Neutral Citation Number: [2024] EWHC 2985 (KB)

Case No: KB-2023-004186

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/11/2024

Before :

David O'Mahony
Sitting as a Deputy High Court Judge

- -

Between :

SOUTH OXFORDSHIRE DISTRICT COUNCIL	**Claimant**
- and -	
(D5) DARREN SMITH	
(D6) MILO LEE	
~~**(D7) DARREN LEE**~~	**Defendants**

- -
- -

Ben du Feu (instructed by **South Oxfordshire District Council**) for the **Claimant**
Michael Fry (instructed by **Brilliance Solicitors**) for the **5th and 6th Defendants**

Hearing dates: 25th October 2024 and 11th November 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 11/11/24 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

David O'Mahony, sitting as a Deputy High Court Judge

David O'Mahony, Sitting as a Deputy High Court Judge :

Introduction

1. This is an application by the Claimant Council to commit the fifth and sixth Defendants ('the Defendants') for contempt of court.

2. The fifth Defendant is the father of the sixth Defendant. They are members of the Gypsy and Traveller community. Since 6th October 2023 they have been the registered proprietors of a piece of land in Towersey in Oxfordshire. When they bought the land it contained disused stables and a barn. On 21st November 2022, the Claimant had granted (it would appear, renewed) planning permission for the conversion of part of the existing structures into a 1 – bedroom dwelling.

3. On 1st November 2023, Griffiths J granted the Claimants an interim injunction against seven defendants and persons unknown under section 187B of the *Town and Country Planning Act 1990* ('the TCPA'), in relation to the land. On 6th December 2023 HHJ Parfitt (sitting as a Judge of the High Court) continued the injunction against the fifth to seventh Defendants.

4. On 27th June 2024 the Claimants made the current application based on allegations that the fifth to seventh Defendants had breached HHJ Parfitt's Order. At the hearing, I gave the Claimant permission to discontinue its application against the seventh Defendant.

5. The Claimant had also applied for an order that the Defendants remedy the breaches. The Defendants applied to vary the injunction to preserve the current situation on the land. These applications have been stayed by agreement pending the outcome of the appeals to the Planning Inspectorate described below.

The material parts of the Order

6. The material parts of HHJ Parfitt's Order are the following:

> *"2…the Defendants, whether by themselves or by instructing, encouraging or permitting any other person, must not bring onto the Land any caravan and/or mobile home without the written permission of the Claimant.*
>
> *3. The written permission of the Claimant referred to in paragraph 2 above is not to be refused if the proposed use and siting of the caravan and/or mobile home would be lawful by reason of Class A of Part 5 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 read with paragraph 9 of Schedule 1 to the Caravan Sites and Control of Development Act 1960…*
>
> *4….the Defendants, whether by themselves or by instructing, encouraging or permitting any other person…must not:*
>
> a. *bring onto the Land any portable structures including portable toilets and any other items and paraphernalia for purposes associated with human habitation or residential occupation or any other purpose in breach of planning control;*
>
> b. *bring onto the Land any waste materials and/or hardcore and/or like materials for any purpose, including the creation/laying of hardstandings or hard*

surfaces, in association with the use of Land for the stationing of caravans and/or mobile homes for the purpose of human habitation or residential occupation or any other purpose in breach of planning control;

c. *carry out any works in relation to the formation of paths, roadways or any works including the provision of sewerage, water and electricity infrastructure associated with the use of caravans and/or mobile homes for the purpose of human habitation or residential occupation or any other purpose in breach of planning control;*

d. *carry out any works to the Land associated with or in preparation for its use for stationing caravans and/or mobile homes for human habitation or residential occupation or any other purpose in breach of planning control;*

e. *undertake any further development on the Land as defined in section 55 of the Town and Country Planning Act 1990 without the express grant of planning permission.*

5. For the avoidance of doubt, nothing in paragraphs 2 to 4 of this order prevents the Defendants from undertaking development of the Land in accordance with planning permission P22/S3712/FUL granted by the Claimant on 21 November 2022."

7. The statutory provisions referred to in paragraph 3 of the Order permit, stating their effect broadly, using part of the land as a caravan site if the purpose of that use is to accommodate those employed in lawful building operations on the land.

8. The order contained a penal notice, gave liberty to apply to discharge or vary the order and provided for alternative service *"…by the posting of sealed copies of the said Order in a transparent waterproof envelope in a prominent position on the Land…"*

The Particulars of breach and the Defendants' stance

9. The Claimant alleges that both Defendants are in breach of paragraph 2 of the Order on the basis that "…whether by themselves or by instructing, encouraging or permitting any other person, have brought onto the Land caravans and / or mobile homes without the written permission of the Claimant…". It alleges that both Defendants are in breach of paragraph 4 of the Order on the basis that "…whether by themselves or by instructing, encouraging or permitting any other person, have occupied caravans and/or mobile homes on the Land…" It alleges that both Defendants are also in breach of paragraph 4 of the Order on the basis that: "whether by themselves or by instructing, encouraging or permitting any other person, have undertaken works on the land… namely: (i) the laying of areas of hardstanding, (ii) the installation of gates and ornamental pillars; and (iii) the installation of poles mounted with outdoor lighting and CCTV surveillance equipment."

10. The Defendants filed witness statements dated 22nd and 21st October 2024 respectively. A skeleton argument was filed by Mr Fry on their behalf on 23rd October 2024. At the beginning of the hearing Mr Fry confirmed that both Defendants had been advised of their right to silence and privilege against self-incrimination.

11. The Defendants accept that there are now four touring caravans and two large static caravans on the land as well as hard standing, lights and cameras. One of the static caravans is the subject of the written agreement by the Claimant under paragraph 2 of the Order, which I describe further below. The Defendants also accept that they are currently in occupation of the caravans with their families.

