



Neutral Citation Number: [2024] EWCA Civ 1599

Case No: CA-2024-001681

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CARDIFF COUNTY COURT
(His Honour Judge Harrison)

The Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday, 4 September 2024

Before:

LORD JUSTICE SINGH
LORD JUSTICE NUGEE

Between:

JAMES OLIVER TAMPLIN

**Applicant/
Respondent**

- and -

(1) ELWYND PROPERTIES LTD

Respondent

(2) DAVID TERRENCE JONES

**Respondent/
Appellant**

Mr Kevin Leigh appeared on behalf of the **Appellant Mr Jones**

Mr Christopher Jones appeared on behalf of the **Respondent Mr Tamplin**

Approved Judgment

Transcript of Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE
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LORD JUSTICE NUGEE:

1. This is an appeal by Mr David Terrence (or Terry) Jones, against a committal order imposed on him by his Honour Judge Harrison (“**the Judge**”), sitting in the County Court at Cardiff on 18 March 2024. Mr Jones was formerly acting in person, but his appeal has been argued today by Mr Kevin Leigh of counsel, who has very recently been instructed, and to whom we are indebted for his measured and realistic submissions.
2. The underlying dispute relates to common land in Wales called Mynydd Eglwysilan in Caerphilly, which lies north of Cardiff and south of Merthyr Tydfil. It is registered under the Commons Registration Act 1965, registration having become final in 1990. The first defendant, a company owned and controlled by Mr Terry Jones called Elwynd Properties Limited (“**the Company**”), acquired two parcels forming part of the common in 2016, and is the registered freehold owner of them. We were told that the Company’s land, which is at the southern end of the common, amounts to some 260 to 280 acres out of a total of some 1,350 acres for the common as a whole.
3. Mr Terry Jones, as well as being the shareholder and director of the Company, has a farm tenancy of the Company’s land, and also owns some adjoining parcels of land to the south and east in his own right. The claimant and respondent, Mr James Tamplin, is and has been since 2015 the registered freehold owner of a farm known as Cefn Llwyd Farm, which adjoins the Company’s land on the west. Cefn Llwyd Farm benefits from a right of pasture which is registered under the Commons Registration Act 1965, again initially in 1990, but re-registered in 2015 after an apportionment when part of the farm was sold. The registered right now consists of a right to graze (a) 23 head of cattle or (b) 237 sheep and followers or (c) a combination pro rata over the whole of the common. We are only concerned in this appeal with the right to graze sheep.
4. Disputes arose as to the exercise of Mr Tamplin’s right to graze sheep on the Company’s land, and also as to certain rights of way. Mr Tamplin issued proceedings against the Company and against Mr Terry Jones personally, complaining of various acts by Mr Jones which were said to have reduced the available area of the grazing,

interfered with Mr Tamplin's ability to exercise his rights, and generally prevented him from exercising them in as beneficial a manner as he was entitled to do.

5. These proceedings came on for trial before the Judge in April 2022. After a site visit on the first day, 19 April, the parties negotiated a compromise, which had been largely agreed in principle by the end of day two, 20 April, and was finalised on day three, 21 April. The compromise was embodied in a consent order made by the Judge, supplemented by written undertakings given to the Court, which were signed by Mr Jones (both personally and as director of the Company).
6. The consent order was prefaced with a penal notice. It contained declarations as to Mr Tamplin's land enjoying both rights of way over the Company's land and the registered right to graze 237 sheep plus followers and the like over the whole of Eglwysilan Common. It then by consent ordered the defendants to carry out certain works, divided into more substantial works, which were by paragraph 1 to be completed by 31 October 2022, which I will call "**the Substantive Works**", and more immediate works which were by paragraph 4 to be completed by 18 May 2022, which I will call "**the Immediate Works**". I need not read out the precise form of these orders, as they are, in fact, mirrored in the undertakings given by Mr Jones, the text of which I give below, the committal applications being technically based on breach of the undertakings rather than breach of the consent order as such.
7. As I have already referred to, the consent order was supplemented by undertakings signed by Mr Jones on 21 April. The undertakings were themselves prefaced with a penal notice. Undertaking 1 concerned the rights of way, and is not relevant for present purposes. Undertaking 2 read as follows,

