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 OR 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 INTEFERING WITH ANY LOCK OR ANY GATE AT THE PERIMETER OF THE HARVIL ROAD SITE WITHOUT THE CONSENT OF THE CLAIMANTS

Defendants / Respondents

CLAIMANTS' SKELETON ARGUMENT

For the hearing commencing on 24 August 2020

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*References to the electronic hearing bundle are in the form **[Volume/Tab/Page]***

***Pre-Reading (time estimate 3 hrs)** The Court is invited to pre-read, in addition to this skeleton and any filed on behalf of any Defendants:*

Background

(1) *The existing injunction in place at the site, granted by Mr David Holland QC on 22 June 2020 ("the **Current Injunction**") **[1/5/A33]**.*

(2) *The May 2019 decision of Mr David Holland QC (sitting as a Deputy Judge of the High Court) in the second hearing in these proceedings: [2019] EWHC 1437 (Ch) which provides: (i) a*

summary of events since the 2018 Injunction; (ii) a summary of the relevant legal principles; and (ii) an explanation of the continuing risk of harm that the protest activity was causing a year ago ***[First Authorities Bundle at Tab 2, p 14]****.*

(3) The Application Notice dated 15 June 2020 (the ***"Substantive Amendment Application"****), for which this hearing is effectively the return date of* ***[1/8/B74]****.*

Key evidence

*(4) The second witness statements of Rohan Perinpanayagam ("***Perin 2***") **[1/12/B92]** and Richard Jordan ("***Jordan 2***") **[1/13/B114]** in support of the Substantive Amendment Application.*

(5) The various (short) statements filed by certain Defendant, namely:

*(i) the statements filed by: (i) Sarah Green (D3) **[1/15/B184] & [1/16/B190]**; (ii) Mark Kier (D4) [**1/17/B199]**; (iii) Robert Mordechaj (D8) **[1/18/B205]**; (iv) Ian Oliver (D9) **[1/19/B206]**; and (v) Hayley Pitwell (D28) **[1/20/B207]** filed ahead of the hearing before David Holland QC on 22 June 2020; and*

*(ii) the further statements D3 **[1/21/B211]** and D4 **[1/22/214]** since that hearing, in accordance with the directions contained in the Current Injunction.*

*(6) The first and third witness statements of Mr Perin ("**Perin 1" [1/23/B220]** and **"Perin 3" [1/24/B231]**) and the third witness statement of Mr Jordan (**"Jordan 3" [1/25/B240]**) filed in reply to the evidence of the named Ds.*

*(7) The fourth witness statement of Mr Perin (**"Perin 4"**) **[1/14/B165]** which provides an update on the Additional Land brought into the HS2 Scheme since 31 May 2020 and sets out further incidents of unlawful obstruction and trespass which have occurred at the Site since that date.*

Service & Case Management

*(8) The fourth witness statement of Ms Jenkins (**"Jenkins 4"**) which explains the current state of play with service of the Current Injunction Order, Notice of Hearing and the Claimants' Reply evidence.*

Introduction and background

1. This is the Claimants' skeleton for the four-day hearing of its Substantive Amendment Application listed to commence on 24 August 2020. That is an application to continue injunctive relief to prevent unlawful protest action against the HS2 development site off the Harvil Road in Hillingdon, West London. The Second Claimant (**"HS2 Ltd"**) is the statutory undertaker under the High Speed Rail (London – West Midlands) Act 2017 ("the **Act**") responsible for the implementation of the HS2 railway project. Unlawful protest activity at the Site continues, and its financial impact to the Claimants has been estimated to be in the order of £16m to date (Perin 2 at §54).

2. This is the second hearing of that application – listed pursuant to paragraph 21 of the Current Injunction – and its purpose is to consider:

2.1 whether interim injunctive relief should be continued;

2.2 the appropriate temporal limit for such continued injunctive relief; and

2.3 the exact form of that relief, mainly in terms of the geographical coverage of the injunction.

3. The Claimants, in short, seek the continuation of the injunction in materially the same form as the Current Injunction preventing trespass to an obstruction of access to the relevant site for a period of two further years. As explained in Perin 4, the totality of the development site is now slightly larger than it was when the Current Injunction was granted on 22 June 2020 – and the Claimants therefore ask that any continued injunction also now apply to the totality of the site at the date of this hearing. The new land which has been added since the Current Injunction was made is shown in green on the plan at **[3/35/D974]**, such that the total site over which the Claimants seek the injunction to be continued is now as at **[3/35/D974]**.

4. From the perspective of the Claimants, the four-day time estimate is likely to be overly generous for these issues. A longer listing has, however, been listed out of an abundance of caution so that anyone who wishes to be heard in opposition to the Claimants (many of whom are in person) has ample time to do so. The Claimants would note at the outset, however, that the grievances against HS2 raised by the Defendants have been explored at length by the Court on at least four previous occasions, and do not relate to the matters properly in issue in these proceedings. The Claimants do not intend to take up a significant proportion of these four days setting out the issues afresh.

5. On the basis of evidence and submissions filed to date and email correspondence with the Claimants' solicitors, the Court can probably expect to hear from at least Mr Keir (D4), either personally or via counsel (Mr Paul Powlesland), and Mr Mordechaj (D8), Mr Ian Oliver (D9), Mr Goggin (D27) and Ms Pitwell (D28) in person.