12. The fifth Defendant admits he brought the static caravan that is the subject of the written agreement and breached the injunction by bringing an additional touring caravan onto the land. He also accepts that he brought floodlights onto the land and that he breached paragraph 4 (b) of the injunction. The sixth Defendant admits that he breached the injunction by bringing two caravans onto the land and that he breached paragraph 4 (b) of the injunction. Both Defendants accept that as joint owners they have permitted the works on the land particularised by the Claimant. They also accept that they have breached paragraph 2 of the injunction by permitting the seventh Defendant to bring two caravans onto the land.

13. The Defendants nevertheless make three points:

    (a) They were aware of the injunction but did not understand its effect or importance until they instructed solicitors following being served with the committal application in July 2024;

    (b) While they accept that they are in occupation of their caravans on the land, they do not accept that occupation is prohibited by the injunction;

    (c) This is not a case in which there is an ongoing breach of the injunction. The Defendants wish to apologise, purge their contempt and provide mitigation as to sanction.

14. The Claimants dispute each of these points. I heard evidence and submissions on 25th October 2024. At the end of the hearing, I invited further written submissions on point (c) by Wednesday 30th October 2024. I said that I would circulate my written reasons in relation to these three issues by 4th November 2024. I listed the matter for sentence with the Defendants to attend on 11th November 2024.

The relevant law of contempt of court

15. The relevant law of contempt of court is summarised at paragraph 81CC.16 of the 2024 edition of the Whitebook, as follows:

> "*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). The test under the first factor is one of "notice" and not "actual knowledge" (although actual knowledge may go to sanction): see Warby LJ in Cuciurean v Secretary of State for*

> *Transport [2021] EWCA Civ 357 at [54]–[62]. 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)."*

The three issues

(i) Whether the Defendants understood the effect of the injunction

(a) The Claimant's evidence

16. The Claimant filed three affidavits sworn by planning officers it employs. One affidavit by Robert Cramp and two affidavits by Emma Turner. At the beginning of the hearing, Mr Fry said that he did not require either officer to give oral evidence and he did not wish to cross- examine them. In response to a question from me, he said that he accepted the contents of all three affidavits and the documents they attached.

17. The facts as they appear from the Claimant's evidence are as follows.

18. The application before HHJ Parfitt was on notice to the Defendants. By that time, the Defendants had instructed a planning agent: Mr Carruthers. Mr Carruthers filed a witness statement dated 4th December 2023 on the Defendants' behalf. The Order states that the Judge considered it. Neither party has filed Mr Carruthers' witness statement in these proceedings.

19. On Monday 11th December 2023, Mr Cramp visited the land. He served the injunction and the note of judgment in accordance with the order for alternative service. He put two copies sealed inside a clear weatherproof plastic sleeve. He fastened one to a post and rail fence at the entrance to the land. He fastened the other to the entrance of an existing barn. Mr Cramp says that at that time there had been no material change to the condition of the land since his previous visit on 13th November 2023. He says that no work had been done to the barn and stable buildings to implement the extant planning permission. There was no caravan on the land. No one was in occupation of the land. I have seen Mr Cramp's photographs taken on that date.

20. Mr Cramp had also sent the injunction to Mr Carruthers by email on 7th December 2023. There followed an exchange of emails between Mr Carruthers and Mr Cramp between 11th December 2023 and 9th January 2024. The subject of this exchange of emails was the stationing of caravans on the land under the statutory provisions referred to in paragraph 3 of the injunction. The parts of that correspondence that are relevant to the issues that I have to decide are the following.

21. By email dated 11th December 2023 Mr Carruthers gave a list of twelve people (the fifth to seventh defendants and their families) *"who are seeking to live on the land to undertake the building works"*. It was said that *"the works will take a maximum of six months and will only be those identified in the extant consent"*. It was said that a minimum of 4 caravans (*"a mixture of statics and tourers"*) would be needed. Mr Carruthers ended his email by asking: *"Is the Council willing to sanction their occupation of the land for 6 months to secure compliance with the existing consent? And if so what number of caravans."*.

22. On 15th December 2023, Mr Cramp replied setting out his detailed reasons for saying that the proposal made by Mr Carruthers would be unlawful under the 2015 Order and 1960 Act.

23. On 21st December 2023, Mr Carruthers sent an email to Mr Cramp. He began by saying

> "Attached is a copy of the court order. It is self explanatory." . He then said in terms that he was corresponding on behalf of the fifth Defendant. He said: "All that I am seeking for Mr Smith is identification of the number of caravans that the Council will tolerate for a period of six months to enable the building works.".

24. Later the same morning, Mr Cramp replied. He again set out some of his reasoning. He finished by saying:

> "Under the terms of the court order, your client is at liberty to apply to the court, if he believes that the council has wrongfully withheld its written agreement to your client's proposal".

25. Mr Carruthers replied that afternoon. In that email Mr Carruthers asserted that his clients "*are seeking compliance with your court order"*.

26. The correspondence continued after the New Year. On 3rd January 2024, Mr Cramp sent an email to Mr Carruthers referring to his seeking written approval from the Council. He pointed out twice in that email that Mr Carruthers could apply to the Court if he disagreed with the Council's stance. Mr Carruthers reply on 5th January 2024 again made clear that he was corresponding on the Defendants' behalf. Mr Carruthers said: *"The owners simply want to start the building works. How many caravans will the Council allow without taking enforcement."*. In the emails that followed, Mr Cramp repeated on a number of occasions that it was open to Mr Carruthers' clients to apply to the Court. Mr Carruthers continued to make assertions on behalf of the Defendants. His email of 8th January 2024 included: *"The family just want to get the work done as rapidly as possible…"*. His email of 9th January 2024 included: *"Mr Smith needs to be able to locate a maximum of three touring caravans on the land…"*.

