Claim No: PT-2018-000098

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

BEFORE DAVID HOLLAND QC (Sitting as a Deputy Judge of the Chancery Division)

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

Representation:

Tom Roscoe and **Daniel Scott** (instructed by Eversheds Sutherland LLP) for the Claimants.

Paul Powlesland (instructed under the Public Access scheme) for the Fourth Defendant.

The Eighth, Ninth, Tenth, Thirteenth, Eighteenth, Twenty Second, Twenty Third, Twenty Fifth, Twenty Sixth, Twenty Seventh, Twenty Eight, Thirty First and Thirty Second Defendants appeared in person.

APPROVED JUDGMENT

David Holland QC

Introduction and background

1. This is the Claimants' application issued on 15th June 2020 to continue injunctive relief to prevent what they assert is unlawful protest action against the High Speed 2, or HS2, railway project at a site off the Harvil Road in Hillingdon, West London.

2. The First Claimant is the Secretary of State for Transport. The Second Claimant ("HS2") is the statutory undertaker under the High Speed Rail (London-West Midlands) Act 2017 ("the Act") responsible for the implementation of the HS2 project.

3. This is the second hearing of that application. This hearing was listed pursuant to paragraph 21 of an order made by myself on 22nd June 2020. I have to consider:

   (i) whether interim injunctive relief should be continued;

   (ii) the appropriate temporal limit for such continued injunctive relief; and

   (iii) the exact form of that relief in terms of the geographical coverage of the injunction.

4. The Claimants, in short, seek the continuation of interim injunctive relief in materially the same form as that granted by me on 22nd June 2020. This, in summary, prevents trespass on and obstruction of access to the Site. They seek such relief for a further period of two years. They say that the totality of the development site is now slightly larger than it was when I granted the injunction on 22 June 2020. The Claimants therefore ask that any continued injunction also now apply to the totality of the site including this land ("the Additional Land") at the date of this hearing.

5. The land which is currently covered by the injunction granted on 22nd June 2020 ("the Land") is shown on the plan at page [D973] of the hearing bundles. The new land the right to possession of which has been acquired by HS2 since 22nd June 2020 and is not currently covered by the injunctive relief ("the Additional Land"), is shown on the plan

at page [D974]. A composite plan shown the Land and the Additional Land ("the Site") is at [D975].

6. Hereafter where I refer in general terms to the land in the vicinity of Harvil Road which is in the possession of the Claimants and on which construction work is or has been taking place I will refer "the Harvil Road Site". I shall refer to individual Defendants as "D" followed by the number given to them in the Schedule attached to my order of 22nd June 2020. Hence Mr Kier will be referred to as "D4".

7. The hearing took place remotely via Skype.

The Claimants and their evidence

8. I heard from Mr Roscoe leading Mr Scott on behalf of the Claimants.

9. I read the following witness statements filed on behalf of the Claimants:

   (i) First Statement of Shona Ruth Jenkins dated 18th May 2020;

   (ii) Second statement of Rohan Perinpanayagam dated 15th June 2020 (RP2)

   (iii) Second statement of Richard Joseph Jordan dated 15th June 2020 (Jordan 2)

   (iv) Third statement of Rohan Perinpanayagam dated 27th July 2020 (RP3)

   (v) Third statement of Richard Joseph Johnson dated 27th July 2020 (Jordan 3)

   (vi) Fourth Statement of Rohan Perinpanayagam dated 13th August 2020 (RP4)

The Defendants

10. There is a Schedule of the various Defendants named and unnamed annexed as a Schedule to the order dated 22nd June 2020.

11. As will be apparent, D1, D2 and D36 are Persons Unknown of various descriptions.

12. Ms Green (D3) had previously been engaged in these proceedings. However, the Claimants reached an accommodation with her and, at the outset of the hearing on 24th August 2020, I approved a signed consent order dated 17th August 2020 by which she ceased to be a party on terms. Nevertheless I read three statements that she had produced dated 1st June 2020, 17th June 2020 and 13th July 2020.

13. So far as the remaining Defendants are concerned:

    (i) D4, Mr Kier, made an undated statement and was represented at the hearing by Mr Powlesland of counsel who made submissions to me.

    (ii) D8, Mr Mordechaj, sent an email to the court dated 2nd June 2020 and addressed me;

    (iii) D9, Mr Oliver, sent an email to the court dated 2nd June 2020 and addressed me;

    (iv) D10, Mr Curcuirean, addressed me;

    (v) D13, Mr Breen, addressed me;

    (vi) D18, Victoria Zieniuk, sent an email to the court dated 24th August 2020 and addressed me;

    (vii) D22, Dr Maxey, provided an email to the court dated 21st August 2020 and addressed me;

    (viii) D23, Sebastian Roblyn Maxey (D22's son) addressed me.

    (ix) D25, Ms Dorton, provided an email dated 21st August 2020 and addressed me;

(x) D26, Mr Collins addressed me.

(xi) D27, Sam Goggin, relied on the evidence supplied by Ms Green (formerly D3) and provided two written documents as well as a report from a Mr Talbot at [D1383] and addressed me.

(xii) D28, Ms Pitwell, provided an undated statement and addressed me.

(xiii) D31, Ms Farbrother, addressed me;

(xiv) D32, Ms Smithson, provided a written statement which I read.

14. I allowed each of the named and unrepresented Ds to address me orally even if they had failed to comply with the directions in paragraphs 23 and/or 24 of the Order dated 22nd June 2020. Given their number, in the interest of case management I felt the need to limit the time allocated to each for their oral address. No doubt there are some who feel that they could have said more and would have done if they had been allowed to do so. However I believe that I have listened to and understood the arguments which each of the Defendants who addressed me raised (many of which were similar if not identical to those raised by many others).

15. In addition I allowed Mr Powlesland to speak last in order that he, as counsel, could amplify and expand upon any argument raised by any of the other Defendants.

16. No doubt the Claimants felt constrained by the guidance given by the Court of Appeal in CANADA GOOSE V PERSONS UNKNOWN [2020] EWCA Civ 303 ("Canada Goose") at para 82 to join as many named Defendants as they could. The problem with that guidance is that, in a case such as this, there is a distinct risk that, unless carefully

and strenuously case managed, the hearing of any application becomes unwieldy and disproportionately long.

Procedural History

17. This is at least the sixth occasion in which protest action at the Harvil Road Site has been the subject of a hearing before this court. The Claimants have been the same on each occasion as have some of the named Defendants.

18. 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 as the evidence showed that a risk of unlawful conduct continued. As the Claimants point out, many of the issues which the Defendants have raised before me at this hearing have already been considered in the earlier hearings.

19. Briefly:

    (i) Injunctive relief was first granted by Mr Justice Barling on 19 February 2018 for the reasons set out in his judgment of that date ([2018] EWHC 1404 Ch-"the Barling judgment"). The relief he granted was time-limited to 1st June 2019, with liberty to apply.

    (ii) Pursuant to those liberty to apply provisions, the Claimants successfully applied to extend the injunction for a further year (and to encompass further land). That extended relief was granted by me in a judgment that I gave on 16th May 2019 ([2019] EWHC 1437 Ch-"my first judgment"). The interim relief granted was to last until 1st June 2020, again with liberty to apply ("the 2019 Injunction").

(iii) During the currency of the 2019 Injunction, separate possession proceedings were brought by HS2 alone to recover possession of part of (what is now) the Land from protestors who were in occupation of it. Those proceedings were determined in the Claimant's favour by me for the reasons set out in my judgment of 28 November 2019 ("my second judgment"). An approved transcript of my second judgment was before the court at this hearing but it has not yet been allocated a neutral citation number.

(iv) The Claimants wished to seek the further renewal of the 2019 Injunction, but were not in a position to do so substantively before 1st June 2020. To avoid the 2019 Injunction lapsing without any form of replacement, an "Extension Application" was issued on 18 May 2020 to seek a temporary extension of the 2019 Injunction to allow this application to be brought (as it now has been). That application was granted by Fancourt J on 21st May 2020, for the reasons recorded in a judgment a brief (and unapproved) note of which is in the hearing bundles. By Fancourt J'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.

(v) The return date of that Extension Application was listed before me on 22 June 2020. By the date of that hearing, this Application had also been issued. At that hearing, I continued injunctive relief to the date of this hearing but expanded the geographical scope of the injunction to cover the whole of the Land.

20. Many of the procedural and case management directions sought by the substantive Amendment Application were dealt with by me in the Current Injunction Order dated 22nd June 2020.

21. It is also worth noting two other court hearings which have dealt with protests at or near the Harvil Road Site.

22. On 13th May 2020 Stuart Ackroyd and Wiktoria Zieniuk (D18 in this case), as Claimants, brought proceedings against HS2 and its appointed security contractor High Court Enforcement Group Ltd T/A National Eviction Team ("NET"), as Defendants, in the Queen's Bench Division of the High Court seeking injunctive relief to prevent HS2 from evicting those Claimants and others from a building on the Harvil Road Site known as RMC or Ryall's Garage where some of those opposed to HS2 had apparently been living. The Claimants in that case were represented by Mr Powlesland: the Defendants by Mr Roscoe. That application came before Swift J on 13th May 2020 who, in a judgment given on that day ([2020] EWHC 1460 QB-"the Swift judgment"), dismissed it.