6. Ms Green (D3) has previously been vocally engaged in these proceedings. Happily, however, the Claimants and her have managed to reach an accommodation – as recorded in a consent order dated 17 August 2020. In short, Ms Green is content to undertake to comply with any injunction continued against "persons unknown" as if she were a named defendant, and on that basis wishes to be removed as a named defendant in these proceedings and take no further part in them. That reasonable stance she has adopted simplifies considerably the scope of the factual issues which remain in play at the hearing. Ms Green had raised: (i) particular disputes about the facts which were alleged against her personally; and (ii) particular concerns about the water aquifer and bats and badgers in the vicinity of the Site. Those concerns, to the extent they are not raised by other Named Defendants, need not now be addressed in any great detail.

7. A significant amount of evidence is now on the Court file in these proceedings. That evidence illustrates overwhelmingly that there remains a serious ongoing risk of unlawful trespass and obstruction of access to the Site (a tortious nuisance). There are very regular attempts to breach security at the site by those opposed to the HS2 scheme, transparently for the purposes of seeking to hamper that Parliament-mandated scheme. The identify of many of those involved is known: but there are more who are not known, and the identities of those involved will change over time. Unfortunately, some of those involved appear not to be deterred by the Court's injunctions in the past: but the belief and experience of the Claimants is that many *will* obey a Court injunction – so that the injunction is useful in mitigating the risk and effects of disruptive and unlawful conduct.

8. The Hillingdon works which are the subject of these proceedings are part of important enabling works for the next stage of the HS2 project. The nature of the works taking place on the Site is explained at §§49-51 of Perin 2 **[1/12/B107*ff*]**. They are complex works, involving teams of different contractors and due to certain restraints (including ecological constraints) must be carried out pursuant to a quite regimented timetable, with delays having serious onward consequences. Many of the works unsurprisingly require the use of heavy machinery, such that the presence of unauthorised persons on the site necessarily prevents works. It is these factors that have made the direct-action protests carried on by the Defendants so disruptive to date.

9. The HS2 project is a controversial project. It has, however, been authorised by the Act following considerable public consultation. That process is set out in more detail in David Holland QC's 2019 judgment at [15] to [23]. The powers given to the Claimants under the Act include powers to take temporary possession of and acquire land permanently.

10. The risk of unlawful conduct will probably not abate until the HS2 Scheme of works at Hillingdon is complete (and the current works time-table extends to at least 2024 (§49 of Perin 2 at **[1/12/B107]** & **[2/31/D685-686]**). It is recognised, however, that injunctions against persons unknown must be appropriately limited in time, and it is for that reason that a two-year injunction is sought. The appropriate temporal limit is returned to below.

Procedural History

11. Injunctive relief has been in place to protect the Claimants and their site from unlawful protest activity since February 2018. It has been renewed from time-to-time as earlier, temporally-limited, injunctive relief was due to expire – whereas the evidence showed that a risk of unlawful conduct continued. Those renewed injunctions have also tailored the relief to the particular

circumstances as have existed when the renewals have been sought. Many of the issues which the Defendants may wish to raise now have already been considered in those earlier hearings.

12. The Court is therefore likely to be assisted by a brief overview of the procedural history. For convenience, the earlier judgments (or notes of judgments) from the earlier hearings are collated in volume one of the Authorities Bundle ("**AB1**"). The orders made are included in chronological order at tabs 1 to 5 of Volume 1 of the main hearing bundle:

    12.1 Injunctive relief was first granted by Mr Justice Barling on 19 February 2018 **[1/1/A1]** for the reasons set out in his judgment of that date **[AB1, tab 1]**. The relief was time-limited to 1 June 2019, with liberty to apply.

    12.2 Pursuant to those liberty to apply provisions, the Claimants successfully applied to extend the injunction for a further year (and to encompass what was then the whole site). That extended relief was granted by Mr David Holland QC (sitting as a Deputy Judge of the High Court) in May 2019, to last until 1 June 2020, again with liberty to apply ("the **2019 Injunction**"). The 2019 Injunction is at **[1/2/A8]**, and the judgment in support is at [**AB1, tab 2.]**

    12.3 During the currency of the 2019 Injunction, separate possession proceedings were brought to recover possession of part of (what is now) part of the HS2 construction site from protestors who were in occupation of it. Those proceedings were determined in the Claimant's favour by Mr David Holland QC for the reasons set out in his judgment of 28 November 2019 **[AB1, tab 3]**.

    12.4 The Claimants wished to seek the further renewal of the 2019 Injunction, but were not in a position to do substantively before 1 June 2020. To avoid the 2019 Injunction lapsing without any form of replacement, an "Extension Application" was brought on 18 May 2020 **[1/6/B47]** to seek a temporary extension of the 2019 Injunction to allow the Substantive Amendment Application to be brought (as it now has been). That application was granted by Mr Justice Fancourt on 21 May 2020 **[1/4/A21]**, for the reasons recorded in the brief note of the judgment at **[AB1, tab 4]**. By Mr Justice Fancourt's judgment, a significant number of Named Defendants were added to the proceedings – to reflect the importance of naming defendants where their identity can be established following the Court of Appeal's recent guidance in *Canada Goose* (returned to below).