"The Defendants shall not, whether by themselves or by encouraging or instructing any third party whatsoever or otherwise to do so, (a) drive or move any sheep or any other livestock belonging to the Claimant, being grazed in accordance with the Claimant's common grazing rights over Eglwysilian [*sic*] Common as defined as "the Right" in the Order to which these undertakings were given, away from any part of Eglwysilian Common or off the Eglwysilian Common or (b) otherwise interfere with the Claimant's use of the said Right and Eglwysilian Common."

8. Paragraph 3 provided that the undertakings at 1 and 2 would expire on 22 April 2023, (that is, after a year). Undertaking 4 concerned the Substantive Works and read as follows:

“The Defendants shall by 31 October 2022 undertake and complete remedial work to Eglwysilian Common (the ‘Remedial Works’) which shall include:

- (1) the reinstatement of the areas of the common as identified in the report (as amended) by Mr Ieuan David Williams in these proceedings (the ‘Report’) which the Defendants have disced, ploughed, otherwise machined, cultivated or worked on and such areas shown more particularly on the plan attached hereto and marked ‘Plan 2’. The works of repair will include but are not limited to the removal of stones, removal of existent vegetation, creation of a seedbed and reseed, as outlined at paragraphs 6.11 to 6.26 of the Report.
- (2) remove the waste and hardcore material referred to at paragraph 5.15 of the Report, and for the avoidance of doubt which land is within the area as shown edged blue on Plan 2, create a suitable seedbed and reseed that pursuant to paragraphs 6.27 to 6.34 of the Report. Save that it is agreed that these works shall not extend to the Yellow Area as defined in the Order.
- (3) in respect of the Yellow Area, cover it with suitable topsoil and reseed.
- (4) all works undertaken and the materials used pursuant to 4(1), 4(2) and 4(3) above shall be to the specification and approval of the Further Expert (as provided for by the Order) and in accordance with the terms provided for above and the Defendants will at their own costs procure all necessary consents and approvals.”

9. Paragraph 4(4) of that, as I have read, refers to the Further Expert. That is dealt with in the consent order in paragraphs 2 and 3 as follows:

“2. The parties shall jointly instruct Robin Jones of Watts & Morgan (or in the event that he is unable to accept the appointment, such other suitably qualified surveyor as the parties shall agree or in the absence of agreement such surveyor as nominated by the President of RICS on the application of either party) (the “Further Expert”) to oversee the Remedial Works, to assess whether they comply with the terms of this Order and any necessary consents, and if necessary, set out what further works are required to comply with the same. The Defendants shall be solely responsible for and shall pay the costs of and incurred by the Further Expert.

3. The Further Expert shall determine the practical arrangements for the remedial works to be undertaken and the reseeded of the land; in particular if the Further Expert determines that any part of the common should not be grazed whilst the reseeded areas are established, he will direct the parties as to how the common should be grazed and in the event that the areas cannot be grazed the Further Expert will direct such amounts as he considers reasonable for the Claimant’s additional shepherding and/or feed costs.”

10. Reverting to the undertakings, paragraph 5 deals with the Immediate Works as follows –

“The Defendants shall by 18 May 2022:

- (1) remove all stones, soil, debris and other materials hazardous to sheep or livestock in the areas around the gates and walls between Cefn Llwyd Farm and Eglwysilian Common;
- (2) remove any materials blocking the sheep holes between Cefn Llwyd Farm and Eglwysilian Common;
- (3) fill in the ditch dug in front of the gate known as the ‘wet ground gate’, and shown on Plan 1, including reinstating the pipe to take away excess water;
- (4) reinstate the surface of the Track, in respect of all those sections of the Track where the surface of the Track has been removed and/or the Track has been excavated or otherwise been disturbed, to a standard reasonably similar to the remaining undisturbed sections of the Track.”

