



Neutral Citation Number: [2022] EWHC 753 (QB)

Case No: QB-2021-003325

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 April 2022

Before:

Paul Bowen QC
(Sitting as a Deputy Judge of the High Court)

Between:

BRAINTREE DISTRICT COUNCIL

Claimant

- and -

JIMMY WILSON (2) CHANTELE WILSON (3)
LEVI WILSON & (4) PERSONS UNKNOWN

Defendants

Wayne Beglan (instructed by **Braintree District Council Legal Services**) for the **Claimant**
Hugh Richards (instructed by **Community Law Partnership**) for the **First Defendant**
The Second and Third Defendants did not appear

Hearing dates: 29 March 2022

Approved Judgment

This judgment was handed down remotely, the date for hand-down is deemed to be on 1 April 2022.

Paul Bowen QC (Sitting as a Deputy Judge of the High Court):

Introduction

1. I am concerned with two applications under CPR 81 by Braintree District Council (**‘the Council’**) to commit the First Defendant, Mr. James (**‘Jimmy’**) Wilson (**‘the First Defendant’**) for contempt of court arising out of breaches of court orders following alleged breaches of planning control on land known as south of Sudbury Road, Castle Hedingham (**‘the Land’**), namely: the erection of 2.4 metre high close boarded fencing around the perimeter of the Land; extensive levelling operations; partial creation of an accessway to service the site; and the installation of infrastructure (including water mains and electricity) to service a future proposed, unauthorised use of the Land which the Claimant apprehends was intended to be as a caravan site. This is the approved judgment containing the fuller, written reasons for the *ex tempore* judgment that I handed down in court on 29 March 2022 and as required by CPR 81.8(9). I have slightly elaborated some of the reasoning and have amended the wording but have not changed anything of substance.
2. Although the First Defendant has now largely admitted the allegations upon which the applications are based I must still determine the issue of the appropriate sanction.

The relevant Orders and committal applications

3. The first committal application is dated 8 October 2021 and arises out of alleged (now admitted) breaches of interim orders made under s 187B Town and Country Planning Act 1990 (**‘TCPA 1990’**) by Farbey J dated 26 August 2021 (made *ex parte*) (the **‘First Order’**) and Tipples J dated 2 September 2021 (at which the First Defendant was present, but unrepresented) (the **‘Second Order’**) restraining the defendants, among other things, from (paragraph 1(c)) ‘bringing any hardcore or any other material for the preparation of hard surfaces onto the Land’ or (paragraph 1(f)) ‘carrying out any works on the Land’, with the proviso at paragraph 2:

Nothing in this order shall prevent the defendants from using the Land for a purpose which has express planning permission; or causing any operational developments to take place for which there is express planning permission.’

4. The second application is dated 24 January 2022 and arises out of alleged (now admitted) breaches of the final injunction under s 187B TCPA 1990 made by HHJ Rebecca Crane (siting as a Deputy Judge of the High Court) and dated 12 October 2021 (at which the First Defendant was again present but unrepresented) (the **‘Third Order’**). This final injunction was in the same terms as the interim injunctions but with an additional requirement to restore the Land to the status quo prior to the breaches of planning control:

The first second and third defendants shall by 4:00 PM on Wednesday 12 January 2022, remove the unauthorised development; remove all the products of that removal; and so

restore the Land to the condition it was in prior to the breaches of planning control which are the subject of this action.

5. There has been no application for permission to appeal against any of the orders of Farbey J, Tipples J or HHJ Crane.

The allegations of contempt: the first committal application

6. In the first committal application the Claimant alleges that, in breach of paragraphs 1(c) and/or 1(f) of the First Order, the First Defendant caused or allowed material to be imported onto the Land and caused or allowed works to be done to the Land (a) by the spreading of that material to level the site and/or (b) to facilitate the later placement of hard surfaces:
 - i) between 31 August 2021 and 1 September 2021 (the ‘**first allegation**’);
 - ii) between 1 September 2021 and 7 September 2021 (the ‘**second allegation**’);
 - iii) between 7 September 2021 and 9 September 2021 (the ‘**third allegation**’); and
 - iv) between 9 September 2021 and 15 September 2021 (the ‘**fourth allegation**’).

