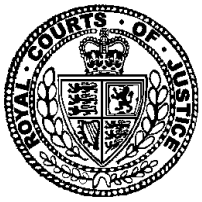

Neutral Citation Number: [2025] EWHC 127 (KB)

Case No: KB-2024-001553

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24th January 2025

Before :

Mr James Healy-Pratt sitting as a Deputy High Court Judge

- -

Between :

BASILDON BOROUGH COUNCIL **Claimant**

- and -

(1) ELIZA SAUNDERS
(2) JOHN BURTON JNR
(3) JOHN BURTON SNR
(4) GEORGE COOK
(5) SHANNON GREAVES
(6) ELIZABETH COOPER
(7) WILLIAM HOMES
(8) ELIZABETH COYLE
(9) PERSONS UNKNOWN (UNDERTAKING OPERATIONAL DEVELOPMENT ON LAND KNOWN AS LAND TO THE REAR OF SUNNYSIDE, LOWER AVENUE, BOWERS GIFFORD, BASILDON, ESSEX WITHOUT A LAWFUL PLANNING CONSENT AND/OR SEEKING TO CHANGE THE USE OF THE LAND INCLUDING A CHANGE IN USE TO A CARAVAN SITE WITHOUT LAWFUL PLANNING CONSENT)

Defendants

- -
- -

Wayne Beglan (instructed by **Basildon Borough Council**) for the **Claimant**
Stephen Cottle and Acland Bryant (instructed by **Public Interest Law Centre**) for the **Fifth Defendant**

- -

Approved Costs Judgment

This judgment was handed down remotely at 10.30am on 24 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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JAMES HEALY-PRATT
(SITTING AS A DEPUTY HIGH COURT JUDGE)

Deputy High Court Judge Mr James Healy-Pratt:

Introduction

1. The claimant, Basildon Borough Council, sought a final injunction against eight named defendants and persons unknown. The application was brought under s.187B of the Town and Country Planning Act 1990, in relation to Land known as "land to the rear of Sunnyside, Lower Avenue, Bowers Gifford, Basildon, Essex". The claimant sought to prevent the Land being subject to any further breaches of planning control, either by the carrying out of operational development, or by the making of a material change of use for stationing caravans for human habitation; and for the Land to be restored to the condition it was in prior to the breaches of planning control. They also sought the removal of two defendants and their children from the Land.

2. Several of the named defendants were legally unrepresented, but some of them still attended the two-day final hearing on 21 and 22 October 2024 and two of them gave evidence in person. In my approved judgment of 20th November 2024 I decided that the interim injunction granted on 4 June 2024 by Mr Simon Tinkler, sitting as a Deputy High Court Judge, should continue as against all defendants pending the outcome of the current planning appeal process on the Land. This meant that the fifth and seventh defendants had the right to remain on the Land until the planning appeal process relating to the Land had been finalised.

3. This brief judgment deals with the issue of costs solely in relation to the fifth defendant, Ms Shannon Greaves ("D5"), which were dealt with by way of written submissions to me following the handing down of my approved judgment – see Paragraph 57.

The parties

4. The Land comprises title EX180826 registered at the land registry.

5. D5 claimed to be occupying the Land (Plot 1) on a full-time basis with her three young children. The fifth to eight defendants are joint applicants for planning permission, and an appeal against refusal, in relation to the Land.

6. D5 was in receipt of emergency legal aid for legal representation at the two-day final hearing.

The procedural history

7. The claim was issued under Part 8 CPR on 29 May 2024 against named defendants D1-D4 and persons unknown (D9). At a without notice hearing the claimant was granted an interim injunction on that same date against those defendants by Sweeting J. I shall refer to that as the First Order.

8. An application to vary or suspend that order was made by D5-D8 (inclusive) on 3 June 2024. At the return date hearing on 4 June 2024 before Mr Simon Tinkler sitting as a Deputy High Court Judge, D5-8 were all added as named defendants by consent. The injunction was continued as against all defendants including persons unknown with D5 and D7 being permitted to remain on the Land, together with directions for trial. I shall refer to that as the Second Order.

