Neutral Citation Number: [2021] EWHC 350 (QB) (Admin)

Case No: QB-2020-002823

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/02/2021

Before:

THE HONOURABLE MR JUSTICE TURNER

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Between:

CHESHIRE EAST BOROUGH COUNCIL

And

(1) MR MICHAEL MALONEY
(2) MRS SHEILA MALONEY
(3) MR MICHAEL MALONEY SENIOR
(4) MS BRIDGET MALONEY
(5) MS HELEN LISA MALONEY
(6) PERSONS UNKNOWN DEPOSITING HARDCORE, BRINGING CARAVANS AND RESIDENTIALLY OCCUPYING THE LAND ON THE SOUTH SIDE OF BROADOAK LANE, MOBBERLEY, KNUTSFORD, CHESHIRE
(7) TOTAL PLANT HIRE
(8) MR THOMAS HALIGAN
(9) W DOHERTY & SONS LTD
(10) MR PAUL RENNIE
(11) MR GLYN PARR
(12) MR ADRIAN DRAPER

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Mr Jack Smyth (instructed by Cheshire East Borough Council) for the **Claimant**
Mr Timothy Jones (instructed by Community Law Partnership) for the **Defendant**

Hearing dates: Tuesday 9 February, Wednesday 10 February and Thursday 11 February 2021

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Approved Judgment

The Hon. Mr Justice Turner:

INTRODUCTION

1. For those unacquainted with the area, Mobberley is a village in an affluent area of Cheshire East. Many of the larger houses there command prices well into seven figures. As one might expect, members of the local community are keen to preserve the character of the neighbourhood. This case is about what happened when an extended family of Irish Travellers decided to make it their home.

BACKGROUND

2. Broadoak Lane runs through a predominantly agricultural landscape about half a mile to the west of Mobberley. It lies in the Cheshire East Green Belt. In August 2019, Mr Michael Maloney, the first defendant and an Irish traveller, purchased an area of paddock land immediately adjacent to the lane and, about a year later, set about gradually populating it with his extended family members many of whom now live in a total of thirteen caravans which had been brought onto the site in quick succession. The word disappointment does not fully reflect the strength of local antipathy to this development.

3. In response, the claimant, to which I will refer henceforth as the council, obtained ex parte interim injunctive relief from Farby J on 13 August 2020 and, inter partes, from Cockerill J on 1 September 2020.

4. Two matters now arise for my determination. The first relates to allegations that Mr Maloney is in contempt of court having acted in breach of the terms of both of the interim injunctions to which I have referred. The second relates to the terms of any injunction to apply in the longer term. Although these are two jurisprudentially distinct issues, they each arise from the background circumstances of the case. The parties have agreed that they could appropriately be dealt with in the same hearing.

5. As it happens, Mr Maloney has been held in custody since the end of last month but his Article 6 rights to a fair trial have been preserved by a live video link from the Civil Justice Centre here in Manchester to the Magistrates' Court across the road. The reason Mr Maloney finds himself in prison has nothing to do with this case. He was on licence following his release from custody with respect to other matters and he has been returned to prison following allegations that he has acted in breach of the terms of his licence. These allegations remain unproven. Suffice it to say that I draw no adverse conclusions concerning either his credibility or propensities from these matters.

6. It is to be noted that the committal proceedings were originally brought against no fewer than twelve defendants of whom Mr Maloney was the first. The cases against the other defendants had all been resolved in one way or another by the time the hearing before me had come to a conclusion and no purpose would be served by

rehearsing here the circumstances in which such mutual accommodation had been achieved.

7. I now propose to address the law relating to each of the two issues of contempt and injunctive relief before making the necessary findings of fact and, finally, applying the former to the latter.

CONTEMPT OF COURT

8. The burden of proof in relation to every allegation of contempt lies squarely on the shoulders of the council and the standard of proof is proof beyond reasonable doubt.

9. A contempt can be proven in relation to breaches of an injunction before the defendant was personally served with the injunction if he was aware of the terms and effect of the injunction and the lack of formal service had not caused him prejudice or unfairness: Dell Emerging Markets (EMEA) v Systems Equipment Telecommunications Services [2020] EWHC 561 (Comm) paras 87-97. In the absence of such prejudice or unfairness, the court retains a discretion to treat the informal service that was effected on him as good service thereby dispensing with service: CPR r81.8 (1) (b).