11. The undertakings then record the fact that the Court explained to Mr Jones, both personally and as a director of the Company, the meaning of the undertakings and the consequences of failing to keep each of these promises, and that the Court accepted by the Defendants' counsel that the meaning of the undertakings and the consequences of failing to keep to each of their promises had been explained to Mr Jones, both personally and as a director of the Company. The Court accepted the undertakings and it was then signed by Mr Jones underneath the words,

“I understand the undertakings that I have given, and that if I break any of my promises to the Court I may be fined, my assets seized or I may be sent to prison for contempt of Court.”

12. Fairly soon after the undertakings were given, Mr Tamplin brought a contempt application based on the breach of them. This was the first of three applications that were in the event brought. The first was dated 18 May 2022, and alleged a breach of undertaking 2, in that the defendants had, on numerous occasions, continued to drive or move Mr Tamplin's sheep. The second application, dated 3 August 2022, alleged a breach of undertaking 5, that is failure to carry out the Immediate Works, which were due to be carried out by 18 May 2022. The third application, dated 14 March 2023, alleged further breaches of undertaking 2 in continuing to move or drive sheep and breaches of undertaking 4 in failing to carry out the Substantive Works by 31 October 2022.
13. The hearing of the applications was delayed, because Mr Terry Jones applied to set aside the consent order and the undertakings on the grounds that he had lacked capacity at the time. That was rejected by the Judge in a judgment of 23 February 2023, which it is not necessary to refer to in any detail. It will be seen that the third application to commit was brought after that date. The committal applications ultimately came on for hearing before the Judge in October 2023 and were heard over two days. He heard oral evidence from both Mr James Tamplin and his father, Mr Nicholas Tamplin. Mr Terry Jones was, on that occasion, represented by counsel, but counsel did not cross-examine either Mr Tamplin on his behalf. The Judge also heard from Mr Terry Jones himself,

who elected to give evidence and was cross-examined. The Judge gave judgment on 17 October 2023.

14. Having set out the background and reminded himself at paragraph 28 that the criminal standard of proof applied, he dealt in turn with the three groups of allegations, namely driving of sheep, failing to carry out the Immediate Works and failing to carry out the Substantive Works. As far as the driving of sheep was concerned, he had a certain amount of video evidence, as well as the affidavit evidence of both Mr Tamplin and his father, which was confirmed by them in the witness box and on which they, as I have said, were not cross-examined. On this he concluded at [34]:

“If I consider that combination of evidence in relation to each of the incidents relevant to driving of sheep and interference with rights, and notwithstanding the evidence of Mr Jones given from the witness box, I am satisfied to the criminal standard that on the occasions referred to in the affidavits and set out in the schedules to the applications for committal, that on each of those occasions, the defendant has been in breach of his undertakings to the court, and I am satisfied in respect of same to the criminal standard.”

As to the Immediate Works he concluded as follows at [44]:

“44. The position so far as the allegations in May 2022 are concerned, are relatively straightforward. The affidavit on behalf of the claimant says that the work has not been carried out, that affidavit was not challenged by questioning. Mr Jones has given evidence that he has not done any work in respect of the same. What he says was that there was nothing to be done by way of work. That, it seems to me, is an odd suggestion. It is, to some extent, inconsistent for him to promise to do something in the original consent order and undertakings that were given, for effectively it then to be the case that nothing needs to be done.”

45. I am satisfied to the criminal standard on the basis of Mr Tamplin’s evidence set out in the affidavit, that the work that should have been done by May 2022 has not been done. I am not satisfied that, in the context of this case, section 38 is relevant to the particular issue in question. There was an obligation on behalf of the defendant to obtain relevant consents, if necessary. It is clear in this case, that that which has been done in this case, so far as the same is concerned, is too little and too late. I am satisfied as I say to the criminal standard that that allegation is established.”