    12.5 The return date of that Extension Application was listed before David Holland QC on 22 June 2020. By the date of that hearing, the Substantive Amendment Application had also been issued. By the Current Injunction, Mr Holland QC continued injunctive relief to the

date of this hearing – but expanding the geographical scope of the injunction to cover the whole of the site (as it was at the date of that hearing).

13. Many of the procedural and case management directions sought by the Substantive Amendment Application have already been dealt with by Mr David Holland QC in the Current Injunction Order. Accordingly, the continuation of relief and the form of such relief are the only remaining issues which fall to be considered by the Court.

14. The nature of the continued relief which the Claimants submit it is appropriate for the Court to make at this hearing is as set out in the Draft Order which accompanies this skeleton argument. The Draft Order supplied with the Substantive Amendment Application has been superseded by the Current Injunction Order and subsequent events.

The Site

15. It may be helpful to set out for the Court at the outset the "lay of the land" at the Site and how it has expanded since both the 2019 Injunction and the last hearing.

16. The Site at the time of the 2019 Injunction was as set out on the Plan appended to that injunction, outlined in red and shaded in three colours: green, pink and blue **[1/2/A16]**. As explained in the judgment of David Holland QC at [7]-[8] **[AB1, tab 2, p.17]**:

    16.1 The blue shaded land was acquired by agreement, and the First Claimant ("the **SoS**") is the registered freehold owner of it.

    16.2 The pink shaded land has been acquired by the SoS under "General Vesting Declarations" under s.4 of the Act.

    16.3 The green shaded land is land to which the Second Claimant is entitled to temporary possession under Schedules 15 and 16 of the Act.

17. That colour coding is used consistently in all the plans that are used by the Claimants from-time-to-time in these proceedings.

18. The Court will also note the following features of that Plan:

    18.1 The Harvil Road is the road running approximately north / south just to the left of centre of the plan.

    18.2 "**Dews Lane**" is a private road which adjoined the Harvil Road to the west. The 2019 Injunction did not seek to prevent persons from using that lane-way (even thought it might

otherwise have constituted trespass), but the position has now moved on as explained further below.

18.3 There were three entrances to the Site off the Harvil Road, then known as "West Gate 3 Entrance", "North Compound Entrance" and "South Compound Entrance".

18.4 Opposite the North Compound Entrance is shown a "Protestor Encampment". At the time, that encampment was both on the verge of the public highway (i.e. the part that is known as the "**roadside camp**"), but also spilled onto the field behind which was – at the time – not part of the Site (and that is why it remained white, and not shaded in a colour).

18.5 The Court should be able to see running parallel to the northern edge of that white field (just in the filed marked C111_112) a path marked by a single black line. That is footpath U34, which was considered as part of the 2019 possession proceedings considered separately by David Holland QC in November 2019 which are referred to in the evidence. As found in that judgment, that footpath had by that date been closed.

19. Since the 2019 Injunction, additional land has been brought into the Claimants' possession for the purposes of the works on the Site. At the 22 June 2020 hearing, the Court extended the geographical scope of the injunction to cover the relevant additional land which had been brought into the Site at that time: that land is described in Perin 2 at §§23-28 (and a plan showing it is at **[2/31/D623]**. The whole site as it stood at that time is the "Plan A" appended to the Current Injunction **[1/5/A46]**. The Court will note from that "Plan A":

19.1 A new "Gate 4" has been added for access to the northern part of the site off the Harvil Road.

19.2 There are now entrances to the east and west sides of Dews Lane ("Fusion Dews Lane Compound HQ", off the Harvil Road, and "Dews Lane West", off adjacent land owned by Hillingdon Council).

19.3 The North and South Compound entrances have now been re-named Gate 2 and Gate 1 respectively.

19.4 The "Ryall's Garage" camp referred to in the evidence was just to the south of Dews Lane on land which was not, but is now, part of the Site.

20. As is set out at §§23-24 of Perin 2, the Claimants' process of taking and acquiring land at the Site is a continuous one, and therefore Perin 2 only included land brought into the Scheme up to 31 May 2020. Further **"Additional Land"** has been brought into the Site since 31 May 2020, and

this is dealt with in Perin 4 at §§5-9 **[1/14/B167]**. The Additional Land is shown coloured green on the plan at p.3 of the exhibit to Perin 4 **[3/35/D975]**, whilst p.4 of the exhibit sets out the proposed new "Plan A" encompassing both the Land and the Additional Land.

21. The Claimants ask that the geographical scope of the injunction they seek include that new Additional Land.

The Defendants

Persons Unknown

22. The names of all the persons engaged in unlawful protest activities was not, and is still not, known. That is why three categories of "persons unknown" have been used as Ds 1, 2 & 36 (with D36 being added as a new category of defendant by the Current Injunction, to address the particular problem of protestors damaging security fencing on the site).

23. Those categories reflect the two categories of tortious conduct – i.e. trespass (D1) and the nuisance of obstruction of access (D2), whilst D36 is an amalgam of both. That was and remains an appropriate means of seeking relief against unknown categories of people in circumstances like this: see, e.g., the Court of Appeal's judgment in *Boyd & Anor v Ineos Upstream Ltd & Ors* [2019] EWCA Civ 515 at [18]-[34].

