

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY, TRUSTS AND PROBATE LIST

THE HONOURABLE MR JUSTICE FANCOURT

THE 26TH DAY OF JUNE 2020

BETWEEN

(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF
HACKNEY

(2) BERKELEY HOMES (NORTH EAST LONDON) LIMITED

Claimants

- and -

(1) PAUL POWLESLAND

(2) PETER BUCKINGHAM

(3) LESLEY BENSON

(4) ELAINE GOSNELL

(5) LYDIA GOSNELL

(6) PERSONS UNKNOWN ENTERING OR REMAINING ON THE LAND OF THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HACKNEY AT WOODBERRY GROVE AND SEEKING TO, FOLLOWING THE SERVICE OF THE FORM OF NOTICE REFERRED TO AT PARAGRAPH 2(a) IN THIS ORDER, PREVENT OBSTRUCT OR HINDER THE REMOVAL BY BERKELEY HOMES (NORTH EAST LONDON) LIMITED, ITS SERVANTS OR AGENTS OF THE TREE ON WOODBERRY GROVE NOW KNOWN AS “THE HAPPY MAN TREE”

Defendants

MINUTE OF ORDER

IMPORTANT:-

PENAL NOTICE

- (1) This Order prohibits you from doing and obliges you to do the acts set out in this Order. You should read it all carefully. You are advised to consult a Solicitor as soon as possible. You have a right to ask the Court to vary or discharge this Order.
- (2) If you disobey this Order you may be found guilty of Contempt of Court and you may be sent to prison or fined or your assets may be seized.

UPON the issue on 17 June 2020 and service on 22 June 2020 of the Claimants' claim by a Claim Form and Particulars of Claim (the "**Claim**") and the Court being satisfied of valid service thereof

AND UPON the hearing of the Claimants' Application by a Notice dated 17 June 2020 seeking interim injunctive relief (the "**Application**") and the Court being satisfied of valid service thereof

AND UPON the Witness Statements listed in Schedule 1 being recorded as having been read

AND UPON the First Defendant giving the undertakings set out in Schedule 2 hereto

AND UPON the Second Defendant giving undertakings to the Court through Counsel on 26 June 2020 and the Claimants and Second Defendant having agreed to dispose of the Claim against the Second Defendant by a separate order

AND UPON the Claimants giving by Counsel the undertakings set out in Schedule 3 hereto

AND UPON the Claimants indicating by Counsel that the Claimants intend rapidly to terminate the Claim as against the Third, Fourth and Fifth Defendants

AND UPON hearing Counsel for the Claimants, James Hanham, the First Defendant in person, Counsel for the Second Defendant, James Sandham, the Third Defendant in

person, the Fourth Defendant in person, the Fifth Defendant in person and the Sixth Defendants neither appearing nor being represented

IT IS ORDERED that:

1. There shall be no order on the Application as against the First, Second, Third, Fourth and Fifth Defendants.

THE INJUNCTION

2. Until trial, or further order, the Sixth Defendants shall not:
 - (a) enter, remain on or occupy the land edged red on the Plan annexed hereto, which includes any structure or tree thereon (the "**Property**"), for the purpose of preventing, obstructing or hindering the removal or felling of the Happy Man Tree (as defined hereinafter) at any point after 9:00AM on the second day after the form of notice annexed to this Order (the "**Form of Notice**") is deemed served on the Defendants in accordance with Paragraph 5 below;
 - (b) undertake any acts that would prevent, obstruct or hinder in any way the Second Claimant or its servants or agents undertaking works to remove or fell, or works preparatory to the removing or felling of, the tree known as the Happy Man Tree located on Woodberry Grove (the "**Happy Man Tree**"), which includes deliberately obstructing any form of passage over the highway known as Woodberry Grove or interfering with or attaching themselves to the machinery of the Second Defendant or its servants or agents;
 - (c) encourage, help or direct anybody else to do any of the matters in paragraphs 2(a) and 2(b) above.

COSTS OF THE APPLICATION

3. There shall be no order for costs of the Application as against the First, Third, Fourth and Fifth Defendants and the costs of the Application as against the Sixth Defendants shall be reserved.