23. In the meantime proceedings were issued by the London Borough of Hillingdon against Persons Unknown and 23 named Defendants (including Mr Kier, Dr Maxey, Sebastian Roblyn Maxey, Ms Dorton, Mr Mordechaj, and Mr Goggin who are Defendants before me) seeking injunctive relief in respect of an area of land owned by Hillingdon adjacent to the Harvil Road Site. On 13th July 2020 Kerr J granted injunctive relief to prevent the Defendants in that case from: camping overnight on the relevant land; carrying on obstructive behaviour or making excessive noise.

24. 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 provided by them and contained in the Hearing Bundles.

The Harvil Road site and the HS2 works

25. As stated, the Site, in respect of which injunctive relief is now sought, is shown on the Plan at [D975].

26. By dint of the High Speed Rail (London-West Midlands)(Nomination) Order 2017, from 24th February 2017, HS2 is the "nominated undertaker" under section 45 of the Act.

27. The Harvil Road Site was described in paragraphs 2 and 7 of my first judgment. It consists of a large site required for the purposes of construction of the HS2 scheme. It is notorious that the HS2 scheme is a controversial project and that there are many people who would much prefer if it was not built. As will have been apparent from the procedural history described above, the Harvil Road Site in particular has attracted protesters concerned at the potential environmental damage which the works proposed at that site might cause.

28. In paragraph 7 of my first judgment I identified three different categories of land over which the injunction was sought (and granted). Those three categories continue to apply. First of all, there is land within the freehold ownership of the First Claimant that is coloured blue on the plans referred to above, and is referred to as "the blue land". Secondly, there is land acquired by the First Claimant pursuant to its compulsory purchase powers in the Act. That land is coloured pink on the various plans and is referred to as "the pink land". Thirdly, there is land in the temporary possession of HS2 by reason

of the exercise of its powers pursuant to section 15 and Schedule 16 of the Act. That land is coloured green on the plans and is referred to as "the green land".

29. I set out the relevant provisions of the Act in paragraphs 42 to 52 of my second judgment. I shall not recite them separately in this judgment.

30. I note the following features from the various Plans at [D973-975]:

(i) Harvil Road runs approximately north / south just to the left of centre of the plan.

(ii) "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 (even though it might otherwise have constituted trespass).

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

(iv) Opposite the North Compound Entrance there 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 shown on the plans as the "roadside camp"), but also spilled onto the field behind which was – at the time of my first judgment – not part of the Site but is now.

(v) Running parallel to the northern edge of a field (just in the field marked C111_112) there is a path marked by a single black line. That is footpath U34, which featured in my second judgment. As I found in that judgment, that footpath had by that date been closed.

31. Since the date of my first judgment, further land had been brought into the Claimants' possession for the purposes of the works on the Harvil Road Site. At the 22nd June 2020 hearing, I 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 RP 2 at paragraphs 23 to 28. That is the Land as set out in the plan at [D973]. In particular:

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

(ii) 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).

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

(iv) The "Ryall's Garage" camp or building 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.

32. As stated, since the date of my order on 22nd June 2020 possession of yet further land has been acquired by HS2 under the statutory scheme (thus it is green land). I have referred to this as the Additional Land and it is shown on the plan at [D974].

33. I described the nature of the works which are currently being carried out and are proposed to be carried out at the Harvil Road Site in paragraph 26 of my second judgment. A more up to date description is set out in at paragraphs 49 to 51 of RP 2. These works include not only site clearance, preparatory and survey/investigation works but also: the installation of a new high pressure gas main; the decommissioning of an existing

overhead power line and the installation of a new and diverted overhead power line; the construction of new utility conduits; the realignment of Harvil Road and Dews Lane; the construction of a viaduct to carry the new railway line; the construction of part of a tunnel also to carry the new railway line.

34. These are complex works, involving teams of different contractors and, according to the Claimants, due to certain restraints (including ecological constraints) they must be carried out pursuant to a quite regimented timetable, with delays having serious onward consequences. Many of the works require the use of heavy machinery, such that the presence of unauthorised persons on the site necessarily prevents works. The current works timetable extends to 2024 (see paragraphs 49 of RP 2 and the Schedules at [D685-686]). In paragraphs 53 and 54 of RP 2 he says this:

> *It is imperative that the Claimants and their contractors have uninterrupted use of the Harvil Road Site without obstruction in order that can work in accordance with and maintain their programme and ultimately the Scheme timetable. To date, protester action has caused considerable impact (and cost) to the Scheme. My colleagues and I have sought to put together a broad estimate of the* ***additional*** *cost of the development at the Harvil Road Site by reason of the delays and additional security expenses caused by protest activity at the site (aside from legal costs). These come to almost £16 million, and are broken down in a short schedule with more detailed narrative comments at p.71. I should indicate that these are necessarily relatively broad estimates, but indicate that the protest activities at the site are causing very serious detail and financial impact - which is ultimately being paid for by the public*.

At paragraph 17(i) of Jordan 2 Mr Jordan states

> *The HS2 Site is an active construction works site. The works time-table requires coordination between numerous different contractors and subcontractors of different specialisations. The mere presence of unauthorised protestors on the Harvil Road Site is unsafe when heavy works are planned, and usually requires those works to be paused. Where, as is often the case, protestors actively interfere with works, the problem is even more acute. The knock-on effect and cumulative effect of these delays is severe. They serve to increase costs, and require increased security and legal costs. All of these costs are ultimately borne by the public purse.*

The Claimants' submissions

35. The Claimants submit that, whilst the HS2 project is controversial, it has been authorised by the Act following considerable public consultation.

36. The Parliamentary process which lead to the Act is set out in more detail in my first judgment at paragraphs 15 to 23.

37. A further description of both the Parliamentary procedure and the overall scheme of the Act is at paragraphs 7 to 17 of the judgment of the Administrative Court in the case of R (OAO PACKHAM) V SECRETARY OF STATE FOR TRANSPORT [2020] EWHC 829 (Admin) and in paragraphs 12 to 19 of the judgment of the Court of Appeal in the same case ([2020] EWCA Civ 1004) ("the Packham case").

38. The powers given to the Claimants under the Act, as I have stated, include powers to take temporary possession of land and acquire land permanently.

39. Details as to the rights of the Claimants over the Land and the Additional Land are set out as follows:

    (i) so far as the Land is concerned, in paragraphs 20 to 27 of RP 2;

    (ii) so far as the Additional Land is concerned, paragraphs 5 to 9 of RP 4.

    In addition there are exhibited to these statements Schedules (at pages [D663] and [D976] of the bundles) which set out the various dates on which HS2 is deemed to have taken possession of the various tracts of green land under Schedule 16 of the Act. I also note the assertion made in paragraph 63 of Jordan 2 relating to the Claimants' rights over the Additional Land at the dates of the various incidents.

40. So far as the Land is concerned, I have of course already held in my first judgment that the Claimants are entitled to possession of large parts of it.

41. However, so far as both the Land and the Additional Land are concerned, I accept the evidence set out in RP2 and RP4 (which was not seriously challenged) and hold that the Claimants are, as a matter of law, entitled to apply for possession of, or to bring a claim for trespass in respect of, all three categories of land as shown on the plan at [D975].

42. I say that the evidence was not seriously challenged but Dr Maxey, in his oral address to me, pointed to what he said were certain inaccuracies in the account of certain events and urged on me that the evidence in RP2 and RP4 as to ownership was not to be accepted at face value. I reject that challenge. I see no reason to doubt the assertion of the Claimants as to their rights over the Land and the Additional Land.

43. As I described in my first judgment, the Claimants claims are put in trespass, in respect of unauthorised incursions into and onto the Land and the Additional Land, and in private nuisance in respect of obstruction on the public highway of entrance into and exit from the Land and the Additional Land. Again there was no challenge to the Claimants assertion that, as a matter of law, if they proved that they had the rights they claimed over the Land and the Additional Land, then they were entitled to bring such claims. I hold that they are.

44. Mr Roscoe submitted that the names of all the persons engaged in unlawful protest activities were not, and are still not, known. That is why three categories of "persons unknown" have been named as Defendants: D1, D2 and D36 (with D36 being added as a new category of defendant by me on 22nd June 2020, to address the particular problem of protestors damaging security fencing on the site). Those categories, he submitted, reflect the two categories of tortious conduct: trespass (D1); and the nuisance of

obstruction of access (D2) whilst D36 is an amalgam of both. That was and remains, he said, an appropriate means of seeking relief against unknown categories of people in circumstances like this. He cited the Court of Appeal's judgment in BOYD & ANOR V INEOS UPSTREAM LTD & ORS [2019] EWCA Civ 515 at [18]-[34]. No one suggested that these submissions were wrong or that the three categories of Persons Unknown were inappropriate or insufficiently precise. I agree with Mr Roscoe on this point.

45. So far as service was concerned, Mr Roscoe noted the application of section 12 of the Human Rights Act 1998 (cited at paragraph 121 of my first judgment). This 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."*

46. There was no difficulty, he said, in giving notice of an injunction to the three categories of persons unknown: it could and has been publicised at the site and online, and orders to this effect have been made in all of the preceding injunctions in these proceedings. He submitted that the Claimants had taken all practicable steps to notify these Defendants. No one suggested otherwise and I agree.

47. It is the Claimants' case that, since the date of the 2019 injunction, and in spite of it, incidents of incursion and obstruction have continued. The various incidents relied on are set out in paragraphs 9 and following of Jordan 2 and paragraphs 11 and following of RP4. In paragraph 14 of Jordan 2, Mr Jordan states that, between the grant of the 2019 injunction and 31st May 2020 there were 35 incidents of incursion and/or obstruction in relation to the Land and 31 incidents of incursion and/or obstruction in relation to the

Additional Land. He describes the various incidents in relation to the Land in paragraphs 30 to 62 of Jordan 2 and those in relation to the Additional Land in paragraphs 63 to 100 of Jordan 2.

