



Neutral Citation Number: [2021] EWHC 3135 (QB)

Case No: QB 2018 000523

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24.11.21

Before :

**MR JUSTICE RITCHIE**

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Between :

**WOKINGHAM BOROUGH COUNCIL**

**Claimant**

- and-

**DEAN JULES (1)**  
**CANDICE JULES (2)**

**Defendants**

(Matt Lewin instructed by Shared Legal Solutions) for the Claimant  
(Scott Stemp, Direct Access, for the Defendants)

Hearing dates: 12.11.2021

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**Approved Judgment**

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Approved Judgment**Mr Justice Ritchie:****The parties**

- [1] The Claimant council is the local planning authority for the district of working ham which includes a plot of woodland at the Coombes, Coombes Lane, Barkham, Wokingham RG41 5SUV (the Site).
- [2] The Defendants are the registered owners of the Site.

**The issues**

- [3] The Defendants admit that they breached some of the terms of an injunction made by Mr Justice Goose on the 3rd of April 2019 and it falls to me to sentence them.

**The summary of claim and defence**

- [4] On the 14th of December 2018 the Claimant issued a part 8 claim form in which it was asserted that the Defendants were developing the Site without planning permission.
- [5] There is no defence on the court Cefile. I have seen no directions in the action pushing it forwards. 2 years and 11 months have passed since issue.

**The underlying chronology**

- [6] The Defendants purchased the Site, which is a 1.5 acre portion of woodland, in October 2018 with the intention of running it as a commercial interest in forestry and well being. In her witness statement the second Defendant asserts that the Defendants received several quotes to clear the rhododendron off the land but those were in excess of £15,000 and therefore they decided to do it themselves by hand.
- [7] They consulted with the Claimant council as to how to move forwards and were at visited by an employee from the trees and landscape office but there was no need for permission to remove the rhododendron. They did need to apply for a small woodland management plan (SP) that would give them permission for five to 10 years of planned work instead of having to submit applications continuously tree by tree.
- [8] They contacted the Wildlife Trust for advice on woodland management and the Small Woods Association, Making Local Woods Work, the Forestry Commission and the Small Woodland Group.
- [9] In November 2018 they applied under the permitted development route for a forestry shed in which to store their tools, gear and the stock of charcoal which they intended to create. In December 2018 they submitted their first draught of their SP which plan they intended to amend and redraft with the Forestry Commission and the Council's help. In the same month they submitted various tree applications to remove some damaged and diseased trees and some of these applications were granted in January 2019.
- [10] The Claimant's evidence is that it received complaints on the 27th of November 2018 that building materials had been delivered to the Site and so they visited on the 27th of November 2018. On the 29th of November the Claimant served a notice pursuant

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to section 171E of the *Town and Country Planning Act 1990*. That was defective. The Claimant served a temporary stop notice on the 4th of December 2018.

- [11] On the 30th of November 2018 the Claimant received an email from the second Defendant which indicated an intention to erect a temporary building/caravan on the Site. And on the 10th of December 2018 a planning enforcement officer inspected the Site and observed development works including the clearing of a patch of ground, steel pins inserted in the ground and wooden beams which looked like the foundations for a building.
- [12] In December 2018 the Claimant refused the Defendants' "prior notification application" and the Claimant accepts that its refusal was invalid and/or unlawful. The Defendants were advised by their planning consultant a Mr. John Gower, to appeal and were advised that under the legislation they could proceed with the erection of the wooden shed/caravan which they had applied for permission for because of the Claimant's unlawful refusal. The Defendants did appeal in January 2019.
- [13] On the 23rd of January 2019 the Claimant issued a further enforcement notice to the Defendants. This concerned the unauthorised construction of a timber building and its use as a dwelling on the Site. The time for compliance was six months from the date of the notice. Which took effect on the 22nd of February 2019 unless an appeal was made against it before hand.
- [14] The Defendants did appeal.
- [15] It took one year and six months for that appeal to come before the inspector. The inspector's decision was made on the 14th of September 2020. The appeals were dismissed and the enforcement notice was upheld. I have seen the decision which is at exhibit JV-F. At paragraph 4 the inspector noted that for the appellants to succeed they were expected to demonstrate that the structure constituted a caravan. The inspector then went into the definition of caravans and in particular mobility and size tests. At paragraph 18 the inspector noted that the structure appeared to be supported by a combination of two pairs of wheels connected by a sub frame and axles. There were hydraulic jacks at two of the corners. At paragraph 20 the inspector decided that the structure could with stand being moved a few centimetres but might not fare well if moved metres or kilometres. At paragraph 29 the inspector considered the case law and at paragraph 34 decided that the structure was a building not a caravan and therefore the appeal failed.
- [16] Without summarising all of the facts that occurred after that decision it is worth noting that the Defendants, on advice from the planning consultant, John Gower, took the view that the wooden shed, having been found not to be a caravan, was therefore a building. They had applied for prospective planning approval to have a shed on the land in the December of 2018 and the Claimant had not provided a decision in time, therefore the Defendants team were working on the basis that they were entitled to have the shed (the building), on the land because the Claimant had failed to make its decision in time.
- [17] This approach seems to be evidenced in an email from Mr Gower to the Claimant dated 11th March 2021 (exhibit JV-N). In that email Mr Gower stated:

