

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
Holborn
London
WC2A 2LL

BEFORE:

MR JUSTICE CAVANAGH

BETWEEN:

WINCHESTER CITY COUNCIL

CLAIMANT

- and -

LARA KIM DEROUBAIX
LUKE DEROUBAIX

DEFENDANT (1)
DEFENDANT (2)

Legal Representation

Mr Douglas Edwards QC (Barrister) on behalf of the Claimant
Mr Paul Powlesland (Counsel) on behalf of the Defendants

Other Parties Present and their status

None known

Judgment

Judgment date: 15 April 2021
(start and end times cannot be noted due to audio format)

Reporting Restrictions Applied: **No**

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Number of folios in transcript **112**
Number of words in transcript **8,024**

Mr Justice Cavanagh:

1. This is an application by Winchester City Council to commit the two Defendants for contempt, arising from their alleged breaches on certain specified days over several years of an injunction granted pursuant to Section 187B of the Town and Country Planning Act.
2. The injunction was granted on 23 May 2018 by Foskett J and it restrained the Defendants from siting any caravans or mobile homes on a plot of land owned by the First Defendant at Long Road, Soberton, within the South Downs National Park in Hampshire. The plot is known as Plot 107. There are a number of other plots on surrounding land which do not belong to the Defendants.
3. Winchester City Council is the local planning authority for and exercises the planning functions of the South Downs National Park in respect of that land. The Defendants are mother and son.
4. The injunction of 23 May 2018, which is a permanent injunction, provides in relevant part that the defendant be forbidden, whether by themselves or by instructing or encouraging any other person, from:
 - 1) siting any caravans or mobile homes on the site and using any vehicle or other structure for residential purposes without the express grant of planning permission from the Claimant; and
 - 2) undertaking any operational development on the site, as falls within the direction that applies to land at Long Road, Soberton, made under Article 4 of the Town and Country Planning Act 1990 on 21 January 2004 (a copy of which was attached to the order) without the express grant of planning permission from the Claimant.
5. The Claimant's case is that there have been, for a considerable time, breaches of the injunction that was granted on 23 May 2018 by the siting and retaining of multiple caravans and other mobile homes, by erecting fences for enclosure and in particular around a part of the site referred to as Plot 107. The Claimant says that the First and Second Defendants have been occupying the caravans and mobile homes and have accumulated a quantity of residential materials around them.
6. Pausing there, the Defendants have indicated via counsel this morning that they accept that they have been in breach of the injunction in the manner alleged and so have accepted that they have been in contempt, but given the significance of the contempt jurisdiction, I am nonetheless going to make findings of fact in this judgment about those matters.
7. As well as seeking committal for contempt, the Claimant also applies for a variation of the injunction so that it applies to the placement of tents as well as the placement of caravans and mobile homes on Plot 107.
8. The committal application is supported by an affidavit dated 20 November 2020 from Miss Sarah Jane Castle, the Principal Planning Officer at Winchester City Council, and also by an affidavit of the same date by Ms Kenna-Sian Young who is a housing manager employed by Winchester City Council. The Defendants have not themselves provided any evidence, either orally or in writing, to challenge or to gainsay

Winchester City Council's evidence and as I have already said, they do not dispute the facts that have been alleged against them.

Recent procedural history and recent events

9. These applications were originally listed for a hearing on 29 January 2021 before Foster J. On 25 January, the First Defendant wrote, by email, to the court saying that she would not be able to attend the hearing on 29 January because she was working as a chef and she was keen not to run the risk of contracting Covid. She did, however, put her side of the story in the email and said that as soon as the lockdown restrictions were removed she would come off the land. At that stage the Defendants were unrepresented.
10. On receipt of this email, Foster J caused a reply to be sent saying that the hearing on 29 January would proceed unless there were medical reasons why it could not do so and that such medical reasons would require evidence, which evidence would have to be sent at once. Foster J also emphasized the importance of the matter, carrying with it, as it did, the risk of imprisonment. She also notified the Defendants that all Covid precautions would be taken at the court, which is operated in Covid-secure conditions.
11. When the hearing took place on 29 January the Defendants did not attend. Foster J adjourned the hearing till later in the day so that a remote hearing link could be set up with the Defendants. This was complicated by the fact that the Defendants had given no information about where they were then living.
12. The person who communicated with the First Defendant to make the arrangements made a note of her conversation with the First Defendant. That note indicates that the First Defendant said that she was at home but only had access to a laptop at work and so she was unable to participate via a video link. She then said that she had chest pains and the person communicating with them noted that she appeared to be breathing heavily down the phone. The need for her personal attendance at court, if possible, and the importance of the proceedings, was re-iterated to her. She stated that she could not drive three hours to London, and a male voice, thought to be the Second Defendant, said:

“It’s lockdown and we can’t get there.”