27. Following complaints from the Towersey Parish Council, Mr Cramp visited the land on 23rd January 2024 by arrangement with the fifth Defendant. He saw that twenty two floodlights had been installed around the perimeter of the land. He also saw that hard standing was being laid along the driveway and in the area covered by the existing planning permission.

28. Mr Cramp had a conversation with the fifth Defendant during that visit. He recorded this conversation in a note of the site visit. He also sent an email to Mr Carruthers recording what he had agreed with the fifth Defendant. As regards the works that had already been done on the site, the fifth Defendant agreed, among other things, to remove all the lights around the perimeter.

29. As regards caravans, the fifth Defendant agreed to one static caravan during operations to implement the existing planning permission. He agreed that the caravan would be occupied only by the fifth to seventh Defendants and would be removed immediately following the completion of the building. This was envisaged to take no longer than six months.

30. Mr Cramp's email to Mr Carruthers said that in his view this would fall within the 2015 Order and the 1960 Act. He asked that Mr Carruthers signal acceptance of these terms by his clients by return email. *"...only then will the council consider giving your client written permission in accordance with the court order."*

31. On 28th January 2024, Towersey Parish Council sent the Claimant photographs of the land showing two touring caravans on it.

32. On 1st February 2024, Mr Carruthers replied to Mr Cramp's email setting out the agreement between him and the fifth Defendant. Mr Carruthers said: *"I think that is all acceptable and has been agreed with Darren"*. He went on to say: *"There is likely to be a tourer on the land intermittently"*. Mr Cramp replied the next day. His email reads:

> "…The agreement is for one static caravan only. The presence of any other caravan on the site, albeit a touring caravan and albeit intermittent, will not benefit from the written permission of the council ('claimant') and will therefore be contrary to the court order. I have explained this to your client and I would ask that you strongly reinforce that message with him."

33. Mr Carruthers replied an hour later: "I think we are all agreed that confrontation is best avoided and have made Darren aware.".

34. In fact, Mr Cramp had visited the land on 1st February 2024 by arrangement with the fifth Defendant. He had again spoken to the fifth Defendant. On this visit, Mr Cramp saw that two new gates had been fixed to the brick pillars at the entrance to the land. These had downlights and surveillance cameras attached. There were also surveillance cameras on poles. Mr Cramp saw that all but six of the twenty two floodlights had been removed. He saw that works to lay hard standing had been completed but it was not clear to him at the time whether this was confined to the area covered by the planning permission. There was a large static caravan and a touring caravan on the premises.

35. Mr Cramp's note of this visit contains the following relevant passages:

> " explained to Mr Smith that the presence of these two caravans on the site had not been agreed to by the council and was therefore contrary to the terms of the court order"; "I further advised Mr Smith that I had just received an email from his agent, Mr Carruthers, confirming his agreement to the council's terms but that Mr Carruthers had gone onto state that "there is likely to be a tourer on the land intermittently"….I again explained to Mr Smith that the presence of more than one caravan on the site would not have the council's agreement and would therefore be contrary to the order of the court."; "According to Mr Smith he had removed the other lights, against the advice of his barrister, because he would prefer to
>
> cooperate with the council."
>
> "I informed Mr Smith in no uncertain terms that he was not to import any material onto the site for this purpose [which the note outlines] and that he would need to obtain planning permission before undertaking any further earthworks on the site."; "At

> around the time that I left the site Mr Smith made a passing comment about, having appointed a new barrister and some kind of intended action he would be taking on or around 16 February 2024."

36. There was a further arranged visit by Mr Cramp on 7th February 2024. There was only one static caravan on the land at this time. Mr Cramp measured the hardstanding area and positioning of the fences. These exceeded the area approved by the planning permission (being 4.1 metres deeper and 12. 4 metres wider than the approved site). Mr Cramp brought this to the fifth Defendant's attention. The fifth Defendant said that he hadn't done the works. He blamed his contractor. Mr Cramp's site visit note records the following exchange:

> "Mr Smith informed me that what he really wants to do is level the existing barns and stables and construct a really nice dwelling. I informed him that his current permission would not allow him to do that. His permission was for the conversion of existing buildings only and that he could not dismantle, reconstruct or replace the existing building. Anything else would require planning permission, but there was no guarantee would be permission would be granted. Mr Smith acknowledged that he understood this."

A later passage in the note records:

> "Mr Smith became quite agitated and demanded that the council refer the matter to the court and include everything (lights, surveillance cameras, front gates, brick pedestals, hardstanding area, caravans)…"

37. On 18th March 2024, the Parish Council sent an email to the Claimant Council attaching photographs of the site. There were now three touring caravans on the site in addition to the static caravan. The Parish Council said that it appeared that people were living in the caravans. It alleged that the fifth Defendant was *"…telling people the high court injunction was overturned at a recent hearing."* Later that day, Mr Cramp sent an email to Mr Carruthers. He began:

> "Under the terms of the order of the court (see Attachment 1) your clients are prohibited from bringing onto the Land any caravan and/or mobile home without the written permission of the Council.

[Mr Cramp then set out the terms of the written agreement of the Council in relation to the static caravan under paragraph 2 of the Order, he then continued]

> "There are presently four caravans on the site, which are evidently being occupied by more than the above-named individuals. Your client is therefore in violation of the terms of the injunction.
>
> The court order also prohibited your clients from carry out works on the land, or permitting any other person to carry out works on the land, in breach of planning control.