48. In addition, in paragraphs 11 to 32 of RP4, there are described further incidents of incursion and obstruction which have taken place in relation to the Land and the Additional Land since 31st May 2020 and up to 31st July 2020.

49. There is neither the time nor the need to set out the details of these various incidents in this judgment. There is not the need because, although several of the named Defendants sought to contradict the account put forward by the Claimants' witnesses of certain of the incidents in certain respects, no one sought to deny that any of the incidents had in fact occurred or that the description of any of them was wholly inaccurate.

50. To give a flavour, the various incidents have involved: climbing over or cutting through the fences at the Harvil Road Site; unauthorised incursions into the Site by individuals, small groups, or larger groups of 12-15 people; obstruction by one or more people of the "bellmouths" between the various gates and the public highway to prevent vehicular access into or out of the Site; damage to locks on the various gates to prevent their being opened; the placing of padlocks and chains around the gates to prevent their being opened; people sitting on or in front of machinery on the Site to prevent its operation; people attempting to lock themselves onto gates and machinery to prevent opening or operation; walking slowly in front of vehicles on the Harvil Road to prevent vehicular passage; the climbing of trees both on and in the vicinity of the Site and the construction of tree platforms; the rigging of lines between trees on and off the Site.

51. In addition to the constant presence of private security guards, NET, at the Harvil Road Site, the police have been called out on numerous occasions.

52. Just as importantly, it is clear from the evidence that many of these incidents have been accompanied by threats and aggressive behaviour. There are allegations that protesters have assaulted HS2 and NET employees. At the very least the constant presence of protesters at and around the Harvil Road Site and the constant prospect of incursions and obstructions must render the job of those carrying out works on the site much less pleasant.

53. In paragraphs 15 and 17 (ii) to (v) of Jordan 2 Mr Jordan states:

> *On average, the number of protesters on or in the vicinity of the Harvil Road Site who are visibly opposed to the HS2 Scheme range between about five and 25 a day, and since the establishment of the camp at the west end of Dews Lane, numbers have increased to approximately 35 to 40. These persons, when not engaged in protest activities elsewhere on the site, are in occupation of the various protest camps mentioned above…*
> *(ii) The acts of trespass and obstruction are often accompanied by incidents of verbal harassment and physical intimidation of contractors including some violent acts.*
> *(iii) Very considerable police resources have been required to assist with incidents on the Harvil Road Site, again at considerable public expense.*
> *(iv) Attempts to maintain order at the Harvil Road Site are further hindered by the fact that temporary metal Heras-style fencing is regularly moved, damaged or tampered with – and the Court-mandated notices warning of the existence of the 2019 Injunction are regularly defaced or torn down.*
> *(v) The Covid-19 pandemic has not noticeably reduced the level of protest at the site. It has, however, made it difficult for the Claimants' security contractors to seek to engage constructively with trespassers and ask them to leave – as protestors are often complaining about the lack of "social distancing" by the security personnel in those circumstances.*

54. In paragraph 36.3(i) and (ii) of his Opening Skeleton Mr Roscoe says this:

> *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.

Nothing said by or on behalf of any of the Defendants sought to contradict this submission. Nothing in what I have seen or heard falsifies it. Indeed Mr Powlesland accepted the description that this was a "war of attrition" between HS2 and the protesters.

55. Thus it is quite clear to me that, whatever the nature of the protests at the Harvil Road Site at the outset of the works in 2018, the protests have now developed into a concerted and long-running campaign by, at the very least, a core group of protesters who are in the vicinity of the site on virtually a full-time basis. The aim of this campaign is not only to draw attention to what the protesters see as the environmental damage caused by the work at the site and by the HS2 project in general but is also to attempt to hinder or prevent work at the site as frequently as possible.

56. Mr Roscoe submits that the evidence illustrates a serious ongoing risk of both trespass and obstruction of access to the Site. Whilst there are people who continue to defy the injunctions currently in place, the clear inference is that, absent injunctive relief, the unlawful direct-action protests at the Site would become considerably worse. I agree.

57. He also submitted, and I agree, that the protests at the Harvil Road Site will probably continue until the HS2 scheme of works at Hillingdon is complete. The current works time-table extends to at least 2024 (see paragraph 49 of RP 2).

58. Mr Roscoe sought an extension of the injunctive relief to cover the Site and for further period of two years.

The arguments of the Defendants

59. Given the number of Defendants, it would make this judgment overly long to attempt to set out in detail the points they made to me individually. There is no need to do so however as there are overarching common themes.

60. The first theme or argument is that the Earth faces a "climate emergency" due to the increasingly rapid onset of Climate Change. The construction and operation of the HS2 project will only serve to increase carbon emissions and thus it ought to be stopped. This point was made most eloquently and forcibly by Dr Maxey who told me that the planet was facing what he called the 6th mass extinction and that there was a real danger of imminent societal collapse. He quoted the Chair of the UN IPCC in that regard. HS2 was, he said, the most environmentally destructive scheme ever embarked upon in the UK and it had to be stopped.

61. The second theme echoes the first. Virtually all of the Defendants who addressed me emphasized how destructive HS2 as a whole was to the natural environment and how, in particular, the works at the Harvil Road Site were destructive of the flora and fauna in the area. Concern was expressed particularly for ancient woodland, bats and newts which were said to be at or around the site.

62. Many of the Defendants emphasised their clear belief that HS2 was carrying out environmentally destructive works illegally without obtaining proper licences and without proper supervision. Echoing a point made to me previously by Mr Powlesland and considered in my second judgment (at paragraphs 88-9 and 137-146) it was said that it is vital that concerned members of the public such as the protesters here be permitted to monitor what is being done in the interests of the wider public.

63. Insofar as what was being done by the protesters was a trespass or a nuisance vis-a-vis the Claimants, then it was argued that this was justifiable as an act of peaceful civil disobedience. Dr Maxey drew my attention to the speech of Lord Hoffmann in R V JONES [2007] 1 AC 136 in which he said (at paragraph 89) that "civil disobedience on conscientious grounds has a long and honourable history". A number of the Defendants suggested that, in relation to significant issues such as slavery, emancipation of women and racial discrimination, those who carried out acts of civil disobedience had proved to be on the "right side of history". This was another one of those occasions they said.

64. Almost all the Defendants emphasised to me how unpopular the HS2 scheme was with the public in general and the local people in particular. They were, they said, by their actions simply reflecting popular opinion.

65. Many of the Defendants were also highly critical of the Parliamentary procedure which led to the Act and the more recent Notice to Proceed with the project given by HM Government following the Oakervee Review (details of which are set out in paragraphs 18 to 31 of the Packham case in the Administrative Court and in paragraphs 21 to 38 of the Court of Appeal judgment in that case). There had been, it was said, an almost complete lack of public consultation and transparency. The process was, they said, fundamentally undemocratic. Some went so far as to urge this court to ignore Parliament and follow "the clear will of the people".

66. Many of the Defendants were also bitterly critical of the actions of NET. There was a litany of complaints: their employees did not have the appropriate statutory licences (under the Private Security Industries Act 2001 and the Private Security Industry Act 2001 (Designated Activities) Order 2005/234); they had pretended to be High Court Enforcement Officers when they were not actually enforcing High Court orders; they had

repeatedly assaulted protesters and used unnecessary force and violence; they had confiscated and unlawfully refused to return protesters belongings (including Mr Mordechaj's Hungarian identity papers and plane ticket). They had in short abused any powers they had.

67. It was constantly said that, if I granted the injunction sought, not only would it give the court's stamp of approval to the HS2 project but it would legitimise the violent and unlawful conduct of NET and embolden its employees to carry out further wrongful acts.

68. Particular complaint was made by a number of the Defendants about the eviction of a number of the protesters from the Ryall's Garage compound on the Land, which of course formed the backdrop to the Swift Judgment. It was said that there had been a clear breach of section 6 of the Criminal Law Act 1977 by NET and HS2. This, so far as is relevant, reads as follows:

> *(1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—*
> *(a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and*
> *(b) the person using or threatening the violence knows that that is the case.*
>
> *(2) Subject to subsection (1A) above, the fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) above constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.*
> *(4) It is immaterial for the purposes of this section—*
> *(a) whether the violence in question is directed against the person or against property; and*
> *(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.*
> *(5) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.*

Mr Powlesland went so far as to describe NET employees on this occasion as acting as "lawless thugs".

69. Mr Powlesland, Dr Maxey and others also pointed to incidents on 23rd and 24th July 2020 when it was said that NET operatives had injured and endangered the lives of peaceful protesters who had climbed trees by seeking to bring these people to the ground by wholly unsafe means. This was yet another example of unlawful conduct by NET, it was said, which would be seen to be sanctioned if I granted the injunction sought.

70. Ms Zieniuk and Mr Goggin also pointed to the material filed by Ms Green before she ceased to be a named Defendant. These arguments were the same as those she made to me and are recited in paragraphs 86 to 89 of my first judgment and paragraphs 80 to 81 of my second judgement. In short there is a significant risk that the pile driving works on part of the Harvil Road Site will damage an important aquifer and expose it to toxic pollutant from a nearby landfill site.