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“to be clear no enforcement action has ever been taken in respect to our clients building of their approved forestry building.... it was entirely better on the previous enforcement notice that it was the cabin structure... that was subject of that notice not this separate and distinct implementation of the prior notified consent in respect of a forestry building. As such the previous appeal had nothing whatsoever to do with this building which was subject of valid prior notification and, having had no determination within 28 days regarding prior approval, may proceed in accordance with the initially supplied details (as confirmed by the relevant legislation).... Wishes to establish its opinion as a matter of fact it must of course, do so through the proper process such as the issue of an enforcement notice (and the subsequent successful outcome of any appeal flowing from such which confirms the ... opinion as correct). Until any such action takes place, which it has not to date there is no legal basis to seek to challenge our clients’ rights to implement their, properly gained, consent.”

- [18] Returning to the chronology: in April 2019 the Claimant conceded that it had made an error and so conceded the appeal made by the Defendants to their December 2018 refusal of permission for a shed. In their letter dated 10th April 2019 the Claimant stated:

“due to this error it is accepted that the council has not made a determination of the application within the 28 day time. Required by class E, schedule two of the GPDO 2015 as required.”

- [19] The Defendants continued to remove rhododendron bushes from the Site and to make charcoal there from. They awaited feedback from the Forestry Commission and the Claimant council with regard to their SP. In May 2019 the Forestry Commission made some suggestions. I have seen at exhibit CJ4 those suggestions. The Defendants had shown the Forestry Commission around their land. The Commission considered that the woodland was deteriorating ecologically due to encroachment of rhododendron. They stated that the ash trees were suffering dieback. They advised removal of the rhododendron, diversification of the woodland structure and facilitative establishment of a new generation of trees. They noted that the Defendants’ aspirations to prevent deterioration, enhance the wood ecologically, produced small quantities of logs and charcoal, use the woodland for quiet and informal recreation for family and friends and to host low intensity meditative and spiritual classes. The Forestry Commission recommended restoring and enhancing the woodland. Establishing a mosaic of interlocked coppices which would be cut on a 6 to 8 year rotation. They suggested a curving route for human walking between the glades. As for storage they stated:

“any permanent structure would result in the loss of woodland and focused access which would result in further degradation of part of the woodland. Some kind of small mobile structure constructed in the vernacular of the woodland setting might be suitable as this could be moved to avoid over use of any particular part of the wood.”

- [20] The updated SP is at CJ5. It deals with the period from July 2021 - 2031. The Defendants set out their address as 14 Dart Close, Finchampstead, Wokingham RG40 4JG. It states that they sold the harvest they made from the forest. They described the disease to the ash trees and the intended clearance of a large number of rhododendron bushes. The SP informed the Claimant that they had added fruit trees and Willow. They planned to clear the little brook going through the land. They set out that there was an open area between the shed they had constructed and the stream in which they

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intended to introduce Blackberry and Gooseberry shrubs. They intended to let chickens run under the trees to help manage pests. They stated that they were making charcoal from the cleared rhododendron and that they sold firewood from the old timber that they cut. They also stated that they offered low impact Wellness events such as meditations under the trees. They stated they held Scout volunteer days for the local Scouts group.

- [21] The Claimant has not yet made any decision on the SP over the course of 2 years 11 months. This is clearly very frustrating for the Defendants who have to apply tree by tree through the Claimant's online portal and who receive responses tree by tree from the Claimant. Yet the Defendants assert that the responses do not contain the correct or any references for each tree application so the Defendants do not know which trees they have permission to cut and which they do not. With no SP in place the whole process is enormously frustrating and bureaucratic, according to the Defendants.