> Your client has now laid or caused to be laid down hardstanding materials that extend well beyond the area approved in connection with planning permission P22/S3712/FUL (see the areas coloured in red on the plan at Attachment 3)…
>
> The following breach of planning control, which similarly did not form part of the development proposal approved by planning permission P22/S3712/FUL also need to be addressed by your client:
>
> [they were listed and Mr Cramp pointed out that no works had been commenced on the barn and stable buildings to convert them to a one bedroom dwelling, he then continued]
>
> Therefore, if your clients have no intention of implementing the scheme approved by the planning permission P22/S3712/FUL, they should vacate the site immediately, as the stationing of caravans on the site does not benefit from permitted development rights and is in violation of the terms of the injunctions.
>
> All of the above only serves to support the council's view that your client's true intention is to use and develop the site as a gypsy and traveller site for his extended family, without the benefit of planning permission.
>
> Accordingly, the council has no alternative but to now refer the matter back to the court."

38. Mr Carruthers replied copying in the Defendants' new planning agent, Mr Brown. Although the other recipients of the email have been redacted, Mr Cramp says that the Defendants were copied into this email also. Mr Carruthers said that he understood that Mr Brown had made a planning application. He also said: *"I have made all of the parties aware of the Court Order."*

39. Mr Cramp went to the site on 20th March 2024. He observed it and took photographs from adjacent land. He observed four caravans and the sound of children playing.

40. An application for planning permission was submitted to the Claimant by Mr Brown on the fifth Defendant's behalf on 19th March 2024. It was stated expressly to be for:

> "Change of use of land to use as a residential caravan site for 3 gypsy families, including the stationing of 6 caravans of which no more than 3 are to be static caravans/mobile homes, together with the laying of hardstanding."

41. The box next to the question "*Has the work or change of use already started?"* was ticked "*yes"*. The start date was given as 15th March 2024.

42. Mr Brown's covering letter referred to the existing planning permission "for conversion of part of existing stables and barn into residential use, providing a 1 bedroom dwelling.". It then said: "The proposal involves the change of use of part of the yard area, containing the existing mobile home, and a small paddock to the rear, for use as a residential caravan site for 3 gypsy households."

43. The Council's refusal letter is dated 9th May 2024. The application proposal is stated in exactly the same terms as to change of use set out in the application. The Council issued an enforcement notice requiring the breaches to be remedied within 9 months, on 5th June 2024. It is stated to take effect from 31st July 2024 unless an appeal is made beforehand.

44. The fifth Defendant's appeal to the planning inspectorate is dated 23rd June 2024. It gives the details of the proposed development in the same terms as to change of use as the planning application.

45. The Claimant's application to commit the defendants is dated 27th June 2024. It was served personally on the fifth and sixth defendants on Friday 13th July 2024 at 12:30 pm. The Defendants current solicitors had been instructed by Monday 16th July 2024. The application was served on them on 17th July 2024.

46. On the morning of 13th July 2024 the Parish Council complained to the Council about a number of trucks coming to the land and dumping either hardcore, scalping or tarmac. A Whatsapp image timed at 11:49 on 13th July 2024 shows what appears to be some work going on. An email from the Parish Council on 15th July 2024 complained about work done over the weekend and also of the arrival of another static caravan *"which blocked the road into towersey for most of the morning."*. A Whatsapp image timed at 19:21 on Saturday 14th July 2024 shows for the first time that a second static caravan has been placed on the land. It appears from photographs filed by the Defendants that further work was later done in relation to this static caravan (although it is not clear when). This included bricking the base and building brick and tiled entrance steps as well as the planting of lawn and shrubs. These photographs from the Defendants show what appears to be an established home.

47. On 19th July 2024 the Parish Council complained about: *"increased work, crushed concrete still driving as well as liquid concrete lorries. The volume of work on site is quite staggering…"*. A photograph of the same date shows a new area of hardstanding in the same area of the site as the new static caravan. On 22nd July 2024 the Parish Council complained that *"Still extensive works going on at the site."* This allegation was repeated in an email from the Parish Council dated 29th July 2024. A photograph dated 27th July 2024 and sent to the Council shows a structure on the new hard standing. The fifth Defendant's evidence is that this is a stable for his horses.

(b) The Defendants' evidence

48. The Defendants relied on their witness statements. The fifth Defendant also gave oral evidence and was cross-examined. Mr Fry said that the fifth Defendant wished to give evidence on behalf of both Defendants.

49. The fifth Defendant is illiterate. The sixth Defendant's witness statement does not say anything about his level of literacy. The fifth Defendant's witness statement says this:

> "24…I depend on my family for assistance with reading and writing. My daughter helps with the household affairs while my family helps in the business administration matters and this way, I can survive and sustain myself and overcome illiteracy. Due to my struggle for literacy, I was very particular that my children were able to be educated and can read and write. I do not want

> my children to suffer like we did and have a very strict view towards education"

50. The fifth Defendant says in his witness statement that he was aware of the scope of the existing planning permission when he bought the land. He says that what are alleged to be unauthorised works were in fact preliminary work to fulfil the obligations of that planning permission. The fifth Defendant's witness statement goes on to describe the importance to his family of being able to reside on the land. He describes the health conditions of his family. He describes the hardships that he and his family have suffered. Including those caused by membership of his community and their travelling lifestyle. He explains the need for a permanent address in order to access vital services, including education. He also explains the importance of that for his family life.

