

1.	Claimants
2.	Rohan Perinpanayagam
3.	Third
4.	RP3
5.	Date: 27 July 2020

Claim No: PT-2018-000098

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

B E T W E E N:

- (1) THE SECRETARY OF STATE FOR TRANSPORT
(2) HIGH SPEED TWO (HS2) LTD

Claimants/Applicants

-and-

(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANT(S) ON LAND AT HARVIL ROAD, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON THE PLANS ANNEXED TO THE RE-AMENDED CLAIM FORM

(2) PERSONS UNKNOWN SUBSTANTIALLY INTERFERING WITH THE PASSAGE BY THE CLAIMANTS AND THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES OR EMPLOYEES WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT TO AND FROM THE LAND AT HARVIL ROAD SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON THE PLANS ANNEXED TO THE RE-AMENDED CLAIM FORM

(3) to (35) THE NAMED DEFENDANTS LISTED IN THE SCHEDULE TO THE ORDER OF MR DAVID HOLLAND QC DATED 22 JUNE 2020

(36) PERSONS UNKNOWN CUTTING, DAMAGING, MOVING, CLIMBING ON OR OVER, DIGGING BENEATH OR REMOVING ANY ITEMS AFFIXED TO ANY TEMPORARY OR PERMANENT FENCING OR GATES ON OR AT THE PERIMETER OF THE HARVIL ROAD SITE, OR DAMAGING, APPLYING ANY SUBSTANCE TO OR INTERFERING WITH ANY LOCK OR ANY GATE AT THE PERIMETER OF THE HARVIL ROAD SITE WITHOUT THE CONSENT OF THE CLAIMANTS

Defendants / Respondents

THIRD WITNESS STATEMENT OF ROHAN PERINPANAYAGAM

I, Rohan Perinpanayagam, of High Speed Two (HS2) Ltd, 2 Snowhill, Queensway, Birmingham, B4 6GA WILL SAY as follows:

1. I am the Second Claimant's Project Client Align IPT (Project Director) of Phase One of the High Speed 2 railway scheme ("the **Scheme**"). This is my third statement in these proceedings and, as mentioned in my earlier witness statements, I am known as Rohan Perin. I shall refer to my first witness statement, dated 9 June 2020 as "Perin 1" and my second statement dated 15 June 2020 as "Perin 2".

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2. I make this statement, in support of the Claimants’ application dated 15 June 2020 known as the “**Substantive Amendment Application**”. The purpose of this Statement is to:
- (i) Provide a short reply to some of the matters which have arisen in the evidence in response to the Substantive Amendment Application which has been filed by two of the named Defendants and in accordance with the directions given by Mr David Holland QC at the first hearing of the Substantive Amendment Application on 22 June 2020 during which Mr Holland QC extended the 21 May 2020 Order (referred to in Perin 2 as the “2020 Injunction”) both in time and geographically to include the land referred to as “the Additional Land” in Perin 2. I shall refer to the order of Mr Holland dated 22 June 2020 as the “**Current Injunction**”. For the interests of clarity, the hearing on the 22 June 2020 was primarily listed as the Return Date for the hearing of the Claimants’ earlier Extension Application. That Extension Application has, for all intents and purposes now been superseded by the Substantive Amendment Application.
 - (ii) Provide further information / explanation in respect of some matters which are related to matters raised by the named Defendants and / or to expand on the evidence set out in my second statement including to provide more detail in relation to the temporary stopping up and diversion of U34 mentioned at paragraph 27 of Perin 1 and paragraphs 29.4 and 29.5 of Perin 2.
 - (iii) Provide an update in relation to the Council’s proceedings relating to adjoining land.
3. The contents of this statement are from matters that are within my own knowledge, knowledge gained from my review of the Claimants’ documents in relation to this matter and various other sources of information which are stated. Where I state matters within my own knowledge, they are true to the best of my knowledge and belief. Where I state matters from other sources, I believe them to be true. There is now shown to me a paginated clip of documents which I exhibit hereto as RP3. Page numbers without qualification refer to that exhibit.
4. At the time of drafting this Statement:
- (i) in opposition to the Substantive Amendment Application, evidence has been received from Ms Green (D3) by way of a third witness statement dated 13 July 2020 which I shall refer to as “Green 3” and Mr Keir (D4) by way of an unsigned and undated witness statement

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which I shall refer to as “Keir 2” and which I understand was received by the Claimants’ solicitors on 13 July 2020.