24. There is no difficulty in giving notice of an injunction against these categories of persons unknown: it can be publicised at the site and online, and orders to this effect have been made in all of the preceding injunctions in these proceedings.

25. Minor amendments to the definitions of these categories of persons unknown are proposed in the draft Order to ensure that the injunction made can be understood without reference to any other document: i.e. by referring to the plan appended to the order.

Named Defendants

26. As at the first hearing of the Extension Application, there were no named defendants to the proceedings; this is in large part why that hearing was formally without notice. Named defendants were previously involved in the proceedings but were removed by the 2019 Injunction at either their own request, or at the request of the Claimants given their past involvement was stale.

27. Following Court of Appeal guidance in *Canada Goose v Persons Unknown* [2020] EWCA Civ 303 as to the importance of including named defendants to 'persons unknown' injunctions where they can be identified, 28 named defendants were added to these proceedings by the May 2020

Injunction and made respondents to the Extension Application: these are Ds 3-33 (the number of a Named Defendant has been left as *'no longer used'* where that number previously referred to a named defendant who has not been re-joined to proceedings or who has subsequently been removed.) Ds34 & 35 were added at the last hearing on 22 June 2020.

27.1 These Named Defendants are individuals identified by the Claimants as having been involved in historic unlawful protest activity such as to justify their inclusion and/or are people who are considered to pose a future threat in this regard.

27.2 Jordan 2 (as supplemented by Jordan 3 and Perin 4) sets out a detailed history of the key incidents of trespass and obstruction of access to the Site (and related acts of protest in the vicinity of the Site which give some broader context to the position on the ground). §§18-24 of Jordan 2 summarises the role of each of these defendants (as known to the Claimants) in the protests at the Site.

27.3 There is no bespoke relief sought against the Named Defendants: the intention is that they should be bound to the interim injunction as any other person who by their conduct were to bring themselves within the description of Ds 1-2 and/or D36.

27.4 The naming of defendants, and service of these proceedings upon them, gives those named a particular opportunity to challenge the grant or continuation of relief which applies to them. No named defendant has sought to file a defence to this claim. Most have not engaged at all.

27.5 Only Ds 3, 4, 8, 9 and 28 filed evidence setting out their opposition to the Extension Application, whilst only Ds 3 & 4 have filed evidence opposing the Substantive Amendment Application, and D3 has subsequently been removed from these proceedings by consent.

27.6 Sam Goggin (D27) has also emailed the Court and Ms Jenkins with some remarks opposing the injunction, though his email (dated 17 August 2020) came too late to be included in the hearing bundle. A supplementary bundle containing last-minute material will be collated. His concern centres around potential contamination of the water aquifer, dealt with below.

27.7 Their evidence engages to a varying degree with the factual allegations against them, but they predominantly seek to express their concerns with the broader HS2 project.

Service

28. Service – particularly service on the named Defendants – has been far from straightforward in these proceedings. Many of the Named Defendants have no fixed address and move regularly between different protest camps up and down the country. As a result, the Claimants have often sought orders for alternative service. Some of the difficulties and expense of service in these proceedings can be gleaned from Jenkins 3.

29. Thankfully, the Current Injunction Order has significantly streamlined future service in these proceedings, meaning that service of the Current Injunction Order, Notice of Hearing and Claimants' Reply evidence has been more straightforward.

30. As relates to the Named Defendants:

    30.1 As recorded in the recitals to the Current Injunction, a number of the Named Defendants were served with the Substantive Amendment Application personally. As per §18, the Current Injunction validated the service of the application on the other Named Defendants and abridged the period of service to the extent necessary to allow the first hearing of the application to be effective.

    30.2 The Claimants are obliged to use "reasonable endeavours" to serve the Named Defendants with the Order itself and any future documents in the proceedings. For those that appeared at the last hearing, service may be effected by (i) leaving hard copies addressed to each defendant at the address or other physical location indicated by them and/or (ii) by emailing electronic copies to the email addresses provided for those purposes – see §19 of the Current Injunction.

    30.3 A witness statement from Ms Jenkins dealing with evidence of service ("**Jenkins 4**" **[1/28/C375]**) explains the steps taken to serve those categories of documents on the Named Defendants in accordance with those directions. The steps taken for each Named Defendant are as set out in the schedule she exhibits **[3/36/D988]**.

    30.4 The steps provided for service in the Current Injunction have been, the Claimants consider, complied with. In those circumstances it is not considered that there is any need for the Claimants to seek further orders for alternative service to approve retrospectively the steps they have varied out.

31. As relates to the unnamed defendants:

31.1 §11 of the Current Injunction validated the service of the Substantive Amendment Application on Ds 1-2 and 36 and the period of service was abridged to the extent necessary to allow the first hearing of the Substantive Amendment Application to be effective.

31.2 §13 provided for alternative service of the Current Injunction on Ds 1-2 and 36, with which the Claimants have complied, as again explained in Jenkins 4.