He seemed, to Ms Knight, the person speaking to him who is the solicitor acting for the council, apparently to be shouting threats in the background.

13. Foster J made arrangements for the Defendants to dial in to the hearing in open court by telephone and the Defendants accepted, on that occasion, that no medical evidence had been provided but they said that they were unable to attend physically and did not think that their car was up to the journey. The judge, once again, reminded them of the importance of the case and of their right to legal aid. In fact, helpfully, Winchester City Council had offered to help them find legal representation already.
14. Amongst the issues that the Defendants emphasised at this hearing was that they were not responsible for the mess that existed in the vicinity of Plot 107 and that they were unable to find other accommodation which they were happy with and which could accommodate their numerous dogs.

15. In all of the circumstances, Foster J decided to adjourn the hearing. Shortly after this the Defendants obtained legal representation from Messrs Abels Solicitors and specialist counsel, Mr Paul Powlesland, from Garden Court Chambers.
16. A directions hearing took place on 15 February at which the Defendants were represented by counsel and the committal hearing was relisted to a date to be fixed, which is today's hearing.
17. Amongst the directions made on 15 February was one that had provided that the Defendants, if so advised, should file with the court and serve on the Applicant any evidence that they wish to rely on, not later than 5pm, seven days before the date fixed for the hearing of the application.
18. More recently, on 8 April, the Defendants' solicitor, Mr Humphris of Abels Solicitors, emailed Winchester City Council's solicitors to say that the Defendants have moved off the land. He enquired if the Authority would be discontinuing the claim or alternatively applying for an adjournment of the hearing.
19. On 9 April, Winchester City Council's solicitors replied to Mr Humphris pointing out that no evidence had been filed to prove that the Defendants had moved out and saying:

“The National Park Authority will not be discontinuing the claim or therefore inviting the court to stand down the hearing listed for next week. First your clients have failed to comply with an injunction and therefore have committed a contempt of court, albeit that this contempt now seems to have been purged. The court will need to address this past contempt. Secondly the National Park Authority has made an application to vary the injunction to prohibit the siting of a tent or tents on the land as has occurred in the past. We've not had any indication as to whether your clients oppose this application. It too will need to be dealt with by the court next week.”

The Defendants have not filed any evidence with the court.

20. On 13 April (that is two days ago), Winchester wrote to the court to acknowledge that the Defendants had indeed moved off the land. The letter said:

“City council officers have been monitoring the site at Long Road, Soberton. As a result of officer site visits made on 8 and 12 April 2021, I am in a position to advise the court that by 8 April 2021 the Defendants appear to have vacated the site. All mobile homes and caravans for which the Defendants were responsible had been removed from the site, together with their vehicles, fencing and most other residential paraphernalia. The Applicant is satisfied that there has now been substantive compliance with the injunction.”

The letter also said:

“The Defendants have not confirmed to where they have located or where the caravans and mobile homes are now sited, notwithstanding a request from the Applicant in correspondence for confirmation of the position.”

Accordingly neither the court nor the council knows where the Defendants are now living or for sure whether the move is permanent.

21. Winchester City Council's letter went on to say:

“For completeness on 8 April 2021 the Defendants refused an offer of accommodation for the two-bedroomed property from the registered housing trust, VIVID Housing. This accommodation was suitable for the Defendants’ dogs. As such, the court is invited on Thursday to address the Defendants’ contempt of court which has now been purged and the Applicant’s application for variation of the injunction, as well as any other matters which now arise.”

22. It is important to emphasise once again therefore that the Defendants have not provided any evidence to the court. In particular they have not provided evidence confirming their departure or whether it is permanent. However there has been no challenge to the council's evidence about the previous breaches.