SERVICE

4. Pursuant to Rule 6.27 of the Civil Procedure Rules 1998, service of this Order is to be effected by:-
 - (a) affixing this Order to the Happy Man Tree and also to the hoarding directly in front of the Happy Man Pub building

(the "**Hoarding**"), both on Woodberry Grove, in envelopes addressed by name to the First, Third, Fourth and Fifth Defendants and by the following wording to the Sixth Defendants: "*PERSONS UNKNOWN ENTERING OR REMAINING ON THE LAND OF THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HACKNEY AT WOODBERRY GROVE AND SEEKING TO, FOLLOWING THE SERVICE OF THE FORM OF NOTICE REFERRED TO AT PARAGRAPH 2(a) IN THIS ORDER, PREVENT OBSTRUCT OR HINDER THE REMOVAL BY BERKELEY HOMES (NORTH EAST LONDON) LIMITED, ITS SERVANTS OR AGENTS OF THE TREE ON WOODBERRY GROVE NOW KNOWN AS "THE HAPPY MAN TREE"*"

- (b) by sending this Order via e-mail to the following e-mail addresses:-
 - (i) First Defendant: ppowlesland@elyplace.com;
 - (ii) Second Defendant: mkilbane@hja.net (solicitor for the Second Defendant);
 - (iii) Third Defendant: ljmbatn16@btinternet.com;
 - (iv) Fourth Defendant: elaine.gosnell@blueyonder.co.uk; and
 - (v) Fifth Defendant: lydia.recorder@hotmail.com and lydia.gosnell@hackney.gov.uk.

5. The Form of Notice referred to at paragraph 2(a) of this Order shall be served on the Defendants by the following methods of service and shall be deemed served on the day that the later of the two methods of service below is completed provided that such service is completed before 5:00PM, and, if such service is not completed before 5:00PM, then on the next day:-

- (a) affixing the Form of Notice to the Happy Man Tree and to the Hoarding; and
- (b) by sending the Form of Notice via e-mail to the following e-mail addresses:-
 - (i) First Defendant: ppowlesland@elyplace.com; and

(ii) Second Defendant: mkilbane@hja.net (solicitor for the Second Defendant).

6. The e-mail addresses referred to above shall be redacted from all copies of this Order served under paragraphs 4(a) above.

VARIATION OR DISCHARGE OF THIS ORDER

7. A Defendant may apply to the Court at any time to vary or discharge this Order but if he wishes to do so he must first inform the Claimants' Solicitors in writing at least 12 hours beforehand.

NAME AND ADDRESS OF CLAIMANTS' SOLICITORS

8. The First Claimant's Solicitors are Pinsent Masons LLP of 30 Crown Place, Earl Street, London EC2A 4ES; tel: 020 7418 7000. For out of hours, please contact: Mr Richard Bartle at Richard.Bartle@pinsentmasons.com and Mr Joshua Black at Joshua.Black@pinsentmasons.com.
9. The Second Claimant's Solicitors are Eversheds Sutherland (International) LLP of 1 Wood Street, London EC2V 7WS; tel: 020 7919 4500. For out of hours, please contact: Ms Heather Tomlinson at heathertomlinson@eversheds-sutherland.com.

INTERPRETATION OF THIS ORDER

10. In this Order the words "him" or "his" include "she" or "her" and "it" or "its".
11. Where there are two or more Defendants then (unless the contrary appears):
- (a) References to "the Defendant" mean both or all of them; and
 - (b) An Order requiring "the Defendant" to do or not to do anything requires each Defendant to do or not to do it.

THE EFFECT OF THIS ORDER

12. A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
13. A Defendant which is a corporation and which is ordered not to do something must not do it itself or by its directors, officers; employees or agents or in any other way.

14. It is a contempt of court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be imprisoned fined or have their assets seized.

COMMUNICATIONS WITH THE COURT

15. All communications to the Court about this Order should be sent to the Royal Courts of Justice, 7 Rolls Building, Fetter Lane, London EC4A 1NL, quoting the case number. The court office is open between 10 am and 4.30 pm Monday to Friday. The telephone numbers are: 020 7947 6322 (Orders and accounts) and 020 7947 6267 (Listing).

SCHEDULE 1

Witness Statements

The Judge read the following Witness Statements before making this Order:-

Witness Statement Anne Byrne dated 16 June 2020

First Witness Statement of Daniel Massie dated 16 June 2020

Witness Statement of Scott Hines dated 23 June 2020

Second Witness Statement of Daniel Massie dated 25 June 2020

SCHEDULE 2

Undertakings to the Court given by the First Defendant

I, Paul Powlesland, am the First Defendant and give this Undertaking to the Court promising that:-

1. Until trial, or further order, the First Defendant shall not:

(a) enter, remain on or occupy the land edged red on the Plan annexed hereto, which includes any structure or tree thereon (the "**Property**"), for the purpose of preventing, obstructing or hindering the removal or felling of the Happy Man Tree (as defined hereinafter) at any point after 9:00AM on the second day after the Form of Notice (defined above) is served on the Defendants in accordance with Paragraph 5 above;