51. As to the injunction, the fifth Defendant says in his witness statement:

> "10. I am not a literate and was unaware of the contents and consequences of the Order/s as I did not understand the process. I did not have a solicitor before and was not legally represented neither was I advised that I could challenge/vary/defend the Order.
>
> 11. My actions on this land were purely unintentional and due to lack of knowledge of the Court Orders and in no way did I knowingly intended to violate the Court Orders. I apologise for my actions and now understand the severity after receiving legal representation…
>
> 28. I apologise for any of my actions which were not to harm or disrespect the Court or any persons as I genuinely did not understand the process…"

52. The fifth Defendant's oral evidence was as follows. He accepted that Mr Carruthers was his planning consultant. He accepted that Mr Carruthers mentioned an injunction but *"did not tell me what it was regarding*". When being cross-examined he accepted that he did remember *"something being left at the premises, vaguely around December 2023"* also in cross- examination he said that he did not know why Mr Carruthers would have served a witness statement in December 2023.

53. When being questioned by Mr Fry, the fifth Defendant said variously that he did not understand what Mr Carruthers was saying to him; he was not getting any information back from Mr Carruthers; Mr Carruthers did not explain why the Council was cross with him, he gave him some information *"but not information about what is happening today"*; Mr Carruthers did not explain what he was doing although he billed the fifth Defendant a lot of money and he was paid. The fifth Defendant said that he had told Mr Carruthers that he wanted to live on the site and that Mr Carruthers had told him that everything was 'ok'. The fifth Defendant said he sacked Mr Carruthers because he could not get information out of him about what was going on.

54. As regards Mr Brown, when he was being asked questions by Mr Fry, the fifth defendant said that he asked Mr Brown to get him planning permission for his *"statics"*. He said that Mr Brown did not talk to him about an injunction. When asked by Mr Fry about the change of use application, the fifth Defendant said *"I do not understand what that is"*.

55. As regards the application for committal, when being asked questions by Mr Fry the fifth Defendant said that it was put into his hands at the gate of his property on 13th July 2024. As to whether anything was said to him at that point he said *"he did not say anything, not that I remember, no"*. The fifth Defendant said that he did not read the papers on 13th July 2024 because he cannot read. He said that he first got in touch with solicitors two weeks or ten days afterwards. He said that his solicitors explained the injunction to him at that stage and since that time he has not done anything that to his knowledge is a breach of the injunction.

56. Mr Du Feu asked the fifth Defendant a series of questions in cross-examination to which the fifth Defendant answered that he did not remember. He said that he did not remember the communications between the Council and Mr Carruthers about stationing caravans on the site. He said that he did not recall the contents of the conversation with Mr Cramp on 23rd January 2024. It was put to him that there was an agreement for only one static caravan being on the site; his answer was that he didn't remember that. It was put to him that there was a conversation about the purpose of the caravan being to facilitate the construction work; his answer was that he didn't remember that either. He said that he did not remember the conversation saying that the caravan was only to be occupied by the 3 named people. He said that he did not recall the meeting of 1st February 2024, although he did remember removing the floodlights. He said that he didn't recall Mr Cramp explaining that the presence of more than one caravan was in breach of the Court Order. He said that he didn't recall Mr Cramp coming to the land on 7th February 2024. He said that he didn't recall giving instructions to make the application to change the planning use of the land or anyone making the application on his behalf. He said that he did not recall the enforcement notice being served on the site. He did remember that the planning permission and the enforcement notice having been appealed on his behalf. He could not recall going to see solicitors on 16th July 2024.

57. In re-examination, the fifth Defendant said that he did tell the planning consultant that he wanted to live on the property with his family. He said: *"That's all I wanted."*

58. The sixth Defendant's witness statement is primarily concerned with the importance to him and his family of continuing to live on the land. In relation to the injunctions, the sixth Defendant's witness statement says:

> "2. It was never my intention to cause any harm or breach the injunction. The development on the land was merely for residential purpose and in light of my family's worsening conditions. Any changes made were discussed with the Council and we made our utmost effort to inform the planner who then informed the Council to my understanding. I did not have a legal representative and was not aware of the legal proceedings and its intensity."

(c) Conclusion on issue 1

59. This judgment is not concerned with the merits of the planning decision or with the family and other issues set out in the Defendants' witness statements. It is only concerned with breach of a Court order in relation to which an application to vary it could have been, but was not, made.

60. I am satisfied to the criminal standard of proof that at all relevant times: the Defendants knew of the injunction; knew that it was an order of the Court; knew of the relevant

prohibitions in the injunction and deliberately breached the injunction in the ways that they have admitted.

61. The injunction was made on notice to the Defendants. Mr Carruthers filed a witness statement on their behalf. The fifth Defendant accepted that he remembers the Order being served. Following the hearing, there were negotiations between the Claimant and Mr Carruthers concerned with negotiating an agreement provided for by the injunction. During that correspondence Mr Carruthers himself attached the order and referred to its "*self- explanatory*" terms. He said on another occasion that his clients were seeking to comply with the Court Order. Mr Carruthers repeatedly made statements apparently on behalf of his clients. Mr Cramp's emails referred a number of times to the ability to apply to vary the order. I did not find the fifth Defendant's evidence that Mr Carruthers was doing and saying what is set out in those emails without his knowledge, to be credible.

62. There were also direct conversations between Mr Cramp and the fifth Defendant on the site. These included direct conversations about the agreement which only arose because of the terms of the injunction. The second conversation was conducted expressly by reference to the Court Order, as was the resulting email exchange with Mr Carruthers. During that second conversation, the fifth Defendant referred twice to having instructed a barrister. At the end of the third conversation, the fifth Defendant demanded that the Council refer the matter back to the Court. I did not believe the fifth Defendant's repeated assertions that he did not remember these matters. Indeed, I found his standard answer to the series of points put to him by Mr Du Feu: that he could not recall, undermined his credibility generally.