Application for the hearing to be remote

23. Also on 13 April, the Defendants applied to the court for today's hearing to be held remotely. Their solicitor, Mr Humphris, emailed the court in the following terms:

“My client has advised me that in addition to now being very short of funds, she is now in hospital having been bitten on the hand by a spider. X-rays are being done and there appears to be an infection of the bone and treatment will be required. She has no idea how long she'll be in and will update us. To assist her with funding her travel to London, we may be able to get help from the Legal Aid Agency, but that requires prior approval. Our client is not at present able to provide us with the necessary paperwork to process such a claim. She does now have an internet connection and obviously would prefer to deal with the hearing remotely, although it is a committal application.”

No medical evidence was provided to support this application.

24. The council's solicitor wrote to the court to make clear that the council wished for the hearing to remain as a hearing in open court and reminded the court of an observation of Foster J at [38] of her judgment dated 29 January 2021 as follows:

“In my judgment it is clear the justice required that an application of this seriousness ought prima facie to be conducted face-to-face in open court, subject of course to Covid safeguards. Such safeguards are in place in the Royal Courts of Justice where in-person trials are conducted subject to social distancing, masked unless speaking and with the benefit of sanitiser and gloves where necessary.”

25. I considered the Defendants' request and decided that the case should proceed as an in-person hearing. I caused the following message to be sent to the parties on 14 April:

“The judge notes that this case has, until now, been listed as an in-person hearing in London. Save in wholly exceptional cases, a committal hearing should be in-person. The judge does not consider that sufficient grounds or evidence have been put forward to convert this to a remote hearing and so the case will proceed as an in-person hearing at the Royal Courts of Justice in London.”

26. On the evening before the hearing the court and my clerk were assured by the Defendants’ solicitors by email that the Defendants and their counsel would be attending today. However, this morning at 8.37am the following message was sent to my clerk by Mr Humphris, the solicitor for the Defendants:

“I received an email message at 08.18 from my client that she was driving up but was stuck in traffic with the car overheating and she felt she had suffered a panic attack and felt terrified as a result. She decided to return back to where she is currently staying and if a link can be provided would join up from there. She sends her apologies. I will keep you posted on any developments.”

This email did not say anything about the position in relation to the Second Defendant.

27. I caused my clerk to reply as follows:

“Thank you for your email.

Mr Justice Cavanagh asks that you notify your client that if she does not attend the judge will have to consider whether to proceed in her absence. Will Mr Humphris please also confirm that the Second Defendant would be attending in person?”

28. To that Mr Humphris replied:

“I will notify my client. She was providing transport for her son, the Second Defendant, so unless he can make alternative arrangements he likewise will be attending [sic]”

In my judgment this was a wholly unsatisfactory state of affairs. It was wholly of a piece with the historic unwillingness of the Defendants to attend court. They have not provided any medical evidence to establish that they were not fit to attend court and in particular there is no medical reason put forward why the Second Defendant could not make his own way to the court or any reason why he could not drive the First Defendant, if he is able to drive.

29. Mr Powlesland, their counsel, has however attended today and he has indicated that the Defendants were content for this hearing to proceed in their absence and in my judgment it is in the interests of justice and consistent with the overriding objective that this should happen. It would have caused huge inconvenience to the council, to the court and to other litigants were this matter to be adjourned once again.
30. There is a checklist of factors that the court must take into account when deciding whether to proceed in the absence of the alleged contemnor. Those are set out helpfully by Cobb J in the case of *Sanchez v Oboz & Anor* [2015] EWHC 235 (Fam)

and were also applied by Cockerill J in *ICBC Standard Bank Plc & Ors v Erdenet Mining Corporation* [2017] EWHC 3135 (QB). I am going to go through the checklist now.

31. The first question is:

“Whether the respondents have been served with the relevant documents, including notice of this hearing”

To that the answer is yes.

32. Second:

“Whether the respondents have had sufficient notice to enable them to prepare for the hearing”

Again the answer is yes. They have instructed counsel for some weeks now.

33. Third:

“Whether any reason has been advanced for their non-appearance”

I have referred to the reason which in my judgment is not a satisfactory reason.

34. Fourth:

“Whether by reference to the nature and the circumstances of the respondents’ behaviour they have waived their right to be present.”

They have expressly waived their right to be present, via counsel.

35. Fifth:

“Whether an adjournment would be likely to secure the attendance of the respondents, or . . . to facilitate their representation.”

