

IN THE COUNTY COURT AT MAIDSTONE

Case No:

BETWEEN

[REDACTED]

Claimant

and

- 1) BOROUGH GREEN PARISH COUNCIL
- 2) FRANCIS MICHAEL TAYLOR

Defendants

PARTICULARS OF CLAIM

1. The Claimant is and was at all material times, the freehold owner of parcels of land, registered title numbers, K591896 and K960397 ("the land"). The land adjoins the A25 in Borough Green and lies within the parish boundary controlled by the First Defendant. The Second Defendant is the First Defendant's Chairman.
2. On divers occasions between 18 and 22 July 2020 persons, including the Second Defendant, acting for and on behalf of the First Defendant and/or by the Second Defendant on his own behalf, entered onto the Claimant's land and used mechanical equipment to cut back and/or to remove at the roots, approximately 45 metres of a large mature hedge row growing on the Claimant's land. In particular, on 22 July 2020, a large section of the land adjoining the A25, on which the said section of hedge stood, was levelled by the Second Defendant, using a mechanical digger.
3. The aforesaid works were carried out without notification to, and/or the knowledge and/or consent of, the Claimant. The actions were unlawful and constitute a trespass to

the Claimant's land and property by the First Defendant through its servants or agents and by the Second Defendant as agent for the First Defendant and/or on his own behalf.

4. At about 17.30 on 22 July 2020 the Claimant was made aware that the aforesaid section of her land had been levelled and attended the site that evening to view the damage caused.
5. By an email dated 23 July 2020, sent to the Defendants at 10.50, the Claimant set out the facts known to her at that time and asked:
 - a) whether the Second Defendant, in entering onto the land and carrying out the work in the way that he did and without the knowledge or consent of the Claimant, was acting with the authority of and on behalf of the First Defendant and if so, to produce evidence of the fact of the said authorisation and the terms thereof;
 - b) the Defendants to identify the legal provisions upon which they purported to rely in authorising and/or carrying out work on land in the Claimant's ownership;
 - c) for the Defendants' proposals for making good the damage.
6. By an email of the same date the Second Defendant, acting or purporting to act on behalf of the First Defendant, made a clear admission that the hedge was the property of the Claimant stating inter alia:

"It is a pleasant surprise that you have managed to contact us now after many years of trying to get you to manage your "hedge" [emphasis added], which was in fact a collection of mostly dead old hawthorn and adventitious damsons."

The Defendants failed to answer the legitimate questions asked by the Claimant in the email referred to in paragraph 5 above. In particular they failed to identify any lawful justification for the aforesaid conduct. It is averred that, prior to the 22 July 2020, there

had been no form of communication between the Claimant and the Defendants on the subject of the hedge at any time during the Claimant's ownership of the land.

7. In a further email of the same date, the Second Defendant, acting or purporting to act on behalf of the First Defendant, stated inter alia:


"...whilst I respect your title to the land you have a responsibility in law to the public using the footpath, and the encroachment of both the hedge and soil/dirt onto the highway is not acceptable and is putting the public at risk."

8. By an email dated 24 July 2020, sent by the Second Defendant to the Claimant's Solicitor, the Defendant admitted that the entirety of the work was carried out on the Claimant's land, stating inter alia:

"For the record we categorically deny a flagrant trespass, the access being required solely to make the hedging and trees safe and no further. We do not deny your client's boundary line, and whilst the title plan is not accurate enough to be certain, we accept that it is the southern edge of the tarmacked [sic] footpath."

9. In pre-action correspondence the First Defendant's solicitors have referred to section 154 of the Highways Act 1980. In so far as the assertions set out in paragraphs 7 and 8 above purport to rely upon s.154 of the Highways Act 1980 (without making any attempt to identify the same), and the Defendants seek to rely on this legislation, that reliance is wholly misconceived in both fact and law for the following reasons:

- a) No notice was served pursuant to s.154 prior to commencement of the work
- b) The work carried out was far in excess of that which could reasonably have been required for the purposes set out in s.154 or in the assertion set out at paragraph 7 above.
- c) The actions of the Defendants are wholly inconsistent with reliance upon s.154.

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10. There is and was at all material times no lawful justification for the Defendants, their servants or agents:
 - a) entering upon the Claimant's land; and/or
 - b) cutting back or removing any part of the Claimant's hedge which did not overhang the boundary with the highway; and/or
 - c) levelling a substantial area of the Claimant's land; and/or
 - d) exposing the Claimant's land to public view.

 11. Following the aforesaid unlawful acts, social media posts by the Second Defendant and a member of the First Defendant Parish Council, Tim Shaw, demonstrated the intentions of the Defendants stating, inter alia, as follows:
 - a) "BGPC team out again this morning. Improving Sevenoaks Road A25 into village. In advance of the new village gateway";
 - b) the team were "recovering and widening lost pavement";
 - c) Watch this space for there was to be a "new bench for sitting and admiring those incredible views **never previously being possible to see** [emphasis added] during your walks along the A25. Breathtaking scenery of the AONB.";
 - d) the next step is planting wildflower seeds.

 12. In entering upon the Claimant's land and carrying out the aforesaid work the Defendants knew or ought to have known that the land and hedge were the property of the Claimant. The Defendants and each of them, knowing that the land was not in their ownership nor part of the highway, failed to make any or any adequate attempts to ascertain ownership of the land and/or to notify the owner. The trespass was deliberate or reckless.