9. At the two-day final hearing, Mr Beglan represented the claimant, and Mr Cottle represented D5. In my approved judgment, I concluded at Paragraphs 37-41 as per below:

> "The claimant decided to seek injunctive relief at a point where there was unauthorised development on the land, a TSN had not been effective, and matters were fast moving. The claimant had little or no information about the identity of some of the defendants or their personal circumstances. The application proceeded on the basis that the site was unoccupied at that time. That position was entirely reasonable.
>
> The claimant declined to investigate the welfare position of D5 and D7 as further information came to light. This was because they retained the belief that no one was in occupation of either of the touring caravans on the Land. I also remain conscious of the duty to uphold lawful decisions made by planning authorities. I must also bear in mind the consequences of a final injunction when there are no alternative sites available. There are significant factors mitigating against the grant of a final injunction on the facts of this case. As the emergence of evidence (certainly in relation of D5) occurred, the claimant should have investigated matters and re-assessed the balance of factors considering that information. The proportionality of the decision should have been revisited when the claimant became aware of these matters.
>
> Here the defendants accept that there has been a breach of planning control which the court should seek to address. They also consent to a continuation of the Second Order pending the outcome of the planning appeal process. Given my finding that the claimant did not attempt to conduct a welfare assessment once evidence emerged from D5, I conclude that there has not been an evaluative exercise properly required before seeking final injunctive relief.
>
> There is also my conclusion that the planning status is not yet final. I also must bear in mind the significant impact that a final injunction would have. Having regard to all matters, I am satisfied that it is appropriate for the court to decline to exercise its discretion to make the final injunction requested but to continue the Second Order on the same basis pending resolution of the current appeal process. I emphasise that this is a decision being made at this juncture, in view of the way the proceedings and the evidence has played out. That does not prevent the claimant from returning to court to seek relief from breaches of planning control or exercising other enforcement powers.
>
> I consider a continuation of the Second Order as against all defendants is just, proportionate and appropriate, pending resolution of the current planning appeal

process relating to the Land. Given the history, connections with the land and related families, I consider it just and proportionate that D1, D2, D3, and D4 remain as named defendants. So too in relation to D6 and D8. D5 and D7 retain the same right to remain on the land that they currently enjoy under the Second Order. As for persons unknown, the claim for injunctive relief has been carefully framed and limited with regard to the small site and area of Land covered, and the activities are limited and clearly defined. Accordingly, the injunction is also justified on a continuing basis in the terms of the Second Order."

10. Clearly, for the reasons given in my Conclusion, D5 was successful in resisting a final mandatory injunction that would have required both her and her children to vacate the Land.

11. At this point it is relevant to consider a letter dated 16 October 2024 from the Public Interest Law Centre, as solicitors of record for D5, D6 and D8. They wrote to the court and confirmed that D6 and D8 had moved off the site as provided in the Second Order and agreed to submit to the interim injunction being continued as they are no longer on the site and withdrew from the application to vary. In relation to D5, they confirmed that should the Second Order of 4 June 20024 be continued, with liberty to apply, then this would be acceptable.

12. Shannon Greaves (D5) provided two witness statements – 3rd and 19th June 2024. In my view her evidence was not dispositive that she had been living on the Land since 2015. In my view, her occupation on the Land had been sporadic since 2015 up until early 2024. I was satisfied that she also spent considerable time at the Homestead from 2018 and continues to use some of its facilities for the benefit of her children. There is a touring caravan on Plot 1 currently, which I accepted she occupied, and noted that it has been consistently on Plot 1 since January 2024.