**The chronology of injunctions**

- [22] The issue of the claim form was on the 14th of December 2018. The Claimants also obtained an ex parte injunction from Mr Justice Martin Spencer. By that injunction the Defendants were prohibited from bringing building materials onto the Site or storing them there. They were also prohibited from carrying out building or engineering works on the Site or bringing a mobile home or caravan onto the Site. They were also prohibited from carrying out any unauthorised tree works.
- [23] There was also a mandatory order for the Defendants to remove all building materials from the Site within 48 hours of the order being served.
- [24] The return date for that injunction was a hearing on the 28th of January 2019. Mr Justice Waksman heard from counsel for the Claimant and the Defendants. He continued the prohibitory injunctions stopping Defendants from bringing or storing building materials on the Site and preventing the Defendants carrying out building or engineering operations on the Site and prohibiting the Defendants from bringing a mobile home onto the Site and carrying out any works to trees protected by a TPO without written permission of the Claimant or the Forestry Commission. The Defendants were also prohibited from living at the Site from the 5th of April 2019 onwards. The Defendants were ordered to serve and file evidence setting out their financial position, their accommodation and the basis on which they stated that their activities carried out on the Site were not in breach of planning controls. There is nothing on the courts Cefile to suggest that this was complied with but I make no finding in relation to that because I am not certain that the courts Cefile is complete. The Defendants were ordered to pay the Claimants costs to be assessed.
- [25] On the 3rd of April 2019 the case returned before Mr Justice Goose because the Defendants had applied to vary the injunction made by Mr Justice Waksman. The variation added a rider to the prohibitory injunction to the effect that the prohibition was subject to the caveat:

“otherwise than in accordance with any of:-

- (1) the provisions of the town and country planning act 1990;
- (2) and express grant of planning permission under the Town and Country Planning Act 1990; Or

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(3) the provisions of a general development order.”

The Defendants were given until the 1st of May 2019 to stop residing on the Site. The Defendants were ordered to pay the Claimant’s costs of the application summarily assessed at £1000.

[26] As to residence on the Site the explanation from the Defendants in their evidence was that they decided to move onto the Site to remove all of the rhododendron, thereby saving themselves £15,000, which they had been quoted to carry out that work.

[27] Two years and two months later the Claimant applied to commit the Defendants for contempt by a notice of application dated the 17th of June 2021. The alleged the Defendants were in contempt of court for breaching the injunctive order made by Mr Justice Goose and sought costs.

[28] The allegations of breach were set out in the brief summary in the normal way. Five dates were relied on.

- On the 28th of April 2020 the Claimant observed a concrete foundation under construction at the Site.
- On the 1st of March 2021 the Claimant observed the concrete foundation had been added to and building materials were on Site.
- On the 15th of March 2021 the Claimant observed a toilet with a canvas and wooden a frame straddling a drainage ditch and a wash stand had been constructed.
- On the 25th of March 2021 the Claimant observed further building materials had been brought onto Site and a wooden walkway was under construction.
- On the 4th of May 2021 the Claimant observed that a wooden shed style building had been erected on the concrete foundations.

[29] On the 8th of October 2021 the application to commit the Defendants for contempt came before John Kimbell QC sitting as a deputy High Court judge. The second Defendant provided a witness statement dated the 7th of October 2021. The Defendants admitted breaching paragraphs 1 (a)- (c) of the injunction dated 3rd April 2019. The judge found:

“that the Respondents have been guilty of contempt of court in failing to comply with paragraph one of the order by bringing building materials onto the Site, storing building materials on the Site and carrying out building works on the Site without the same being authorised by the provisions of the *Town and Country Planning Act 1990*, an express grant of planning permission under the said act or the provisions of a General Development Order.”

[30] The Respondents at that hearing undertook by 4:00 PM on the 5th of November 2021 to remove from the Site the shed, the concrete foundations, the toilet and wash stand, the walkway, the building materials and all resultant debris and materials.

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- [31] This application came before me on the 12th of November 2021. The Claimant put in a further witness statement from Mr Varley dated 10th November 2021. In that witness statement, in summary, the Claimant complained that although the Defendants had substantially purged their contempt they had moved the walkway and other bits of building material to land off the Site but adjacent to it, which the Defendants did not own. They also sent out at various photographs, those on pages 4, 5, 6, 7, 8, 16, 17, 18, 28, 29, 30, 31, 32, 33, 34 are photographic evidence of the alleged breaches. It should be made clear that the Claimant accepted in evidence that the other photographs were not part of any asserted breaches.
- [32] I was also provided with photographs dated 11th November 2021 by the Defendants showing that all of the building materials had, by that date been removed from their Site.
- [33] To remove the wooden shed and concrete and toilet and building materials in October/November 2021 from the Site, which has no vehicular access, was a mammoth task. It involved carrying everything by hand over 150 metres to the road up a 60 degree slope and then walking back for the next batch.
- [34] To take care of the forest, which they own, without a shed in situ, the Defendants have to park on the lane and carry all of the tree cutting machines and tools down the footpath under the frowning glare of other walkers who on the 2<sup>nd</sup> Defendant's evidence pass disparaging comments to them when tree cutting equipment is seen being carried.