71. Mr Powlesland for D4 also made the following points.

72. Accepting, as the court had stated in exchanges, that we live in a parliamentary democracy, I should not second guess Parliament by ordering an injunction to prevent a civil wrong the breach of which was potentially punishable by committal to prison for up to two years. Parliament had seen fit to enact specific statutes to criminalise certain acts in certain circumstances allotting specific criminal penalties. He drew attention to the offence of aggravated trespass under section 68 of the Criminal Justice and Public Order Act 1994 and the offence under section137 of the Highways Act 1980. No such specific offence had been enacted by Parliament to deal with the situations which arise here. The power to grant an injunction under section 37 of the Senior Courts Act 1980 was a wide one but, he said, the court should not effectively and by means of the grant of an injunction punishable by up to two years in prison for contempt of court, seek to add to

the "quasi-criminal arsenal" of a private landowner in circumstances in which Parliament has chosen not to legislate.

73. He also pointed out that due to the many instances of unlawful conduct on the part of its agents NET, HS2 did not come to court "with clean hands" and an injunction should on that ground alone be refused.

Discussion and conclusions

74. I begin this section by repeating two points that I made in both my first and second judgments.

75. As I emphasised in paragraph 108 of my first judgment, both the named and unnamed Defendants are protesting against the activities on the Land and the Additional Land, not from any immediate self-interest but, rather, because of their genuine and passionate concern for the environment and their genuine fear that the activities of the Claimants on the Site risk causing irreparable harm to it. My impression is that they are intelligent and articulate people many of whom have given up much to pursue what they see as a just cause in respect of which urgent action is necessary.

76. However, as I also emphasised in both my previous judgments, this court is not here to give a view on the merits or demerits of HS2. No doubt it remains highly controversial. As far as this court is concerned, however, it is a lawful scheme mandated by statute which statute was passed, as both the Administrative Court and the Court of Appeal in the Packham case have outlined, after a lengthy Parliamentary procedure during which those who objected had a chance to explain their reasons.

77. When considering whether to grant an interim injunction, as is sought here, the court will usually apply the well-established test from AMERICAN CYANAMID CO V

ETHICON LTD [1975] AC 396: (a) Is there a serious issue to be tried? (b) Would damages be an adequate remedy? (c) Does the balance of convenience favour the grant of an injunction?

78. However, a more exacting test is required in this type of case. Where the injunction sought may interfere with freedom of expression, the test is not that under *American Cyanamid* but that provided in section 12(3) of the 1998 Act (which I have already set out) namely: is the court satisfied that the applicant is likely to establish that publication should not be allowed?

79. "Likely" in section 12(3) means "more likely than not": CREAM HOLDINGS LTD V BANERJEE [2005] 1 AC 253. In YXB v TNO [2015] EWHC 826 (QB*)* Warby J summarised the position for the court at the interim stage (at paragraph at 9):

> *"The test that has to be satisfied by the claimant on any application for an injunction to restrain the exercise of free speech before trial is that he is 'likely to establish that publication should not be allowed': Human Rights Act ('HRA'), section 12(3). This normally means that success at trial must be shown to be more likely than not: Cream Holdings … ordinarily a claimant must show that he will probably succeed at trial, and the court will have to form a provisional view of the merits on the evidence available to it at the time of the interim application."*

80. In paragraphs 122 to 127 of my first judgment I adopted a test of whether the threat of further trespass and obstruction was "imminent and real".

81. Having considered all the evidence in these proceedings, it is clear that:

    (i) The Defendants (both unnamed and named) have committed acts of trespass and nuisance by way of obstruction on (collectively) a very significant number of occasions in the past.

    (ii) That course of conduct continues.

(iii) As stated, there is in my view now at the Harvil Road Site a group of protesters who are determined to continue to wage a ceaseless campaign against what they see as the pernicious effects of the HS2 project.

(iv) That campaign has involved, and in my view will continue to involve, acts of trespass and nuisance as described. Its aim is not only to express disapproval of the HS2 project but also to seek by acts of "civil disobedience" to hinder or delay it.

(v) 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. Quite the opposite.

(vi) The final words of Mr Collins D26 when he addressed me were *"You can stick your injunction up your arse"*. However amusing he might have thought those words were, they are clearly indicative of a determination on the part of the protesters to keep up their present activities come what may.

82. Thus I am clear that the risk of further acts of trespass and nuisance is imminent and real.

83. Further, not only do I think it is likely that the Claimants will establish their case for a final injunction at trial, at the moment, I cannot see that the Defendants have any valid defence at all.

84. At common law, a landowner whose title is not disputed (such as the Claimants here) is prima facie entitled to an injunction to restrain a threatened or apprehended trespass on his land even if the trespass will not harm him or cause him loss (see PATEL V WH SMITH (EZIOT) LTD [1987] 1 WLR 853).

85. It is not said by any of the Defendants that they somehow have a better title to any part of the Land or the Additional Land than the Claimants. Nor could it be. Many have effectively or actually admitted that they have been trespassers.

86. So far as there being breaches by HS2 of environmental laws or requirements and the consequences, it is worthwhile reading certain passages from the judgments in the Packham case. That was an attempt, by the well-known naturalist and television presenter Chris Packham, to judicially review the decision of the Secretary of State to give the Notice to Proceed in respect of the HS2 scheme. Of course, the Administrative Court is if anything a more appropriate forum than this court for challenging the validity or lawfulness of the HS2 scheme. The challenge failed on all grounds. In their judgment, in the course of describing the statutory scheme under the Act, the Court of Appeal said this (at paragraphs 16 to 19):

> *16. Section 68(5)(a) of the 2017 Act refers to a "statement deposited" in connection with the Phase One Bill in November 2013 under Standing Order 27A of the Standing Orders of the House of Commons "relating to private business (environmental assessment)". Section 68(5)(b) refers to "statements containing additional environmental information" published in connection with the Phase One Bill – supplementary environmental statements – in 2014 and 2015. Both the environmental statement and the supplementary environmental statements were subject to public consultation in accordance with Standing Order 224A. A report prepared by an "independent assessor" under Standing Order 224A, summarising the issues raised by comments made on the environmental statement, was presented to MPs before the Second Reading of the Bill in the House of Commons, and, in the case of the supplementary environmental statements, before the Third Reading.*
>
> *17. Both the environmental statement and the supplementary environmental statements contained detailed descriptions and assessment of the environmental effects of the Phase One works – for example, their effects on wildlife, including European Protected Species and their habitats, and on designated ancient woodlands and other areas of woodland affected by the works authorised by the 2017 Act. Both set out detailed arrangements for the mitigation of those effects where they could not be avoided, and for compensation – for example, by extensive tree planting – where they could not be fully mitigated. Their content was the subject of petitions to both Houses. Among the petitioners were local authorities, and many organisations*

concerned with the environment – for example, national and local wildlife trusts and the Woodland Trust. The environmental statement also provided an assessment of the performance of Phase One, as proposed to be authorised under the Bill, against the then current legislative, regulatory and policy requirements and objectives relating to climate change.

18. As nominated undertaker for Phase One of the project, HS2 Ltd. is under a contractual duty in the HS2 Phase One Development Agreement to comply with the published Environmental Minimum Requirements ("EMRs") for construction of Phase One of HS2. The EMRs are intended to ensure that Phase One is delivered in accordance with the deemed planning permission granted under section 20 of the 2017 Act, with the environmental statement and supplementary environmental statements, and with the requirements of Parts 3 and 4 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations").

19. The HS2 Phase One Code of Construction Practice, issued in February 2017, is a component of the EMRs. Section 9 of the Code of Construction Practice imposes obligations on HS2 Ltd. for the protection of ecological interests, including protected species, statutorily protected habitats, and other habitats and features of ecological importance – such as ancient woodlands. HS2 Ltd. also published, in August 2017, an Ancient Woodland Strategy for Phase One, setting out detailed arrangements for managing the impact of the construction of Phase One on the areas of designated and other ancient woodland in which works are authorised under the 2017 Act.

87. In considering the challenge brought by Mr Packham on the ground that "the Governments decision [was] flawed by a failure to consider environmental effects" (referred to as "ground 2"), the Court of Appeal said this (at paragraphs 54, 55, 58 and 61-63):

54. Before the Divisional Court it was common ground that the Phase One works were lawful. They had been authorised under the 2017 Act. An environmental impact assessment of that phase had been undertaken, in accordance with EU and domestic legislation, including public consultation, during the process of Parliamentary scrutiny. Petitions against the Bill had been brought by local authorities and by national and local wildlife and woodland trusts, and had been heard by Select Committees appointed by each House. The works were subject to regulation by Natural England as competent authority through the operation of the licensing procedures in Parts 3 to 5 of the Habitats Regulations. And they had to be carried out in accordance with the published HS2 Phase One Code of Construction Practice.

55. The Divisional Court regarded these propositions as "self-evidently correct" (paragraph 47 of the judgment)…

58. Specifically on ground 2 of the claim, the Divisional Court said it would be impossible to construct a project on the scale of HS2 Phase One without causing "interference with and loss of significant environmental matters, such as ancient

woodland", and this had been authorised in the 2017 Act (paragraph 81). The environmental impacts of Phase One had been assessed in detail in the Parliamentary process…

61…We agree with the conclusions of the Divisional Court. We do not accept that it misunderstood Mr Wolfe's submissions, but in any event we see no merit in the argument as it was presented to us.