- (ii) I understand that Ms Green also submitted a second witness statement dated 17 June 2020 shortly before the last hearing on 22 June 2020 which I shall refer to as “Green 2”.
- (iii) I understand that Ms Pitwell (D28) also filed an unsigned and undated ‘Defence Statement’ in advance of the hearing on 22 June 2020.

- 5. I do not propose to comment in detail or comment on every point raised by the defendants. Some points are to be covered by Mr Jordan in his third witness statement (which I have seen in draft). Points about the broader merits or disadvantages of HS2 are not, I understand, relevant for the purposes of these proceedings. Therefore, to confirm, where I have not commented on any specific points raised by the defendants, that should not be taken to indicate that the Claimants agree to what is being asserted.
- 6. Instead, I seek to provide the Court with some background in relation to some points which have been raised by the defendants in the event that the Court finds this helpful.

Council’s Proceedings

- 7. Since these proceedings were last before the Court on 22 June 2020, the Council’s application for an injunction has been heard and decided (referred to at paragraphs 31 and 73 of the first witness statement of Ms Shona Jenkins at paragraph 36 of Perin 2).
- 8. In short, the Council has obtained an injunction over land adjoining the Harvil Road Site against both persons unknown and some named individuals, some of whom are common to these proceedings. I exhibit a copy of the order made at that hearing (**pp. 1 – 8** of RP3) as well as the notes of the hearing and judgment taken by one of the Second Claimant’s inhouse trainee solicitors who observed the remote hearing of the application (**pp. 9 - 23** of RP3). It is my understanding that the Council’s land is public land. I note from the hearing notes at **p. 12** of RP3 that Mr Woolf, Counsel for the Council in that application confirms that consent from the Council is not required to enter onto that land.

Temporary stopping up and diversion of U34 and Dews Lane

- 9. As has been explained previously, parts of a footpath known as Footpath U34 have been temporarily closed and diverted pursuant to section 3 and Schedule 4, Part 2 of the High Speed

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Rail (London – West Midlands) Act 2017 (the “Act”). The procedure for temporarily interfering with the footpath depends on whether the part of the footpath being temporarily interfered with is specified in Table 3 of Schedule 4 of the Act.

10. In very brief terms, if the section of the footpath does fall within Table 3, consultation only with the Council is required in relation to the stopping up of that section. If, however, the section of the footpath is not specified in Table 3, consent (not to be unreasonably withheld) is required in relation to the temporary interference.
11. For ease of reference, I exhibit annotated extracts of the deposited plans, being Sheet 2-01 and Sheet 2-04 at **pp. 24- 25** of RP3. The sections of U34 which have been temporarily closed and diverted are the parts roughly marked by green and orange colouring:
 - (i) the green colouring reflects those sections of the footpath which do fall within Table 3 and so for which consultation only was required. I confirm that the Council was consulted in respect of the temporary interference in relation to those parts of U34; and
 - (ii) the orange colouring reflects the section of the footpath which falls outside of Table 3 and for which consent was required from the Council. The closure of the ‘orange’ part of U34 to the south of Dews Lane (“the Orange Section”) had been opposed during the 2019 Possession Proceedings referred to at paragraphs 15-20 of Jenkins 1. It was held by Mr David Holland QC in those proceedings that the temporary stopping up had been lawfully exercised and that the Second Claimant was entitled to possession of the Orange Section.
12. In relation to the Orange Section, the original diversion was along Dews Lane which abuts the public highway on the east side of the Lane and the Council’s land at the west end of the Lane. As explained at paragraphs 30-35 of Perin 2, Dews Lane was closed on 22 May 2020 following the Second Claimant taking temporary possession of it in accordance with its statutory powers.
13. Prior to the closure of Dews Lane, it was necessary to re-divert the original diversion (over Dews Lane) in anticipation of its closure. An alternative (albeit I accept longer) diversion was put in place diverting members of the public away from Dews Lane and up Harvil Road turning to the west over Harefield Moor as indicated on the plan at **p. 26** of RP3. There is a signage scheme in place in relation to the alternative diversion of U34. It is fit for purpose, well signed on the ground and is free of defects.
14. I understand that there has been an assertion that a condition of the closure of the Orange Section of U34 imposed by the Council was that the diversion was to run along Dews Lane. This is not

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accepted. It is accepted that in providing its consent to interfere with the Orange Section, the Council made the following comment:

Consultation with Joel Sykes, with regard to the diversion route. Please ensure diversion route along Dews Lane is well signed, as the lane appears to be privately maintained, please ensure it is fit for purpose as a diversion route (free from defects) for use by the public, traffic flow and pedestrian safety should also be considered as the public can not be separated from the lane. HS2 should ensure notification takes place with residents and businesses along Dews Lane prior to the temporary diversion.