(b) undertake any acts that would prevent, obstruct or hinder in any way the Second Claimant or its contractors undertaking works to remove or fell, or works preparatory to the removing or felling of, the tree known as the Happy Man Tree located on Woodberry Grove (the "**Happy Man Tree**"), including by wilfully obstructing free

passage along the public highway or interfering with or attaching himself to the machinery of the Second Claimant's contractors on the land edged red on the Plan annexed hereto and/or on the land edged and dotted green on the "Second Plan" annexed hereto;

(c) encourage, help or direct anybody else to do any of the matters in paragraphs (a) and (b) above.

SCHEDULE 3

Undertaking given to the Court by the Claimants

1. Anybody notified of this Order will be given a copy of it as soon as is reasonably practicable.
2. If the Court later finds that this Order has caused loss to the Defendants and decides that the Defendants should be compensated for that loss, the Claimant will comply with any Order the Court may make.

Dated: 26 June 2020

SERVICE OF THIS ORDER

The Court has provided a sealed copy of this Order to the First Claimant by its solicitors:

Pinsent Masons LLP
30 Crown Place
London EC2A 4ES
Tel: +44 (0)20 7418 7000
DX: 157620 Broadgate
Ref: RB14.503301.07052

A copy of the sealed Order will be sent by the First Claimant to the Defendants in accordance with the terms of this Order above.

**FORM OF NOTICE TO BE GIVEN UNDER PARAGRAPH (2)(a) OF THE
ORDER OF 26 JUNE 2020**

FORM OF NOTICE

"NOTICE OF INTENTION TO COMMENCE WORKS TO REMOVE THE TREE"

DATED: []

ADDRESSED TO:-

(1) PAUL POWLESLAND

(2) PETER BUCKINGHAM

**(3) PERSONS UNKNOWN ENTERING OR REMAING ON THE LAND OF THE
MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HACKNEY AT
WOODBERRY GROVE AND SEEKING TO, FOLLOWING THE SERVICE OF
THE FORM OF NOTICE REFERRED TO AT PARAGRAH 2(a) IN THE ORDER
OF 26 JUNE 2020, PREVENT OBSTRUCT OR HINDER THE REMOVAL BY
BERKELEY HOMES (NORTH EAST LONDON) LIMITED, ITS SERVANTS OR
AGENTS OF THE TREE ON WOODBERRY GROVE NOW KNOWN AS "THE
HAPPY MAN TREE" ("PERSONS UNKNOWN")**

**PLEASE TAKE NOTICE THAT BERKELEY HOMES (NORTH EAST LONDON)
LIMITED NOW INTENDS TO COMMENCE WORKS TO REMOVE THIS TREE.**

**PURSUANT TO PARAGRAPH 1 AND SCHEDULE 2 AND 3 OF THE COURT
ORDER DATED 26 JUNE 2020 PAUL POWLESLAND, PETER BUCKINGHAM
AND THE PERSONS UNKNOWN TO WHOM THIS NOTICE IS ADDRESSED
CANNOT THEREFORE FROM 9:00AM ON THE SECOND DAY AFTER THE
DEEMED DATE OF SERVICE UNDER PARAGAPH 5 OF THE ORDER AND
THEREAFTER ENTER, REMAIN ON OR OCCUPY THE LAND EDGED RED ON
PLAN 1 ANNEXED HERETO, WHICH INCLUDES ANY STRUCTURE OR TREE
THEREON, FOR THE PURPOSE OF PREVENTING OBSTRUCTING OR
HINDERING THE REMOVAK OF THIS TREE.**

**IF AT ANY POINT AFTER 9:00AM ON THE SECOND AFTER THE DEEMED
DATE OF SERVICE UNDER PARAGAPH 5 OF THE ORDER ANY PARTY TO
WHOM THIS NOTICE IS ADDRESSED ENTERS, REMAINS ON OR OCCUPIES
THE LAND EDGED RED ON PLAN 1 ANNEXED HERETO, WHICH INCLUDES
ANY STRUCTURE OR TREE THEREON, FOR THE PURPOSE OF
PREVENTING OBSTRUCTING OR HINDERING THE REMOVAL OF THIS**