62. HS2 is an infrastructure project of national significance, with a long and well-publicised history. When the Government made its decision to proceed with the project in February 2020, the factual context in which the Oakervee review had come to be set up in August 2019 was a matter of record. Phase One of the project had passed through a lengthy process of consultation, assessment – including environmental impact assessment – and statutory approval. The process had been punctuated by challenges in the courts, and its lawfulness had been confirmed. Statutory authorisation for Phase One was embodied in the 2017 Act, which referred in several of its provisions to the environmental impact assessment that had been carried out. The Parliamentary process was well advanced for Phase 2a, and would soon begin for Phase 2b.

63. The deemed planning permission for Phase One of the project depended on the assessment of environmental impacts and mitigation and compensation measures set out in the environmental statement and the supplementary environmental statements. HS2 Ltd., as nominated undertaker, was under a contractual duty to comply with the EMRs and to ensure that both the construction and operation of Phase One were controlled in accordance with that assessment. It was an appropriately extensive and thorough assessment. Matters raised in representations in the course of the Oakervee review, and to which Mr Packham refers in these proceedings – such as the effects of tunnel boring on water quality and water supply and the possible dewatering of the River Misbourne and Shardeloes Lake, and ecological effects of various kinds – had already been raised in petitions against the Bill. Such effects were addressed in the environmental statement and controlled under the EMRs. These are merely a few examples. But they serve to illustrate the comprehensive coverage of environmental impacts within the approval process.

88. These passages serve to emphasise the points which I have made (albeit in much less detail) in my previous judgments. So far as this Court is concerned, HS2 is a lawful scheme mandated by the Act. The works carried out under the HS2 scheme by HS2 are lawfully carried out. Parliament carefully considered the likely environmental impacts of the scheme before it sanctioned the works by means of the Act. There are environmental safeguards mandated by Parliament and built into the scheme which Parliament has deemed to be sufficient to avoid or mitigate any environmental damage caused.

89. Thus any challenge to HS2 or the works being carried out on the grounds that they are somehow in breach of UK or EU environmental legislation or have not been the subject of adequate Parliamentary scrutiny, is bound in my view to fail.

90. I have already rejected a submission to the effect that the Defendants' Article 10 or 11 rights include a right to stand on a public highway to monitor HS2's activities on its own land (see paragraphs 88 and 141-147 of my second judgement). I see no reason to change my mind on that point. Further, having rejected the argument in relation to the Defendants standing on a public right of way (onto which, a fortiori, they are lawfully permitted to go) my rejection becomes all the more emphatic when, as now, it is sought to say that this alleged right extends to monitoring by trespassing on private land such as the Harvil Road Site.

91. Further, as the courts pointed out in the Packham case, there is built into the Parliamentary scheme what Parliament regards as sufficient environmental safeguards and it is not for interested members of the public to seek to second-guess what Parliament has decreed to be adequate.

92. Further, as Mr Roscoe was at pains to point out, it is the Claimants' case that all the relevant environmental requirements have been complied with and all the relevant permits and licences obtained. He pointed me to various licences relating to water and bats at the following pages in the hearing bundles [D692], [D782], [D789], [D820], [D827] and [D833] and to paragraphs 55-59 of RP2.

93. Further, even if it was to be established that HS2 was breaking the law in some way (and I hasten to add that it has not been established) I do not see how this could amount to a defence to a claim in trespass and nuisance as advanced by the Claimants against the

Defendants. I venture to repeat the points I made at paragraphs 132 to 135 of my second judgment.

94. I do not accept any submission made by the Defendants to the effect that the risk or prospect of the Claimants committing a criminal offence or breach of statutory provision if the injunction is granted, could possibly amount to a defence. This is for a number of reasons:

(i) Firstly, on the facts, there is is no clear proof that any criminal offence or breach of statute will occur if the injunction is granted. The Claimants deny that it will. The Defendants assert that it will. However, the Defendants have not produced any formal statements or specifically prepared expert reports and none of them are experts. I do not therefore accept that there is any strong evidence to the effect that the Claimants are likely to commit any crime or breach of statutory provision if the injunction is granted.

(ii) Further, even if I was to accept that the evidence showed that there **was** a risk or even a likelihood that the Claimants would carry out some unlawful activity if the injunction was granted, I would not hold that this was a defence to a claim for injunctive relief. As set out above, the Claimants are entitled, by reason of statute, to possession of the Land and the Additional Land. There was, and is, nothing unlawful about the acquisition of the Claimants' rights. The Defendants cannot and do not assert any countervailing right to possession of the Land or the Additional Land. There is no necessary connection between the grant of an injunction to protect the Claimant's rights over the Site and the subsequent commission on the Site of any crime or breach of statutory provision: the latter is not the inevitable consequence of the former.

(iii) In the words of Lord Toulson in PATEL V MIRZA [217] AC 467, the public interest in maintaining the integrity of the justice system does not, in my view, result in the denial of the remedy which the Claimants seek in these circumstances. If, following the grant of an injunction, the Claimants carry out unlawful activities on the Site, then there are sufficient other remedies available to the law.

95. So far as concerns the submission to the effect that I should refuse to grant an injunction in recognition of the fact that the Defendants are engaged in a principled form of so-called "civil disobedience", that argument is doomed to failure.

96. It is quite true that in paragraph at paragraph 89 in R v Jones Lord Hoffmann did say that "civil disobedience on conscientious grounds has a long and honourable history". However that quote must not be taken out of context. In that case demonstrators against the Iraq war sought to justify the commission of criminal acts by their opposition to what they asserted was an illegal war. At paragraph 78 of his judgment in that case Lord Hoffmann said this:

> *In principle, therefore, the state entrusts the power to use force only to the armed forces, the police and other similarly trained and disciplined law enforcement officers. Ordinary citizens who apprehend breaches of the law, whether affecting themselves, third parties or the community as a whole, are normally expected to call in the police and not to take the law into their own hands. In Southwark London Borough Council v Williams [1971] Ch 734 , 745 Edmund Davies LJ said: "the law regards with the deepest suspicion any remedies of self-help, and permits those remedies to be resorted to only in very special circumstances."*

He continued at paragraphs 83 to 86:

> *83. The right of the citizen to use force on his own initiative is even more circumscribed when he is not defending his own person or property but simply wishes to see the law enforced in the interests of the community at large. The law will not tolerate vigilantes. If the citizen cannot get the courts to order the law enforcement authorities to act (compare R v Comr of Police of the*

Metropolis, Ex p Blackburn [1968] 2 QB 118) then he must use democratic methods to persuade the government or legislature to intervene.

84. Often the reason why the sovereign power will not intervene is because it takes the view that the threatened action is not a crime. In such a case too, the citizen is not entitled to take the law into his own hands. The rule of law requires that disputes over whether action is lawful should be resolved by the courts. If the citizen is dissatisfied with the law as laid down by the courts, he must campaign for Parliament to change it. So in Monsanto v Tilly [2000] Env LR 313 a landowner claimed an injunction against protesters who threatened to trespass upon his land and dig up genetically modified crops. They claimed to be acting in the public interest and to protect third parties from damage which the crops might cause. The Court of Appeal said that this was no defence. Mummery LJ said, at p 338:

> *"trespass by the individual, in the absence of very exceptional circumstances, cannot be justified as necessary or reasonable, if there exists a public authority responsible for the protection of the relevant interests of the public. In this case the Department of the Environment has that responsibility. In such cases the right of the individual to trespass out of necessity, whether as defender of his own or a third party's interest or as champion of the public interest, without attempting to enlist the assistance of the public authority, is obsolete."*

85. It was clear that the department, if called upon, would have done nothing to stop the growing of the genetically modified crops. It had granted Monsanto a licence under the relevant legislation for the specific purpose of enabling them to be grown. But, as Stuart-Smith LJ pointed out, at p 329, the protesters' remedy, if any, was to challenge the legality of the licence by judicial review. Or, if that failed, they could seek to have the law changed. But that must be effected by lawful means. Whatever the honest apprehension of danger to the community, it is not reasonable to resort to force.

86. My Lords, to legitimate the use of force in such cases would be to set a most dangerous precedent. As Lord Prosser said in Lord Advocate's Reference (No 1 of 2000) 2001 JC 143 , 160:

> *"What one is apparently talking about are people who have come to the view that their own opinions should prevail over those of others ... They might of course be persons of otherwise blameless character and of indubitable intelligence. But they might not. It is not only the good or the bright or the balanced who for one reason or another may feel unable to accept the ordinary role of a citizen in a democracy."*

The quote relied on by Dr Maxey is at paragraph 89. However that is then followed by this (at paragraph 90 to 93):

The protesters claim that their honestly held opinion of the legality or dangerous character of the activities in question justifies trespass, causing damage to property or the use of force. By this means they invite the court to adjudicate upon the merits of their opinions and provide themselves with a platform from which to address the media on the subject. They seek to cause expense and, if possible,

embarrassment to the prosecution by exorbitant demands for disclosure, such as happened in this case.