In my judgment, given the past history, an adjournment is unlikely to secure the attendance of the Defendants and as I have already said they are represented today.

36. Sixth what is:

“The extent of the disadvantage to the respondents in not being able to present their account of events”

They are at no disadvantage, in my judgment, since there is no significant dispute of fact and they have had the benefit of representation by counsel.

37. Seventh:

“Whether undue prejudice would be caused to the applicant by any delay.

To that the answer is yes. This would be the second adjournment of this committal application. It is true that the Defendants have left the site but there is no certainty at this stage that they will not return to it.

38. Eighth:

“Whether undue prejudice would be caused to the forensic process if the application were to proceed in the absence of the respondents.”

To that the answer is no. The Defendants have not put forward any evidence or suggested that they wish to give evidence orally at court and as I have said several times already they are represented by counsel.

39. Finally, in the terms of the overriding objective, should the case proceed? In my judgment the overriding objective is strongly in favour of proceeding. It would be huge inconvenience not only to the court and the Claimant but also to other litigants if this matter were adjourned and so were to clog up the court’s list on a third application.
40. The checklist also observes that where ill-health is given as a reason for absence the court can draw out those inferences from the absence where there is weak or no evidence provided. I am afraid that is the position here. The First Defendant was well enough to start her journey today. It is not clear to me why she was able to travel back if she was not able to complete it, and there is no further suggestion that the insect bite is causing her any significant difficulties.
41. It would have been open to the court to consider issuing a bench warrant to secure the Defendants’ attendance but I did not think that that would be proportionate in all the circumstances of the case. Therefore I am satisfied, bearing in mind the factors which the court must consider as listed in *Sanchez*, that this is a case in which it is appropriate to proceed in the Defendants’ absence and I repeat that the Defendants have indicated through counsel that they are content for me to proceed in this way.
42. The Claimant is represented by Mr Douglas Edwards QC and the Defendants by Mr Paul Powlesland. I am grateful to both counsel both for their submissions and for the sensible and reasonable way in which they have conducted themselves today.

Application for committal - the procedural requirements

43. The injunction of 23 May 2018 was endorsed with a penal notice warning of committal for contempt if the Defendants did not comply with the prohibitory injunction. It was served on the Defendants on 4 June 2018 and this is established by a certificate of service.
44. CPR Rule 81 provides a detailed list of requirements for the contents of the application notice and for its service. Since a committal application may result in the imprisonment of the individuals against whom the application has been made, these requirements must be complied with rigorously. It is also important that Article 6 of the European Convention on Human Rights is complied with.
45. I have reviewed the application notice dated 27 November 2020 and the accompanying statement of case. In its terms it has complied with the requirements as set out in CPR 81.4 and counsel for the Defendants does not suggest otherwise.

46. As for the service of the application, the new rule 81.5 requires that the application be served either personally on the Defendants or served on their legal representatives unless that legal representative objects in writing within seven days of receipt of the application and evidence in support. In the present case the application was served personally on the Defendants, they had notice of it and there is no submission to the contrary.

The legal principles that the court must apply in a committal application

47. The starting point for an application such as this is that the court must identify the alleged contempts relied upon by the Claimant in the application notice and should confine itself to those contempts. The contempts that are alleged in the application notice and the accompanying statement of case are observed breaches of the injunction on five specific occasions, namely the 7 November 2019 and 5 February 2020, 7 July 2020, 10 August 2020 and 2 October 2020.
48. In order for a person to be found guilty of contempt and for a person to be committed of contempt, the breaches alleged against that person must be found to be true at a criminal standard of beyond reasonable doubt, or the modern formulation (which amounts to the same thing) of being satisfied so that the court is sure. This applies even though these are civil proceedings. This is the standard that I have applied to the evidence in the present case. The order which leads to the committal application must bear a penal notice and unless the court has waived it, must have been personally served on the respondent. As I have said that has happened in the present case. The terms of the order should be clear and unequivocal. Again, I am satisfied that the terms of the order were clear and unequivocal.
49. Once those procedural steps have been followed there are two main conditions that must be satisfied for a finding of contempt to be made. First it must be established to the necessary standard that the relevant orders have not be complied with. But that is not enough to establish a contempt. The second condition is that in order to show that a person is in contempt it must also be established that his or her conduct was intentional and that he or she knew all of the facts which made the conduct in breach of the order, though it is not necessary also to prove that he or she appreciated that the conduct did breach the order. See *Heaton's Transport (St Helen's) Ltd v Transport and General Workers' Union* [1973] AC 15, *F W Farnsworth v Lacy & Ors* [2013] EWHC 3487 (Ch) and *Sectorguard Plc v Dienne Plc* [2009] EWHC 2693 (Ch) [32] – [33].