32. In the context of service, the Court's attention is drawn to section 12 of the HRA 1998. This section is relevant as regards service on persons unknown, and as regards named Defendants who do not subsequently appear at the hearing. It provides:-

> *"(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.*
>
> *(2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied – (a) that the applicant has taken all practicable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified.*
>
> *(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed."*

33. The relief sought will – arguably - affect the Defendants' rights to freedom of expression (sub-section (1) and restrain "publication" of their opinions (via the medium of unlawful protest). Two considerations follow:

33.1 The question, for service, is whether all practicable steps have been taken to notify *"the person"* against whom relief is sought (sub-section (2)). The section is not readily applicable to the situation of persons unknown, but it is submitted that the steps taken by the Claimants to draw the Substantive Amendment Application to those "persons unknown" who may be affected by the order have been sufficient: indeed, the steps that have been taken have been expressly validated as good service by §11 of the Current Injunction and follow a mechanism for service which has been used by the Claimants since 2018. On each such occasion, s.12 has been cited to the Court and no issues have arisen.

33.2 It is also submitted that the steps taken to notify those Named Defendants of the Substantive Amendment Application who could not be served personally have also been sufficient; the Claimants have gone to extensive efforts to ensure that this application has been brought to the attention of all interested parties. The fact of these proceedings must now be well known to the communities of protestors at the roadside camp, Crackley Woods camp, and otherwise involved in protests in the vicinity of these sites and all of the information is available on the websites referred to in the order for those who are concerned

to engage. Once again, the Claimants draw attention to the fact that their service on the Named Defendants has been expressly validated by §18 of the Current Injunction.

34. Second, the Claimants have to demonstrate that it is *"likely"* that they would obtain the relief they seek at trial. The evidence in these proceedings is that the Defendants (both unnamed and named) have committed acts of trespass and nuisance via obstruction on (collectively) a very significant number of occasions in the past, that course of conduct continues, and those named defendants (in particular) are particularly committed and active in their opposition to HS2 at this Site and are most likely to continue to embark upon such a course unless otherwise restrained. Nothing has changed since the grant of relief in 2018, 2019 or 2020 which would tend to make it *less* likely that the Claimants would be granted relief at trial.

The need for the continuation of injunctive relief

35. As per §10 of the Current Injunction, the primary purpose of the current hearing is for the Court to reconsider the continuation of relief beyond the date of the hearing. In the Claimants' submission, relief must plainly continue in some form given that the risk of both trespass on and obstruction to the Site has not abated but continues.

36. Evidence in support of the Substantive Amendment Application: Perin 2 and Jordan 2 were filed alongside the Substantive Amendment Application, whilst Perin 4 has since been filed to update the Court on incidents occurring at the Site since 31 May 2020. The evidence illustrates a serious ongoing risk of both trespass and obstruction of access to the Site. The clear inference is that, absent injunctive relief, the unlawful direct-action protests at the Site would become considerably worse:

    36.1 Perin 2 sets out, at §§37-48 **[1/12/B104-107]**, some of the difficulties encountered with the 'Protester Encampment' which was previously situated on land outside the Scope of the Site, but which is now within the scope of the Current Injunction. Since the Claimants regained possession of that parcel of land, protestors retook the land which was then subject to another enforcement operation. The Ryall's Garage camp was a long-running camp on what is now part of the Site. Exchanges like this between the Claimants and the protesters are common and emphasise the need to continue the injunctive relief over the Site as it stands from time to time. Land which is not subject to injunctive relief is likely to be vulnerable to further acts of trespass in the form of protests camps.

    36.2 Perin 2 further sets out, at §§49-54 **[1/12/B107-B110]**, the continued impact that unlawful protests activities have had on the scheme of works at the Site. In particular, Mr Perin estimates that the additional cost of the development at the Site by reasons of delay and

security expenses caused by protest activity comes to almost **£16 million**. This amount *excludes* all of the Claimants' legal costs, including those incurred in bringing these proceedings. All of these costs are ultimately borne by the public purse.

36.3 Jordan 2 sets out in considerable detail the continued unlawful acts at the Site from §39 **[1/12/B130*ff*]**, which taken together demonstrate an acute and urgent risk to the entirety of the Site:

(i) The Court is invited to review this full account of that position on the ground. Such is the volume of incidents, any attempt to summarise it would omit the important impression to be gained from the scale of events. This is not a case about protests from time-to-time which inevitably cause a degree of disruption to the wider public: such protests are part and parcel of a democratic society, and must of course be tolerated. This is an attempt, not to articulate views, but a hard-fought and continuous campaign to try to compel the Claimants to stop the work they are mandated to do by an Act of Parliament. It is no exaggeration to say that the protestors appear to be seeking to engage in a war of attrition with the Claimants – of which the security personnel at the Site are at the front line. The very considerable deployment of police resources has also been required.

(ii) The language of a "fight" or a "war" is, sadly, all too apt because a number of the incidents have become marred with violence (or allegations of violence) (e.g. §§43, 66 and 93 of Jordan 2). Certain of the Defendants point the finger at the Claimants' security team for such conduct – but the short point is that if injunctive relief were to be granted and obeyed, there would be no need for such altercations at all. Conversely, if the Claimants had to rely entirely upon security efforts without the support of a court injunction, the risk of violence increases.

(iii) Certain of the other events might be considered relatively minor, though the sheer number of them makes matters more serious. Others, such as prolonged lock-ons to equipment on the Site (e.g. §§46 and 47) are inherently more serious because of the disruption involved.