10. The matters to be proved before a finding of contempt may be made are set out in the notes to Volume 3 of the White Book at 3C-17 and it has been agreed on behalf of Mr Maloney that they apply to the circumstances of this case:
"A person is guilty of contempt by breach of a court order only if all the following factors are proved to the criminal standard of proof: (a) having received notice of the order (being an unambiguous order) the contemnor did an act prohibited by the order or failed to do an act required by the order within the time set by the order; (b) he intended to do the act or failed to do the act as the case may be; (c) he had knowledge of all the facts which would make the carrying out of the prohibited act or the omission to do the required act a breach of the order (FW Farnsworth Ltd v Lacy [2013] EWHC 3487 (Ch), (Proudman J), at para.20). Further, the act constituting the breach must be deliberate rather than merely inadvertent, but an intention to commit a breach is not necessary, although intention or lack of intention to flout the court order is relevant to penalty (ibid)."

PLANNING INJUNCTIONS

11. The power of the court to control breaches of planning control is now contained in section 187B of the Town and Country Planning Act 1990 which provides:
"**Injunctions restraining breaches of planning control**

(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.
(4) In this section "the court" means the High Court or the county court."

12. The leading case on the proper scope and application of the power afforded by this section is South Bucks DC v Porter(No.1) [2003] 2 A.C. 558 in which Lord Bingham expressly endorsed as judicious and accurate in all essential respects the guidance of Simon Brown LJ in the Court of Appeal in that case ([2002] 1 W.L.R. 1359 at paragraphs 38-42) which provides, insofar as is relevant:

"38. I would unhesitatingly reject the more extreme submissions made on either side. It seems to me perfectly clear that the judge on a section 187B application is not required, nor even entitled, to reach his own independent view of the planning merits of the case. These he is required to take as decided within the planning process, the actual or anticipated breach of planning control being a given when he comes to exercise his discretion. But it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for himself all questions of hardship for the defendant and his family if required to move, necessarily including, therefore, the availability of suitable alternative sites. I cannot accept that the consideration of those matters is, as Burton J. suggested was the case in the pre-1998Act era, 'entirely foreclosed' at the injunction stage. Questions of the family's health and education will inevitably be of relevance. But so too, of course, will countervailing considerations such as the need to enforce planning control in the general interest and, importantly therefore, the planning history of the site. The degree and flagrancy of the postulated breach of planning control may well prove critical. If conventional enforcement measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be the readier to use its own, more coercive powers. Conversely, however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gipsy moving onto the site might, indeed, involve him in less hardship than moving him out after a long period of occupation. Previous planning decisions will always be relevant; how relevant, however, will inevitably depend on a variety of matters, including not least how recent they are, the extent to which considerations of hardship and availability of alternative sites were taken into account, the strength of the conclusions reached on land use and environmental issues, and whether the defendant had and properly took the opportunity to make his case for at least a temporary personal planning permission.

39.Relevant too will be the local authority's decision under s.187B(1) to seek injunctive relief. They, after all, are the democratically elected and accountable body principally responsible for planning control in their area. Again, however, the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the art.8(2) questions as to necessity and proportionality.

40.Whilst it is not for the court to question the correctness of the existing planning status of the land, the court in deciding whether or not to grant an injunction (and, if so, whether and for how long to suspend it) is bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end. In this regard the court need not shut its mind to the possibility of the planning authority itself coming to reach a different planning judgment in the case.

41.True it is, as Mr. McCracken points out, that, once the planning decision is taken as final, the legitimate aim of preserving the environment is only achievable by removing the gipsies from site. That is not to say, however, that the achievement of that aim must always be accepted by the court to outweigh whatever countervailing rights the gipsies may have, still less that the court is bound to grant injunctive (least of all immediate injunctive) relief. Rather I prefer the approach suggested by the 1991 Circular: the court's discretion is absolute and injunctive relief is unlikely unless properly thought to be 'commensurate'—in today's language, proportionate. The approach in the Hambleton case [1995] 3 P.L.R. 8 seems to me difficult to reconcile with that circular. However, whatever view one takes of the correctness of the Hambleton approach in the period prior to the coming into force of the Human Rights Act 1998, to my mind it cannot be thought consistent with the court's duty under s.6(1) to act compatibly with convention rights. Proportionality requires not only that the injunction be appropriate and necessary for the attainment of the public interest objective sought—here the safeguarding of the environment—but also that it does not impose an excessive burden on the individual whose private interests—here the gipsy's private life and home and the retention of his ethnic identity—are at stake.