Committal to prison for contempt

50. The principles that apply where the court is considering whether to commit a person to prison for a contempt are also well established. The penalties for contempt of court are set out in section 14 of the Contempt of Court Act 1981 which provides that a committal must be for a fixed term and that the term should not in any circumstances exceed a fixed term of two years. If the committal is ordered to take effect immediately, the contemnor is entitled to automatic release without conditions after serving half of the term of the committal. In every case the court must consider whether committal is necessary, what is the shortest period of imprisonment necessary and whether a sentence of imprisonment can be suspended or dispensed with altogether.

51. Committal for any period is always a section of last resort. It is only appropriate where there has been some extra obstinate or obstructive dimension to a contemnor's breach of the court order. This quality is known as contumacy.
52. The factors which may make contempt more or less serious include the following matters which were identified by the court in *Crystal Mews Limited v Metterick & Ors* [2006] EWHC 3087 (Ch):
- “First, whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy. Second, the extent to which the contemnor has acted under pressure. Third, whether the breach of the order was deliberate or unintentional. Fourth, the degree of culpability. Fifth, whether the contemnor has been placed in breach of the order by reason of the conduct of others. Sixth, whether the contemnor appreciates the seriousness of the deliberate breach. Seventh, whether the contemnor has co-operated.”**
53. There is an eighth consideration identified by Popplewell J in *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Limited & Ors* [2015] EWHC 3748 (Comm) which is:
- “Whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward.”**
54. As well as establishing a strong prima facie case for committal for contempt, the applicant must also show that committal would be in the public interest. In this regard, in the case of *The Financial Conduct Authority v McKendrick* [2019] EWHC 607 (Ch), Marcus Smith J held that the
- “The purpose of the contempt jurisdiction is twofold:**
- (1) First, it upholds the authority of the court by punishing the contemnor and deterring others. Such punishment is nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed. As Norris J said in *Commissioners for Her Majesty's Revenue and Customs v Munir* [2015] EWHC 366 (Ch) at [9(i)]:**
- ‘A contempt of court is not a wrong done to another party to the litigation. It is an affront to the rule of law itself and to the court.’**
- (2) Secondly, in some instances, the contempt jurisdiction provides an incentive for belated compliance because the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt by complying with the court order in question.”**
55. The court should always deal with the question of whether any sentence of imprisonment should be suspended in order to give the contemnor a chance to comply with the court's order and if so the court must specify the period of suspension and the terms or conditions of the suspension.

The grounds for the application for committal

56. As I have said, I bear in mind the facts must be proved to the criminal standard. The Defendants have conceded that the facts have been made out but I am going to recite them anyway given the nature of this jurisdiction.
57. The only evidence before the court is that contained in the affidavits and supporting evidence in support of Winchester's application. In these circumstances and given the supporting documentation and the credibility of what is said and the fact that the Defendants do not challenge any of it, I accept the evidence that is set out in the council's affidavit evidence.
58. I will summarise that as briefly as possible, borrowing from the summary that was given by Foster J in her judgment of 29 January 2021. Have there been breaches on the dates referred? I am satisfied for the criminal standard that the answer is yes. The South Downs National Park is a nationally designated area which benefits from the highest order of statutory protection on account of its scenic beauty and landscape attributes. It is dedicated and managed in order to achieve the long-term conservation of important landscapes, nature and wildlife.
59. The South Downs National Park has delegated its planning enforcement duties to Winchester City Council. The particular area in which Plot 107 is located is what is called the dip slope which runs the length of the South Downs and is characterised by downland mosaic landscape.
60. In 2004, the then owner of the land in question appears to have divided a substantial agricultural field into approximately 122 small plots and then sold them off to various owners, one of whom was the First Defendant. She became the registered proprietor of that plot (Plot 107) on 23 November 2017. The Second Defendant, as I have said, is her son. This area was formerly part of a field in agricultural use of Long Road, Soberton and is divided into a number of plots and multiple ownership.
61. At the time of obtaining an interim and then a final injunction in 2018, Winchester City Council's concern was about the placement of caravans, tents, fencing and other living paraphernalia on the land that had been brought there by the First and/or Second Defendants and where they appeared to be residing on the plot without planning permission. It is clear on the evidence that the Defendants continued to live and to maintain caravans and other structures on the land, even after the injunction was granted and specifically on the dates referred to in the contempt application. It is also clear that the Authority tried a number of other steps to enforce the injunctions before they took the final step of issuing contempt proceedings.
62. The Defendants did not attend the hearing before Foskett J in May 2018 but the First Defendant sent a letter to the court dated 20 May 2018 in which she said that she had planned to farm on the land in order to give herself a job as she grew older, growing herbs and raising goats and producing eggs. She also had a number of bull terriers which she intended to breed and she was planning a training school with the dogs. She said her life revolved around her dogs and that she needed fences to protect her dogs. She said that she worked one hour as a chef in a *care home* for the minimum wage.

