

IN THE HIGH COURT OF JUSTICE

Claim No. KB-2024-002210

KINGS BENCH DIVISION

B E T W E E N:

HEATHROW AIRPORT LIMITED

Claimant

-and-

**PERSONS UNKNOWN WHO (IN CONNECTION WITH JUST STOP OIL OR
OTHER ENVIRONMENTAL CAMPAIGN) ENTER, OCCUPY OR REMAIN
(WITHOUT THE CLAIMANT'S CONSENT) UPON 'LONDON HEATHROW
AIRPORT' AS IS SHOWN EDGED PURPLE ON THE ATTACHED PLAN A TO THE
PARTICULARS OF CLAIM**

Defendants

**NOTE OF "WITHOUT NOTICE" HEARING BEFORE
MR JUSTICE JULIAN KNOWLES
LISTED FOR 9 JULY 2024 AT 14:00**

The hearing was originally listed before Mrs Justice Cutts at 10:30am on 9 July 2024. The Hearing Bundle refers to that original listing on its face.

The hearing commenced at 13:58. Appearing for the Claimant, Katharine Holland KC ("KH") and Jacqueline Lean ("JL") before Mr Justice Julian Knowles ("J").

1. KH expressed appreciation for the listing of the urgent hearing and Knowles J making the time in his listings.
2. J confirmed he had electronic papers sent last night and had read the Skeleton Argument and witness evidence and reviewed some plans. He is relatively familiar with the case law, generally from the press, and from similar cases covered recently.

3. KH proposed to take J through the Skeleton Argument in order and, mindful of the without notice nature of the application and duty of full and frank disclosure to cover everything but will note any areas if J wishes to move on.
4. J confirmed no need to go laboriously through underlying risk and threat evidence, he has seen some similar evidence before and has a general awareness. Obviously, the Claimant must demonstrate their entitlement to an order though.

Opening

5. KH outlined Heathrow is Europe's busiest airport and a piece of Critical National Infrastructure. In relation to Just Stop Oil ('JSO'), there is a specific threat to Heathrow that may not have applied or been so obvious at London City ('LCY') where J had previously granted an injunction, namely the JSO video specifically identified Heathrow. J indicated it was not necessary for Counsel to review the JSO background and threatened deadline to MPs, etc. in detail.
6. KH clarified the Claimant is adopting a claim based on the UKSC's decision in *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 W.L.R. 45 to be referred to in detail later.
7. KH outlined how big Heathrow is and summarised the title, reference to Skeleton Argument para 3. KH clarified the perimeter and parcels within, exhibited at Hearing Bundle ('HB') page 15. Titles within Claimant ownership and the perimeter plan (HB24).
8. J remarked it is a much bigger site so he wished to orient himself. The left most purple line and orange building is Terminal 5. North is the A4.
9. KH clarified that blue hatched areas are leased to other non-parties. The terminals are coloured orange and on numerous floors have various third party occupants. J asked for an example and KH hypothesised Boots. J gave examples of Border Force and police leases.

10. KH clarified the classic cause of action in trespass over land where the Claimant has an immediate right to possession (shaded yellow on the plan) is a textbook example. But the Court will be addressed on how the perimeter as defined, regardless of third party interests within, gives the Claimant sufficient right in case law to claim over the whole area edged purple, including (as J queried, having looked at it in the *HS2* case) via *Manchester Airport Plc v Dutton & ors* [2000] 1 Q.B.133.
11. J queried, in short, whether the point was that the title was better than that of any trespasser. KH said that was exactly so and indicated there were other principles to similar effect.
12. KH directed J to HB339 where there is a larger plan. KH clarified as per the witness evidence some OCEs were still on order from HM Land Registry but, on the evidence as a whole in this case, the ownership is clear.

Right to Possession

13. KH explained that the backdrop is the Claimant's 'better right' to control based on 3 documents – as operator (Certificate of operation), with the benefit of the economic licence granted under Civil Aviation Act 2012 and also by virtue of the Byelaws made pursuant to s.63 or s.64 of the Airports Act 1986.
14. J confirmed he did not need to review the principle of Byelaws in detail, being familiar from the LCY claim.
15. KH explained that the backdrop is control and how the Claimant exercises it as a totality over the whole area.

Apprehended Action

16. For the Court's note, the witness evidence is p298-302 (Akhil Markanday) and p47-48 (Jonathan Daniel Coen). Skeleton Argument paragraph 13. Skeleton Argument paragraph 15 relates to the campaign targeting airports and paragraph 16 historical events.