The allegations of contempt: the second committal application

7. The Claimant alleges that the First Defendant has failed to comply with paragraph 2 of the Third Order because he had not, by 4pm Wednesday 12 January 2022 done any of the following things as required by that order:
 - i) Remove the unauthorised development that was the subject of the action.
 - ii) Remove all products of that removal.
 - iii) Restore the Land to the condition it was in prior to the breaches of planning control that were the subject of the action.
8. The Claimant accepts that the First Defendant has complied with the Third Order to the extent he has now removed the 2.4 metre high fence and infrastructure connections (water, electricity). However, the First Defendant has failed to reverse the ‘extensive levelling operations’. Furthermore, the 2.4 metre fence has now been replaced by a shorter post and rail fence which itself is unauthorised and breaches the terms of the Third Order.

The First Defendant’s admissions

9. The First Defendant has until now denied the allegations but, on the morning of the committal hearing, he admitted through his Counsel that he had breached the orders in the following terms:

- i) That in breach of paragraph 1(f) of the First Order the First Defendant caused or allowed works to be done to the Land by the importing and spreading of topsoil to level the Land: (a) between 31 August and 1 September 2021, (b) between 1 September and 7 September 2021, (c) between 7 September and 9 September 2021, and (d) between 9 September and 15 September 2021.
 - ii) That, in breach of paragraph 2 of the Third Order, he had not, by 4pm Wednesday 12 January 2022 done all of the things required by that paragraph of the order in that he had not removed the unauthorised topsoil and aggregate which was part of the subject matter of the proceedings.
10. The Claimant has accepted those admissions on certain conditions so that it is not necessary for me to make any findings of fact relevant to the issue of guilt. In particular, the First Defendant will, no later than 4pm on 27 April 2022, remove the topsoil and aggregate from the Land as required by the Third Order, unless before that date the Claimant gives prior written consent for the topsoil to remain upon the Land (either for a fixed further period of time, or indefinitely). This condition is necessary because, as will become clear, the First Defendant has now made a planning application to retain the Land in its present state and with its current use. Before the Claimant can decide that application the Claimant must conduct a contamination survey (at the First Defendant's expense) because the aggregate and topsoil was imported from sources that have not been certified. It must then decide whether to grant planning permission. If for any reason the Claimant decides the Land must be returned to the *status quo ante* then the First Defendant must comply or be in breach of my order.
11. Although this was not specifically agreed, a further condition is to be imposed that the First Defendant must also remove the post and rail fence within 28 days of being directed to do so by the Claimant. This fence was erected without permission and does not fall within permitted development. It is open to the Claimant to grant express planning permission but, if it refuses, the First Defendant must remove it.

Narrative

12. On the 5 March 2021 the First Defendant, together with the second and third defendant, purchased the Land jointly at auction. At the time of purchase the Land was covered in trees and shrubs and its planning use was for agricultural purposes only. The auction details explained that the Land 'may offer the potential to develop subject to the necessary planning permissions and consents' but warned purchasers that they 'must rely on their own enquiries, due diligence and inspections with regards to its current uses and potential'. The Land is not within any relevant settlement boundary and, for planning purposes, is in the countryside. It is about 850 metres west of the small village of Castle Hedingham with a cluster of houses nearby; from satellite pictures it can be seen as surrounded by fields and woodland. According to the Claimant, the Land is not considered to be a suitable location for any form of residential

accommodation or other development which would be contrary to the National Planning Policy Framework and local planning policies.

13. Following complaints by local residents about development at the Land, on 8 April 2021 the Claimant carried out the first site inspection. The Land had been completely cleared of trees and shrubs and was surrounded by a new fence which was 2.4 metres (8 feet) high. Water and electricity connections had been made. Although the clearance of the trees and shrubs did not require planning authorisation, there being no tree preservation orders in place, the fence and utilities connections certainly did. No planning application had been made and the Claimant was concerned that these activities were consistent with the Land being developed as a caravan park. Accordingly, on 14 April 2021 the Claimant issued a planning contravention notice ('PCN') seeking information about the defendants' intentions in relation to the Land. On 6 May 2021 the First Defendant responded explaining that the property had been acquired for 'investment' and that a planning application was 'ready to go in'.
14. On 24 August 2021 the Claimant inspected the site and found that the interior of the site showed small deposits of brick and aggregate, water and electricity supplies had been connected and parts of the site appeared to have undergone significant alteration in site levels. The Claimant was concerned the Land was being converted for use as an unauthorised caravan park. In consequence, on 26 August 2021 the Claimant issued a claim for emergency injunctive relief to restrain the defendants from further development under section 187B of the Town and Country Planning Act 1987.
15. The application was considered by Farbey J that same day and an injunction was granted against all of the defendants in the terms outlined at paragraph 3 above (the First Order).
16. Copies of the first order were served on the defendants and the First Defendant accepts he received this on 27 August 2021.