42.I do not pretend that it will always be easy in any particular case to strike the necessary balance between these competing interests, interests of so different a character that weighing one against the other must inevitably be problematic. This, however, is the task to be undertaken by the court and, provided it is undertaken in a structured and articulated way, the appropriate conclusion should emerge."

THE FACTS

13. Mr Maloney is a businessman. As members of the travelling community, he and his extended family have lived a traditionally peripatetic lifestyle over the years.

14. This case does not mark his first encounter with the planning authorities. There is documentary evidence in the trial bundle of an earlier issue arising with the local council in Leicestershire. Without descending into unnecessary detail, it demonstrates, at least, that, at time of the matters material to the instant case, he was not a complete novice when it came to matters of planning.

15. There are certain details to the background of this case which the council does not seek to challenge. These include the fact that Mr Maloney and the members of his immediate family were the victims of an arson attack on their home in Bishop's

Stortford on 14 April 2020 which had left them looking for a safe alternative place to live. Furthermore, Mr Maloney's father had been diagnosed with terminal cancer from which he died in October 2020.

16. There are, however, a number of issues upon which the evidence of Mr Maloney is in stark contrast to the factual inferences which the council invite me to draw from the background narrative. In this context, I must observe that Mr Maloney did himself no favours in the witness box. He is undoubtedly both intelligent and articulate. In contrast to other members of his immediate family, he is fully literate and was able effortlessly to read out documents to which he was referred during the course of his oral evidence. On the other hand, I found that his answers to questions put to him in cross examination were unsatisfactory in several respects. I will refer to specific examples later in this judgment but will make some general observations at this stage. When faced with questions the answers to which he undoubtedly knew were important he repeatedly obfuscated. In some instances, he flatly refused to answer questions even where those answers were plainly relevant to the issues in the case. His mien was, at times, one of hostile resentment and left me with no doubt that he was a man used to getting his own way. I did not find his evidence to be reliable and, save where corroborated from other sources, it fell to be treated with caution.

17. About four months after the arson attack, Mr Maloney and some members of his family arrived at the Broadoak Lane site with their caravans with the intention of making the palace their home. I am sure that Mr Maloney took up occupation in the full knowledge that this use of an agricultural site was in clear and obvious breach of planning control. On Friday 7 August 2020, a planning consultancy, Marrons Planning, sent a detailed letter to the planning department of the council on his behalf pointing out that a planning application had been submitted electronically in respect of a proposed change of use for the stationing of caravans on three pitches, associated hardstanding and pedestrian access. By the time of this letter, however, Mr Maloney had, by way of pre-emptive strike, already moved in.

18. Three pitches had been established on the site. The first was occupied by Mr Maloney, his wife and four children; the second by Mr Maloney's father (now deceased) and mother; the third by Mr Maloney's sister and her daughter.

19. It was not long before several members of the public noticed what was happening and complained to the council. As a result, on Monday 10 August, two officers of the council, Mr Cush and Mr Douglas visited the site. They found that six caravans were, by this time, on site and that extensive earthworks had already been carried out. Mr Maloney was not there. He was in the south of England. I am sure that he had deliberately absented himself in an attempt to frustrate and delay any attempts on the part of the council to intervene. Mr Douglas, however, managed to speak to Mr Maloney over the telephone and was given much of the same information as had been set out in the letter from Marrons Planning.

20. Complaints continued to flood in from local residents and, on the following day, Mr Cush returned with one Mr Ward. They found that works were continuing and a digger, dumper truck and roller were on the site. Tipper wagons were observed to be making repeated visits to deposit hardcore.

21. In response to the continuing works, the council sought and obtained an ex parte injunction on the morning of Thursday 13 August from Farby J. Complaint is raised that the council did not, at this hearing, adequately discharge its duty of candour when presenting its evidence in support of the granting of the injunction. The court was not informed, for example, that the council was failing to discharge its statutory duty to provide adequate pitches for travellers in the area, that Mr Maloney's father's condition was terminal or that there may be some scope for concluding that some of the activity on the site may have fallen within the parameters of permitted development. The duty of candour is an important one and I proceed on the assumption that the deficits identified were not without significance and that the council ought, in particular, to have provided the court at that stage with a copy of the letter of Marrons Planning which contained much of the relevant information. The relevant principles to be applied are conveniently set out in Arena Corporation v Schroeder [2003] EWHC 1089 (Ch) at paragraph 213:

