



Neutral Citation Number: [2024] EWCA Civ 536

Case No: CA 2024 000271

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM HIGH COURT OF JUSTICE
(KING'S BENCH DIVISION)
MANCHESTER DISTRICT REGISTRY
His Honour Judge Bird
QB-2022-MAN-000181

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/03/2024

Before:

LADY JUSTICE KING
and
LADY JUSTICE ANDREWS

Between:

ADAM (formally known as Michael Merrill)

Appellant/Defendant

- and -

CHESHIRE EAST COUNCIL

Respondent/Claimant

The Appellant appeared In Person
Josef Cannon (instructed by **Cheshire East Council**) for the **Respondent**

Hearing date: 12 March 2024

Approved Judgment

This judgment was handed down ex tempore and by release to the National Archives.

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Lady Justice King:

1. This is an appeal against the decision of His Honour Judge Bird (“the judge”) sitting as a judge of the High Court, by which he imposed upon the appellant Michael Merrill (known as Adam) a custodial sentence of 12 months suspended for 12 months on terms that he complies with certain requirements as to the removing of an unauthorised development on “Six Acres”, an area of land he owns at Wirswall Road in Wirswall.
2. Adam together with his wife Stephanie Ruth Merrill (also known as Adam but referred to, in this judgment, as “the wife”) and their children and the wife’s parents live in buildings erected by the appellant on agricultural land for which there is no planning permission. The sentence relates to breaches of a planning injunction made by the judge on 3 October 2022 pursuant to s187B of the Town and Country Planning Act 1990. The appellant was also ordered to pay the costs of £17,409.34.
3. On 4 September 2014, an enforcement notice was issued by Cheshire East Borough Council (“the Borough Council”) upon the appellant. The appellant made no effort to comply with the enforcement notice and on 5 May 2017 he was found guilty at the Crown Court at Chester for failure to comply with the notice contrary to Section 179(2) Town and Country Planning Act 1990. This was followed on 2 June 2017 by service of a Planning Contravention Notice by the Borough Council to which the appellant responded the following day.
4. It was not until 21 July 2022, however, that an application was made for an injunction pursuant to CPR Part 8. On 3 October 2022, an injunction order was made by the judge at the High Court in Manchester. The terms of the injunction required the appellant and his wife to cease to use the land for residential purposes, to demolish three buildings, a viewing platform and a fire pit and to remove some hardstanding. The land was to be restored by 3 August 2023, to the condition it was in prior to the unauthorised works.
5. The injunction referred to the land at Six Acres “marked in red on the attached plan”. It was accepted on behalf of the claimant that the red edging was omitted from the plan attached to the order.
6. The judge heard the appellant give oral evidence at a finding of fact hearing on 11 January 2024. He found, without hesitation, that far from the absence of the edging on the plan providing the appellant with justification for having failed to comply with the injunction, it was, he said; “nothing short of preposterous to say that the defendants did not properly understand what they had to do, not least of all because the order was made in their presence after argument and following the judgment”. The judge also noted that both the appellant and his wife had made it plain at the injunction hearing that they would not comply with the terms of the injunction.
7. It comes at no surprise therefore that nothing was done by the appellant and his wife to comply with the terms of the injunction and accordingly on 24 July 2023 Cheshire East Borough Council issued an application for contempt.

The hearings

8. The judge conducted a hearing on 11 January 2024 in order to ascertain whether the Borough Council had proved to the criminal standard of proof, that the appellant and his wife were each in breach of the injunction of 3 October 2022. As is essential in contempt proceedings which potentially affect the liberty of a subject, the judge was rigorous in identifying those breaches and the dates of those breaches which amounted to contempt. The judge accordingly and properly refused an application made by the Borough Council to amend various erroneous dates in the application and permitted them to proceed only in relation to 3 incidents as substantial breaches which accurately reflected the terms of the injunction order. These were:

“By the 3rd April 2023 the Defendants were to demolish the building marked in red on the map attached to the Order and the extension marked in green on the map. This was not complied with

To move all concrete sleepers from the land marked on the map. This was not complied with

By the 3rd May 2023 remove all items not related to agriculture from the land marked on the map. This was not complied with”

9. Given that it was unequivocally the case that all the unauthorised buildings remained and the judge had evidence (including photographic evidence) to that effect, a finding of breach might be thought to have been inevitable. That, however, left the core of the appellant’s submissions which centred around his argument that he is not a “person” for the purposes of the Town and Country Planning Act 1990 and that he and his wife are “following God’s plan and that anything built on God's earth is lawful and that he therefore cannot be in breach of the order”. The appellant further argued that the land is “God’s land” and therefore, notwithstanding that he is the registered proprietor and has the title to Six Acres and the land registry has him registered as the owner of the land in question, he is not, the appellant argues, the owner of the land and therefore could not comply with the order.
10. The judge dismissed these submissions summarising the appellant’s position as him having in effect said that; “by reason of his faith, he is immune from the rules that govern society.” The judge highlighted that the injunction (from which there was no appeal) stands.
11. The judge having found to the criminal standard of proof that the appellant and his wife were in breach of the three parts of the order which the judge had identified, was also satisfied that no contrary explanation had been put forward by the appellant. The judge noted that the order requiring the removing of unlawful development was straightforward and the decision of the appellant and his wife not to take any steps to comply with it was plainly intentional.
12. The wife did not attend the contempt hearing so the judge emphasised the importance that she appeared at the sentencing hearing, which he adjourned to 26 January 2024.