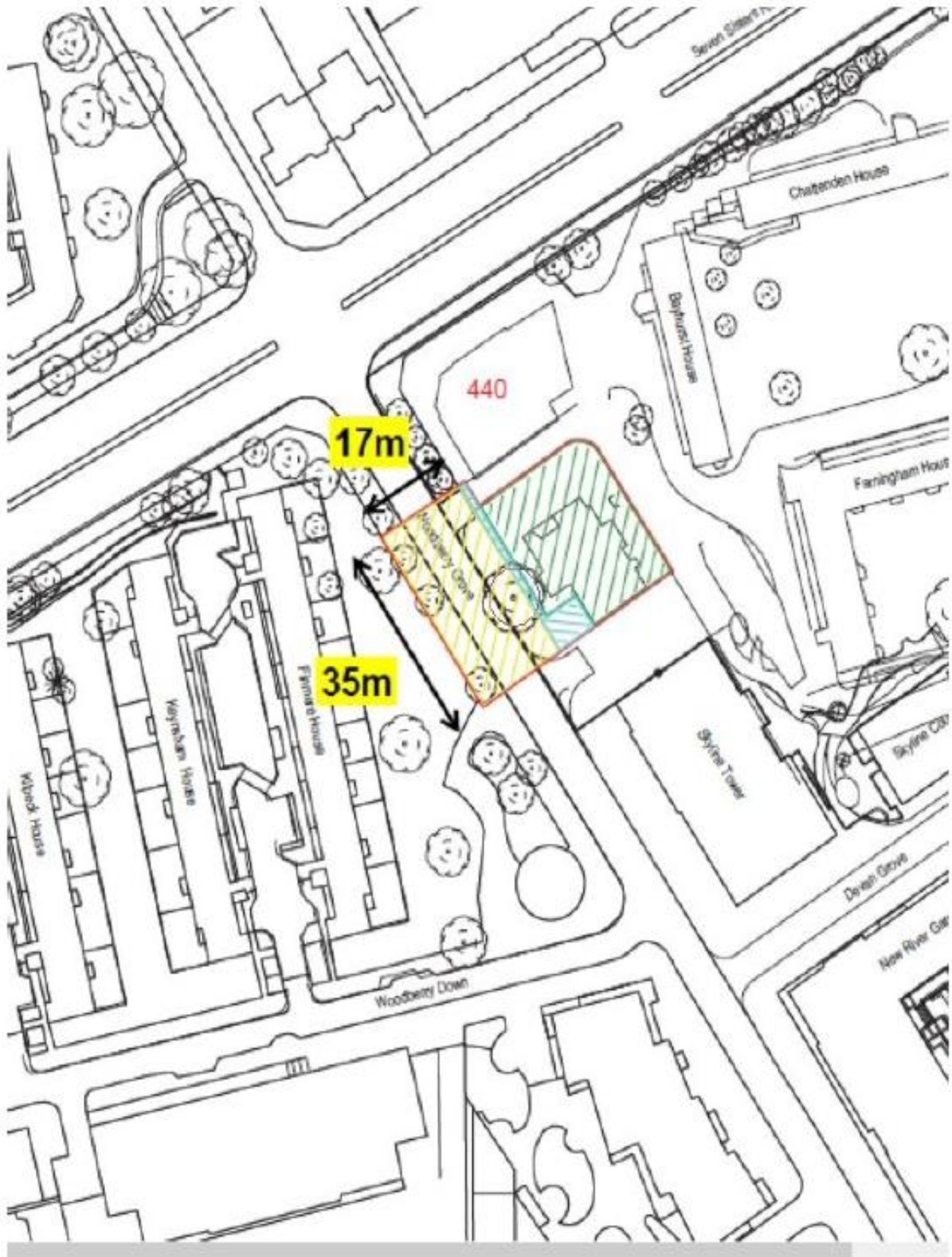
TREE, THEN THAT PERSON OR THOSE PERSONS SHALL BE IN BREACH OF THE COURT ORDER DATED 26 JUNE 2020

PENAL NOTICE

(1) THE COURT ORDER DATED 26 JUNE 2020 PROHIBITS YOU FROM DOING AND OBLIGES YOU TO DO THE ACTS SET OUT IN THAT ORDER. YOU SHOULD READ IT ALL CAREFULLY. YOU ARE ADVISED TO CONSULT A SOLICITOR AS SOON AS POSSIBLE. YOU HAVE A RIGHT TO ASK THE COURT TO VARY OR DISCHARGE THIS ORDER.

(2) IF YOU DISOBEY THE COURT ORDER DATED 26 JUNE 2020 YOU MAY BE FOUND GUILTY OF CONTEMPT OF COURT AND YOU MAY BE SENT TO PRISON YOU MAY BE FINED OR YOUR ASSETS MAY BE SEIZED.

THE PLAN



THE SECOND PLAN