15. I will explain the Judge's reference to section 38 later. As far as the Substantive Works are concerned he said this at [46]:

“46. The allegations in relation to the work that should be carried out by October 2022 are again themselves in a similar position to that of the May 2022 allegations. Mr Jones does not say that he has done anything to comply with the order that he agreed by way of undertakings, he again relies upon the section 38 point.

47. Again, for the purposes of establishing whether to the criminal standard, the allegations are made out, one has to take into account the contents of the affidavit evidence, again unquestioned, and one has to take into account whether or not that which is set out in the evidence on behalf of Mr Jones, so far as section 38 is concerned, helps him in relation to resisting the same.

48. For the reasons that I have explained, I do not think it does. The section 38 point, again, would be more powerful if there had been some form of engagement with the claimant's solicitors to the effect of saying, well I wish to comply to this in a serious way at an early stage, but I at present, am struggling to obtain the relevant permissions. That is not what has taken place in this case and I am satisfied, again to the criminal standard, that the defendant is in breach of his obligation so far as the third application to commit is concerned, insofar as it relates to the October 2022 work that should have been completed.”

16. He then adjourned the question of sanction or sentence. In the event that came back before him in March 2024, and he gave judgment on 18 March 2024. He again dealt with the breaches by dividing them into the same three categories, and he imposed a sentence of fourteen days' imprisonment on each. That is:

- (1) 14 days concurrent for each allegation of sheep moving;
- (2) 14 days consecutive to that for failure to carry out the Immediate Works; and
- (3) 14 days consecutive to the previous two periods for failure to carry out the Substantive Works,

making a total of 42 days.

17. By paragraph 2 of his order he provided:

“Such order to be suspended provided the Defendant complies with the terms of the order of the court dated 4th May 2022 as amended and the undertakings given to court at the time of the consent order”

I should explain that the date of 4 May 2022 is the date on which the consent order was sealed, although as I have said, it was actually approved by the Court on 21 April 2022. He then extended time for compliance with paragraphs 1 and 4 of the consent order. That is for paragraph 1, the time was extended to 4.00 pm on 13 September 2024 and for paragraph 4, that is the Immediate Works, to 4.00 pm on 10 May 2024.

18. Mr Terry Jones now appeals the committal order. He does not need permission to do that, and on an appeal against committal, he is entitled to challenge the findings of contempt, as well as the sentence imposed: see *Deutsche Bank AG v Sebastian Holdings Inc and another* [2023] EWCA Civ 191 at [39] per Males LJ. Although in his written grounds of appeal, prepared when he was acting in person, he confined himself to challenging the findings of contempt, Mr Leigh has somewhat expanded that orally to include questions of sentence, and we have permitted him to do so. I propose to deal with the various arguments advanced by Mr Leigh, by considering first the questions of breach and then the questions of sentence, in each case by reference to the three heads of sheep driving, failing to carry out the Immediate Works and failing to carry out the Substantive Works.
19. As far as breach in relation to the sheep driving is concerned, Mr Jones’ written grounds of appeal contain two relevant grounds, namely ground 1, which reads as follows:

“The learned Judge’s finding that the Applicant Appellant had moved and interfered with the Respondent’s sheep to the criminal standard was

perverse. The evidence in many aspects was contrary to the ability to make such a finding.”

And ground 3:

“The learned Judge made findings based on the criminal standard of proof which were simply not open to him.”