The first allegation: between 31 August 2021 and 1 September 2021

17. On the 31 August 2021 the Claimant inspected the site again. It was apparent that further work had been undertaken since the previous inspection. On the 1 September 2021 there was a further site inspection. The First Defendant was present at the Land and spoke with the planning inspector. He admitted that there had been further deliveries of topsoil to the Land but asserted that this did not breach the injunction because it was not 'hardstanding material'. The inspector corrected that misunderstanding and on leaving made clear that no further materials should be imported onto the land.
18. In his first statement the First Defendant accepts that he was aware of four deliveries of topsoil around this time which he had ordered before the injunction, two of which were delivered before he received the injunction. As regards the other two he said he could 'not recall' whether these were delivered before or after the injunction was served on him. The First Defendant now admits that the deliveries were made after the injunction had been served and with his knowledge.

Second allegation: between 1 September 2021 and 7 September 2021

19. As a consequence of the continuing planning breaches and breaches of the First Order, the Claimant applied on 1 September to continue the interim injunction granted by Farbey J. On 2 September 2021 the matter came before Tipples J who extended the injunctive relief against the First Defendant in the same terms as granted by Farbey J. The First Defendant was present at the hearing, albeit he was unrepresented. This order was served on 6 September and again there is no dispute that the First Defendant, at least, received it.
20. The Claimant has produced photographic evidence of further deliveries of topsoil being made on 6 September (when its inspectors were not present) and on 7 September 2021 a further site inspection confirmed that topsoil had been delivered and graded over the Land. The First Defendant maintained that these deliveries did not breach the injunction because – according to his first statement - the topsoil had been ordered ‘2-3 weeks’ earlier, i.e. before the injunction was served, and that he had no knowledge of its being delivered on 6 September. In his second statement he says that this delivery had been ordered by Chantelle, his daughter (and the second defendant). The Claimant has obtained details of the delivery from ‘Mason Trucking Co. Ltd’ and established that the order had in fact been made on 30 or 31 August by someone who gave his name as ‘James’. The First Defendant has now admitted that he was responsible for those deliveries. It follows that the evidence in his witness statement was not true, and I so find.

Third allegation: between 7 September 2021 and 9 September 2021

21. On 9 September the Claimant’s inspector returned and found that further material had been spread and the middle of the Land was now nearly entirely level. The First Defendant now accepts responsibility for that work.

Fourth allegation: between 9 September 2021 and 15 September 2021

22. On 15 September a further site inspection was carried out during which a tipper lorry full of material arrived and deposited its contents on the Land. A mini excavator was present and was being operated by someone identified by the Claimant as Levi Wilson, the First Defendant’s son and the third defendant in these proceedings. A gentleman who gave his name as Mr. Mitchell was present working at the Land. Mr. Mitchell explained that he had been instructed to carry out the work by ‘Chantelle’, the second defendant. He said a further four similar deliveries were due to be made that week and he hoped to have the Land entirely levelled by the end of the following week. He explained that, while he did not know for sure, he believed that the owners wanted ‘to place horses or alpacas’ on the Land. The First Defendant’s case was, at least until the day of the hearing before me, that he was not responsible for these deliveries or the work undertaken by Mr. Mitchell. He now admits responsibility.
23. On 17 September 2021 the Claimant’s inspector attended and found further work being carried out. He could hear a mini excavator in operation and Mr. Mitchell and the third defendant were present. Mr. Mitchell confirmed to the inspector that further works involving levelling the land had been undertaken.

This event is not included within the schedule of allegations so I do not take it into account.