91. In Hutchinson v Newbury Magistrates' Court (2000) 122 ILR 499 , where a protester sought to justify causing damage to a fence at Aldermaston on the ground that she was trying to halt the production of nuclear warheads, Buxton LJ said, at p 510:

> *"there was no immediate and instant need to act as Mrs Hutchinson acted, either [at] the time when she acted or at all: taking into account that there are other means available to her of pursuing the end sought, by drawing attention to the unlawfulness of the activities and if needs be taking legal action in respect of them. In those circumstances, self-help, particularly criminal self-help of the sort indulged in by Mrs Hutchinson, cannot be reasonable."*

92. I respectfully agree. The judge then went on to deal with Mrs Hutchinson's real motive, which ("on express instructions") her counsel had frankly avowed. It was to "bring the issue of the lawfulness of the Government's policy before a court, preferably a Crown Court". Buxton LJ said, at p 510:

> *"in terms of the reasonableness of Mrs Hutchinson's acts, this assertion on her part is further fatal to her cause. I simply do not see how it can be reasonable to commit a crime in order to be able to pursue in the subsequent prosecution, arguments about the lawfulness or otherwise of the activities of the victim of that crime."*

93. My Lords, I do not think that it would be inconsistent with our traditional respect for conscientious civil disobedience for your Lordships to say that there will seldom if ever be any arguable legal basis upon which these forensic tactics can be deployed.

His judgment ends with the follow passage (at paragraph 94):

> *In a case in which the defence requires that the acts of the defendant should in all the circumstances have been reasonable, his acts must be considered in the context of a functioning state in which legal disputes can be peacefully submitted to the courts and disputes over what should be law or government policy can be submitted to the arbitrament of the democratic process. In such circumstances, the apprehension, however honest or reasonable, of acts which are thought to be unlawful or contrary to the public interest, cannot justify the commission of criminal acts and the issue of justification should be withdrawn from the jury. Evidence to support the opinions of the protesters as to the legality of the acts in question is irrelevant and inadmissible, disclosure going to this issue should not be ordered and the services of international lawyers are not required*

97. Thus, far from setting the seal of approval on unlawful acts carried out on conscientious grounds, Lord Hoffmann and the rest of the House of Lords were emphasising the **illegality** of such acts and the dangerous precedent it would set in a Parliamentary democracy for the courts to be seen to condone them. The quoted remarks of Mummery LJ in the Tilley case are particularly apt here. It is not for this, or any Court, to adopt a moral attitude and to pick and choose which Acts of Parliament or aspects of the civil law it will or will not enforce.

98. These passages from the Jones case seem to me to deal a fatal blow to most of the points made by the Defendants.

99. So far as the actions of NET are concerned, I cannot at this stage of the proceedings, make any findings as to whether any of the allegations made by the Defendants are true.

100. I will note however that the courts have repeatedly recognised a right on the part of a landowner to use reasonable force by way of self-help in order to prevent a trespass on his land. In MEIER V ENVIRONMENT SECRETARY [2009] 1 WLR 2788 Lady Hale said this (at paragraph 27):

> *In considering the nature and scope of any judicial remedy, the parallel existence of a right of self-help against trespassers must not be forgotten, because the rights protected by self-help should mirror the rights that can be protected by judicial order, even if the scope of self-help has been curtailed by statute. No civil wrong is done by turning out a trespasser using no more force than is reasonably necessary: see Hemmings v Stoke Poges Golf Club [1920] 1 KB 720. In Cole on Ejectment (1857), a comprehensive textbook written after the Common Law Procedure Act 1852 (15 & 16 Vict c 76), there is considerable discussion (in chapter VII) of the comparative merits of self-help and ejectment. Any person with a right to enter and take possession of the land might choose simply to do that rather than to sue in ejectment*

Thus there is nothing wrong with HS2 through the agency of NET seeking to evict trespassers from its land without resorting to the Courts provided that no more than reasonable force is used.

101. I am not in a position to come to any view as to whether more than reasonable force has been used on any particular occasion.

102. However, if, by granting injunctive relief, I can discourage persons from trespassing in the first place then it seems to me that this will at least go some way to avoiding any such arguments in the future.

103. So far as NET being in breach of section 6 of the CLA 77 is concerned, I note the following:

    (i) The civil injunction action failed not least because the court held that a breach of section 6 gave rise to no civil remedy (see paragraph 6 of the Swift judgment).

    (ii) It was accepted by both sides in front of Swift J that the Police were in fact present during the eviction of the protesters from Ryall's Garage (see paragraph 14 of the Swift judgment).

    (iii) There is, and has been, no criminal prosecution of HS2 or NET for a section 6 offence and they are entitled to rely on the presumption of innocence.

104. Further even if NET **had** been guilty of using unreasonable force or of an offence under section 6 of the CLA 1977 or have not been lawfully licensed pursuant to statue, I do not see how that can possibly constitute a defence to an otherwise clear claim for injunctive relief to prevent trespass and nuisance. I repeat what has been set out above about illegality. Further, as Mr Roscoe points out, the actions of NET as instructed by HS2

derive from the common law right of self-help. They do not derive from the injunction, the remedy for breach of which is committal for contempt. If I refused to grant an injunction, then HS2 and its agents, NET, would still be entitled to seek to use self-help. Indeed I am convinced that, should I refuse an injunction, then it would render it much more likely that they would have to do so.

105. Thus I decline to refuse the grant of an injunction for that reason.

106. I also decline to accept the argument that I should refuse to grant an injunction because the Claimants do not come to equity "with clean hands". This principle is tightly circumscribed and is not a "magic wand" which can be waved by a Defendant to a claim for an injunction who can identify any type of wrong done by the Claimant. In ROYAL BANK OF SCOTLAND V HIGHLAND FINANCIAL PARTNERS [2013] EWCA Civ 328 (at paragraph 159) Aikens LJ said this:

> *It was common ground that the scope of the application of the "unclean hands" doctrine is limited. To paraphrase the words of Lord Chief Baron Eyre in Dering v Earl of Winchelsea the misconduct or impropriety of the claimant must have "an immediate and necessary relation to the equity sued for". That limitation has been expressed in different ways over the years in cases and textbooks…Spry: Principles of Equitable Remedies, suggests that it must be shown that the claimant is seeking "to derive advantage from his dishonest conduct in so direct a manner that it is considered to be unjust to grant him relief". Ultimately in each case it is a matter of assessment by the judge, who has to examine all the relevant factors in the case before him to see if the misconduct of the claimant is sufficient to warrant a refusal of the relief sought*

107. As I have stated, there is nothing unlawful about the work being carried out by HS2 at the Site. The behaviour said to disentitle the Claimants from obtaining the relief they seek is the alleged violent conduct on the part of NET. However, even if it was proved, I do not think that, in all the circumstances, any such violent conduct on the part of NET would persuade me to refuse the grant of an injunction. The Claimants' right to an injunction stems from the trespass and nuisance being committed by the Defendants. An

argument by those committing trespass and nuisance that the applicant for an injunction to prevent these torts has exercised its remedy of self-help using unreasonable force ought, it seems to me, to incline the Court towards the grant rather than the refusal of injunctive relief. Given the inadequacy of damage as a remedy in this case, to refuse relief in these circumstances would effectively leave the Claimants without any remedy at all.

108. So far as Mr Powlesland's point on the absence of a specific statutory offence, I think that it is unsustainable. I note that in Bennion on Statutory Interpretation (7th edition) the following principle is enunciated at section 25.1:

> *An Act must be read and applied in the context of the general body of law into which it is assimilated. Ordinary rules and principles of the common law will generally apply to, and may impliedly qualify, the express statutory provisions. Moreover in appropriate circumstances the common law may be used to supplement an Act that is found lacking in some respect.*

This is supported by a quotation from the judgment of Lord Hope in the case of WISELY V FULTON, WADEY V SURREY CC [2000] 2 All ER 545 (at 548):

> *As a general rule Parliament must be taken to have legislated against the background of the general principles of the common law. It may be found on an examination of the statute that Parliament has decided not to follow the common law. In that situation the common law must give way to the provisions of the statute. But an accurate appreciation of the relevant common law principles is nevertheless a necessary part of the exercise of construing the statute.*

In section 25.6 the following principle is stated:

> *(1) In accordance with the doctrine of Parliamentary sovereignty, Parliament may abolish, modify or displace any existing common law rule.*
>
> *(2) But there remains a general presumption that Parliament does not intend to make changes to the common law.*

This is in turn is supported by a quotation from Lord Browne-Wilkinson in R V SECRETARY OF STATE FOR THE HOME DEPARTMENT (EX PARTE PIERSON) [1998] AC 539 (at 573):

> *It is well established that Parliament does not legislate in a vacuum: statutes are drafted on the basis that the ordinary rules and principles of the common law will apply to the express statutory provisions. Parliament is presumed not to have intended to change the common law unless it has clearly indicated such intention either expressly or by necessary implication.*

109. Thus statutes are enacted against the background of the common law. Unless a statute expressly or impliedly alters or abrogates the common law, it remains in force. Here the common law (fused with equity) grants injunctive relief at the suit of a landowner to prevent trespass or nuisance. That position has been neither altered nor abrogated by any statute. There is absolutely no warrant for the court refusing to grant an injunction to prevent trespass or nuisance in one set of circumstances simply because Parliament has decreed that certain types of trespass or trespasses in other circumstances are criminal offences as well as torts.

110. Finally there is an argument that I should not grant an injunction because its terms will be ignored as, indeed, it is clear that the terms of the previous and indeed the existing injunctions have been ignored by certain, if not all, of the Defendants.

111. In paragraph 141 of my first judgment I quoted from the speech of Lord Rodger in the Meier case where he said this (at paragraph 17):

> *Nevertheless, as Lord Bingham of Cornhill observed in South Bucks District Council v Porter [2003] 2 AC 558 , at para 32, in connection with a possible injunction against gipsies living in caravans in breach of planning controls:*
>
> > *"When granting an injunction the court does not contemplate that it will be disobeyed … Apprehension that a party may disobey an order should not deter the court from making an order otherwise appropriate: there*

is not one law for the law-abiding and another for the lawless and truculent."