63. Mr Cramp's email to Mr Carruthers on 18th March 2024 attached the Court Order and clearly set out what the Council alleged were breaches of it. The reply by Mr Carruthers was copied to the Defendants. I do not think it credible that the Defendants would not have sought to understand what was in it. In any event, the Defendants have not given me any reason to disbelieve Mr Carruthers' statement in his reply email that: "*I have made all of the parties aware of the Court Order."*

64. As regards the sixth Defendant, no separate submissions as to knowledge were made on his behalf. Given the following facts: he is also a registered proprietor of the land; he is a party to the injunction proceedings; Mr Carruthers said he acted for 'clients' (plural); he has admitted being involved in the works and bringing caravans on the land; and the fifth Defendant's evidence that he relies on his family to assist with business matters, I am satisfied again to the criminal standard, that his knowledge must be treated in the same way as that of the fifth Defendant. In so far as it is necessary for me to do so, I draw an adverse inference against the sixth Defendant by reason of his failure to give oral evidence before me.

65. I do not accept that the Defendants ever intended to develop the land in accordance with the current planning permission. In his oral evidence the fifth Defendant was not able to point to any real progress on the permitted development, over a year after they had bought the land.

(ii) Whether occupation of the caravans is a breach of the injunction

66. The Claimant relies on sub-paragraph 4(e) of the Order. It points to the following parts of section 55 of the TCPA, which is referred to in that paragraph:

> "1) "…except where the context otherwise requires, "development" means…any material change in the use of any buildings or other land"

67. The Defendants must be taken to accept that the use of the land as a caravan site for their three families is a material change of use. Planning permission has been applied for on that basis. An appeal against the refusal of planning permission has been brought on the same basis.

68. The Claimant points out that a material change of use is not constituted merely by placing the caravans or other works on the land. The material change of use only occurs once the land is actually used as a residential caravan site for the Defendants' families. That is to say when they occupy the caravans in this way: see generally paragraph 55.49 of the *Planning Encyclopaedia.*

69. The Defendants cite a number of authorities for the proposition that in order to form the basis for a committal for contempt, the relevant prohibition must be clear: *Redwing Ltd v. Redwing Forest Products Ltd* [1947] 64 RPC 67 at paragraph 71 and *Cuadrilla Bowland Ltd and Ors v. Persons Unknown and Ors* [2020] EWCA Civ 9 at paragraph 59. Mr Fry says that sub- paragraph 4 (e) lacks the necessary clarity because it is necessary to cross-refer to the TCPA and the Planning Encyclopaedia. He says that because of the Defendants standard of literacy and the fact that they were not legally represented it is "*unsurprising*" that the Defendants did not understand that a material change of use was intended to be prohibited.

70. The proper approach to the construction of a judicial order was summarised by Tipples J in ISAAC Sarayiah v University of Durham and Ors [2020] EWHC 2792 (QB) at paragraph 5:

> "5. The construction of a judicial order, like that of any other legal instrument, is a single coherent process. It depends on what the language of the order would convey, in the circumstances in which the Court made it, so far as these circumstances were before the Court and patent to the parties. The reasons for making the order which are given by the Court in its judgment are an overt and authoritative statement of the circumstances which it regards as relevant. They are therefore always admissible to construe the order. In particular, the interpretation of the order may be critically affected by knowing what the Court considered to be the issue which its order was supposed to resolve: see Sans Souci Limited v VRL Services Limited [2012] UKPC 6 , per Lord Sumption at para [13]."

71. I do not accept that sub-paragraph 4 (e) of the Order is relevantly unclear. It prohibits "*development*" as defined in the statutory provision it sets out. That statutory definition includes a material change of use, which is a term of art in planning law. Mr Fry would have to satisfy me that cross-referring to a statutory provision in this way in an injunction is impermissible. He has not cited any authority for that proposition.

72. I also do not accept that the Defendants, who have been advised throughout the relevant period by planning consultants, can have been in any doubt about the effect of the Order.

73. If one reads the Order as a whole one sees that: paragraph 2 prohibits placing caravans on the land except with the written consent of the Council (the history of interactions

between the Council and the Defendants or their planning agent shows that the Defendants cannot have been in any doubt as to what would be consented to under paragraph 3); sub- paragraphs 4 (a) to (d) prohibit a series of works: *"for purposes associated with human habitation or residential occupation or any other purpose in breach of planning control."*; sub-paragraph 4 (e) prohibits undertaking "any further development on the Land as defined in section 55 of the Town and Country Planning Act 1990 without the express grant of planning permission". Paragraph 5 then makes clear that the Order does not prevent development of the land in accordance with the extant planning permission.

74. The object of the Order is clear. It is to prevent the conversion of the land into a caravan site of the kind that the Defendants are now using it for. It would make no sense for an injunction of this kind to prohibit the construction of the caravan site and all the other associated works, but nevertheless permit the occupation of any caravan site built in breach of the Order. I do not accept that the Defendants can have reasonably interpreted the injunction in that way. As I have said the plain words of sub-paragraph 4 (e) are to the contrary effect.

75. I should add, that even if Mr Fry's argument were to have been correct, it may not have had a material effect on penalty. Even on Mr Fry's argument, the Defendants are deliberately taking advantage of past breaches of the Order by conduct which would not have been possible if the admitted breaches had not occurred. That conduct is continuing.

(iii) Whether for the purposes of the committal proceedings there is an ongoing breach of the injunction

76. The Defendants' argument is simple. They acknowledge that it is unattractive. They say that all the prohibitions in the injunction are as to one off events. They say that these have all occurred in the past. They therefore say that any penalty should reflect the fact they wish to apologise to the court and purge their contempt.

77. The Claimant on the other hand, says that at least the change in use is continuing conduct and that therefore the Defendants remain in breach of continuing prohibitions in the Order.