> "On the basis of the foregoing review of the authorities, I would summarise the main principles which should guide the court in the exercise of its discretion as follows:
>
> (1) If the court finds that there have been breaches of the duty of full and fair disclosure on the ex parte application, the general rule is that it should discharge the order obtained in breach and refuse to renew the order until trial.
>
> (2) Notwithstanding that general rule, the court has jurisdiction to continue or re-grant the order.
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> (3) That jurisdiction should be exercised sparingly, and should take account of the need to protect the administration of justice and uphold the public interest in requiring full and fair disclosure.
>
> (4) The court should assess the degree and extent of the culpability with regard to non-disclosure. It is relevant that the breach was innocent, but there is no general rule that an innocent breach will not attract the sanction of discharge of the order. Equally, there is no general rule that a deliberate breach will attract that sanction.
>
> (5) The court should assess the importance and significance to the outcome of the application for an injunction of the matters which were not disclosed to the court. In making this assessment, the fact that the judge might have made the order anyway is of little if any importance.
>
> (6) The court can weigh the merits of the plaintiff's claim, but should not conduct a simple balancing exercise in which the strength of the plaintiff's case is allowed to undermine the policy objective of the principle.
>
> (7) The application of the principle should not be carried to extreme lengths or be allowed to become the instrument of injustice.
>
> (8) The jurisdiction is penal in nature and the court should therefore have regard to the proportionality between the punishment and the offence.
>
> (9) There are no hard and fast rules as to whether the discretion to continue or re-grant the order should be exercised, and the court should take into account all relevant circumstances."

22. In this case I am satisfied the council's omissions were innocent and the importance and significance to the outcome of the application for an injunction of the matters which were not disclosed to the court was not such as to vitiate or otherwise undermine the terms of the injunction granted. It is to be noted that when the matter next came, inter partes, before the court, Cotterill J did not discharge the earlier injunction but went on to grant further injunctive relief to the council. In the particular

circumstances of this case, I am satisfied that the council's omissions, although culpable, are not such, in the event, to have a material bearing on my conclusions in the substantive issues in this case.

23. On 13 August, Farby J ordered, insofar as is material:
"1. Until further order, the Defendants shall not (whether by themselves or encouraging or allowing another) undertake any developments as defined by section 55 of the Town and Country Planning Act 1990 on the Land (as defined by para 2 below) without the grant of planning permission or the written consent of the Claimant's solicitor. For the avoidance of doubt, the Defendants are forbidden from:

(a) Importing or depositing any material;

(b) Excavating or altering ground levels;

(c) Laying down further hardstanding/hardcore;

(d) Erecting any building/structure

(e) Siting any caravans/mobile homes (For the avoidance of doubt, if a caravan which was on the Land at the time of the service of this order is removed it may not be replaced with another;

(f) Allowing any further residential use (For the avoidance of doubt, nobody else may live on the Land who was not doing so at the time of the service of this order).

2. The land referred to in this order is the Land on the south side of the Broadoak Lane, Mobberley, Knutsford, Cheshire as delineated in red on the attached plan.

3. For the avoidance of doubt, if a person claims that they were unaware of the terms of this order when they breached it, they must remedy the breach within 4 hours of being informed of the terms of the order. Otherwise they shall be in contempt of Court.

4. To effect service the Claimant shall personally serve the first Defendant with a copy of this order together with the application, claim form and evidence in support, place a copy of the order on its website and affix a copy of this order contained in a transparent weatherproof envelope on each of the caravans on the Land and at a prominent position at the entrance to the Land so that it comes to the attention of any visitors.

5. Any person who is presently living on the land and who wishes to identify him or herself to be joined as a named Defendant to the proceedings may apply to the Court on 24 hours written notice to the Court and the Claimant."

24. Armed with copies of the order of Farby J, Mr Cush, Mr Douglas and Mr Ward visited the site that afternoon to find that works were still in progress. Attempts to persuade the workmen to stop were to no avail. Mr Maloney's daughter, however, rang her father and passed the phone to Mr Cush who told Mr Maloney of the terms of the injunction. Mr Cush's evidence was that Mr Maloney said that he was in Essex

and would not be back until the weekend. Mr Cush told him that failure to comply with the terms of the order could result in imprisonment. In a further conversation between the two men about an hour later Mr Cush says that he asked Mr Maloney to instruct the operatives to stop work and Mr Maloney confirmed that he would do it.