I note also that Lord Neuberger in the same case said this (at paragraphs 79 to 81 and 83):

Obviously, the decision whether or not to grant an order restraining a person from trespassing will turn very much on the precise facts of the case. None the less, where a trespass to the claimant's property is threatened, and particularly where a trespass is being committed, and has been committed in the past, by the defendant, an injunction to restrain the threatened trespass would, in the absence of good reasons to the contrary, appear to be appropriate.

80. However, as Lord Walker said during argument, the court should not normally make orders which it does not intend, or will be unable, to enforce. In a case such as the present, if the defendants had disobeyed an injunction not to trespass on any of the other woods, it seems highly unlikely that the two methods of enforcement prescribed by CPR Sch 2 , CCR Ord 29 and section 38 of the County Courts Act 1984 (RSC Ord 45, r 5(1) in the High Court) would be invoked. The defendants presumably have no significant assets apart from their means of transport, which are also their homes, so sequestration would be pointless or oppressive… in the same paragraph of his opinion, Lord Bingham also said that "[a]pprehension that a party may disobey an order should not deter the court from making an order otherwise appropriate". A court may consider it unlikely that it would make an order for sequestration or imprisonment, if an injunction it was being invited to grant were to be breached, but it may none the less properly decide to grant the injunction. Thus, the court may take the view that the defendants are more likely not to trespass on the claimant's land if an injunction is granted, because of their respect for a court order, or because of their fear of the repercussions of breaching such an order. Or the court may think that an order of imprisonment for breach, while unlikely, would nonetheless be a real possibility, or it may think that a suspended order of imprisonment, in the event of breach, may well be a deterrent (although a suspended order should not be made if the court does not anticipate activating the order if the terms of suspension are breached).

In some cases, it may be inappropriate to grant an injunction to restrain a trespassing on land unless the court considers not only that there is a real risk of the defendants so trespassing, but also that there is at least a real prospect of enforcing the injunction if it is breached. However, even where there appears to be little prospect of enforcing the injunction by imprisonment or sequestration, it may be appropriate to grant it because the judge considers that the grant of an injunction could have a real deterrent effect on the particular defendants. If the judge considers that some relief would be appropriate only because it could well assist the claimant in obtaining possession of such land if the defendants commit

the threatened trespass, then a declaration would appear to me to be more appropriate than an injunction.

112. In this context, I note from the evidence at RP 2 para 61 to 64, the following is stated:

> *61. As well as the impact to the scheme of works I outline above, the constant presence of protestors continues to make for an unpleasant and far from ideal working environment for the Claimants and their contractors. This has continued now for some years. The Claimants' contractors face verbal abuse and taunts on almost a daily basis and the presence of the protesters detracts them from their day to day activities. In addition, the Claimants' contractors face increasing physical abuse including prevention of their coming and going from the land, spitting and having unknown liquids thrown in their face.*
> *62. Whilst the Claimants consider there to have been a number of breaches of the 2019 Injunction Order (which the Claimants are considering further with their legal team though privilege is not waived), the 2019 Injunction Order has still been - for the most part - effective. There has been a noticeable reduction in trespass and obstruction to the Land since the injunctions have been made, and the trespass to the Additional Land (not subject to the injunction) is greater than trespass to the Land.*
> *63. I therefore believe that this shows that, should the 2020 Injunction not be continued and extended as set out in the draft order for this Substantive Application, there is likely to be an increase in incidents of this type which would adversely impact the works required at site in order to implement a scheme which has been mandated by Parliament.*
> *64. Moreover, as mentioned above, now that 'Notice to Proceed' has been issued by the Second Claimant to its suppliers who will be undertaking the remaining construction works in due course, the Second Claimant considers it is likely that this may result in increased levels of protest and activity against any works which will be taking place at the site in the shorter term.*

I do not see why I should not accept this evidence and I do.

113. Thus not only am I disinclined to refuse an injunction to restrain a clear trespass and nuisance simply because there is a risk that certain people will disobey it, it appears that the previous orders have had a noticeable effect and there is no reason to suppose that a further injunction would not be similarly efficacious. Besides, I am convinced, having

heard from many of the Defendants, that a refusal of an injunction would be regarded by them as a "green light" to increase the level of incursions and obstructions.

114. So far as damages being an adequate remedy is concerned, my view remains as I originally expressed it in paragraph 119 of my first judgment that damages would not be an adequate remedy in this case. The continuing incursions and obstructions have as their effect and, it seems to me, their intention, the delay of a major national infrastructure project which has been permitted by an Act of Parliament. The present cost of such disruption and delay has been quantified in a rough and ready way at nearly £16 million. That will only increase. There is absolutely no evidence that any of the Defendants would be able to pay any substantial damages. What I have seen and heard seems to me to suggest that most, if not all, of them have no assets at all. Further, as I have set out already, the estimated costs does not take into account the risk of further aggressive and violent confrontations which risk would in my view substantially increase if I refused to grant the injunction sought.

115. I accept that the Defendants' rights under articles 10 and 11 of ECHR are potentially affected here.

116. Article 10 provides:

> *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprise.*
>
> *2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of*

information received in confidence, or for maintaining the authority and impartiality of the judiciary."

117. Article 11 provides:

> *Freedom of assembly and association*
> *1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
> *2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the exercise of these rights by members of the armed forces, of the police or of the administration of State."*

118. However the Defendants' rights have to be balanced against the Article 1 Protocol 1 rights of the Claimants. This reads:

> *Protection of property*
> *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

119. Given that the Defendants' Article 10 and 11 rights are not absolute, a balancing exercise has to be carried out in every case. However, the authorities show that only in exceptional circumstances will the Article 10 and/or 11 rights of one person "trump" the A1 P1 rights of another such as to deny a landowner possession of land to which he might otherwise be entitled.

120. The authorities were reviewed by His Honour Judge Pelling QC in the case of MANCHESTER SHIP CANAL DEVELOPMENTS LTD & ANR V PERSONS UNKNOWN & ORS [2014] EWHC 645 (Ch) in the context of a claim for possession

against protesting trespassers. He considered a number of authorities including: APPLEBY V UK [2003] 38 EHRR 783; CITY OF LONDON V SAMEDE AND OTHERS [2012] EWCA Civ 160; SOAS V PERSONS UNKNOWN [2010] 25 November (Unreported); UNIVERSITY OF SUSSEX V PERSONS UNKNOWN AND OTHERS [2013] EWHC 862 (Ch); SUN STREET PROPERTY LIMITED V PERSONS UNKNOWN [2011] EWHC 3432 (Ch). He said as follows at paragraphs 33 to 37:

33. The final authority that I need to refer to at this stage is Sun Street Property Limited v Persons Unknown [2011] EWHC 3432 (Ch). I understand that permission to appeal from this decision was granted but not exercised. I accept that it must be read subject to the decision of the Court of Appeal in Samede (ante). Sun Street (ante) was concerned with an application made by the Defendants to set aside a possession order made against them following their occupation of a large complex of buildings in the City of London. The Defendants relied on Articles 10 and 11. Having recited the relevant Articles, Roth J referred to Appleby (ante) at page 29, to SOAS and then to an argument on behalf of the Defendants that each case was fact sensitive and that in that case the occupiers' rights should prevail because the property was unoccupied, and the location was '… absolutely integral …' to the protesters' message. Roth J rejected that submission in these terms:

> *Those submissions confuse the question of whether taking over the bank's property is a more convenient or even more effective means of the Occupiers expressing their views with the question of whether if the bank … recovered possession, the Occupiers would be prevented from exercising any effective exercise of their freedom to express their views so that, in the words of the Strasbourg Court, the essence of their freedom would be destroyed. When the correct question is asked, it admits of only one answer. The individuals … currently in the property can manifestly communicate their view about waste of resources or the practices of one or more banks without being in occupation of this building complex. … I need hardly add that the fact that the occupation gives them a valuable platform for publicity cannot in itself provide a basis for overriding the respondent's own right as regards its property.'*

These comments are perhaps rather starker than those contained in Samede (ante) and to the extent that they suggest that a full fact sensitive analysis is not required in the circumstances may be wrong. Nonetheless in my judgment it is reflective of the effect of Appleby (ante).

34. In my judgment Articles 10 and 11 do not even arguably provide the 2nd and 5th Defendants with a defence to the Claimants' possession claim. My reasons for reaching that conclusion are as follows. First, the land in respect of which possession is claimed is land owned otherwise than by a public authority. To permit the Defendants to occupy that property would be a plain breach of domestic law, because neither defendant has the licence or consent of the Claimants to be or remain on the land. It is also an interference with the Claimants' Article 1 Protocol 1 rights in relation to their property. Although Mr Johnson submitted that this factor was circular and had the effect of defeating the Defendants' Article 10 and 11 rights, I reject that argument. I do not regard the points as being of themselves decisive. They are two factors that have to be weighed in the balance with others. Nonetheless they are powerful factors because if effect is not given to them then the result will be to deprive a property owner of its entitlement to enjoy its property without interference. As Appleby (ante) demonstrates, it will only be in exceptional circumstances in which such an outcome could be justified, particularly in relation to privately owned land.