78. It does not seem to me that I need to resolve the dispute as to whether the prohibitions in the injunction refer to one off events or to continuing conduct, at this stage.

79. It seems to me that the answer to Mr Fry's argument is to be found in the judgment of Munby P in *Solicitor General v. Jones* [2013] EWHC 2579 (Fam) referred to in the passage from *Gee on Commercial Injunctions* relied on by Mr Du Feu.

80. That case concerned a mandatory injunction. The relevant provision required a mother to deliver or cause the children to be delivered to the father at Cardiff railway station no later than 4 pm on 12 October 2012. The mother failed to do that (in fact due to circumstances beyond her control). The Solicitor General put his case on contempt on two bases. The first was that the mother was in breach because she failed to deliver the children by 4 pm on 12 October 2012. The second was that she continued to breach the order by failing to deliver up the children after 4 pm on 12 October 2012. The Solicitor General alleged that the second breach continued until 17th October 2012.

81. Munby P rejected the second basis for the allegation of contempt (see paragraph 20 of the judgment). He said the order was specific. It required the mother to do something by 4 pm on 12 October 2012. It did not require her to do anything after that time or say what was to happen if there had not been compliance by the specified time. He said that there could therefore be no contempt proceedings on the basis of an allegation of continuing breach.

82. However, Munby P went on at paragraph 23 of the judgment to say this:

> "I do not want to be misunderstood. If someone has been found to be in breach of a mandatory order by failing to do the prescribed act by the specified time, then it is perfectly appropriate to talk of the contemnor as remaining in breach thereafter until such time as the breach has been remedied. But that pre-supposes that there has in fact been a breach and is relevant only to the question whether, while he remains in breach, the contemnor should be allowed to purge his contempt. It does not justify the making of a (further) committal order on the basis of a further breach, because there has in such a case been no further breach. When a mandatory order is not complied with there is but a single breach…"

83. Although that case concerned a mandatory order, it seems to me that the reasoning in the above passage would apply to a situation where a prohibitory order prohibits a defined act, as Mr Fry argues this one does.

84. Even if Mr Fry is correct that the prohibitions in this case were not to bring the caravans on to the land, not to do the relevant works and not to change the use of the land (all interpreted as single events), the fact is that the caravans remain on the land, the works remain and the Defendants are living there in breach of planning law. The Defendants have achieved all they set out to achieve. They have achieved it, as I have found, by deliberately flouting a Court order. In the words of the Court of Appeal in *Mid Bedfordshire District Council v. Brown* [2005] 1 WLR 1460 at paragraph 25:

> "…the defendants decided to press on as originally planned and as if no court order had ever been made. They cocked a snook at the court. They did so in order to steal a march on the council and to achieve the very state of affairs which the order was designed to prevent…"

85. For the purposes of the present proceedings, they are remaining in breach of the order. If they wished to argue in these proceedings that the penalty should reflect the fact that they are apologising to the court and purging their contempt, the Defendants would have had to at least remove their caravans and cease their current use of the land.

86. I note in this respect that the fifth Defendant accepted that he was handed the application for committal on Friday 13th July 2024. The Bailiff's record of service shows that it was handed to him at 12.30 pm on that day. The Defendants knew of the injunction. Whatever they understood about the content of what they had been served with on 13th July, they were sufficiently concerned that they had instructed solicitors by Monday 16th July 2024. Notwithstanding this, the second static caravan was brought onto the site over the weekend. Over the following weeks this was converted into the home that is shown in the Defendants' pictures. Also over the following weeks, more hard standing was laid and a stable for the fifth Defendants' horses placed on the land.

Conclusion

87. My findings are therefore as follows:

(a) Both Defendants have breached paragraph 2 of the Order by bringing caravans onto the site and permitting the seventh Defendant to do so;

(b) I do not make any finding of breach in relation to the act of bringing the first static caravan that was agreed to by the Claimant onto the land;

(c) Both Defendants have breached sub-paragraph 4 (b) of the Order by the laying of or permitting the laying of hardstanding on the land for the purposes set out in that sub paragraph;

(d) Both defendants have breached sub-paragraph 4 (e) of the Order by changing the use of the land to a caravan site for their three families and occupying them.

88. I find that that both Defendants knew of the order and the relevant prohibitions at all relevant times. I find that they deliberately breached the Order. I find that for the purposes of considering penalty, those breaches are to be regarded as not having been remedied.

David O'Mahony, sitting as a Deputy High Court Judge:

Sentencing remarks

1. This is an application to commit the fifth and sixth Defendants for contempt of an injunction granted under section 187B *Town and Country Planning Act 1990*.

2. I heard evidence and submissions on 25th October 2024. I circulated my draft reasons on 4th November 2024. I have handed them down this morning.

3. I am sitting this today to consider the appropriate penalty. I will not repeat what I have said in my main reasons (which I have summarized in open court).

4. The framework for the decision as to penalty is set out in the judgment of the Court of Appeal in *Liverpool Victoria Insurance Co Ltd v. Khan and Ors* [2019] 1 WLR 3833. I will take the same approach to sentence for each Defendant.

5. I begin by considering culpability. It seems to me that the following features of the Defendants' conduct are relevant to culpability:

   (a) The Defendants knew of the injunction and what it prohibited but nevertheless deliberately breached its terms;

   (b) Despite it being open to them to apply to vary the injunction, they did not do so. Instead they sought to 'create facts on the ground' in order to seek to present the Council with a fait accompli when they applied for planning permission;

   (c) The Defendants sought to deceive the Council by pretending that the purpose of placing caravans on the land was so that they could conduct lawful building works and so take advantage of the 2015 Order and 1960 Act;

   (d) Even after being served with the committal application, they brought an additional static caravan onto the site. They then continued to develop the site around that static caravan at a time when even on their own case, they had taken legal advice on the committal application and understood what it meant;

   (e) The Defendants have sought to turn the land into a permanent home for them and their families. I have mentioned the photographs, but it appears from the medical and other records attached to the witness statements that the land is given as the

home address for the children.