25. Mr Maloney, on the other hand, denies that he ever said that he would be back by the weekend and suggests that he told Mr Cush to tell the operatives to stop work. He said that the work was being organised and carried out by one Mr Peter Murphy in return for a favour which he owed him and that Mr Murphy just happened to be out of contact in Ireland during this period.

26. I did not believe a word of Mr Maloney's account.

27. The suggestion that Mr Murphy had done the work as a favour was fanciful. Mr Maloney refused to say what the favour was when repeatedly asked about it during cross-examination and I am satisfied that this was because there was no such favour. The scale of the works was such that they would have cost thousands of pounds and not of the kind as would be called in on a vague and undisclosed favour. The allegation that it had been left to Mr Cush to order the operatives to stop work is also a fabrication. I am sure that Mr Maloney knew full well that it was his responsibility to stop the work and to ensure that no further caravans should come on site and he had the means and authority to achieve this. He deliberately absented himself in Essex in an attempt to distance himself from the development on the land in the full knowledge that it was in breach of planning control and, after the afternoon of 13 August, the order of the court. He knew full well what the consequences of disobeying the court order might be after his first conversation with Mr Cush on that afternoon. In the absence of any prejudice or unfairness, I find that Mr Maloney was then bound by the terms of the injunction and fully aware of the potential penal consequences thereafter despite the fact that he may not have seen the injunction until 20 August.

28. In the days which followed, further caravans arrived on site in breach of the order. By 24 August, no fewer than 13 caravans had arrived, all occupied by members of Mr Maloney's extended family. I am in no doubt that Mr Maloney both expected and encouraged their arrival despite the terms of the injunction and in the full knowledge that he was acting in breach of it. There was a telling moment during cross examination when Mr Maloney was asked why he refused to allow representatives of the council to check up on the welfare of the children on site. He asserted in emphatic terms that he was the owner of the site and that it was he who would decide who could and could not come on his land. In this respect, I am sure, for once, that he was telling the truth. I am sure that the five additional caravans were brought there with his consent, connivance and encouragement.

29. The case came before Cotterill J on 1 September 2020. Both sides were legally represented. The judged ordered:
"1. Until further order, the Defendants shall not (whether by himself or encouraging or allowing another) undertake any development as defined by section 55 of the Town and Country Planning Act 1990 on the Land (as defined by para 3 below) without the grant of planning permission or the written consent of the Claimant's solicitor. For the avoidance of doubt, the Defendants are forbidden from:

a) Importing or depositing any material;
b) Excavating or altering ground levels;
c) Laying down further hardstanding/hardcore;
d) Erecting any building/structure

2. Until further order, the Defendants shall not (whether by himself or encouraging or allowing another) site any further caravans/mobile homes on the Land which were not present on 1 September 2020. For the avoidance of doubt:

    a) No more than 13 caravans may be on the Land at any one time
    b) Only those persons listed in the attached schedule may live on the Land and nobody else may do so.
    c) The land referred to in this order is the Land on the south side of the Broadoak Lane, Mobberley, Knutsford, Cheshire as delineated in red on the attached plan.
    d) For the avoidance of doubt, if a person claims that they were unaware of the terms of this order when they breached it, they must remedy the breach within 4 hours of being informed of the terms of the order. Otherwise they shall be in contempt of Court."

THE ALLEGATIONS OF CONTEMPT

30. I will deal with each allegation in turn. When drafted, each allegation had been raised against more than one of the defendants. Now that only Mr Maloney remains to be dealt with, the allegations, although drafted in the plural, must be read on the basis that it is only he who falls now to be considered.

Order of Farby J

ALLEGATION 1
They disobeyed para 1 of the injunction in that they continued (whether by themselves or encouraging or allowing another) to import/deposit material, alter ground levels and lay down further hardstanding/hardcore after the service of the injunction on the afternoon of 13 August 2020 contrary to sub-paras a, b & c. The allegation is made on the basis of the activity undertaken (including the deposit and spreading of material on the Land) after service of the injunction on the afternoon of 13 August 2020.