15. HS2's position is that the Council's requirement for the original temporary closure of footpath U34 required a properly signposted diversion that was fit for purpose, not that the diversion had to be and remain along Dews Lane. In any case, if the Council is not satisfied with the replacement Diversion that has been put in place, my understanding is that the Council would have enforcement powers it could use – but the failure to comply with conditions for the closure of U34 in the first place would not automatically be for U34 to be re-opened as a footpath.
16. In any event, it is not the diversion route for which the Claimants' seek consent when applying to the Council to temporarily interfere with highways under the Act. The application and therefore consent which follows relates to interference with highways, in this case the Orange Section of U34. The Council's consent to that interference has been obtained and the Orange Section stopped up accordingly.
17. For the avoidance of doubt:
 - (i) The re-diverted diversion has been in place since 20 May 2020 and we have not received any complaint from the Council in relation to it as far as I am aware; and
 - (ii) Dews Lane is not a highway and so an application under the Act could not and did not need to be made in relation to the closure of Dews Lane. Dews Lane has been closed following the Second Claimant taking temporary possession of it pursuant to section 15 and Schedule 16 of the Act as indicated in Perin 2.
 - (iii) I would also wish to emphasise that there are no open footpaths at the other side of Dews Lane (i.e. at the end of Dews Lane furthest from the Harvil Road). Any pedestrian who walked down Dews Lane would therefore have no onward public right of way that they could use to go any further. As I have previously explained, adjoining land-owners and their visitors are given access licenses to use Dews Lane to access those properties.

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Environmental Concerns

18. Each of the statements filed by those named defendants raise a number of environmental concerns and I addressed those generally at paragraphs 7 – 11 of Perin 1 and paragraphs 55-59 of Perin 2.
19. Whilst I understand the concerns relating to the environment are not relevant to the issues to be determined by the Court in considering the Substantive Amendment Application, the Claimants do take seriously allegations that works are being undertaken without necessary consents being in place. That is not the case. In order to be helpful, I exhibit to this statement consents relating to some of the issues to which the defendants appear to take issue with, such as the load test piling works (relevant to the issues raised by Ms Green in respect of the water aquifer) works in areas known for the bat species. These consents are:
- (i) The Environment Agency’s consent to the load test piling works (**pp. 27 - 96** of RP3). (The consent which was exhibited to my first witness statement at **pp. 9-18** of RP1 was for the investigative works, rather than the actual piling activities themselves).
 - (ii) Licence permitting disturbance, interference with and closure of badger setts along Phase 1 One of the High Speed Rail route (**pp. 97 - 109** of RP3).
 - (iii) Two licences relating to the bat species (**pp. 110 - 145** of RP3).

Specific responses to points raised by the Defendants

20. I have not made any specific comment to matters raised by D28, Ms Pitwell because I do not understand the general complaints she makes about the HS2 project to be relevant to the matters before the Court. However, as mentioned, the assertions made by Ms Pitwell and any comments not specifically addressed by the other named defendants are not accepted as true.

D3 – Sarah Green

21. It is clear from her evidence that Ms Green has particular concern for (i) the water aquifer as a result of the piling works at the Harvil Road Site and (ii) bat species particularly with regard to works at Denham Country Park. Again, whilst I do not understand that these points are relevant to the Claimants’ application before the Court, I make the following comments in the event that the Court finds these useful. In relation to:

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(i) ***the Water Aquifer (“the Aquifer”):***