17. J was familiar with an event at LCY where someone glued themselves to a plane. J was also familiar with the self-evident hazards in and around airport restricted areas.

Causes of Action

18. KH explained that trespass is extremely clear cut (*Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780). KH took J to Skeleton Argument paragraph 23 and the *Dutton* case, quoting the headnote on page 146 of authorities bundle and the Court of Appeal's conclusion. J was taken to the *Twickenham* case cited in *Dutton* in the same Skeleton Argument paragraph.

19. KH explained that the Claimant seeks an order necessary to vindicate and give effect to the rights it necessarily enjoys (via the certificate, licence and Byelaws). The second sentence of *Twickenham* (*Dutton* page 144, c to d) is relevant to statute giving us a degree of control, see Laws LJ. Finally, p151 at letter d is relevant.

20. KH explained that all of these principles were said by the Claimant to flow from *Dutton*. In *High Speed Two (HS2) Limited v Four Categories of Persons Unknown* [2022] EWHC 2360 (KB) at Skeleton Argument paragraph 23.2, this is J's own judgment and paragraph [77] is relevant. We also cite *Mayor of London v Hall* [2011] 1 WLR 504 at [22]-[27] given our title complexity. J was directed to read [27] in particular. KH also directed J to [53], albeit it was not in highlighted in the Skeleton Argument.

21. KH took J to the Skeleton Argument paragraph 25, and explained that the Claimant said that the certificate, aerodrome manual, licence and Byelaws make good the case for the Claimant's necessary control.

22. J asked about Skeleton Argument paragraph 23 and the certificate. KH clarified this is an operational conferment, pursuant to which there is the aerodrome manual and referred specifically to HB94 and HB101. KH referred to Skeleton Argument 25.1.2.

23. KH then referred J to the economic licence which confers a right to charge – also denoting a level of control. Then the Byelaws (HB256) confer ability to regulate use/operation/conduct of persons.

24. KH explained that, in a nutshell, this is a ‘do not go on to the airport in connection with this’ approach. A very simple one. Defendants are defined as persons entering in connection with the campaign. Fact of entry is simple and correct way of defining in relation to those activities. The general position in relation to the airport is that there is a certain permission to go on and use, but going on in connection with a campaign is not what one would expect in that general scenario.
25. J picked a Byelaw example – not to display signs. Presumably an activity with placards would be an automatic violation?
26. KH agreed, and drew attention to the two Byelaws which were the easiest ones to indicate the Claimant’s approach was correct, being byelaws 3.19 and 3.21 (HB270). Those referred to the very activities the definition of Defendant addressed. KH directed J to Skeleton Argument paragraph 27.
27. J noted a point he had raised in the LCY hearing that he had noticed e.g. railways now have signs about implied consent to enter being withdrawn e.g. for antisocial behaviour. Any implied consent to go on and use the airport being withdrawn for the people described as D.
28. KH submitted that the Claimant’s case was that trespass is sufficient for the entirety of the relief sought but the Claimant had also pleaded private and public nuisance at Skeleton Argument paragraphs 29-31.
29. J indicated he was familiar with those causes of action from *HS2*.

Principles for Relief

30. KH referred to a number of cases, including *Valero Energy Ltd & ors v Persons Unknown* [2024] EWHC 134 (KB). There was discussion in relation to the nature of the injunction being sought (interlocutory vs. final injunctions) since *Wolverhampton* and in the context of LCY. J wondered whether in this sort of case with unknown Ds, the difference between final injunction after review and interlocutory is a distinction without a difference.

31. KH suggested that approach was vindicated by *Wolverhampton* at para 143(vii), which supports the LCY approach of no return date but review. KH offered that a return date could be included on an Order (if made) if the Court considered that appropriate.
32. KH drew attention to the Skeleton Argument for the case law and tests. KH submitted that the principles applied, the Claimant had a clear cause of action (trespass + nuisance) and realistic prospect of success. There was a serious issue to be tried. Footnote 3 of the Skeleton Argument deals with the s.12(3) of the Human Rights Act 1998. Even if there is a higher test of 'likely to be granted' that was satisfied in any event. Damages are clearly not adequate as a remedy. There is a real and imminent threat.
33. KH informed J that in addition to LCY, the Claimant was also aware of a recent Order by HHJ Coe KC in respect of Manchester/Stansted/East Midlands Airports on 5 July. The papers only seemed to be published that morning, so there had not been a chance to read all the papers in full, but as part of the duty of full and frank disclosure, KH highlighted some differences.
34. J asked if the injunctions had been granted for similar reasons, i.e. the campaign of action proposed for the summer.
35. KH confirmed that was her understanding. [A printed bundle of papers relating to those injunctions was handed up]. KH drew attention to (1) the different way in which the Defendants were defined, and explained why the Claimant had adopted the approach it had (avoiding subjective purposes / state of mind); (2) the inclusion of Extinction Rebellion within the definition of the Defendants, noting that this was covered off in the Claimant's definition which referred to 'other environmental campaign' and (3) that the Claimant's proposed description did not refer to protest (which was referred to in the description of the Ds in those Orders) and why that was. J noted that this was private land, and there was not a right to protest on private land, referencing *HS2* and the Strasbourg Court in *Appleby v United Kingdom* [2003] 27 EHRR 38.
36. KH then drew attention to paragraph 3 of the Manchester/Stansted/East Midlands Order which was very prescriptive, and explained why the Claimant did not consider that was needed in this case, and also highlighted that the claimants in that case had applied for alternative service rather than to dispense with service, which would be addressed later.