31. I find this allegation proved. I am sure that, following his conversations with Mr Cush on the afternoon of 13 August 2020, Mr Maloney knowingly encouraged and allowed works beyond the scope of permitted development rights in breach of the Order of Farby J to continue. I am sure that Mr Maloney told Mr Cush that he, Mr Maloney, would tell the operatives to stop work but that he had no intention so to do. It would have been easy and straightforward for him to get the message through to them. Had he done so they would have done as he told them. His excuse that Mr Murphy was the man in control of these activities and was out of contact in Ireland was a lie.

ALLEGATION 2
They disobeyed para 3 of the injunction in that they failed to remedy the aforementioned breach (in respect of allegation 1 above) within 4 hours of being

informed of the terms of the order on the afternoon of 13 August 2020. To date, no effort has been made to remedy the breach.

32. I find this allegation proved. Even if, contrary to my findings on the issue, Mr Maloney was unaware of the terms of the order or any of them at the time of his telephone conversations with Mr Cush on the afternoon of 13 August 2020 he made no attempt to remedy the breach thereafter. It is suggested that four hours would not be long enough time in which to remedy the breach but this did not preclude Mr Maloney from using his best endeavours and claiming force majeure in the event that a longer time would be required than that allowed for in the order.

ALLEGATION 3
They disobeyed para 1 (e) of the injunction in that they sited additional caravans on the Land after the service of the order. There were 6 caravans when the injunction was served on the afternoon of the 13 August. The following day there were 10 on the land.

33. I find this allegation proved. I am sure that the caravans which arrived after the afternoon of 13 August 2020 did so at the continuing invitation and with the authority of Mr Maloney whose plan was to provide accommodation for members of his extended family.

ALLEGATION 4
They disobeyed para 3 of the injunction in that they failed to remedy the aforementioned breach by removing the "new" caravans within 4 hours of being informed of the terms of the order on the afternoon of 13 August 2020 or the following day. To date, no effort has been made to remedy the breach.

34. I find this allegation proved. Even if, contrary to my findings on the issue, Mr Maloney was unaware of the terms of the order or any of them at the time of his telephone conversations with Mr Cush on the afternoon of 13 August 2020 he made no attempt to remedy the breach thereafter. It is suggested that four hours would not be a long enough time in which to remedy the breach but this did not preclude Mr Maloney from using his best endeavours and claiming force majeure in the event that a longer time would be required than that allowed for in the order.

ALLEGATION 5
35. Was not directed at Mr Maloney.

ALLEGATION 6
They disobeyed para 1 (e) of the injunction in that they sited additional caravans on the Land after a site visit by officers on 13th August when they were served with the order and told not to site any further caravans. There were 8 caravans when the injunction was served on the afternoon of the 13th August. On 17th August there were 10 caravans on the Land.

ALLEGATION 7
They disobeyed para 1 (e) of the injunction in that they sited additional caravans on the Land after a site visit by officers on 13th August when they were served with the

order and told not to site any further caravans. There were 8 caravans when the injunction was served on the afternoon of the 13th August. On 20th August, 11 caravans were observed.

ALLEGATION 8

They disobeyed para 1 (e) of the injunction in that they sited additional caravans on the Land after the site visit by officers on 13th August when they were served with the order and told not to site any further caravans. There were 8 caravans when the injunction was served on the afternoon of the 13th August. On 24th August there were 12 caravans were observed.

ALLEGATION 9

They disobeyed para 3 of the injunction in that they failed to remedy the aforementioned breaches by removing the "new" caravans within 4 hours of being informed of the terms of the order on the afternoon of 13 August 2020 or the following day. To date, no effort has been made to remedy the breach.

36. I find each of these allegations proved. I am sure that the caravans which arrived after the afternoon of 13 August 2020 did so at the invitation and with the authority of Mr Maloney whose plan was to provide accommodation for members of his extended family.

ALLEGATIONS 10, 11 AND 12

37. Were not directed at Mr Maloney.

ALLEGATION 13

He disobeyed para 1 sub-paras a & c of the order of Farby J dated 13 August 2020 in that he (whether by himself or encouraging, instructing or allowing another) imported/deposited material and laid down further hardcore at the gated access to the Land. The allegation is made out on the basis of the activity undertaken, namely the depositing of hardcore, between 26 August 2020 and the next site visit by officers on 28 August 2020. To date, no effect has been made to remedy the breach.