20. Mr Leigh however realistically accepted that it was an uphill task for him to maintain the submission that the Judge did not have enough evidence to reach the conclusion that he did. He not only had the videos, which we have seen, and which do appear to show Mr Terry Jones driving sheep with his car and his dogs from the part of the common referred to as “the bank” towards Mr Tamplin’s farm, but also the evidence of both Mr Tamplin and his father which, as I have said, they were not cross-examined on. In those circumstances there was, in my judgment, ample evidence to entitle the Judge, who had the advantage of seeing both parties give oral evidence, to conclude that there had been breaches of the undertaking not to move or drive sheep on the numerous occasions referred to in the evidence.
21. As far as the Immediate Works are concerned, it is not disputed that the Immediate Works were not carried out by 18 May 2022 as required by undertaking 5. Mr Leigh told us that his instructions today are that these works have now been done. Mr Christopher Jones, who appeared for Mr Tamplin, said that that was not the case and that there were further proceedings in train which would, among other things, deal with the question of whether compliance was still required. None of that, however, affects the failure to do the works by the date specified in the consent order and the undertaking.
22. In ground 2 of his written grounds of appeal, Mr Jones said this:

“The learned Judge, worryingly, made a finding that the Applicant Appellant was in breach of the order by failing to remove stones from

‘sheep holes’ in the walls. This was and is irrational as the Applicant/Appellant could not remove something that was not there, i.e. when the Appellant went to comply, there were no stones to be removed. The only other ‘stone’ had been there for circa 50 years. For the avoidance of doubt, the Applicant Appellant could not carry out the impossible. That standard of proof being irrelevant.”

23. This point was not, however, relied on orally by Mr Leigh. In any event, I do not think it can be an answer to the allegation of breach. Even if Mr Jones were right on this point, and this is something that is heavily disputed, it is only a small part of what undertaking 5 required him to do and, as summarised in Mr Tamplin’s affidavit, no works had been done at all. Not only was Mr Tamplin not cross-examined on that, but Mr Jones’ own evidence did not contradict it. On the contrary, he gave oral evidence and was cross-examined. It is true that when asked about the materials blocking the sheep holes, he said he did not need to do that, as they were already clear; but when asked about the other items required by the Immediate Works, he accepted he had not done any of the work. If one goes back to the terms of undertaking 5, as well as unblocking the sheep holes it requires three other things namely (i) removing stones, soil, debris and other materials hazardous to sheep or livestock in the areas around the gates and walls; (ii) filling in the ditch; and (iii) reinstating the surface of the Track. It seems to me that Mr Leigh was well advised not to press ground 2 in his oral submissions.
24. The substantive defence advanced by Mr Leigh to this allegation was based on section 38 of the Commons Act 2006. The suggestion was that this section prevented Mr Jones from carrying out the work without a permit; that he had not obtained such a permit; and that he was therefore unable to comply. Section 38 of the Commons Act 2006 reads as follows:

“38. Prohibition on works without consent

- (1) A person may not, except with the consent of the appropriate national authority, carry out any restricted works on land to which this section applies.

- (2) In sub-section (1), “restricted works” are –
- (a) works which have the effect of preventing or impeding access to or over a land to which this section applies;
 - (b) works for the resurfacing of land.”

25. Pausing there, Mr Lee did not suggest that any of the works required, either the Immediate Works or the Substantive Works, fell within sub-section (2)(a) as being works which had the effect of preventing or impeding access to or over any land. His case was that they fell within (2)(b), works for the resurfacing of land. I need not read sub-section (3) which deals with works falling within sub-section (2)(a), but sub-section (4) provides:

“For the purposes of sub-section 2(b) works are for the resurfacing of land if they consist of the laying of concrete, tarmacadam, coated roadstone or similar material on the land (but not if they consist only of the repair of an existing surface of the land made of such material).”

Sub-section (5)(a) provides that the section applies, among other things, to any land registered as common land, so it applies to the Company’s land.