 13. The purpose of the unlawful works was to act in a way inconsistent with the Claimant's ownership of the land by installing a village gate and/or bench and/or wildflower

meadow on the Claimant's land. Further, to expose the Claimant's land, which the Second Defendant admits had always been screened from the A25 by mature vegetation, to public view. The Defendants unlawfully entered onto and destroyed or damaged property on the Claimant's land in order to further the aforesaid aims.

14. Further, the matters aforesaid constitute misfeasance in a public office. The Defendants abused their powers as public servants and acted with knowledge of or reckless indifference to the unlawfulness of their actions and with knowledge of, or conscious and reckless indifference to, the probable harmful consequences to the Claimant of the same.

PARTICULARS

The Defendants and each of them:

- a) are public officers;
 - b) entered onto the Claimant's land, as aforesaid, without taking any or any adequate steps to notify the owner or to seek permission to enter onto the land and/or carry our work thereon;
 - c) prior to entering upon the said land, either knew that they had no power so to do or were recklessly indifferent as to their power so to do in that, they failed to take any or any adequate steps to research and/or identify any legal power which entitled them to enter upon the land and/or carry out the aforesaid works in the absence of consent and ensure compliance with the same;
 - d) in cutting back and removing a hedge, thereby destroying physical property and exposing the land to public view, they knew their actions would probably cause damage to the landowner or were recklessly indifferent to the same. The foreseeable damage was the physical destruction of property (the hedge), the financial loss and damage which would inevitably flow from the need to replace the same and the interference with the Claimant's peace and quiet enjoyment of her property by exposing her land to public view from the adjoining road.
15. By reason of the matters aforesaid, the Claimant has sustained loss, damage and inconvenience. The large mature hedge which screened the land from the A25 and

enhanced the Claimant's peace and quiet enjoyment of the property was destroyed. The land was exposed to public view and was temporarily exposed to a risk of escape of livestock. The work substantially altered the appearance and character of the said portion of the land.

PARTICULARS OF SPECIAL DAMAGE

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| a) Supply and delivery of hedge plants of sufficient quantity and maturity to restore the pre-existing visual screen from the A25 | £8,538.00 |
| b) Preparation of the ground, removal of waste, planting of the hedging stock and installation of irrigation measures | £7,856.40 |
| c) Travel costs of return journeys to the land arising from removal of hedge (a 66 mile return journey at £0.45 per mile):
22 July 2020 to inspect damage;
28 July 2020 to meet Defendants;
27 August 2020, 7 September 2020 and 17 September 2020 meeting contractors for quotes;
16 December 2020 to take delivery of hedge;
18 December 2020 to view completed work; | £207.90 |

16. The conduct of the Defendants was an egregious abuse of power. The Claimant's sense of grievance and injustice at the aforesaid actions is justifiably heightened by the manner in which and/or the motives for which the work was carried out. The Claimant claims aggravated and/or exemplary damages.

PARTICULARS

- a) In so far as the First Defendant purported to authorise the said entry onto the Claimant's land and/or the said work it failed to take any or any adequate steps to identify the Claimant as owner of the land and/or to satisfy itself of the existence of a lawful power of entry upon the Claimant's land and/or lawful justification for the work in fact carried out.
 - b) The Defendants failed to make any, or any adequate attempt, to obtain the consent of the Claimant to the entry upon her land.
 - c) The Defendants failed to make any, or any adequate attempt, to obtain the consent of the Claimant to the aforesaid work or any work being carried out upon her land.
 - d) The Defendants failed to make any, or any adequate attempt, to give notice to the Claimant of their intention to carry out the said work.
 - e) The nature and extent of the work carried out is far in excess of that which would have been required for any lawful purpose.
 - f) The Defendants have repeatedly failed and refused to acknowledge that their aforesaid conduct was unlawful.
 - g) The Defendants have failed and refused to issue any apology for their unlawful conduct.
 - h) The Defendants have sought to justify their unlawful conduct and have made disingenuous attempts to conceal the true intentions behind their actions.
 - i) The Defendants, by their actions, have demonstrated a complete disregard for the Claimant's rights as owner of the land and have demonstrated a wish and willingness to treat the land as their own.
17. The Claimant claims interest pursuant to s.69 of the County Courts Act 1984 on the amount found to be due to her at such rate and for such period as the court deems appropriate.

AND the Claimant claims:

- i) An injunction prohibiting the Defendants and each of them, their servants or agents from a) entering upon the Claimant's land (Title No K591896 and K960397) and/or b) from carrying out any work on the Claimant's land (Title No K591896 and K960397) or on property situated on the Claimant's land (Title No K591896 and K960397) save where there is an lawful entitlement so to do and where all relevant statutory provisions giving rise to that entitlement have been fully complied with.
- ii) Damages in the sum of £16,602
- iii) General damages
- iv) Aggravated damages
- v) Exemplary damages
- vi) Interest as aforesaid
- vii) Costs

STATEMENT OF TRUTH

I believe that the facts stated in these Particulars of Claim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Full name.....

Signed.....

Dated this 1st day of FEBRUARY 2021