Fifth allegation: failure to comply with the Third Order

24. As a result of what the Claimant considered to be ongoing breaches of the orders made by Farbey J and Tipples J, on 8 October 2021 the Claimant brought the first of the applications before me to commit the First Defendant for contempt.
25. The matter then came before HHJ Crane (sitting as a Deputy High Court Judge) on 12 October 2021 for consideration of whether the injunction should be extended. On this occasion the First Defendant was again present but unrepresented. The judge considered whether in all the circumstances a final injunction was necessary and granted the injunction in materially the same terms as the previous interim injunctions, but with the additional requirement to return the Land to its original state prior to the breaches of planning control.
26. The injunction now not only required the defendants to restrain from further planning breaches but also to return the Land to its previous condition, unless express planning permission was granted. While the Claimant accepts this did not mean that the Land had to be reforested, it did mean that the defendants were obliged to remove the fence that had been put around the Land, to remove the water and electricity and to remove the top soil and aggregate that had been introduced in order to level the Land.
27. Following the order by HHJ Crane, there were a number of conversations between the First Defendant and the Claimant's planning officer in which it was explained that the site had to be returned to its original state. That was partially done. A further site inspection on 12 January 2022 revealed that the water and electricity connections had been removed and the First Defendant had replaced the original fence with a new post and rail fence. This is only four, rather than eight, feet high and is of open, not closed, construction so the Land is now visible. However, no express planning permission had been given for this new fence. Furthermore, no steps had been taken to return the Land to its original state as none of the topsoil or aggregate had been removed. Instead, the Land remained level and had been seeded with grass.
28. By this stage the First Defendant had engaged a planning consultant, and on 9 November 2021 and again on 10 February 2021 the consultant filed planning applications with the Claimant for permission to install the new post and rail fence and the retention of the new topsoil across the whole site. It appears that the First Defendant was thereby hoping to avoid the consequence of HHJ Crane's order to return the Land to its original state by obtaining planning permission for the work that had been done, and thus fall within the specific exception in each of the orders for works that had 'express planning permission'. Those planning applications have, however, been rejected by the Claimant. The first was rejected because of insufficient supporting information; the second, because the material deposited on the site is from unknown sources and may contain contaminated material so a Contamination Risk Assessment and/ or evidence of certification for the material deposited

must be obtained, as the Claimant explained in a letter to the First Defendant of 23 March 2022.

29. It is conceivable that those investigations will result in express planning permission being granted in due course, at least for the Land to remain in its current state with its existing use. However, the Claimant submits, in the absence of ‘express planning permission’ the First Defendant is in breach of HHJ Crane’s order because he has failed to return the Land to its original state prior to the planning breaches within the timescale indicated by her order. This failure forms the basis of the second committal application.
30. The First Defendant now accepts that he is also in breach of HHJ Crane’s order.

Legal framework

31. These are applications for committal for contempt which are quasi-criminal in nature. The burden of proof is on the Claimant to establish the allegations to the criminal standard, so that I must be sure on the evidence that a fact existed or event occurred. That must apply to the process of sanction as it does to the issue of liability, which is no longer in issue.
32. The sanctions that may be imposed are (see CPR 81.9(1)):
 - i) Committal to prison, although this is limited to a maximum term of two years: see s 14 of the Contempt of Court Act 1981. In practice, only half the term will be served: s 258(2) Criminal Justice Act 2003.
 - ii) An unlimited fine, which may be imposed instead of, or in addition to, any other sanction, *Arlidge, Eady & Smith on Contempt*, 5th Ed. [14-118].
 - iii) Confiscation of assets.
33. Any sanction can be suspended on conditions, including a term of imprisonment: CPR 81.9(2) and *R v Yaxley-Lennon (CA)* [2018] Cr. App. R. 30, [57].
34. The objectives to be met by sanctions may be one or all of (1) punishing the offender to mark the court’s disapproval of the breach or non-compliance and disregard for the rule of law; (2) deterring future breaches by the individual and others (which is one reason why there is a high value on the transparency and public reporting of committal proceedings); and (3) coercing the offender into compliance with the order so as to purge his contempt.
35. I have considered, and will apply, the guidance of the Supreme Court in *AG v Crosland*, (SC(E)) [2021] 4 W.L.R. 103, [44] which requires the sanction exercise to be similar to that for criminal sentencing:
 1. The court should adopt an approach analogous to that in criminal cases where the Sentencing Council’s Guidelines require the court to assess the seriousness of the conduct by reference to the offender’s culpability and the harm caused, intended or likely to be caused.