Submissions from the parties

The Claimant

13. By a judgment given on 20th November 2024 the judge ordered continuing negative injunction relief against D5, subject only (in substance) to whether extant planning appeals are successful. (if the appeals are dismissed, by definition that will have taken in the personal circumstances of the appellants, the best interests of the children ("BIOC") and so on, and the works specified in the EN will require to be carried out, achieving the mandatory part of the relief sought). In the event of the planning appeal being successful, planning permission would have been achieved for the development on site and the use, and it would have fallen outside of the order C sought in any event (which did not seek to prohibit matters which had planning permission).

14. In those circumstances C has been substantially successful in obtaining continuing relief against flagrant and co-ordinated breaches of planning control. Clear findings

of fact were made in that respect (in contrast to the interim injunction stage). Applying the normal rules, C should have its costs.

15. Insofar as other elements of conduct weigh in favour of granting C its costs of the action – it is well established that pre-action conduct is a factor the court *"will have regard to"* for these purposes: CPR 44.2(5)(a); 44.2.25. As to that conduct: (1) This was a case of intentional unauthorised development; (2) D5 (as the other relevant Ds) did not comply with the TSN **[J:15-16]**. The works were *"flagrant . . . committed in a co-ordinated way, timed over a bank holiday weekend, and . . . continued despite the service of a TSN"* **[J:92]** without any proactive planning application or advice; (3) D5 (as the other relevant Ds) chose not to provide personal circumstances and BIOC information in support of her planning application before the LPA **[J:38, 42].** It was that conduct which *caused* the proceedings to be issued against D5, and these costs to be incurred. Further, (4) D5's first WS, relied upon in resisting the interim injunction, was neither full (c.f. her WS2) nor truthful: The clear and central statement that D5 had "lived on the site since 2015 with my 3 children" was not true **[J:49, 79, 103]**. (5) Nor should her initial attempt to deflect blame for the works be given any credit **[117/7]**. (6) It appears she was present on site and did nothing to intercede when George Cook (supported by others) was swearing and making physical threats to council officers. (7) D5 did not allow her evidence to be tested **[J:73]**, and that did hamper Cs development of its case. The court is well used to making appropriate accommodation so that vulnerable or anxious witnesses can properly give their evidence.

16. By a letter of Wednesday 16 October 2024 that D5 effectively conceded a final order in the same form as the interim injunction **[J:72]**. By that stage the costs in preparing for trial had been incurred. The brief had been received, Cs skeleton argument was in preparation and filed the following day (17 October 2024). All the admitted witness evidence on behalf of C had been filed and served. In any event, C would have required a period of time to consider the offer, and against the backdrop where all the costs of trial had been incurred during that time. It was this late concession that D5 continued through the actual trial **[J:96]**.

17. The view taken by C in relation to D5's evidence, summarised at [101], was reasonable in circumstances where her WS1 was false in its key assertion, in the circumstances of works being undertaken as described at [J:92], and where D5 had chosen not to provide personal circumstances information within the planning application, although ultimately the Judge concluded the situation of occupation was more nuanced [J:103]. C was not obliged in forming its planning judgment about the likely occupation of the land to apply a criminal standard of proof or give D5 the benefit of any doubt. Having reached that reasonable view, applying *Porter* it was justified in proceeding as it did. For that reason, this case is very different from *Gray* where actual occupation was not in dispute (see e.g. [4] of that case).

18. C should have its costs of pursuing injunctive relief against D5. They should be in the normal form up to the date of grant of public funding, and subject to the normal protection from that date forward.

The Fifth Defendant

19. D5 successfully resisted a mandatory order which was the main issue in the trial. Legal aid was extended because otherwise D5 faced eviction and she stopped that. Costs of and occasioned by the substantive trial are different to the costs in the case arising from the prohibitive order made by Mr Tinkler. Costs in the case should still apply to those who told the Court they were content for that Order to continue against them, as the present prohibitive order is a continuation of Mr Tinkler's order and if planning permission is refused and if thereafter any named defendants or persons unknown on the land don't leave, then Basildon can come back for a mandatory order and argue for those costs in the case. An order that Basildon's costs are costs in the case for other defendants, may not re-surface for unrepresented defendants if planning permission is granted, unless at the conclusion of the claim those costs are re-opened.

