

Application notice

For help in completing this form please read the notes for guidance form N244Notes.



Name of court Worcester County Court	
Claim no.	1WR00987
Warrant no. (if applicable)	
Claimant's name (including ref.)	Worcestershire County Council
Defendant's name (including ref.)	(1) Tony Barnett (2) Vanessa Wright (3) Steven McCarron
Date	12 June 2012

1. What is your name or, if you are a solicitor, the name of your firm?
 Legal and Democratic Services, Worcestershire County Council

2. Are you a Claimant Defendant Solicitor
 Other (please specify) _____

If you are a solicitor whom do you represent? Claimant

3. What order are you asking the court to make and why?
 It is the Claimant's case that the Defendants have breached the injunction order of the court dated 21st December 2011 (as amended) on 10th January 2012 which forbid them from:-
 (a) Removing, tempering, damaging or interfering with the fencing or gates of the Common;
 (b) Removing, tampering, damaging or interfering with any man made physical feature of the Common (including the car parking surfaces and gates)
 (c) Stopping or interfering with the Claimants (their servants or agent or other given permission by them) grazing of the Common or such person's works of upkeep and conservation of the Common; and/or
 (d) Entering the Common.
 and the Claimant is asking the court to make an Order for Committal.

4. Have you attached a draft of the order you are applying for? Yes No

5. How do you want to have this application dealt with?
 at a hearing without a hearing
 at a telephone hearing

6. How long do you think the hearing will last?
 2 Hours 15 Minutes
 Is this time estimate agreed by all parties? Yes No

7. Give details of any fixed trial date or period
 None

8. What level of Judge does your hearing need?
 Circuit Judge

9. Who should be served with this application?
 Defendants (by personally by claimant)

Claimant

-and-

(1) TONY BARNETT

(2) VANESSA WRIGHT

(3) STEVEN MCARRON

Defendants

COMMITTAL APPLICATION

List of Affidavits Supporting the Application

1. Nicholas Elt (30 April 2012)
2. Nicholas Elt (30 April 2012)
3. Nicholas Elt (30 April 2012)
4. Thomas James Pollock (1 June 2012)
5. David Robert Shepherd (1 June 2012)
6. Dr Joy Rooney (1 June 2012)
7. Second Thomas James Pollock (1 June 2012)
8. Walter Morris (29 May 2012)
9. Eugenia Franca Alma Davies (6 June 2012)
10. PC Tony Carter (2 May 2012)

Particulars of Application

Background

1. The background is set out in the Affidavit of Thomas Pollock, but is set out here for ease of reference. The Claimant is the registered proprietor and owner of land known as Hartlebury Common registered under title number WM110168 hereinafter referred to as "the Common". Significant sections of the Common are designated as a site of special scientific interest.

2. On 17th September 2009 the Claimant was granted by the Secretary of State authorisation to fence the Common pursuant to section 38 of the Commons Act 2006.

3. The Claimant fenced the Common in accordance with the said authorisation in or about June 2011.

4. The Defendants by way of a joint enterprise and/or individually and/or incited or encouraged each other or others to remove part of the said fencing on 21st June 2011.

5. The Claimant issued proceedings in the Kidderminster County Court under Claim Number 1K100225 for injunctive relief and damages arising out of the said acts of trespass and damage to the fencing.

6. Following an interim injunction granted by District Judge Khan 22nd June 2011 he on 6th July 2011 granted the Claimant a final injunction, damages and costs. The Defendants admitted that they had damaged fencing.

Particulars of the Injunction part of the order

The Defendants (and each of them) (whether by themselves or by instructing or encouraging any other person) were forbidden until 12 noon on 21st December 2011 from:-

(a) Removing, tampering, damaging or interfering with the fencing or gates at the Common as shown on a map attached to the order

(b) Removing, tampering, damaging or interfering with any man made physical feature of the Common (including the car parking surfaces and gates)

(c) Stopping or interfering with the Claimants (their servants or agents or others given permission by them) grazing of the Common or such person's works of upkeep and conservation of the Common.

7. An appeal against the above injunction was made purporting to be on behalf of all three Defendants but signed by the second and third Defendants only on 13th July 2011 (the third Defendant indicated by email that he was not appealing). In the appeal documents the Notice of Appeal there was acceptance that they had damaged the fence but a claim that they were "repairing the damage done by the Council when they have wrongly fenced the common landthey cannot legitimately drive stakes into the ground.....". The appeal was struck out by HHJ Rundell on 27th October 2011.

9. Further acts of damage to the fencing took place and the Council issued further proceedings in the Worcester County Court for further injunctive relief and damages arising out of the trespass and damage to the fencing. In particular, in order to provide effective protection for the Common the Council claimed it was necessary and proportionate to stop the said Defendants coming onto the Common at all.

10. On 20 December 2012, DJ Whittaker granted an injunction in the following terms.

Particulars of the Injunction part of the 20 December order

The Defendants (and each of them) (whether by themselves or by instructing or encouraging any other person) were forbidden until further order from:-

- (a) Removing, tampering, damaging or interfering with the fencing or gates at the Common as shown on a map attached to the order;
- (b) Removing, tampering, damaging or interfering with any man made physical feature of the Common (including the car parking surfaces and gates);
- (c) Stopping or interfering with the Claimants (their servants or agents or others given permission by them) grazing of the Common or such person's works of upkeep and conservation of the Common; and/or
- (d) Entering the Common

11. A copy of the order (as amended 10 January 2012) together with penal notice is attached to this application. The amended order was served on the Defendants on 6 February 2012 (Affidavits of Nicholas Elt dated 30 April 2012).