2. In light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty.
 3. If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.
 4. Due weight should be given to matters of mitigation, such as genuine remorse, previous positive character and similar matters.
 5. Due weight should also be given to the impact of committal on persons other than the contemnor, such as children or vulnerable adults in their care.
 6. There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council's Guidelines on Reduction in Sentence for a Guilty Plea.
 7. Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually the court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension.
36. In determining seriousness the following factors are relevant: '(i) whether there has been prejudice as a result of the contempt, and whether that prejudice is capable of remedy; (ii) the extent to which the contemnor has acted under pressure; (iii) whether the breach of the order was deliberate or unintentional; (iv) the degree of culpability; (v) whether the contemnor was placed in breach by reason of the conduct of others; (vi) whether he appreciated the seriousness of the breach; (vii) whether the contemnor has cooperated, for example by providing information; (viii) whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea; (ix) whether a sincere apology has been given; (x) the contemnor's previous good character and antecedents; and (xi) any other personal mitigation' (per Sharpe LJ, PQBD, in *National Highways Ltd v Heyatawin* (DC) [2021] EWHC 3078 (QB), [49(d)]).

Sanction

Culpability

37. In my judgment the First Defendant's culpability is high, for three reasons:
38. Failure to engage with the planning process. The First Defendant failed to engage in any way with the planning process between the date of purchase in

March 2021 and November 2021, when he finally made a planning application. The appropriate, reasonable and lawful approach would have been to contact the Claimant's planning team to seek pre-application advice. This would have given the planning department the chance to survey the site, to consider the impact on the environment, wildlife and the local area of any proposed development and to exercise their statutory functions in the public interest. Instead he immediately began to develop the Land by stripping it of its woodland and shrubs, to erect a fence that (whether that was intended or not) hid his activities from view, to arrange for connections to utilities and to import aggregate and topsoil to level the site. Planning inspectors appear to have been lied to when they carried out site inspections. This led the Claimant reasonably to fear that the First Defendant was planning further unauthorised development, such as a caravan park. This behaviour matched the 'playbook' of unscrupulous developers who seek to make a quick profit from land transactions by undertaking unauthorised development and then presenting local authorities with a *fait accompli* in the hope of obtaining after the event planning permission which, they calculate, is worth the risk of enforcement action being taken against them.

39. Refusal to comply with court orders. In the event, the Claimant did not accept the *fait accompli* but brought injunction proceedings. But rather than refrain from any further development, as the Orders of Farbey J and then Tipples J clearly demanded, the First Defendant doubled down by continuing the unauthorised development. On four occasions he arranged for loads of topsoil to be delivered and then graded over the site for the purpose of levelling in direct breach of those injunctions. These were flagrant and serious breaches of court orders which showed disregard not only for the planning authorities but also for the Court: see *Wokingham BC v Dunn* [2014] EWCA Civ 633, [19]. And even once the final order of HHJ Crane was made, requiring the land to be restored to the *status quo ante*, the First Defendant still only complied partially with the order, leaving the topsoil and a new fence in place and now applying for planning permission. He may yet get that planning permission, at least to retain the Land in its current form, the Claimant being left with very few options in the fact of such opportunism.
40. An evasive and untruthful response to the committal proceedings. Contrary to the submission made by his barrister, Mr. Richards, the First Defendant has not been 'co-operative' or 'candid' in the evidence he has given to the Courts in either the injunction or these committal proceedings. At least until the committal hearing, his evidence was largely made up of a mix of bare denials, evasions, vague explanations and untruths: see paragraph 20, above.