38. I find this allegation proved. I am sure that the evidence of Mr Ward is to believed to the effect that when he visited the site on 28 August, he found that new and further hardcore had been deposited about 20 to 30 metres from the access point to the land. It has been argued on behalf of Mr Maloney that I could not be sure that the intended work did not fall within permitted development rights relating, in particular, to the formation, laying out and construction of a means of access to then highway. However, the location of the material well away from the entrance to the site together with the fact that there was no suggestion that this might have been the intended purpose of the hardcore before the issue was raised in the skeleton argument of 5 February 2012 renders this explanation not worthy of belief.

Order of Cockerill J

ALLEGATION 14

He disobeyed para 1 sub-paras a & c of the order of Cockerill J dated 1 September 2020 (amended on 2 September 2020) in that he (whether by himself or encouraging, instructing or allowing another) imported/deposited material and laid down further hardcore at the gated access to the land. The allegation is made out on the basis of the activity undertaken (including the deposit and spreading of material on the Land) was witnessed taking place on the Land on 23 September 2020. The next day, during a site visit, officers confirmed that fresh material had been deposited. To date, no effort has been made to remedy the breach.

39. I find this allegation proved. Photographs taken on 23 September 2020 show a large tipper truck depositing materials on the site. Mr Maloney's explanation was that the material being deposited was asphalt slurry the purpose of which was to prevent small chippings from being deposited in the road. Be that as it may, it is still a deposit and the operation was prohibited by the order of Cockerill J.

ALLEGATION 15
He disobeyed para 1(d) of the order of Cockerill J dated 1 September 2020 (amended on 2 September 2020) in that he (whether by himself or encouraging, instructing or allowing another) erected 2 wooden sheds on the Land between 24 September 2020 and 16 October 2020. To date, no effort has been made to remedy the breach.

40. I do not find this allegation proved. The two sheds in question were erected to provide washing facilities for those living on the site. They were undoubtedly structures and, therefore, on the face of it, erected in breach of the order of Cotterill J. However, there arose a lively debate between counsel as to whether or not the erection and use of the huts, per se, gave rise to a breach of planning control. Having heard these representations, I was not sure, on the very limited evidence before me, that there had been such a breach. I took the view that the Order of Cotterill J ought to be interpreted, in the circumstances of this case, so as to cover only breaches of planning control.

ALLEGATION 16
They disobeyed paragraph 2a of the injunction in that they sited an additional caravan or motorhome on the Land after service of the above mentioned order. There were 13 caravans when the injunction was served on the 3rd September 2020. On the 15th January 2021 an additional caravan or motorhome was sited on the Land.

41. I do not find this allegation proved. I accept that the additional caravan here referred to may have been on the land transiently to replace one which was already there. It may have been there for no longer than was necessary to allow the contents of the caravan already on the land to be transferred. I would not regard this operation to involve the siting of an additional caravan.

CONCLUSION ON CONTEMPT

42. It follows from the above that I have found that Mr Maloney is in contempt of court in respect of the following allegations: 1,2,3,4,6,7,8,9,13 and 14.

43. Since the parties, and Mr Maloney in particular, have not been afforded the opportunity to make representations to me as to the consequences of this combination of findings, I have ordered that the case should be listed for this matter to be addressed further with Mr Maloney in remote attendance.

CONTINUING INJUNCTION

44. The council seeks prohibitory restraint to remain in place for 5 years to enable it to proceed with enforcement action which is subject to appeal. This approach is not controversial. The issue, however, is as to the terms of such restraint.

45. The central question is as to whether the number of caravans on site over this period should be limited to the eight which were present at the time of the Order of Farby J or the thirteen which were present by the time the matter came before Cotterill J.

46. The eight caravans first to arrive were occupied as follows:
    - One and two by Mr Maloney, his wife and four children;
    - Three by Mr Maloney's sister, Lisa, and her child;
    - Four by Bridget, Mr Maloney's mother;
    - Five, Six and Seven by Mr Maloney's brother, Joe, with his wife and nine children;
    - Eight by Mr Maloney's sister, Rose, and her husband and five children.

47. The five later arriving caravans were occupied as follows:
    - Nine and ten by Mr Maloney's sister, Rose, and her husband and five children (in addition to caravan seven above);
    - Eleven and twelve by Mr Maloney's sister, Theresa, and her husband and four children;
    - Thirteen by Mr Maloney's sister Stephanie, her husband and five children.