(iv) The evidence that one of the protestors (Mr Cucuirean (D10) spat on a sponge and smeared it on a vehicle being obstructed from leaving the Site (§53) [**1/16/135**] on 1 April 2020 and that Jack Oliver (D34) spat at a High Court Enforcement Officer on 21 May 2020 (§95) is disgusting behaviour at the best of times, but takes on a sinister edge during this pandemic.

(v) There has been repeated damage to the fences around the site – and attempts to climb or dig under it, which is what has given rise to the inclusion in the Current Injunction of the new D36.

36.4 The Claimants invite the Court to review the further incidents set out in §§11*ff* of Perin 4 **[1/14/B168]** which provide an update of the most recent incidents on the site since 31 May 2020. These incidents clearly show that the risk to the Site has not in any way abated, but rather appears to have increased in intensity:

(i) One incident involved 30 to 40 protesters all trying to gain access to the Site along the fence line (§15(vi)).

(ii) There have been regular incidences of assault and threats, both verbal and by action directed towards the security officers on site (e.g. §15(viii)).

(iii) Lighting towers were damaged at night after a number of protesters swam across the River Colne and cut their way through the fencing into the Site (§18(iii)). This illustrates the protestors' resourcefulness and commitment to their direct-action methodology and reinforces the need for injunctive relief to be continued.

(iv) The further incidents in Perin 4 are only the more significant incidents which have been reported to the Second Claimant. That ought to give some sense of the sheer scale and frequency of daily incursions by the protesters.

Points raised by the Defendants in reply

37. The evidence received from the Named Defendants does not, for the most part, seek to contest the factual accuracy of the Claimants' evidence.

37.1 Rather, the statements focus on a number of broad concerns with the HS2 project as a whole. As has been recognised repeatedly by the Courts in this context in the past, the Court's role is not to adjudicate the merits or demerits of HS2. Those subject to unlawful conduct cannot be left without a remedy because the unlawful conduct is directed against an unpopular project.

37.2 To the extent that there are particular points raised by those Named Defendants about their precise involvement in particular issues they were said to have been involved in, those concerns are addressed by way of reply in Perin 3 and Jordan 3. There are two big-picture points to make:

(i) There is no dispute of evidence that unlawful acts have been carried on by many of the Named Defendants, and persons unknown.

(ii) Where there remains contested evidence, the Claimants' evidence is strong and compelling – such that the Court should continue to conclude that the Claimants would be "likely" (the test under s.12(3) HRA 1996) to obtain relief against this conduct at trial.

37.3 Environmental concerns: Many of the individuals who protest against HS2 have genuine and sincere environmental beliefs and concerns. The environmental impact of the works is, however, not relevant to the question of relief at hand: these concerns, or a desire to prevent or monitor environmental impacts of the work, do not justify tortious conduct. Perin 3 draws attention to the fact that environmental concerns have been dealt with generally at §§7-11 of Perin 1 and §§55-59 of Perin 2. §19 of Perin 3 exhibits a number of environmental consents which the Claimants have in place to put to bed any allegation that the Claimants are undertaking works without the necessary consents. D3 had specific concerns about the water aquifer (a concern shared by D27 and many others) beneath the Site and the impact of the works on the local bat species: both of these points are addressed in detail at §21(i) and (ii) of Perin 3 **[1/24/B237-238]**.

37.4 Closure of Dews Lane: The closure of Dews Lane (on 22 May 2020) was met with considerable protest action. Some of the Defendants (e.g. Mr Mordechaj (D8)) have complained that Dews Lane was a route previously used to obtain water. In the event, the closure of Dews Lane was lawful and was a consequence of the Claimants taking temporary possession pursuant to section 15 and Schedule 16 of the Act. The Lane has been closed to allow works to be safely undertaken in the vicinity – see Perin 1 §§14- 27 [**1/10/63-66**]. A footpath which was previously diverted along Dews Lane (known as U34), has been re-diverted around the site (since May 2020) and no longer goes across Dews Lane, as explained in Perin 3 at §9*ff* **[1/24/B233]**. There is therefore no basis or entitlement for any member of the public to pass along Dews Lane.

37.5 D4 – Mr Keir: Notably, Mr Keir does not deny the factual assertions made against him. He makes a number of allegations and/or criticisms of the Claimants' conduct:

(i) The National Eviction Team ("NET"): Mr Keir suggests that a "litany of crimes" is being committed on HS2's behalf against protesters by the NET and other enforcement officers on Site. Throughout §7 of Jordan 3 **[1/25/B245]**, a background to the NET's involvement at the Site is given. There may have been some confusion

in the past about the conflation of "NET" with "HCEO" (High Court Enforcement Officers). The National Eviction Team is part of the High Court Enforcement Group Limited, and it has therefore become customary to refer to staff from that group as "High Court Enforcement Officers" (or "HCEOs") even when carrying out other security duties (e.g. 'self help' remedies, or executing statutory warrants), rather than executing High Court writs. If that language has caused confusion, that is to be regretted and is to be avoided in future. In substance, however, the nomenclature should make no difference. If there are concerns about the conduct of NET employees, the affected individuals may conceivably have criminal or civil remedies: but such complaints (which are certainly not admitted) should not count against the Claimants' entitlement to relief. Again, part of the desirability of an injunction is that it ought (if obeyed) minimise the opportunities for altercations between protestors and security personnel at the site.