Harm

41. In assessing harm, I must take into account not only the actual harm caused but also the harm that was intended or likely to occur as a result of the breach: *National Highways Ltd v Heyatawin* (DC) [2021] EWHC 3078 (QB), [54(b)].
42. I accept the following points made in the First Defendant's favour:

- i) The ‘harm’ that was feared by the Claimant, namely that the First Defendant was building a caravan park, did not transpire. The Land is currently a levelled, green field surrounded by a low post and rail fence, which the Claimant may yet decide is not out of keeping with the fields and woodland that surround it and grant planning permission.
 - ii) I cannot impose a penalty on the basis that the First Defendant intended the harm that the Claimant feared. Like the Claimant, I suspect that he intended to develop the Land for maximum profit, with no regard for the law or the impact on the environment or local residents. But I do not have sufficient evidence to draw that inference to the criminal standard.
 - iii) I cannot impose a penalty on the basis of the harm caused to wildlife and the environment by the unauthorised clearing of trees and shrubs from the Land. That conduct occurred before the injunctions had been granted and it is no part of the Claimant’s committal application that that conduct was unlawful, although it does not accept that this clearance was permitted development.
43. In my judgment there has nevertheless been significant harm or risk of harm, in three respects.
- i) Harm to the public interest. The blatant disregard of planning rules and court orders undermines public trust and confidence in the planning process and undermines the rule of law.
 - ii) Harm to local residents. The Land is close to a number of residential buildings and less than a kilometre from the small village of Castle Hedingham. The residents of those homes, as well as those from other nearby villages, will have suffered anxiety and distress for a number of months: at the sudden and unheralded loss of a longstanding and familiar woodland; the unsightly fencing that surrounded and hid the Land from view; the comings and goings of lorry loads of material to be deposited on the Land; and the reasonable concern that the Land would be developed in a way that might have a significant negative impact on the local area. This concern will have been exacerbated by a sense of helplessness once they learned the development was unauthorised, particularly when it continued after court orders had been made ordering that it stop.
 - iii) Harm to the Claimant and local taxpayers. The Claimant local authority was obliged to expend considerable resources in dealing with the First Defendant’s unlawful behaviour including numerous site visits, the preparation of evidence and attendance at three separate injunction hearings and these committal proceedings. The cost is not only the time and expense of its officers and lawyers but also the opportunity cost; the work that the Claimant could not do to protect the environment because it had to deal with the First Defendant. While the costs order made by HHJ Crane will provide some compensation, the Claimant will recover nothing from the First Defendant for the costs of bringing these

committal proceedings because he is legally aided and enjoys costs protection.

Mitigating factors

44. I take into account the following mitigating factors relevant to the offence:

- i) There has been substantial, if belated, compliance with the orders and the First Defendant is now engaging actively and constructively with the planning process.
- ii) The First Defendant has, at the 11th hour, admitted the breaches of those orders and so obviated the need for a fact-finding hearing. However, this did not avoid the need for the parties to incur the expense of preparing for such a hearing. A plea of guilty on the day of trial in a criminal court would attract a discount of no more than 10%: Sentencing Council Guideline, 'Reduction in sentence for a guilty plea - first hearing on or after 1 June 2017':

<https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/reduction-in-sentence-for-a-guilty-plea-first-hearing-on-or-after-1-june-2017/>.

That is the figure I will apply.

45. I also take into account the following personal mitigation:

- i) The First Defendant told me that he lives with, and provides care to his elderly parents, one of whom is terminally ill. There was no supporting evidence for that but I took it at face value. They are likely to be particularly affected if the First Defendant is imprisoned. This is a powerful mitigating factor, as the Supreme Court in *Crosland* emphasised at [44(5)].
- ii) I have seen no evidence of the First Defendant engaging in similar conduct in the past and I therefore treat him as being of good character.
- iii) He apologised personally to me at the end of the hearing when I gave him the opportunity to add to what had been said on his behalf.

Committal to prison

46. Any sanction I impose must be commensurate with the seriousness of the contempt and a custodial penalty cannot be imposed if a financial penalty will adequately meet the objectives of punishment, deterrence and coercion. I am satisfied that a financial penalty, alone, would not meet those objectives. The Courts have consistently committed to prison those who deliberately fail to comply with court orders, even when their actions have been motivated by genuine conscientious motives. For example, in *National Highways Ltd v Heyatawin* (DC) [2021] EWHC 3078 (QB) the Insulate Britain protestors who blocked roads as a protest to force the government to take steps to address climate change, in deliberate breach of court orders, all received immediate

custodial penalties of between 3 and 6 months. I have concluded that the First Defendant deliberately carried out unauthorised operations at the site after he knew the orders had been made. He did so either knowing that those operations breached the orders or, at best, without bothering to check whether they were a breach. In those circumstances, only a custodial penalty will suffice.

