impressed by D3's evidence. I found him to be deliberately manipulative. He engineered the adjournment application on the grounds of having no representation by refusing to instruct his lawyers to represent him for the substantive hearing.
- [65] I do not accept that he is naïve and was misled by his solicitor Rebecca Hawksley on all or even most matters of importance in this application. I note that Miss Hawksley appeared as solicitor advocate for the Defendant in *Edmundbury BC v Oakley [2015] EWHC 1975* and before the Court of Appeal in this action. She is not inexperienced in planning or committal for contempt. She is not here to defend the allegations made against her which I find are not proven. I do not accept that this solicitor of the Supreme Court did advise D3 to ignore the Court orders numbered 1-3 or the suspended sentence conditions, whatever other problems her practice may have been experiencing in the first half of 2021.
- [66] I do not accept that any reading and writing challenges D3 faces (and I make no findings on those) made any difference to his ability to understand the seriousness and the thrust of the Court Orders made by Foxton J and Mr. Metzger QC. There must be many nails in the gate post of plots 1 and 2 of the Land, D3's plots on which D3 has carried out so much development work over the last 11 months. I find as a fact that D3 was aware of the orders, the powers of arrest therein, the hearing on 28 July, the bench warrant and that he understood the contents of those documents. I find that D3 chose to breach the Orders, chose not to come to court on 28th July, chose to ignore the bench warrant for his arrest and chose to continue his development of the Land contrary to the Court's injunctions.
- [67] I take into account that D3 has already been granted time to comply by the suspended sentence passed in March 2021. He did not comply.
- [68] I have read and take into account the decision of HHJ Simon Barker sitting as a deputy High Court Judge in *Official Receiver v Brown [2017] EWHC 2762 (Ch)* relied on by D3. In particular para 17:

“17. Following a finding or admission of contempt, punishment falls to be considered in the context of both the gravity of the conduct and also the need to secure future compliance with or adherence to the rule of law, that is to deter repetition of the contempt, and further to encourage or ensure compliance with any outstanding and/or continuing obligation pursuant to an order or undertaking to the court or a statutory obligation. The court's interest is confined to (1) punishment to mark the court's disapproval of the breach or non-compliance and disregard of the rule of law, (2) deterring future or continued breaches or non-compliance and upholding the rule of law, and (3) coercion, that is encouraging or ensuring present and/ or future compliance by the contemnor. The punitive element addresses the seriousness of the breach or non-compliance of the particular contempt. The deterrence element reflects the public interest in maintaining adherence to the rule of law. The coercive element encourages purging, or atonement, for the particular contempt. A contemnor has an unqualified and continuing right to purge the contempt and seek an order for immediate release.”

[69] I also take into account that there are three main purposes for sentences for contempt: coercion of the Defendant to obey the courts orders and punishment of the Defendant for failing to do so and deterrence.

[70] I take into account that fact that D3 could have purged his contempt or started doing so at any time after 17 June 2021 but chose not to do so. He can still do so through his family and friends, in the next 2 weeks as he offered to me in Court, or thereafter and he will then be able to apply for release from detention.

[71] I take into account that many costs orders have been made against D3 and he not paid a single one of them. This is to be contrasted with him booking a holiday to Corfu in late September and paying his own lawyers. I note that D3 makes absolutely no financial offer to satisfy those costs despite being in work as a landscape gardener so a fine or financial penalty does not appear to be appropriate, nor would it match the gravity of D3's breaches.

[72] In mitigation I take into account the *Sentencing Guidelines; Sentencing Act 2020 s57, 63-65, 230-232*. I take into account D3's young age and lack of any criminal convictions. I take into account that others may have been assisting or encouraging him. I take into account that his lawyers came off record before the hearing on 28th July.

[73] I take into account the admissions by D3 of the breaches.

[74] I take into account *the Sentencing Act 2020 Schedule 16, paragraph 13*.

Reactivation of the suspended sentence

[75] Taking the above into account I reactivate the custodial sentence of **4 months** imposed by Mr Metzger QC but alter it to detention at Her Majesty's Pleasure in a Young Offenders Institute. I take note of *S.108 of the Powers of Criminal Courts (Sentencing) Act 2000*. I do not choose to reduce the term imposed.

Sentence

- [76] For the new admitted breaches of the court's orders and conditions I considered originally that a sentence of 6 months detention at Her Majesty's pleasure in a young offenders Institute would be appropriate, but I have reduced that to **3 months** due to the mitigation provided by Miss Kerridge.
- [77] The two custodial sentences will be run consecutively making a total of **seven months**. The breaches are different, separate and are very serious.
- [78] I am bound to inform D3 of his right (without the need for permission) to appeal my sentence to the Court of Appeal. The time limit for the appeal is 21 days.

Costs

- [79] I award the Claimant its costs of the application and the hearing before Saini J to be paid by D3.

Warrant signed
Order Made.

Ritchie J