(ii) Ryall's Garage: Mr Keir (and Ms Pitwell) complains about an eviction which took place under self-help common law powers on 12 and 13 May 2020. This is addressed at §8.1 of Jordan 3 **B[1/25/B248]**. Most importantly, the eviction was subject to an urgent application for an interim injunction against the Claimants, which failed, and was supervised by the Police who – it seems – have no concerns about illegality. There is no suggestion that any of those who were evicted from the garage on that occasion has ever raised any criminal complaint subsequently.

(iii) Eviction operation on 15-18 June 2020: Mr Keir complains about this eviction operation as well, which is dealt with in reply at §8.2 of Jordan 3 **[1/24/B249]**. The short points are that: (i) the eviction operation was independent of any injunction, and has now completed – any complaint about the way it was carried out is for a separate forum; and (ii) in any case, the NET executed statutory warrants (under the regime under the Compulsory Purchase Act 1965) for eviction lawfully.

(iv) Low conviction rate of protesters: Mr Keir attacks the fact that over 200 arrests have been made on site with only two convictions made. Firstly, that is clearly a matter for the police to deal with rather than the Claimants. But secondly and in any event, whether or not a crime has taken place does not bear on whether a civil wrong has been committed in breach of the injunction. This point is addressed further at §9 of Jordan 3 **[1/25/B250]**.

(v) Steeple Claydon incident: Mr Keir also alleges that the Claimants' contractors unlawfully sprayed herbicide at an area known as Steeple Claydon (which is

geographically distance from the site with which these proceedings are concerned) on 3 July 2020. As is set out at §10 in Perin 4 **[1/14/B168]**, these works were properly undertaken and supervised.

37.6 D28 – Ms Pitwell: Jordan 3 responds to Ms Pitwell's evidence at §§11-13. In short, the key point arising from her evidence is that she does not deny that she was on the land at Ryall's Garage, which the Claimants say amounts to trespass on their land – see §12 of Jordan 3.

38. The Claimants therefore submit that the evidence is overwhelmingly in favour of the Current Injunction being extended, and none of the points raised by the Defendants in their responsive evidence seriously suggests otherwise.

***Canada Goose* requirements**

39. *Canada Goose v Persons Unknown* [2020] EWCA Civ 303 **[AB2, tab 11]** is the leading recent authority on 'persons unknown' injunctions. Whilst the *Canada* Goose guidelines on 'persons unknown' injunctions have been dealt with previously in these proceedings, they are repeated here (from [82] of the judgment):

> *"Building on Cameron and the Ineos requirements, it is now possible to set out the following procedural guidelines applicable to proceedings for interim relief against "persons unknown" in protester cases like the present one:*
>
> *(1) The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".*
>
> *(2) The "persons unknown" must be defined in the originating process by reference to their conduct which is alleged to be unlawful.*
>
> *(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief.*
>
> *(4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as "persons unknown", must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.*

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application."

40. Requirements (1) to (6) have been found satisfied in these proceedings in the past, and continue to be satisfied.

41. The questions of geographical and temporal limits are addressed next.

Geographical limits

42. The desirability of having the injunction extend to the full extent of the site as at the date of the hearing (i.e. as described in Perin 4) is clear:

42.1 It would be anomalous if an injunction prevented trespass and obstruction of access to only part of a contiguous and contentious construction site: the part of the Site to which the Current Injunction attaches is simply the Land which then comprised the whole site. There is no qualitative difference to one part of the Site as opposed to the other.

42.2 There would be considerable prejudice to the Claimants if full extent of the site were not now included in the scope of the Injunction: further delays to the works would be inevitable, and the cost for such delays is ultimately to be borne by the public purse. Conversely, it is difficult to identify any prejudice to the Defendants.

42.3 Whilst some Defendants have sought to oppose the injunctive relief in broad terms, the arguments raised are of limited relevance and no person has ever sought to challenge the Claimants' entitlement to substantive relief.

42.4 Trespass to the Additional Land and obstruction of access to it are plainly unlawful acts.

42.5 It would be most unattractive if any Defendant seeks now to oppose the extension of the relief on the basis that they wish to trespass on the Additional Land. The fact that any such intention might be thwarted is not a proper ground to object to the continuation and extension of the injunction.

Temporal limit

43. As to the second point, the Scheme of Works at the Site will continue until at least 2024. The Claimants recognise that there should be an appropriate temporal limit on the relief that they seek (as there has been for the original 2018 injunction and the 2019 Injunction), and that a four-year injunction would be too long.

44. It is submitted, however, that a one-year injunction would be too short. Hearings such as the present to review the appropriateness of continued injunctive relief are expensive, and there is no realistic prospect of the Claimants recovering those costs from other parties. They also require considerable Court resources (in particular because at least some defendants tend to be unrepresented). Many of the same arguments as to the general desirability or otherwise of HS2 tend to be rehearsed on each occasion. That experience suggests that the need to revisit the position in just one year's time is likely to be disproportionately expensive.