48. There are significant arguments in favour of allowing all thirteen caravans presently on site to remain there.

49. Of particular importance is the interests of the children. In this regard, reference is to be made to the case of Collins v Secretary of State for Communities and Local Government [2013] P.T.S.R. 1594 the effect of which is accurately summarised in the headnote thus:

> "…that where a planning decision engaged a child's right to private and family life under article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the child's best interests would be a primary consideration for the decision-maker, but that those interests, once identified, were not determinative of the planning issue; that, however, no other consideration was to be regarded as more important or to be given greater weight than the best interests of any child, merely by virtue of its inherent nature apart from the context of the individual case; that when examining all material considerations and making a

> planning judgment on the basis of the best interests of any child, the decision-maker had to keep those interests at the forefront of his mind and assess whether any adverse impact of any decision he might make on the interests of a child was proportionate; that whether the decision-maker had properly performed the exercise was a question of substance not form; that it was not necessary for the planning decision-maker, or inspector appointed to hold a public inquiry and make recommendations to the Secretary of State, to hear directly from children affected by the relevant decision, since their wishes and best interests would normally be conveyed sufficiently through evidence from other sources; that the decision-maker had to be equipped with sufficient evidence on which to make a proper assessment of the child's best interests, but where an applicant for planning permission was professionally represented the decision-maker was entitled to assume that the relevant evidence had been placed before him unless something showed the need for further investigation; and that it would not usually be necessary for the decision-maker to make his own inquiries as to evidence that might support the child's best interests."

50. The council realistically concedes that an injunction limiting the occupation of the site would have an adverse impact on the interests of the children presently occupying caravans nine to thirteen inclusive. This may also extend to the children of Rose Maloney only one of whose three caravans had arrived on site before Farby J made her order. It is likely that the occupants of the five caravans may be forced to resort to a peripatetic roadside existence disadvantageous to adults and, more particularly, children in terms of access to health care, education and other amenities. Thus, the article 8 rights of all concerned are engaged as is the Public Sector Equality Duty. I note in this context that Mr Cush of the council made detailed enquiries concerning the children on site at the time of his visit of 10 August. He later wanted to do a welfare assessment on the children but Mr Maloney refused to allow him on site to perform it. No other adult on site had applied to be joined to the proceedings as a defendant.

51. A further relevant feature is the admitted failure of the council to meet the assessed need of travellers in accordance with Local Plan Strategy Policy SC7 "Gypsies and Travellers and Travelling Showpeople". For very many years the number of pitches available has fallen far short of those for which there is a need. This is a matter of real concern at both a national and local level.

52. However, notwithstanding these features, to which I pay full regard in accordance with the decided cases, I am entirely satisfied that it would be wrong to countenance the continued presence of the five additional caravans. There is a strong public interest in ensuring that orders of the court are obeyed and that, all other things being equal, disobedience to such orders are not thereafter deployed to forensic advantage. If Mr Maloney had denied access to the five caravans in obedience to the order then the likely consequence would have been that the court would thereafter have sought to preserve that status quo. By allowing the additional caravans on his land, I am sure that his intention was cynically to shift the goal posts.

53. It is to be noted that the original application for planning permission was for three pitches to accommodate Mr Maloney and his sister, Lisa and their families together with Mr Maloney's parents. His ambition at that stage was not stated to include the

other members of the family who have since arrived. Indeed, Mr Maloney's explanation for their wanting to come to the site was that they wanted to be close to Mr Maloney' father who was terminally ill with cancer. It is now about four months since he died and so this consideration can no longer apply. The families of Rose, Theresa and Stephanie, unlike that of Mr Maloney, had not been rendered homeless as a result of the arson attack and there had been no history of their previously living close to Mr Maloney. Before moving to the Mobberley site, they had been peripatetic. It would be a matter of speculation for me to attempt to predict the eventual outcome of the substantive applications for planning permission.

CONCLUSION ON INJUNCTION

54. Standing back from the detail of this narrative, I am satisfied that, notwithstanding the factors in favour of allowing all thirteen caravans to stay in the interim, by a strong balance, the position before Mr Maloney embarked on his campaign of contumely should be preserved and not that which prevailed at the later time when the matter came before Cotterill J. Such an outcome would be a proportionate response. For reasons I have already articulated, I will take no action in respect of the two sheds.

55. I invite the parties to attempt to agree the terms of an injunction which reflects my findings. Any outstanding disputes may be resolved when the matter is next listed before me.