37. J noted that Orders in such cases will each turn on its own facts, and that he wasn't sure how helpful it would be to go through those papers further, noting that the Claimant would be reflecting on those cases and would no doubt bring anything to the Court's attention pursuant to the duty of full and frank disclosure, in the event that the Order was made, and the Claimant needed to come back, rather than trying to deal with it 'on the fly'.
38. KH finished on that point but highlighting the key point was in that case there had been some points about highways which was not the case here.
39. KH then directed J to Skeleton Argument paragraph 14, and submitted that the evidence makes out a compelling need for the Order. The act the Claimant seeks to prohibit is directly related to the tort, clear and precise, all the tests are met. It's a very simple injunction with no difficulty for people to understand. There are clear geographical (the perimeter) and temporal limits.
40. J asked the time period being sought, and noted that 5 years with annual review had been granted on the LCY injunction.
41. KH confirmed the Claimant also asked for 5 years with annual review.
42. J said that absent any evidence these protests will go away, and quite the reverse whatever the rights or wrongs of that, he did not think 5 years was unreasonable.
43. KH then turned to the final tests. KH submitted that this is private land regarding the Human Rights Articles as already indicated; the Claimant was not a public authority and even if it was, the balancing act from all recent cases very clearly comes out for the Claimant, addressing those points pursuant to the duty of full and frank disclosure.
44. J noted that nothing in the Order stops protests on public land (subject to blocking traffic, etc.) but they just cannot be on private land. KH commented that it would only be in an extreme case where the essence of the right of free speech or assembly was barred or effectively destroyed that the Articles could be a defence if it was private land.

45. KH then addressed service, highlighting that the Claimant's approach was similar to LCY based on *Wolverhampton* at paragraph 56. The Claimant proposed to dispense with service and to notify persons potentially affected by the Order. KH directed J to where this was dealt with in the Claimant's witness evidence too (specifically, paragraph 56, HB311). The Claimant had to satisfy J of this being effective. The Claimant considered the arguments did so. The backdrop is at [230]-[231] of *Wolverhampton*.

46. J asked if there were any identified individuals.

47. KH confirmed that there were not, and directed J to the evidence in relation to that at HB310, paragraphs 51-53. Enquiries continued. The Claimant was aware of its obligations.

Full and Frank Disclosure

48. KH ran through the points set out in the Skeleton Argument.

49. J noted that some of these points have been run elsewhere without success, including in *HS2*— a good evidential base and fear, doesn't mean you have to wait for action to start.

The Order

50. KH and J then reviewed the Order, with particular reference to:

- a. Date. Until...9 July 2029 but (3) should say 'reviewed annually on each anniversary';
- b. Proposals for notification of the Order, by particular reference to Plan B at Schedule 4. J queried whether this included any locations at tube stations, as it seemed to him that some people wanting to go to the airport to protest would go by tube. KH explained why notices at the red dots were proposed and confirmed that notices could be put (voluntarily) where people at access from public transport. JL explained that notices would need to be within the Claimant's land. It was not practically possible to show locations on the Plan. J noted that

provided the Claimant put the documents at least at the red dot locations, there was nothing to stop the Claimant putting notice elsewhere;

- c. The Warning Notice at Schedule 5;
- d. The Undertakings in Schedule 1 which should include an undertaking to notify the Defendant by a specified date. LCY Order provided for 4 days. KH offered to do the same.

51. KH highlighted a small point re Plan A, in that it appeared some land within the boundary was not shaded yellow when it probably should be. But we say this does not make a difference to the area of control, i.e. the purple line.

52. J said he would grant the order subject to amendments discussed for reasons set out in Skeleton Argument.

Hearing ended 15:20.