20. Knowing of upcoming planning appeals, Basildon could have decided to wait and see but chose to press on. Once planning appeals were lodged and once enforcement notice appeals were made the situation changed and called for a review of the merits of trying to get a mandatory order before those appeals are determined. Consistent with the judgment of the court, Basildon's decision to press on with trying for a final order including removal of caravans / cessation of residential use was not informed by a proper review of circumstances as became apparent from D5's 2nd witness statement; and as informed by the lodging of planning appeals with supporting representations.

21. Basildon were at risk of not being successful in getting the land vacated before the planning appeal, but were prepared to risk the exposure to costs that would follow if they lost. There was a finding at the end of paragraph 112 regarding alternative accommodation that Basildon fought and lost on.

22. The Court is invited to find that D5 was the successful party at trial. No time at trial was taken over the terms of the prohibitive order that were not contested. D5 should have her costs from a reasonable period after receipt of her evidence (1st statement 3rd June 2004, subsequently signed and 2nd statement dated 9th July 2024) **or** from when a planning appeal was lodged 2nd July against the enforcement notice and the local planning authority became aware that the secretary of state might side with colleagues who have allowed the other 16 appeals in Basildon owing to disagreements over the weight to give to matters like the level of chronic historic unmet need, and the lack of any policy geared to meet it, that Basildon apparently, still deny the significance of.

23. Costs are in the discretion of the court but the general rule in CPR 44.2(a) requires the court to ask who won? Case law referred to under para 44.2.13 to Vol 1 of the White Book 2024 provides "where a particular party is the successful party it is important that proper weight be attached to that and that judicial reasoning towards costs order which justice requires should start with the general rule that the unsuccessful party should pay his or her costs" According to 44.2.6(c) the Court may order costs to be paid from or until a certain date only. Under 44.2.8 the Court is further invited to order Basildon to pay a reasonable sum (50%) on account of costs. The costs of seeking the injunction were costs in the case and the case is not over yet, because as case law shows, the costs of seeking interim relief do not equate with overall success and you are not asked to decide that. It is only the costs since Basildon had time to

review the wisdom of going to trial at this juncture, that are sought by D5. If there was no review that isn't an excuse.

24. The Order of Mr Tinker has been continued and Basildon unsuccessfully sought a mandatory order against D5 and D7 and there is no reason for not applying the general rule in respect of D5 costs since 1st September or since 1st October by which time Basildon had time to consider the position knowing that there were appeals afoot and they would be asking the Court not to wait until the outcome of the planning process before granting the mandatory order. The Court is invited not to make any percentage reduction from D5's costs of trial which were all or nothing in respect of the contested hearing before you. A consent order could have obviated the need for a contested hearing but Basildon wanted the land cleared now and that is why D5 had legal aid. The cost incurring steps in relation to trial were significant and the issue of who won, is to be decided, as of the present moment in time, when the court is now deciding the matter in the light of the judgment of the Court refusing a mandatory order. It is important to make costs orders in favour of legally aided parties where appropriate to do so, as here, and a culture that since both parties are publicly funded, it does not matter, is unacceptable "otherwise the system of public funding would be gravely disadvantaged" per Lord Hope in the JFS case cited in R (Bahta)v SSHD [2011] 5 Costs LR 857@ 28 & 49, attached.