63. The affidavit of Ms Castle relates some of the history to the application for this injunction in May 2018. It was triggered by a site visit but made clear to the council that the land was being occupied and caravans were on the land.
64. On 9 October 2018 some months after the injunction was granted by Foskett J, an enforcement notice was issued on and served upon both Defendants. This required cessation of use of the land as a residential caravan site by 9 December 2018. The Defendants did not appeal this enforcement notice but neither did they comply with it. Accordingly, quite some months later on 4 June 2019, Winchester City Council took action to remove all of the items on the land and the court has been provided with photographs of the site at various dates, including in April and May 2018 and also later in 2019 and 2020.
65. After the items had been removed, a tent was erected on the land in 2019 and a vehicle, associated items and fencing was placed on the land and the tent was there from June to November 2019. Following information from a member of the public, a site visit was undertaken by Miss Castle on 7 November 2019, at which stage she saw two caravans sited on the Defendants' plot together with a tent, fencing and other domestic items. This is the first of the dates specifically mentioned in the application notice.
66. Within the same pieces of land, although not on Plot 107, there were three caravans which were derelict and one of which appeared to be prepared to be burnt. Miss Castle said that the area appeared to be a smallholding with stables and pets on it. She took photographs of the plot and she was told by the Second Defendant not to enter his land, which she did not do. She said that he was confrontational and threatening to her.
67. Miss Castle made further site visits on 5 February, 7 July 2020, 10 August 2020 and 2 October 2020. On each occasion, she was accompanied by other council officers and photographs were taken, which have been provided in the exhibits before the court. Those are the second to the fifth of the days in relation to which the specific contempts are alleged.
68. On 9 September 2020, warning letters were written to the Defendants, which were served on them the following days. They were reminded of the injunction of 23 May and its terms. The letter said that three caravans had been sited on the land and that the council considered that the Defendants were responsible and so that they were in contempt of court.
69. The council said, however, that contempt proceedings would be deferred so long as all of the caravans and the associated paraphernalia were cleared within 21 days of the date of that letter, that is by 30 September 2020, but warned that if this did not happen, committal proceedings for contempt of court would be started. In that letter, Winchester City Council also indicated that they would seek an amendment to the injunction to prohibit the siting of a tent, the parking or storage of vehicles and the erection of temporary fencing.
70. Miss Castle conducted other visits and, in particular, a visit at the end of October 2020, from which it became clear that even with the threat of contempt proceedings, the injunction still had not been complied with.

71. In all of those circumstances, I am satisfied beyond reasonable doubt that there were breaches on the days specified in the application and, indeed, that until very recently, the Defendants have ignored the injunction.

Was the breach deliberate?

72. There can be no doubt that the breach was deliberate, the Defendants were not placing caravans and living there by accident. This carried on for a long time.

Committal for contempt.