13. There was no appeal from the finding of contempt. Strictly speaking any appeal from that finding should have been issued prior to the sentencing hearing and would have required permission to appeal. The sentencing hearing however took place only a matter of days later on 26 January 2024 when the appellant was sentenced to a suspended terms imprisonment. The order for committal does not require permission to appeal. By his Grounds of Appeal, the appellant seeks to challenge not only the sentence but also the finding of breach. Mr Cannon, on behalf of the Borough Council, does not submit that the court should refuse to consider the appellant's challenge to the findings of contempt.

The Appellant's Position

14. The Borough Council has helpfully summarised the appellant's principle arguments in his skeleton argument:
- i) That he is not a "person" and therefore (it appears) is not bound by the Enforcement Notice, or the consequent order;
 - ii) That the learned Judge failed to consider his faith, in breach of Article 9 of the ECHR (and in particular, that if forced to comply with the Notice and/or order, the appellant would commit sin and lose his soul);
 - iii) That he is not the owner of any land (notwithstanding the Land Registry having him as the owner of the land in question);
 - iv) That the learned Judge failed to take into account the appellant's ability to comply with the order, perhaps because the plan attached to the order does not feature a "red line" around the appellant's land, but also because in any event the land concerned is "*God's land*" and not the appellant's; and to comply with the order would mean he would be "*dead with God*"; and
 - v) That it was disproportionate to "*allow the claim to proceed*" and/or "*to grant the injunction*", particularly given the fact that children reside at the land with the appellant and his wife.

The Judge's Judgment

15. Before considering: (i) whether the appellant is a "person" for the purposes of Planning Law, even if it is relevant; (ii) whether in law he owns the land with which the court was concerned; and (iii) whether it matters whether the appellant is or is not the owner of the land, I will refer briefly to the judge's approach to the sentencing exercise in circumstances where his task was to deal with the penalty to be imposed as a result of the findings which he had made that each of the appellant and his wife were guilty of contempt.
16. The wife attended the hearing at which the judge considered sentence. In contrast to the appellant whose submissions he found to be both confusing and difficult to follow, he found those made by the wife to be clear, focused and relevant. The judge formed a view that the wife generally acts on her husband's instructions and follows his guide because she perceives that, for faith reasons, that is her duty. The judge was clear that the appellant had taken a "wholly irrational and illogical approach to the case" and

“deployed any number of empty and baseless arguments which include an argument that he is not a person, that he has been instructed by God to build on land so that he is immune from the requirements of the planning regulations, and that, in any event, as a man of faith he somehow stands above the law”.

17. The judge was clear that the appellant’s breaches were serious and flagrant and reached the custody threshold. This was in contrast to the wife’s culpability which, the judge held, did not pass the custody threshold, she having followed her husband out of a misplaced sense of duty. There had however, the judge recorded, been progress at the hearing in that largely due to the efforts of the wife, discussions took place with the Borough Council which provided for a staged compliance with the planning regulations starting on 29 February 2024 with the demolition of a viewing platform and a firepit, progressing in July 2024 to the appellant and his family ceasing to use the land for residential purposes and by the end of January 2025 with the demolition of the main building and extension.
18. The appellant today whilst not denying that he and the wife had agreed to two simple conditions says that it would have been impossible to carry out the conditions as there is no land known as Six Acres. When asked by Andrews LJ whether he would have complied if the requirement had been to remove the buildings from “God’s Earth”, he said he would have appealed but would have listened to God and if God told him not to comply with the injunction, he would go to prison.
19. The judge at paragraph [8] of his judgment directed himself as to the proper principles of sentencing in committal proceedings. He reminded himself that he needed to first consider the seriousness of the breach by reference to culpability and harm and therefore whether the custody threshold had been passed. Secondly, if passed, what was the least period of committal properly reflecting the seriousness of the contempt and third, having reached a conclusion as to the appropriate length of term, to consider whether the sentence could be suspended.
20. The judge conducted the exercise in an exemplary manner. He concluded that in relation to the three breaches the most serious merited 12 months imprisonment, the second 6 months and the third 3 months to be served concurrently.
21. The appellant submits that no harm has been caused by his failure to comply with the injunction. The reality is however that harm has been caused, but in any event there can be no doubt as to the level of culpability which is considerable given the flagrant disregard of the injunction and all subsequent efforts to enforce it.
22. Turning as to whether the sentence should be suspended, the judge concluded that because of the new approach taken by both the appellant and the wife at the hearing which would lead to staged compliance with the injunction, it would be appropriate to suspend the term of imprisonment providing the relevant milestones recorded in the order were met. The appellant was told in clear terms that in the event that the milestones were not met, the Borough Council would be at liberty to bring the matter back before court in order to invite the judge to activate the sentence.
23. There is no possible basis for interfering with the judge’s order when applying conventional interpretation of the law and statutes. That leaves then the issues of:

- i) Whether the appellant is a person for the purposes for the Town and Planning Act 1990;
- ii) Whether he is the owner of the land in question and relevance of his faith;
- iii) Whether the absence of edging on the plan annexed to the original injunction was fatal to any application to commit.