45. There are safeguards to those who may (improperly) be affected by the continuation of an injunction in the meantime: (i) a cross-undertaking in damages continues to be offered; and (ii) any person affected by the injunction may apply to vary it or set it aside on short notice in the meantime.

46. Equally, should the position on the ground change materially, the Claimants would themselves wish – no doubt – to apply for further amendments to the injunction to ensure that the relief were tailored to the particular risk on the ground. That is, in practice, a further safeguard.

47. The Claimants recognise that what they have sought, and continue to seek, are sequential interim injunctions which fall to be reconsidered from time-to-time. The Claimants do not shy away from the fact that continued interim relief is preferable to them to final injunctive relief in the light of *Canada Goose*. It is submitted that this course is both well within the scope of the Court's case-management powers, and is the just and convenient way to deal with a situation such as the present:

47.1 *Canada Goose* confirms that *interim* injunctive relief is permitted against "persons unknown", whereas final injunctions are not.

47.2 Moreover, the interim relief against "persons unknown" covers 'Newcomers'; i.e. those who are not currently within the definition of D1-2 and/or D36, but who might come within the definition in future. When it comes to *final* injunctive relief granted at trial, however, the class of persons who the injunction can relate to must then close, preventing it from 'biting' on Newcomers in future.

47.3 Accordingly, interim relief is an inherently more flexible and desirable tool from the perspective of the Claimants, not least because of its ability to catch 'Newcomers'. The fact that the relief is interim does not put the Defendants at a disadvantage because an interim injunction must be time-limited and is subject to variation or discharge by interested parties. Further, the 'price' of interim injunctive relief is the Claimants' cross-undertaking in damages.

47.4 Any named defendant who sought finality against themselves one way or the other could compel a trial of the claim against them by filing a defence (as permitted by the Current Injunction, and the proposed continued injunction), but none has done so. That is why the proposed Draft Order, as well as providing for an appropriate long-stop date, also makes provision for further case management directions through to trial *if* any named defendant wishes to defend these proceedings (or otherwise apply to vary the injunction).

47.5 From the Claimants' perspective, there is little to be gained from proceeding to final relief against the named defendants: (i) it could only be relief that applied to the extent of the site as it currently exists – as additional land was added in the future, fresh proceedings may in any case be necessary; and (ii) it cannot assist with persons unknown, against who continued relief is necessary and desirable.

47.6 It is submitted that the continuation of interim relief is a neat mechanism which balances: (i) the interests of the Claimants to have workable relief; (ii) the rights of those affected by the relief to proceed to full trial or challenge the injunction at any time should they wish to; (iii) the interests of the Claimants and the Court in not expending time and resources considering the merits of the claim further in unopposed proceedings; and (iv) the interests of all in providing a mechanism for the relief to be revisited, re-tailored or re-considered if the circumstances require it.

47.7 Importantly, *Canada Goose* does not prohibit the Claimants from obtaining interim relief against Persons Unknown, and continuing such relief for so long as the threat of tortious conduct continues. The relief must have a temporal limit (because it is not final), but *Canada Goose* does not suggest that such temporal limit cannot be extended from time-to-

time for so long as the circumstances warrant it. Any such prohibition would produce an anomalous result in this case because:

(i) The Site is always changing in nature and so any final relief granted would immediately become outdated.

(ii) The moment the class of 'Newcomers' closed upon the making of a final injunction order, newcomers would no longer be caught by the injunction and new proceedings would need to be commenced against them. Given the vast number of protesters in these proceedings, many of whom are unknown, that is not an unlikely outcome.

(iii) Commencing new proceedings repeatedly in order to capture both additional land and additional defendants would put the Claimants to considerable expense and take up disproportionate amounts of Court time and resources to no practical benefit.

(iv) In these circumstances, an interim injunction which is reviewed from time-to-time is clearly the most effective form of relief.

47.8 The Claimants are aware of two recent first instance decisions which express concern (though seemingly not part of the *ratio*) that interim injunctions should not be permitted to roll-on indefinitely without a final hearing. They are, *Hackney LBC v Persons Unknown* [2020] EWHC 1900 (QB) and *Hackney LBC v Persons Unknown* [2020] 6 WLUK 273 (judgment 19 June 2020) for which unfortunately no transcript of judgment is available **[AB2, tabs 13 & 14]**. The circumstances in those cases were different:

(i) Those cases concerned public land, whereas the current proceedings concern private land. As is alluded to at §93 in *Canada Goose*, there are a number of public law remedies available in respect of public land, whereas private land can only benefit from private remedies.

(ii) In any event, the current interim injunctive relief is not tantamount to a final injunction because it is not everlasting, and it is not sought for an indefinite period. It is only necessary so long as there are active HS2 works at the Site and a threat to the Site continues, which the Claimants accept they must demonstrate from time-to-time. If, for example, protest at the Site diminishes, the injunction could be allowed to lapse or an application for discharge made. This illustrates the effectiveness of having flexible, interim relief.

Further directions

48. The Draft Order continues to include a mechanism for any person to apply to be joined to these proceedings, or for any person to seek to apply to vary or discharge the Order.

49. The Draft Order also contains a mechanism which provides for proceedings to be advanced to trial should any Named Defendant wish to contest the claim.

50. Subject to any modifications the Court considers appropriate, the Claimants respectfully ask that the Court make an order in the terms sought.

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