73. I remind myself that committal to prison for contempt, either immediately or by way of a suspended order, is a last resort. The first question is whether there has been contumacy, that is some extra obstinate or obstructive dimension to the Defendant's breach of the court order.
74. I am fully satisfied that there has been such contumacy in light of the sequence of events that I have just described. The Defendants have been fully aware of the court order since May 2018. Until very recently, they have carried on living in the site regardless, including on the days that are the subject of the application. They were given ample warning and the Authority very fairly and patiently took all other steps reasonably available to it to persuade the Defendants to comply with the court order before applying to commit them for contempt.
75. I have mentioned these already but to recap, on 9 October 2018, an enforcement notice was issued and served on both the Defendants. In June 2019, after the Defendants had failed to comply with the enforcement notice, Winchester City Council took action to remove all of the items that were then on the land but the Defendants simply re-occupied the land, in breach of the injunction and, on 9 September 2020, further warning letters were written to the Defendants, they were given a period to withdraw from the land and warned that if they did not do so, contempt proceedings would be conducted against them but once again, the Defendants did not respond by complying with the court order and, on top of all of this, council officers regularly visited the site.
76. It is absolutely clear, in my judgment, that the Defendants decided to carry on living in the site, in flagrant disregard of the court orders. The fact that the Defendants wanted to carry on living there and were not happy with the alternative locations offered to them by the council does not provide an excuse or mean that it is not in the public interest to punish the Defendants for contempt. Indeed, the fact that they disagreed with the court order is nothing to the point. If they thought they had valid grounds for setting aside the order, then they should have made an application to the court.
77. It is very important that planning controls are observed, especially perhaps in National Parks. The rule of law means that court orders must be observed and it has been emphasised by the court in recent years that the public interest requires breaches of a court order in the planning context are properly sanctioned and Mr Edwards helpfully drew my attention to the cases of *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658, at [30] - [35], and *Mid-Bedfordshire District Council v Brown* [2005] 1 WLR 1460, at [25] - [27]. It is obvious that the planning system will come crashing down if individuals can simply ignore planning constraints.

78. In any event, steps have been taken by the council to accommodate the Defendants elsewhere and either to accommodate them with their dogs or to make alternative provisions for their dogs. This has been dealt with in the witness statement of Ms Young, which I will not cite in detail. However, a number of offers of assistance of appropriate or apparently appropriate accommodation have been made and the most up to date position is that Winchester City Council has managed to locate housing association accommodation that is able to accommodate the Defendants and their dogs but, nonetheless, the Defendants still are not content.
79. It may be that the Defendants disagree that the alternative accommodation is appropriate but they have not provided any evidence to support this and I find no reason to dispute the evidence of the council to the effect that the accommodation is appropriate but, in any event, they have to comply with the court orders.
80. The only thing that can be said in the Defendants' favour, though it is an important one, is that they have now finally moved off the site, though only within the last week. They have not, however, offered an apology to the court or stated in terms that they will not return. Also, this has not retrospectively changed the position that the breaches were committed on the dates specified in the application and I bear in mind that committal for contempt is not just to prevent any further breaches in the future or to compel belated compliance, but also to punish for breaches that have already taken place.
81. On behalf of the Defendants, Mr Powlesland said that these circumstances arose for his clients out of a sense of desperation, they really needed somewhere to live, and they had no desire to show disrespect for the court. He also submitted that they may not have been properly legally informed of the consequences of the breach until counsel was instructed and spoke to them in no uncertain terms in recent weeks. It was only then that the penny dropped with them.
82. He therefore invites me to impose no penalty, although he does not resist a finding that they are in contempt. He submits that there is no need to impose a further punishment for what has gone on before, there is no risk of them repeating it, and it has been difficult for them to comply with the order. Mr Powlesland has said everything that could be said on behalf of the Defendants.
83. As for the seriousness of the breach, and against the background of the matters that I have just referred to, the following conclusions can be reached about the seriousness of the breach by reference to the list of matters identified in the *Crystal Mews v Metterick and Ors* [2006] EWHC 3087 (Ch) and *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Ltd and Others* [2015] EWHC 3748 (Comm) cases.
84. First, has the Claimant been prejudiced by virtue of the contempt and is the prejudice capable of remedy? Yes, it has been prejudiced, this is a very serious breach of planning controls. It has belatedly been remedied in the sense that the Defendants have now moved off the land but that does not retrospectively eradicate the breaches that had happened previously.
85. Second, to what extent, if any, did the contemnors act under pressure? There is no evidence or indication that the Defendants acted under pressure. They may have had difficulty in finding suitable accommodation elsewhere but they could have done so and chose not to do so. The breaches were deliberate.