- (a) the principal aquifer beneath the Harvil Road Site is in a drinking water protected area. It is also subject to the Water Framework Directive 2000/60/EC (“WFD”) which sets environmental objectives which must be met for water bodies. Where any development has the potential to affect a water body, the development must be assessed against the objectives of the WFD before consent to the development is given. I confirm the HS2 Scheme has been assessed against the WFD.
- (b) The Aquifer is used for public supply as well as providing support to surface water. The route of the HS2 Scheme passes through a number of groundwater zones used for public drinking water. This is therefore a highly sensitive area and the Second Claimant and its contractors understands and respects this and (as they are required to do) has paid due regard to the potential impacts on the Aquifer associated with all of its (and its subcontractors’) activities.
- (c) There is a management strategy for protection of the Aquifer and the Second Claimant is required to meet a number of undertakings and assurances to provide that protection. All works with the potential to affect groundwater require prior approval from both Affinity Water and the Environment Agency and the Second Claimant (and its contractors) are required to demonstrate that the works are managed in an appropriate manner and where necessary mitigation is implemented.
- (d) In addition, monitoring of groundwater levels and quality and surface water flow and quality is required before, during and for up to 30 years after the works to assess any impacts, determine their significance and whether further monitoring is required. The monitoring data is collected and reviewed at a high frequency ranging from daily and weekly to monthly.

(ii) ***Impact on the bat species:***

- (a) The only area of Denham Country Park that is *currently* covered by the Current Injunction is plot C111_008 which can be identified on the injunction ‘Plan A’. This plot of land is required to install a temporary access road to start from Denham Court Drive, near Buckinghamshire Golf Club. This temporary access will include a temporary bridge crossing over the River Colne and will continue up to the existing National Grid 275kV overhead line which is to be diverted as part of HS2 works.

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- (b) The Second Claimant’s contractors have been carrying out site setting out, ecology surveys, vegetation / tree clearance, ground investigations, site security fencing and trackway installation along the line of the route and at the location of the bridge crossing at the River Colne. This is in conjunction with obtaining the necessary ecology survey data as part of the due diligence required to obtain the appropriate licences and consents from Natural England and the Environment Agency for any works that require them.
- (c) The installation of a new diverted overhead power line is required to enable decommissioning of the existing line by National Grid at the point that it intersects the new HS2 route. This is to prevent a conflict between the high voltage power lines and the traction current for the new railway. The diversion needs to be completed well in advance of the railway construction. This is because the Colne Valley Viaduct construction works, with associated jetty piling and a viaduct gantry will also require sufficient clearance from the overhead power lines. The installation of the diverted route will provide enough clearance for both the new railway and its associated construction works.
- (d) Overall, the overhead line diversion involves construction of temporary compounds and access roads including associated bridges, piling, construction of new tower bases and new towers, and cable stringing over the new route of the overhead line across existing and new towers. Specifically, in Denham, a new tower is required to allow it to convey the diverted line on the new direction and withstand the new angles of deviation in the overhead cables. The temporary access route will be used to construct the new tower in Denham Country Park. The same access will also be used to remove the overhead lines and dismantle the old towers no longer needed in Denham Country Park once the line has been diverted.
- (e) In response to concerns raised by D3 Ms Green in relation to alleged works in breach of legislation relating to the bat species, I confirm that the Second Claimant’s contractor has been completing non-licensable works on behalf of the Second Claimant in the Denham Country Park area. Trees with negligible and low suitability for roosting bats have been felled, under the watching brief of an ecologist. This work does not require a bat licence.
- (f) Alongside those non-licensable works, the Second Claimant’s contractor has been engaging with Natural England in relation to the submission of a standard bat licence application for their licensable works. This bat licence was issued (see **pp. 110 - 145** of RP3) on 20 July 2020. No works for which a bat licence is required have been undertaken prior to the licence being issued.

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D4--Mr Keir

22. Mr Keir makes an allegation that there was an unlawful incident relating to the spraying of herbicide at an area known as Steeple Claydon on 3 July 2020. Steeple Claydon is at a different part of the HS2 route and so this allegation is not relevant to the Harvil Road Site and I don't have any direct knowledge in relation to it. My team however has sought to obtain information about the allegation from the teams and contractors who are working in that area who have explained they are unaware of this allegation. Neither is there any information on the Second Claimant's HORACE system to suggest that this allegation has been reported to the Second Claimant. An allegation of this nature would be recorded as a high potential incident and an investigation would be undertaken in relation to it.

I believe that the facts stated in this witness statement 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:

Rohan Perinpanayagam

Dated: 27 July 2020