**The facts****Agreed facts**

- [35] There is no substantial dispute on the facts. I have set those out above in the chronology both in relation to the background goings on and in relation to the injunctions.

**Analysis**

- [36] I accept the Defendants' evidence that the Defendants twice offered to mediate the background dispute. The Claimant refused or ignored the requests both times. This case requires in my judgment more constructive interaction and communication between the parties.
- [37] The Defendants have been open and clear with the Claimant all through about what they are trying to do with their own land. Their plans may or may not be permissible or within the relevant planning regulations but they have not been covert. They have always wanted to use this forest for forestry purposes, the making of charcoal, for meditation and alternative therapy, for the Scouts group and to do so they have always wanted to put a rather large wooden shed on the land and to store not only tools for forestry but also charcoal which they make on Site.
- [38] The Claimant's approach to the Defendants has involved issuing defective "stop" notices and failing to respond in a reasonable timescale to the Defendants' Small Woodland Management Plan and refusing mediation. Then the Claimant obtained the ex-parte and inter partes injunctions banning the bringing onto the Site of a wooden "caravan" (which the inspector determined was a shed), or any building.

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- [39] The Claimant, through the processes that they have in place, have required the Defendants to make multiple, tree by tree, applications when it would have been far more efficient to work with the Defendants to draft a sensible Small Woodlands Management Plan in consultation with the Forestry Commission, if necessary.
- [40] So the interim injunctive proceedings have progressed quickly and involved court orders, whilst as far as I can ascertain the main action has stalled for over 2 years.
- [41] I accept the Defendants' evidence that they have been advised by Mr Gower that the interlocutory injunctions were obtained precipitously, before the relevant planning appeals and applications had been determined, or which usurped what they were advised were their rights after their prospective planning application was unlawfully refused, causing huge amounts of legal costs with questionable benefits. Of course I make no findings about whether that advice was wrong or right. It may well have been wrong.
- [42] I also take into account the fact that the Defendants came before the court on this contempt application and admitted their contempts before John Kimbell QC sitting as a deputy High Court judge and they purged them all in accordance with their undertaking to a very substantial extent. The tiny bits of concrete and few bits of plastic that remained on Site on the 10th of November were fully removed by the 11th of November. Therefore I consider that the Defendants have shown due respect to the court by fulfilling their undertakings substantially.
- [43] I take into account that I have no evidence that anything has been done by the Claimant to bring the action to trial. I am not aware of any directions orders, none are on the court's Cefile. As currently drafted the claim form relies on a temporary stop notice dated 29th November 2018 and a later served temporary stop notice stated 4th December one or other of which was invalid.

**The Law**

- [44] The court's powers in relation to sentencing for contempt are set out in S.14 of the *Contempt of Court Act 1981*.
- [45] I do not consider that the breaches are serious enough to warrant a sentence of imprisonment or a suspended sentence.

**Mitigation**

- [46] I take into account that the Defendants have 3 children aged 19, 6 and 3. That they live in a council house and are being forced to move soon. Both Defendants have low incomes based on the forest and their work there and have already spent up to £100,000 on this land and their plans for it.
- [47] I take into account the admissions of breach and the considerable efforts they have made to purge their contempt and the fact that they have purged their contempt.
- [48] I take into account that the Claimant has not engaged with the Defendants in mediation to resolve the underlying issues despite two requests.



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- [49] I take into account the frustrations of the Defendants in their efforts to obtain approval for their Small Woods Management Plan from the Claimant and to site a tools, equipment and storage shed on their land ancillary to their forestry and wellness and Scouts activities there.
- [50] I take into account the open way in which the Defendants have approached the council and the court.
- [51] I take into account the guidance given in the Supreme Court Practice vol 2 and 3C-36 and *Liverpool Insurance v Zarfar* [2019]EWCA civ 392.
- [52] I take into account the General Sentencing Guidelines and the limitation on my power to make any community services order.

**Rulings**

- [53] I sentence the Defendants to a fine of £100 each to be paid in 14 days.
- [54] Directions as to the further progress of the action: I would like to see the court file in relation to the main action to consider direction for the further conduct of the action by this court or a master.

**Costs**

- [55] For the reasons set out above I currently intend to make no order as to costs on the application but will hear submission on costs at the adjourned hearing which should be listed before me as soon as possible with a time estimate of 1 hour. Before that hearing I invite the Claimant to file a bundle of all directions orders and pleadings in the main action.

**Ritchie J**

End