26. The suggestion that a permit or consent was required under section 38 seems to me to run into a number of difficulties. Firstly, as I have referred to, undertaking 5 requires four things to be done by way of Immediate Works. The first three, removing stones, removing materials blocking the sheep holes, and filling in the ditch and reinstating the pipe, do not seem to me to be even arguably within the definition of “restricted works” which I have read from section 38. None of those can be said to be works of the resurfacing of land, or to involve the laying of concrete, tarmacadam, coated roadstone or similar material. The only one which could even conceivably fall within the ambit of section 38 is sub-paragraph (4) of undertaking 5 which I will read again,

“reinstate the surface of the Track, in respect of all those sections of the Track where the surface of the Track has been removed and/or the Track has been excavated or otherwise been disturbed, to a standard reasonably similar to the remaining undisturbed sections of the Track.”

27. Even if that did engage section 38, it does not excuse the failure of Mr Jones to have complied with the remaining obligations in undertaking 5, and would not prevent there being a breach of the undertaking. In any event, I do not see that there is any real likelihood of consent being required for the reinstatement of the surface of the track. We were told by Mr Leigh that the track in question had been newly created, and there was a suggestion that it was merely a mud track, in which case reinstating the surface of the track to a standard reasonably similar to the remaining undisturbed sections could not conceivably involve the laying of concrete, tarmacadam, coated roadstone or similar material.
28. I think that was not entirely accepted by Mr Christopher Jones, who said it was an old farm track, and consisted of a stone surface. Again, that seems to me to be unlikely to fall within the laying of concrete, tarmacadam, coated roadstone or similar material. Even if it did, the only obligation in undertaking 5(4) is to reinstate the surface of the Track to a standard reasonably similar to the remaining undisturbed sections of the Track. I see no reason to doubt that that would fall within the final part of sub-section (4), which excepts from restricted works, works which consist only of the repair of an existing surface of the land, made of such material. Therefore, section 38 is, to my mind, no excuse for not doing the Immediate Works.
29. That makes it unnecessary to consider the point the Judge was impressed by, which is that if a person undertakes to do some work, and if a permit is required to do it, it is implicit that it is for that person to do everything he can to obtain the permit in time. That will involve promptly applying for the permit, and there was no evidence before the Judge that Mr Jones had promptly applied for a permit under section 38. What we were told is that he had first applied (and in fact then to the wrong authority, to the United Kingdom Government rather than the Welsh Assembly) in 2023, long after the time for compliance had expired.

30. I think the Judge was right that even if section 38 had applied, it would not have excused Mr Jones if he had not promptly applied for the necessary permit. For the reasons I have given, section 38, in my judgment, in fact, had no application to the Immediate Works at all, and provides no defence to the breach of that undertaking.
31. As far as the Substantive Works are concerned, it is not disputed that the works were not done by October 2022. Indeed, as I understood Mr Leigh, it is not disputed that they have not yet been done. Although the Judge referred to section 38 in this context, it seems to me to have no application at all to undertaking 4, because the works required by undertaking 4 consist of reinstatement of areas of common which have been disced or ploughed and the like, removal of existing vegetation, removal of stones, creation of a seedbed and re-seeding, removal of waste and hardcore material and reseeded, and covering with topsoil and reseeded. None of that even arguably comes within the definition of restricted works in section 38.
32. Mr Leigh here relied on the provisions for supervision of the Substantive Works by the Further Expert, namely Mr Robin Jones. He said that since Mr Robin Jones had not yet responded to inquiries to him, Mr Terry Jones could not do the work and could not be criticised for not having done it. The evidence on this aspect of the case is in a very unsatisfactory state. The point was not taken before the Judge at the liability hearing in October 2023, and there was no evidence adduced in relation to it before the Judge and hence no relevant findings by the Judge. The Judge certainly cannot be faulted for not dealing with a point that was not raised before him.
33. We were told by Mr Leigh, although we have not seen any confirmation of this, that Mr Terry Jones did avert to the point at the sentencing hearing in March 2024. Again, there is no evidence of quite what Mr Terry Jones told the Court, and there is no evidence before the Court of when Mr Terry Jones first contacted Mr Robin Jones, or whether, and if so why, there was any difficulty in Mr Robin Jones supervising the work. As a matter of general principle, I consider that if a person undertakes to do something which requires the co-operation of a third party, it may be highly relevant if, despite the person's best endeavours, it has proved impossible to secure the third party's co-operation. That might, depending on the precise circumstances, mean that