Analysis & Decision

25. D5 was successful in resisting a final mandatory injunction requiring both her and her children to vacate the Land. That was a central issue of fact and law at the two-day final hearing. For clarity and ease of reference, I repeat paragraphs 108 and 109 of my approved judgment of 20th November 2024:

> "Since becoming aware of the more detailed evidence from D5 in relation to her children and daily existence, the claimant has not seemingly re-assessed its initial decision to pursue injunctive relief, save to push for a final injunction. There has been no mention of welfare checks or questionnaires being sent to the D5 or D7 families to ascertain their needs. Enquiries should have been made regarding these matters and questions asked about the proportionality of continuing to pursue a final injunction. It is agreed that the interim injunction order of 4 June 2024 preserved the status quo and has prevented further works taking place. In short, it achieved its aims. An alternative available path was that suggested by the Public Interest Law Centre on 16 October 2024 whereby the claimant consent to the continuation of the status quo order without prejudice to further applying to vary the injunction, contingent on the conclusion of the planning process. This was rejected by the claimant.
>
> I conclude that there has been a failure by the claimant to undertake a welfare assessment on the needs of the children of D5 and D7 on the Land since they became aware of relevant evidence in late June/ early July 2024. Those assessments should have taken place and have been factored into an updated assessment seeking to test the proportionality of continuing to push on for final injunctive relief."

26. Reminding myself of CPR 44, I consider that D5 can properly and reasonably be considered to have won at the final hearing because the Claimant was unsuccessful in its attempt for a final mandatory injunction against D5.

27. Obviously the final outcome remains to be seen; which is contingent and dependant upon the current planning appeal process. That final outcome could play out in a variety of conclusions with significantly different effects on all the parties to this dispute. Accordingly, this is not necessarily the end of the matter. Hence I confine myself to the issue of the costs solely relating to D5 and the two-day final hearing that was subject to my approved judgment.

28. Further in relation to CPR 44, orders the Court may make include those listed in CPR 44.2.6. These include an order that the paying party pay costs up to or from a certain date, or that they pay a proportion only of the costs, or that they pay the costs of a certain issue only. The Court should start by asking which party has been successful overall and then ask whether there is a good reason to make a different order from the normal one.

29. In my view, D5 was the successful party because she resisted a final mandatory injunction essentially seeking to evict both her and her children from the Land. The Solicitors for D5 offered the claimant on 16th October 20024 a pre-final hearing concession for a Consent Order on the basis of the Second Order. This was rejected by the claimant, and following the final hearing, my approved judgment provided an identical outcome.

30. Given my findings of fact in relation to the evidence of D5, and the consideration of the issues raised in that evidence by the claimant, it is objectively fair to describe that evidence as an evolving picture between June and September 20024. I agree with the broad submission of D5 that the claimant had sufficient time by October 2024 to consider the evidentiary matrix relevant to D5 and the appropriateness of pushing on for a full hearing to pursue a Final Mandatory Injunction against D5. Certainly by 16th October 2024, the position as between D5 and the claimant had crystallised.

31. Reminding myself of R (Bahta)v SSHD [2011] 5 Costs LR 857 and under CPR 44.2.6 I consider it appropriate in all the circumstances for the claimant to pay the costs of D5 from a certain date. Specifically, those costs of D5 should be from 18th October 2024, as by that time the claimant had sufficient information as well as the pre final hearing concession by way of proposed Consent Order from D5. At that time, the final hearing was listed for the next week but still capable of being vacated.

32. Under CPR 44.2.8 I consider it appropriate in all the circumstances for the claimant to pay fifty percent (50%) on account of the costs of D5 from 18th October 2024.

33. Accordingly, the Order resulting from my approved judgment will contain the following items in relation to costs, and I invite Counsel for the parties to submit the appropriate Order to the Court for approval and issuance:

> *Costs in the case, save between the Claimant and the 5th Defendant which is provided for below.*

The Claimant shall pay the 5th Defendant's costs including those occasioned by costs submissions since 18th October 2024, such costs, if not agreed, to be subject of detailed assessment.

The Claimant shall pay 50% of the 5th Defendant's bill of costs from 18th October 2024, on account of those costs, within 28 days of receipt.

Detailed assessment of the 5th Defendant's legally aided costs.