86. That brings me to the third question. Was the breach deliberate or unintentional? It was undoubtedly deliberate.
87. The fourth question is the degree of culpability and the answer, in my judgment, is that this was very great. This had gone on a long time. Mr Powlesland submits that it was only when they spoke to counsel in the last few weeks that they appreciated what the consequences of breach would be but, on the evidence, I do not accept this. The reality is that, time and again, it was made clear to them, by means of the service of court order or communication from the council, that they were in breach of the order and that they were at risk of committal for contempt if they carried on with the breach.
88. In my judgement, it is significant also that the Authority has very properly tried every step possible, short of committal, to persuade the Defendants to leave the land.
89. The next question in the checklist is whether the contemnors have been placed in breach of the order by reason of the conduct of the others. The answer to that is simply no.
90. The next question is whether the contemnor appreciates the seriousness of their deliberate breach, to which my conclusion is, as I have already dealt with, that it is impossible to see how they could have failed to do so, even before they instructed solicitors and counsel.
91. The next question is whether the contemnor has co-operated, to which the answer is yes, finally and belatedly, but not for a long time, and not at the times to which the committal application relates, and then finally, whether there has been any acceptance of responsibility, any apology or any remorse or reasonable excuse put forward. I have already said there has been no reasonable excuse for the Defendants' actions and there has not really been an apology put before me by the Defendants, who chose themselves not to attend today. There has not really, in my judgment, been a genuine acceptance of responsibility.
92. I am satisfied, and indeed it is not disputed amongst counsel, that among the options open to me would be the option of recording that the contempt had been committed but then imposing no sanction for it but, in my judgment, that is not something that would be an appropriate course of action for the court to take in all the circumstances that I have referred to in this judgment.
93. In those circumstances, the only option open to the court is the last resort of committal for contempt. The shortest sentence that I can impose in all of the circumstances, including, I mention in passing the Covid pandemic and the impact of that on incarceration, is a sentence for each of the Defendants of 1 month's imprisonment but I have decided to suspend that sentence in the hope that this will secure the Defendants' compliance with the injunction in future and in recognition of the fact that they have now left the land.
94. The sentence is suspended for 2 years on condition that the sentence will not be activated if, during that period, the Defendants do not commit any further breaches of the order and they do not go onto the land and I make clear that this is a sentence separate for each of the Defendants, and so when I refer to any further breaches, I am referring to a breach by the Defendant concerned.

95. Under paragraph 13 of the practice direction, committal for contempt of court, open court, the court must state certain matters in open court about the consequences of the ruling that it has just made and although these have been covered in the judgment I have just delivered, I am going to spell them out anyway.
96. The name of the persons against whom the Committal Order is made are Lara Kim Deroubaix and Luke Deroubaix. The general terms of the nature of the contempt are breaches on five separate occasions of an injunction granted by Foskett J on 23 May 2018, requiring the Defendants to refrain from siting any caravans or mobile homes on the site, or using any vehicle or other structure for residential purposes, without the express grant of planning permission from the Claimant on land within the South Down National Park at Long Road, Soberton, Hampshire.
97. The punishment being imposed is 1 month's imprisonment, suspended for 2 years, the sentence not to be activated unless the individual defendant commits any further breaches of the order dated 23 May 2018 as amended in the manner that I am about to come on to and I order that a transcript of the judgment be prepared on an expedited basis.
98. Finally, I deal with the application to vary the injunction of 23 May 2018. The Applicant council seeks a variation of the injunction of 23 May 2018 to prohibit the siting of a tent without an express grant of planning permission. As I have already referred to, there is evidence that the Defendants have, in the recent past, sited and occupied a tent within Plot 107, particularly after the council had removed the caravan or caravans that had then been on site. The siting of a tent for permanent or semi-permanent residential use without planning permission amounts to a breach of planning control and there is no planning permission in this case.
99. On behalf of the Defendants, Mr Powlesland does not object in principle to the variation but wishes it to be made clear that the variation should reflect the right of the Defendants to camp on their own land for short periods, provided that this is not what might be referred to as residential or permanent camping, and council have helpfully indicated to me that they will agree a form of words that reflects this reservation, so with that reservation, I grant the application to vary the injunction of 23 May 2018 and, for the avoidance of doubt, that injunction remains in place.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

The Transcription Agency, 24-28 High Street, Hythe, Kent, CT21 5AT

Tel: 01303 230038

Email: court@thetranscriptionagency.com