the person concerned was either not in breach of his undertaking at all, or if in technical breach of his undertaking, not deserving of significant punishment. In practice, a person in that position would be well advised not only to engage with the other party to the proceedings, but to revert to the Court and seek to have his undertaking varied on the grounds that it had proved literally impossible to comply with it.

34. The evidential basis for such a submission must however be laid properly. Here the Judge, as I have said, had no evidence at all at the time of making his findings on liability, nor do we today. The best we have is a schedule that Mr Leigh handed up, indicating that it was not until some time in 2023 that the claimant's solicitors put forward a draft of a joint instruction. We were later shown by Mr Christopher Jones that the claimant's solicitors had asked in both February and March 2023 whether Mr Terry Jones intended to do the works, to which they have not had, we were told, any response.
35. It does seem to me that in any event it was not for the claimant's solicitors to push for the instruction of Mr Robin Jones. It was for Mr Terry Jones to do what he needed to do to comply with his undertaking. Since he only had six months to carry out the works by October 2022, it was incumbent upon him to contact Mr Robin Jones promptly and ask him to supervise the works.
36. We have had no proper evidence as to whether that was done and if not, why it was not done and why it could not have been done. In those circumstances, I do not think Mr Terry Jones is in a position to rely on the requirement for supervision of the works by Mr Robin Jones as providing him with a defence as to liability. I therefore would dismiss the appeal against the findings of contempt which were made by the Judge in October 2023 in relation to all three aspects.
37. I pass to the appeal against sentence. Here, Mr Leigh addressed us primarily in relation to the sheep driving allegation. The first question is whether the findings crossed the custody threshold. I have no hesitation, despite Mr Leigh's submissions, in saying that they did. These were, on the evidence, almost immediate breaches of the undertaking. They were deliberate breaches and they were continued on a number of repeated

occasions. It is not suggested that if the breaches crossed the custody threshold, which in my judgment they did, that fourteen days was itself too long a period. The other aspect Mr Leigh addressed us on, was on the suspension of the sentence. Mr Leigh said that it was wrong in principle to make suspension of a term of imprisonment, which had been imposed for breach of the undertaking not to drive sheep, dependent on compliance with other aspects of the order. However, that seems to me to be well within the Judge's discretion.

38. As my Lord pointed out in argument, in criminal proceedings it is not uncommon for a sentence to be suspended on terms that the defendant commits no further offences. In the context of a civil dispute such as this, it is well established that the contempt jurisdiction can include exercising powers of sanction or sentencing in such a way as to encourage contemnors to comply with the obligations they have undertaken or been ordered to carry out. I see nothing wrong in the Judge making the suspension of the fourteen days imposed for the sheep driving breaches dependent on compliance with the other aspects of the order, all of which were designed to achieve the same end, which was to enable Mr Tamplin to exercise the rights to graze his sheep which attach to his farm without impediment.

39. As far as the Immediate and Substantive Works are concerned, it seems to me again that the breaches which the Judge found in October 2023 did cross the custody threshold. It was not suggested to him that Mr Terry Jones had made any efforts at all to comply with those obligations. As I have already referred to, it is well established that it is appropriate to use the powers of sentencing in such a way as to encourage contemnors to comply with their obligations, and that is precisely what the Judge did by imposing short periods of imprisonment, suspended on terms that Mr Jones complied with his obligations, and then extending the time for that to happen. There was, in my judgment, nothing wrong in principle with such sentences and I would therefore dismiss the appeal against the sentences which have been imposed.

LORD JUSTICE SINGH:

40. I agree. The consequence is that the appeal is dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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