12. By order of the court made on 16 March 2012 the injunction was continued and the Council granted summary judgment on its claim for damages.

Alleged Breaches of Injunction

The Claimant asks that the Defendants be committed to prison for knowingly disobeying the order of the Court made on 20 December 2011.

Specific Allegations of Breach of the Injunction Order Granted by District Judge McKenzie on 20th December 2011 (amended 10th January 2012)

Mr Steven McCarron

1. In breach of Paragraph 1(d) of the Injunction order – namely not to enter Hartlebury Common; “the common” defined in the order as the land edge in red did:-

- (a) Enter and remain on “the common” on 1st March 2012 and 21st April 2012.

2. In breach of Paragraph 1(c) of the Injunction order – namely forbidding him (whether by himself or by instructing or encouraging others or inciting any other person) from Stopping or interfering with the Claimants (their servants or agents or others given permission by them) grazing of Hartlebury Common or such person's works of upkeep or conversation of the Common did:-

- (a) On 21st April 2012 entered the common.
- (b) Interfered with the work of volunteers working with the permission of Worcestershire County Council and Mr Shepherd, Assistant Countryside Sites Officer of Worcestershire County Council on the common by:-
 - (a) Disrupting the works by making a number of very loud comments directed to Mr Shepherd and the volunteers.

(b) Speaking, whilst with two large dogs, to a volunteer Dr Rooney, working with the permission of Worcestershire County Council, who was clearing scrub, saying words to the effect that the common was becoming a barren wilderness/desert and her work was disgraceful. This caused Dr Rooney to be feel quite frightened.

(c) Standing close to Mr Shepherd, in a loud voice, speaking to him, saying words to the effect:

(i) The work was illegal, was not conservation but destruction turning the common into a desert.

(ii) The volunteers had been brainwashed by the Council.

(iii) Mr Shepherd had supplied false evidence to the Court and was a liar.

(iv) Mr Shepherd had no right to park his van on the common.

(d) The conversation with Mr Shepherd was at times aggressive and/or intimidating and/or threatening in tone.

(e) Refusing to leave the common when asked and continuing to express his opinions in a loud and overbearing manner and refusing to stop his behaviour or move away.

(f) When leaving (after the Police had been called) continued to direct comments to the volunteers of a similar nature to that set out above.

(g) Said to Mr Morris, a volunteer, words to the effect you should be wearing glasses you are making a sandpit.

Mrs Vanessa Wright (McCarron)

1. In breach of Paragraph 1(d) of the Injunction order – namely not to enter Hartlebury Common; “the common” defined in the order as the land edge in red did:-

(a) Enter and remain on “the common” on 1st March 2012 and 21st April 2012.

2. In breach of Paragraph 1(c) of the Injunction order – namely forbidding her (whether by himself or by instructing or encouraging others or inciting any other person) from Stopping or interfering with the Claimants (their servants or agents or others given permission by them) grazing of Hartlebury Common or such person’s works of upkeep or conversation of the Common did:-

(a) On 21st April 2012 entered the common.

(b) Speak to Mr Walter Norris, a volunteer working with the permission of Worcestershire County Council saying in an angry voice, about the works being undertaken, and continued to voice her opposition to the work on the common by the County Council.

(c) By her presence on the common along with Mr McCarron in seeking to engage with the volunteers in the manner described interfered with their carrying out of work on the common.

Mr Tony Barnett

1. In breach of Paragraph 1(d) of the Injunction order – namely not to Hartlebury Common; “the common” defined in the order as the land edge in red did:-

(a) Enter and remain on “the common” on occasions in the period 20th December 2011 to 8th March 2012; as admitted in his email of 8th March 2012.

The Claimant further asks for its costs of this application to be assessed and for an order that they should be paid by the Defendants.

Important Notice

The Court has power to send you to prison and to fine you if it finds that any of the allegations made against you are true and amount to a contempt of court.

You must attend court on the date shown on the front of this form. It is in your own interest to do so. You should bring with you any witnesses and documents which think will help you put your side of the case.

If you consider the allegations are not true you must tell the court why. If it is established that they are true, you must tell the court of any good reason why they do not amount to a contempt of court, or, if they do, why you should not be punished.

If you need advice you should show this document at once to your solicitor or go to a Citizens' Advice Bureau.

10. What information will you be relying on, in support of your application?

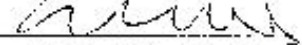
- the attached witness statement
 the statement of case
 the evidence set out in the box below

If necessary, please continue on a separate sheet.

Please see attached.

Statement of Truth

~~(I believe)~~ (The applicant believes) that the facts stated in this section (and any continuation sheets) are true.

Signed 
Applicant(s Solicitor)(s litigation friend)

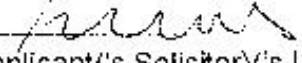
Dated 12 June 2012

Full name Thomas James Pollock

Name of applicant's solicitor's firm Legal & Democratic Services, Worcestershire County Council

Position or office held Senior Solicitor
(if signing on behalf of firm or company)

11. Signature and address details

Signed 
Applicant(s Solicitor)(s litigation friend)

Dated 12 June 2012

Position or office held Senior Solicitor
(if signing on behalf of firm or company)

Applicant's address to which documents about this application should be sent

Legal & Democratic Services
Worcestershire County Council
County Hall
Spetchley Road
Worcester

Postcode

W | R | 5 | 2 | N | P

If applicable

Phone no. 01305 766687

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Ref no. 4750/6/33/Hartlebury Committal

E-mail address tpollock@worcestershire.gov.uk