6. It seems to me that culpability is high.

7. Turning to harm. It seems to me that the following features of the Defendants' conduct are relevant to harm:

   (a) there is harm to the administration of justice by deliberate breaches of Court orders;

   (b) harm to the planning process by the attempt to create 'facts on the ground';

   (c) harm to the environment by carrying out works in breach of planning controls.

8. I accept Mr Fry's categorization of the harm as 'medium'.

9. I consider the following matters in mitigation of the penalty (I deal with the Defendants' submissions as to the effect of their admissions, below). The remorse that both Defendants expressed in Court this morning. Their previous good character and the family and other circumstances that I have read about in their witness statements.

10. Taking all these matters into account, it seems to me that as Mr Fry was realistic enough to accept, the custody threshold has been crossed in this case.

11. It seems to me that the shortest sentence that I can pass to reflect all of the above matters is one of 8 months.

Reduction for the admissions of contempt made by the Defendants

12. In the course of the sentencing hearing this morning, it became apparent that there appears to be a conflict in the authorities as to the correct approach to reduction of the penalty that would otherwise be imposed, to take account of admissions of contempt.

13. Mr Fry's submission is that the Defendants admitted the contempts at the first opportunity: when they filed evidence and at the first hearing of this matter. He relies on the judgment of William Davis LJ in *National Highways Ltd v. Springorum* [2022] EWHC 205 (QB) at paragraph 36. Mr Fry accepts that his submission is inconsistent with what is said in *Liverpool Victoria* at paragraph 68. He has referred me to the acceptance by Morris J in *All England Lawn Tennis Club (Championships) Limited v. Hardiman* [2024] EWHC 787 (KB) at paragraph 55, that there appears to be some conflict in the authorities.

14. In *Liverpool Victoria*, the Court of Appeal said:

> "68. Having reached a conclusion that a term of committal is inevitable, and having decided the appropriate length of that term, the court must consider what reduction should be made to reflect any admission of the contempt. In this regard, the timing of the admission is important: the earlier an admission is made in the proceedings, the greater the reduction which will be appropriate. Consistently with the approach taken in criminal cases pursuant to the Sentencing Council's definitive guideline, we think that a maximum reduction of one third (from the term reached after consideration of all relevant aggravating and mitigating features, including any admissions made before the

> commencement of proceedings) will only be appropriate where conduct constituting the contempt of court has been admitted as soon as proceedings are commenced. Thereafter, any reduction should be on a sliding scale down to about 10% where an admission is made at trial."

15. *Liverpool Victoria* was applied by the Supreme Court in *Attorney General v. Crosland* [2021] 4 WLR 103 at paragraph 44. This aspect of *Liverpool Victoria* is summarized at paragraph 44 (6) of *Crosland* as follows:

> "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."

16. In *Spingorum*, William Davis LJ said:

> "36…Mr Elvin QC correctly points out that the admissions were made at various stages…We accept the submission of Mr Greenhall that it is not possible to draw a precise link with the carefully calibrated scheme for the credit resulting from a guilty plea in criminal proceedings – see the Sentencing Council's overarching guidance on reduction in sentence for a guilty plea. In criminal cases, the defendant will typically have received legal advice at the police station, together with pre-interview disclosure. Here, there is no equivalent to the first hearing before a Magistrates' Court or a plea and trial preparation hearing. Moreover, as our decision on the 2 November 2021 protest shows, the question of whether a contempt has taken place is not always clear-cut, even where a defendant intended to breach the order. Each defendant was entitled to time to obtain legal advice. Each defendant is, we consider, entitled to a full one third reduction of the sanction on account of their admissions."

17. As it has been acknowledged that there is an element of uncertainty in the authorities, I will take the approach most favourable to the Defendants. However, I must also take into account when applying that approach that while the Defendants admitted the breaches, they only admitted as much as was shown on the photographs and in the other material. An important issue for deciding the appropriate penalty: whether their breaches were deliberate in the sense that they knew of the terms of the order and went ahead anyway, needed to be litigated. In those circumstances the reduction for admissions falls to be reduced in any event.

Penalty and other orders

18. In all the circumstances, I reduce the sentences to 6 months.

19. I have considered whether I can suspend the order for committal. The Council has decided not to seek an order to remove the Defendants and their families until after the current appeals against the refusal of planning permission and the enforcement notice have been resolved, at least by the Planning Inspectorate. I have also had regard to the Sentencing Council's 'Imposition' Guideline. It seems to me that the two factors form that Guideline that I must balance in this case are on the one hand whether appropriate

punishment can only be achieved by immediate custody; and on the other hand whether an immediate custodial sentence would result in significant harmful impact on others (namely children and vulnerable adults).

20. In the overall circumstances of this case, it seems to me that I can suspend the order for Committal and I do so. It will be suspended for 18 months.

21. Mr Fry said that I should not impose any condition on the suspension as to removal of the caravans and works. He says that I do not have sufficient information to decide whether to make such an order and points to the fact that the Council has decided to leave this issue to be resolved within the planning process. Mr Du Feu did not strenuously oppose those submissions.

22. The condition of suspension will therefore be that the Defendants not bring any more items prohibited by the injunction onto the land. I have explained the effect of the suspension order and the consequences of not complying with the conditions in open court.

23. I order that the Defendants pay the Claimant's costs on a joint and several basis. I assess the costs summarily in the sum of £ 23,500.