A Person

24. The injunction was made under s187B T&CPA which says:

“Injunctions restraining breaches of planning control.

(1)Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.

(2)On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3)Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.”

25. The only reference to “person” in the section relates to a person whose identity is unknown. However even if one approaches the injunction on the basis that in this case the injunction was made against a “person”. The appellant’s argument that he is not a person is unsustainable.

26. The Court of Appeal has recently considered a similar argument in relation to The Children Act 1989 in *Re AB (A Child) (Habeas Corpus)* [2024] EWCA Civ 105. The argument run in that case, and again by the appellant in this appeal, is that as The Interpretation Act 1978 Schedule 1 says that: “‘person’ includes a body of persons corporate or unincorporate.” he, not being a body corporate or unincorporate, is not a person for the purposes of the Planning Regulations.

27. At paragraph [30], I said as follows that:

“The reference in the Interpretation Act to ‘person’ including “a body of persons corporate or unincorporate” is not intended to limit the ordinary meaning of the word by excluding human beings, but rather to include in the definition a class, namely “a body of persons corporate or unincorporate” who on the ordinary meaning of the word, would not otherwise be within the class.”

28. I went on to give as an example a club which has no separate legal existence apart from the members from which it is composed but does, for the purposes of the

definitions in The Interpretation Acts, constitute a person. This approach was endorsed by Lewison LJ at paragraph [56] who said that on the face of it the definition found in Schedule 1 of The Interpretation Act “simply extends the ordinary meaning of a ‘person’ (i.e. a human being) to bodies of persons. Some of those bodies of persons will not take human form at all (for example a limited company). Others might do (for example a partnership).”

29. This Court is bound by *Re AB* even if common sense alone, as was recognised by the judge, makes it abundantly clear that the appellant is a person for the purposes of the Town and Country Planning Act.

Title

30. Section 187B does not require the injunction to be made against the owner of land in relation to any actual or apprehended breach of planning control. The appellant argues that there is no land named as Six Acres as although Six Acres is the postal address, the land is “God’s land named earth”. Such an argument is of no assistance to him, an injunction was made against the appellant to do specified things, he has failed to comply and is therefore in contempt.
31. Dealing briefly with the argument, however, the appellant argues that God alone owns the land and there is therefore nothing he can do to comply with the injunction. The property in question is registered in the Land Registry in the appellant’s name on the title register. An official copy of the title register is the official record of land and property ownership. It reveals the name and address of the registered owners and provides detailed information on all matters affecting ownership. The appellant is the registered proprietor of the Six Acres with which this appeal is concerned and is accordingly the owner/proprietor of the land.
32. The appellant’s faith, whilst always the subject of respect, is irrelevant to the matters before this Court or the Court below. The appellant having been identified as the owner/proprietor in the Land Registry is for the purposes of the law of England and Wales the owner. Equally, the appellant and his wife are subject to the planning laws of England and Wales.

The Plan

33. It is unfortunate that as a result of an error the plan attached to the original injunction order did not have red marking on it. The judge however considered its absence with care in his first judgment and was entitled, given his extensive knowledge of the case and having heard and seen the appellant give evidence, to conclude that the appellant was at all times fully well aware of the impact of the injunction and chose intentionally to defy it. This Court will not go behind that finding of fact.

The Sentence

34. The judge approached the issue of sentencing with care. Having found that the custody threshold was crossed in respect of the appellant but not the wife, he said in relation to mitigation at paragraph [16]:

“The only mitigating factor that I can think of, doing the best that I can, is that today, the first defendant has engaged in meaningful discussions with the claimant. As to factors that increase seriousness, then I bear in mind that the breach is blatant and that it must have led, in one way or another, to profiteering at the expense of the public.”

35. He went on to consider whether the sentence could be suspended. The appellant submitted that the sentence was not proportionate, not only because he could not comply with it as Six Acres is “God’s land” but because of the harm to his family. It is clear that the judge had in mind the impact on the family.
36. In my judgment the sentence passed by the judge was proportionate and just. He suspended it in the expectation that the appellant would carry out the two modest requirements to which he had agreed. He has failed to comply and it is clear he has no intention of doing so.
37. The appeal is dismissed on all grounds.

Lady Justice Andrews:

38. I agree.