

Application notice

For help in completing this form please read the notes for guidance form N244 Notes.

Find out how HM Courts and Tribunals Service uses personal information you give them when you fill in a form:

<https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

Name of court High Court of Justice Business and Property Courts Property, Trusts and Probate List (ChD)	Claim no. PT-2018-000098 15 Jun 2020
Fee account no. (if applicable) PBA0087211	Help with Fees – Ref. no. (if applicable) PT-2018-000098
Warrant no. (if applicable)	Hearing Date: 22 Jun 2020 10:30 The Rolls Buildings - Court 10
Claimant's name (including ref.) (1) THE SECRETARY OF STATE FOR TRANSPORT (2) HIGH SPEED TWO (HS2) LTD	
Defendant's name (including ref.) (1) – (2) PERSONS UNKNOWN (3) – (35) See continuation sheet to draft Re- Amended Claim Form	
Date	15 June 2020

1. What is your name or, if you are a legal representative, the name of your firm?

Eversheds Sutherland (International) LLP

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

If you are a legal representative whom do you represent?

Claimants

3. What order are you asking the court to make and why?

This is the “**Substantive Amendment Application**” which Cs indicated their intention to bring at the hearing of their “**Extension Application**” (app. Notice dated 18 May 2020) before Fancourt J on 21 May 2020. The “Return Date” of the Extension Application is listed for 22 June 2020. By para 3 of Fancourt J’s order of 21 May 2020 (“the **May 2020 Order**”), the Court is to reconsider the continuation of the injunctive relief in favour of Cs.

By this application, which Cs ask to be considered initially at the Return Date, Cs seek:

1. Permission to re-amend their Claim Form in the form of the supplied draft *inter alia* to include “Additional Land” within the “Harvil Road Site” over which injunctive relief is sought to prevent unlawful protest activity.
2. Directions for a two-day “Further Hearing” in this Substantive Amendment Application (with ½ day judicial pre-reading) to determine whether Cs should be entitled to injunctive relief over the Harvil Road Site for a further two years (or some other period) and the form of that relief.
3. The continuation, pending that Further Hearing, of injunctive relief over the Harvil Road Site, either over the whole of the Harvil Road Site (including the Additional Land) in the form of the draft Order provided herewith, alternatively in such form as the Court shall think just and convenient.
4. Retrospective orders for alternative service of the Extension Application, May 2020 Order and

this Substantive Amendment Application.

5. Orders for the alternative service of the Extension Application and May 2020 Order and Directions for service of this Substantive Amendment Application and any order(s) made.
6. Further case management directions as appropriate.

The terms of the order sought are as per the draft order filed herewith.

The reasons for seeking the order are set out in the second witness statements of Richard Jordan (“**Jordan 2**”) and Rohan Perinpanayagam (“**Perin 2**”) filed herewith. Evidence of service will be filed in addition in advance of the Return Date.

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? Hours Minutes
Is this time estimate agreed by all parties? Yes No
7. Give details of any fixed trial date or period
8. What level of Judge does your hearing need?
9. Who should be served with this application?
- 9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.
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

The detailed evidence in support of this Substantive Amendment Application is set out in the supporting witness statements. In summary, and by way of overview:

1. These proceedings were commenced on 5 February 2018 in order for the Claimants to seek interim injunctive relief to prevent trespass to and unlawful obstruction of access to the Claimants’ HS2 construction site at Harvil Road in West London. Mr Justice Barling granted an injunction against such conduct on 17 February 2018, which was to expire on 1 June 2019 (with liberty to apply).
2. Before its expiry, and in light of the continued threat of such unlawful protest activity, the Claimants applied successfully for its extension (both in time, and over the whole site as was being used by the Claimants at the time). That extension was granted by David Holland QC (sitting as a judge of the High Court) on 16 May 2019 (“the **2019 Injunction**”). That injunction was to expire on 1 June 2020, again with liberty to apply.
3. The Claimants continued to face a risk of unlawful protest activity, but were unable before 1 June 2020 to issue a substantive application for a further substantial extension of the 2019 Injunction to cover all of the land that is now within the Harvil Road Site. They, consequently, brought the short term Extension

Application in order simply to continue the 2019 Injunction until the more substantive application could be brought.

4. That application was determined by Mr Justice Fancourt on 21 May 2020, who ordered (by the May 2020 Order) the temporary continuation of the 2019 Injunction until a Return Date, which has now been listed for 22 June 2020. The May 2020 order records that the question of the further continuation of relief will be considered at the Return Date.
5. The Claimants are now in a position to bring this Substantive Amendment Application. They ultimately, by this application, seek the continuation of injunctive relief preventing trespass to and obstruction of access to the land which now comprises the site for a further period of two years. Such an injunction is justified by the long-running and determined campaign of unlawful 'direct action' protest at the site, which the Claimants estimate has led to costs (from delay and security measures) of nearly £16m.
6. The full hearing of that application for an extension will, the Claimants estimate, take approx. 2 days (if half a day's pre-reading is allowed). The time estimate is likely to be easier to assess at the Return Date, when the Defendants' position may become clearer.
7. Pending that further longer hearing, and at the hearing of the Return Date of the Extension Application, the Claimants seek the continuation of injunctive relief over the site. They ask that the continued injunctive relief, however, be varied from that granted on the Extension Application to cover the *whole* of the current Harvil Road Site, rather than just that part which was covered by the 2019 Injunction. The injunction sought also makes provision for the prohibition of interference with the fenced around the site, as there is evidence in the attached witness statement of regular damage to these security fences in connection with this protest activity.
8. If and to the extent that the application for this extended relief is on short notice or even *ex parte* to the Defendants at the Return Date of the Extension Application, the further hearing of the Substantive Application which the Claimants ask to be listed could operate in effect as a further return date.
9. Following Court of Appeal guidance in the *Canada Goose* case ([2020] EWCA Civ 303) as to the importance of including named defendants to 'person unknown' injunctions where they can be identified, 28 named defendants were added to these proceedings at the 21 May 2020 hearing of the Extension Application. The Claimants therefore will therefore seek appropriate case management directions to deal with a claim with this number of defendants, particularly relating to service of documents in these proceedings.
10. There are practical challenges associated with this, as the Claimants do not know all of their addresses, and many of the Defendants appear to be of no fixed address, and appear to move between protest camps directed against HS2 and other causes.
11. The Claimants intend to file an up-to-date witness statement ahead of the Return Date explaining the steps that they have managed to take by way of service of the Extension Application, the May 2020 Order and this Substantive Application and ask (to the extent that personal service or service by post has not provided possible) that retrospective orders be made for alternative service to the extent appropriate.

Statement of Truth

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

Signed



Dated 15 June 2020

Applicants' legal representative

Full name Kathryn Mair Cook

Name of applicant's legal representative's firm Eversheds Sutherland (International) LLP