47. In my judgment, the appropriate penalty is to commit the First Defendant to a term of imprisonment for 3 months on each of the four breaches of the orders of Farbey J (the First Order) admitted at paragraph 9, above, to be served concurrently. I make no additional penalty in respect of the breach of the order of HHJ Crane (the Third Order), the Defendant having taken some steps to comply with that order and the overall term of 3 months being sufficient to reflect the totality of the First Defendant's criminal contempts.
48. In reaching that conclusion I have taken into account the late admission of guilt and the other mitigating factors outlined above.

Suspension of order of committal

49. I have carefully considered whether the order of committal to prison should be suspended under CPR 81.9(2). If this were a criminal case, factors favouring suspension include: a realistic prospect of rehabilitation; strong personal mitigation; immediate custody would result in significant harmful impact upon others. Factors that weigh against suspending a sentence include: appropriate punishment can only be achieved by immediate custody; there is a history of poor compliance with court orders: see the Sentencing Council Overarching Guideline, 'Imposition of community and custodial sentences' on its website <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/imposition-of-community-and-custodial-sentences/>.
50. Those are also relevant factors when deciding whether to suspend an order or warrant of committal for contempt. In my judgment, the potential adverse impact that an immediate term of imprisonment would have on the First Defendant's elderly parents, one of whom is terminally ill, is such that suspension is justified.
51. The order of committal is suspended on condition that the First Defendant complies with the order of HHJ Crane, which continues in force, as well as the order that I make alongside this judgment. I was at pains during the hearing to make sure the First Defendant understood that any further breach is likely to lead to his immediate imprisonment under the terms of this order as well as a further sanction for the new breach.

Financial penalty

52. I consider that an additional financial penalty is also appropriate. I have had regard to the First Defendant's limited means (he earns less than £25,000 a year as a self-employed roofer) and savings (he tells me these have been 'wiped out' by the costs he has incurred in relation to the Land) and the fact he has an outstanding order for costs against him in the Claimant's favour of £20,000. On the other hand, he remains the owner of the Land, which he bought for £55,000

and which may since have increased in value through his unlawful activities. In my judgment a fine of £5,000 is appropriate, although this is generous to the First Defendant. To be clear, this is in addition to the suspended term of imprisonment. The fine must be paid within one year. I direct that this is to be enforced through the First Defendant's local magistrates' court at Bury St. Edmunds.

Costs

53. I make a costs order in the Claimant's favour in the full amount of their costs of the committal applications. Because the First Defendant is legally aided he is entitled to 'costs protection' under s 26 of the Legal Aid and Sentencing and Punishment of Offenders Act 2012 ('**LASPO**') and the Civil Legal Aid (Costs) Regulations 2013 ('**the 2013 Regulations**'). I do not have sufficient information to specify the amount of costs to be paid: see Regulation 15(2)(b) of the 2013 Regulations.
54. The costs order can only be enforced by the Claimant under the terms of the 2013 Regulations. Although an application can be made to a costs judge to enforce such a costs order against the Lord Chancellor under Reg. 16 of the 2013 Regulations, in first instance proceedings only an individual who can prove financial hardship is entitled to such an order: Reg. 10(c) of the 2013 Regulations. If, however, there is subsequently a significant change in the First Defendant's circumstances (for example, if he comes into a significant sum of money from, say, a sale of the Land) or new information as to his resources becomes available then the Claimant may apply to enforce the order against the First Defendant under Reg. 19 of the 2013 Regulations.

Conclusion

55. To conclude, the First Defendant has admitted breaches of court orders which amount to criminal contempts. As reflected in the Form N603, an order for committal for imprisonment for a term of imprisonment of 3 months is made, suspended for 12 months, on condition that the First Defendant comply with the terms of HHJ Crane's order and the order made alongside this judgment. A fine of £5,000 is also to be paid within 12 months. The First Defendant is to pay the Claimant's costs, subject to s 26 LASPO and the 2013 Regulations.