35. Secondly, the continued presence of the Defendants and, more importantly, all those others coming within the scope of the phrase 'Persons Unknown' is a source of interference with other legitimate users of the land concerned. …

36. Thirdly, the protest has been ongoing and escalating since last November. The length of the protest is a relevant consideration as Sales J demonstrated in University of Sussex v Persons unknown and Others (ante). Whilst this factor may not be a particularly weighty one it is nonetheless of importance when considered with the others I have so far mentioned.

37. The final and key point is that there is absolutely nothing to prevent the protesters from carrying on their protest elsewhere and/or by other means that does not involve interfering with the Article 1 Protocol 1 rights of the Claimants, their licensees and visitors. There is no evidence offered by the Defendants on this issue."

121. In my view the balancing exercise leads me, as it did in both my first and my second judgments, to the conclusion that I ought to grant the injunctions sought. In particular:

(i) The Claimants wish to prevent the Defendants from trespassing on and obstructing access into the Site to which they are lawfully entitled to possession and on which they are carrying out substantial works.

(ii) Those works are not only lawful but they are part of a statutorily mandated national infrastructure project.

(iii) In my view the intention behind and intended effect of the incursions and obstructions sought to be injuncted is not only to protest at the HS2 project but is also physically to hinder or prevent the works being carried out. Thus these activities go beyond the expression and communication of views and segue into deliberately obstructive activity which goes beyond the expression of views and imparting of information.

(iv) The Defendants have been on or around the Harvil Road Site protesting for some years now. They have had ample opportunity to express their opposition to the HS2 project.

(v) Most importantly the grant of the injunctive relief sought will not prevent the Defendants from protesting against HS2 or even from protesting against HS2 in the vicinity of the Harvil Road Site. They can still protest on the public highway at Harvil Road; they can still occupy the roadside camp which, if anything, is that part of their protest which is most visible to other members of the public.

122. I therefore propose to grant the injunction sought in the terms sought over the Land and the Additional Land as sought. In doing so I have also been mindful of the conditions set out in paragraph 82 of Canada Goose which, save as set out below, I believe are fulfilled by the terms of the injunction sought in these circumstances.

123. For the avoidance of doubt, I decline the invitation from Mr Powlesland to make any order or condition in relation to NET or its future conduct or involvement. Given that I have made no findings of fact in relation to the conduct of NET or its employees, it would be wholly wrong of me to do so.

The temporal limit of any injunction

124. In paragraph 82 (7) of Canada Goose the Court of Appeal states that any interim injunction should have "clear temporal limits".

125. Mr Roscoe on behalf of the Claimants states that they want the further injunction to last until trial or further order or for a period of 2 years (whichever is the earlier).

126. In his Skeleton argument and indeed in his oral submissions Mr Roscoe submitted that:

(i) Works at the Site will continue until at least 2024.

(ii) A one-year injunction would be too short because 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. Such applications also require substantial Court resources.

(iii) There are, he said, 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 by the Claimants; and (ii) any person affected by the injunction may apply to vary it or set it aside on short notice in the meantime.

(iv) Should the position on the ground change materially, the Claimants would themselves wish to, and indeed could, apply for further amendments to the

injunction to ensure that the relief was tailored to the particular risk on the ground. That is, in practice, a further safeguard.

127. However, he recognised that the Claimants have sought, and continue to seek, sequential interim injunctions which fall to be reconsidered from time-to-time. He accepted that so far as the Claimants were concerned, in the light of Canada Goose, continued interim relief is preferable to proceeding to trial and obtaining final injunctive relief. Indeed the impression I gained is that, were I to do nothing, then the Claimants would be content for these proceedings never to come to trial at all.

128. I can see why the Claimants would be reluctant for this case to come to trial and indeed why that course of action might be preferable for the Court:

(i) Preparation for and attendance at any trial would be hugely time consuming and expensive for the Claimants.

(ii) It is highly unlikely that they would recoup any of their costs from any of the Defendants who, as set out above, are likely to have no assets.

(iii) Given the number of named Defendants and their attitude to the HS2 project, it is likely that many of them would wish to participate fully at the trial which, of course, they would be perfectly entitled to do but this would involve them in immense effort if not cost.

(iv) Unless it was very carefully case managed, given the nature of the submissions made to me in the four hearings I have now tried, it is in my view highly likely that the Defendants would attempt to turn any hearing into a trial on the merits of the HS2 scheme. That would be illegitimate but risks being inevitable.

(v) Any trial would be lengthy and the trial, together with the inevitable case management hearings, would involve a large amount of Court time and resources.

129. However the problem with the position advocated by the Claimants is that there are clear dicta which indicate that this is not a legitimate course of action. In Canada Goose (at paragraphs 92 and 93) the Court of Appeal said this:

> *92. In written submissions following the conclusion of the oral hearing of the appeal Mr Bhose submitted that, if there is no power to make a final order against "persons unknown", it must follow that, contrary to* Ineos, *there is no power to make an interim order either. We do not agree. An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's Category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also "persons unknown" who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end. There is nothing anomalous about that.*
>
> *93. As Nicklin J correctly identified, Canada Goose's problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protestors. It wishes to use remedies in private litigation in effect to prevent what is sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those affected are not confined to Canada Goose, its customers and suppliers and protestors. They include, most graphically in the case of an exclusion zone, the impact on neighbouring properties and businesses, local residents, workers and shoppers. It is notable that the powers conferred by Parliament on local authorities, for example to make a public spaces protection order under the Anti-social Behaviour, Crime and Policing Act 2014 , require the local authority to take into account various matters, including rights of freedom of assembly and expression, and to carry out extensive consultation: see, for example, Dulgheriu v Ealing London Borough Council [2020] 1 WLR 609 . The civil justice process is a far blunter*

instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it.

In the recent case of HACKNEY LBC V PERSONS UNKNOWN [2020] EWHC 1900 (QB) (a case in which a local authority sought injunctive relief to prevent unlicensed music events on its land) Linden J (although he granted the relief sought) said this (at paragraph 40):

> *I was willing to grant the interim injunction which is set out in my Order but only on the basis that there would be a trial and that this would take place in the near future. There would also be a right to apply to discharge the Order in the intervening period. Interim injunctions are not an end in themselves and should not be granted as a way of solving a problem without finally resolving the issues in a Claim. I therefore was not prepared to grant an interim injunction for a year, as requested, and I listed the trial and gave directions as appears from my Order*.

130. Mr Roscoe sought to distinguish the passages from the Canada Goose case in a number of ways. However, in my view and despite the very different circumstances of the cases, they are applicable here.

131. Mr Roscoe submitted that simply to grant a further injunction for two years was 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. There is some support for the court having a flexible attitude in these circumstances. In the Meier case (at paragraph 58) Lord Neuberger said this:

> *Particularly with the advent of the CPR , it is clear that judges should strive to ensure that court procedures are efficacious, and that, where there is a threatened or actual wrong, there should be an effective remedy to prevent it or to remedy it. Further, as Lady Hale points out, so long as landowners are entitled to evict trespassers physically, judges should ensure that the more attractive and civilised option of court proceedings is as quick and efficacious as legally possible. Accordingly, the Court of Appeal was plainly right to seek to identify an effective remedy for the problem faced by the Commission as a*

> *result of unauthorised encampments, namely that, when a possession order is made in respect of one wood, the travellers simply move on to another wood, requiring the Commission to incur the cost, effort and delay of bringing a series or potentially endless series of possession proceedings against the same people.*

However he then added this (at paragraph 59):

> *None the less, however desirable it is to fashion or develop a remedy to meet a particular problem, courts have to act within the law, and their ability to control procedure and achieve justice is not unlimited. Judges are not legislators, and there comes a point where, in order to deal with a particular problem, court rules and practice cannot be developed by the courts, but have to be changed by primary or secondary legislation-or, in so far as they can be invoked for that purpose, by practice directions*.

132. Mr Roscoe pointed out, in particular, that:

(i) 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 whom the injunction can bind must then close, preventing it from 'biting' on so-called newcomers in future.

(ii) Thus, interim relief is an inherently more flexible and desirable tool from the perspective of the Claimants, not least because of its ability to catch such "newcomers".

(iii) 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.

(iv) Further, 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.

133. Thus he submitted that the continuation of interim relief was 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.

134. Despite Mr Roscoe's submissions and however sympathetic to his position I might be, I do not think that, in the light of the Canada Goose case, I can contemplate a situation in which I grant a further interim injunction and give no directions for the conduct of the proceedings to trial.

135. Thus I am prepared to grant the injunctions sought in the terms sought over the Site. I am prepared to grant relief until trial or further order or for a period of two years (whichever is the lesser period).

136. However I shall give the following directions:

(i) I will direct that any Defendant who wishes to defend the claim must serve an Acknowledgment of Service pursuant to CPR Part 8.3 within 28 days.

(ii) I will direct that there is to be a Case Management Hearing before a High Court Judge listed with a time estimate of 1 day on a date to be fixed after 56 days. Such a hearing is listed to consider the directions required for the further conduct of these proceedings and is not to be a reconsideration of the grant of injunctive relief.

(iii) Details of the hearing are to be published and served in the same way as directed by my order of 22nd June 2020.

(iv) I will also direct that the Claimants are to serve a list of the directions which they seek on every named Defendant who has served an Acknowledgment of Service at least 14 days before the hearing and every such Defendant is to counter serve a list of directions which they will seek on the Claimants at least 7 days before the hearing.

137. I hope that the parties will be able to agree a form of order. If there are disagreements about any part of the order or on any consequential matters, I will either decide such matters on paper without a hearing or give directions for another brief hearing to deal with any matters which remain in issue.