

Amended Particulars of Claim to reflect the addition of the Sixth, Seventh and Eighth Defendants as Defendants in these proceedings (pursuant to the Claimants' application dated 26 March 2021).

Claim No: _____

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST
BIRMINGHAM DISTRICT REGISTRY**

B E T W E E N:

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

Claimants

-and-

(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON LAND AT SOUTH CUBBINGTON WOOD, SOUTH OF RUGBY ROAD, CUBBINGTON, LEAMINGTON SPA SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON PLAN A ANNEXED TO THE PARTICULARS OF CLAIM

(2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON LAND AT CRACKLEY WOOD, BIRCHES WOOD AND BROADWELLS WOOD, KENILWORTH, WARWICKSHIRE SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON PLAN B ANNEXED TO THE PARTICULARS OF CLAIM

(5) ELLIOTT CUCIUREAN

(6) IAN "LARCH" MAXEY

(7) PAUL SANDISON

(8) TERRY SANDISON

Defendants

PARTICULARS OF CLAIM

The Claimants

1. The First Claimant is the Secretary of State for Transport ("the SoS").
2. The Second Claimant ("HS2") is the nominated undertaker appointed by the SoS

under s.45 of the High Speed Rail (London – West Midlands) Act 2017 (“the **Act**”) by the High Speed Rail (London-West Midlands) (Nomination) Order 2017.

The Land

3. The Claimants have an immediate right to possession of:
 - 3.1. all of the land at South Cubbington Wood, South of Rugby Road, Cubbington, Leamington Spa as shown coloured green, blue and pink and edged in red on Plan A annexed to the Particulars of Claim (“the **Cubbington Land**”); and
 - 3.2. all of the land at Crackley Wood, Birches Wood and Broadwells Wood, Kenilworth, Warwickshire, as shown coloured green, blue and pink and edged in red on Plan B annexed to the Particulars of Claim (“the **Crackley Land**”).
4. The Defendants have never been a tenant or sub-tenant of the Cubbington Land or the Crackley Land.
5. The land mentioned at paragraph 2 does not include residential property.
6. As explained further below, the Claimants do not know the names of all of the Defendants.
7. The basis of the Claimants’ entitlement to possession of the Cubbington Land and the Crackley Land is set out at §§15 and 16 and §§23 and 24 (respectively) of the first witness statement of Alan Robert Payne in support of this claim (“**Payne 1**”). In summary:
 - 7.1. The SoS is the registered freehold owner of the land coloured blue on Plans A and B.
 - 7.2. The SoS has executed General Vesting Declarations, pursuant to his powers under s.4 of the Act, to acquire the land coloured pink on Plans A and B.
 - 7.3. HS2 has taken temporary possession, pursuant to its powers under s.15 and Schedule 16 of the Act, of the land coloured green on Plans A and B.
8. The Claimants require the possession of the whole of the Cubbington Land and the Crackley Land in connection with works for the High Speed Rail Project (commonly

referred to as “HS2”) (“the **HS2 Scheme**”), construction of Phase One of which is authorised by the Act. In particular, the whole of the Cubbington Land and the Crackley land is required for “Phase One purposes”, within the meaning of s.67 of the Act.

Trespass to the Cubbington Land

9. The circumstances in which the Cubbington Land has been occupied are as follows:

- 9.1. A group of individuals entered onto the Cubbington Land on or around 29 September 2019 without the consent of the Claimants, and therefore as trespassers. Certain of those individuals have remained on the Cubbington Land since then, and remain in occupation, and have been joined by other individuals from time-to-time, again without the consent of the Claimants.
- 9.2. Individuals originally gained access to the Cubbington Land via a former public footpath which had been legally and physically closed or ‘stopped up’ and diverted on a temporary basis. This is the public right of way identified on the plan appended hereto as “**Plan C**” as “PROW 129d”. The circumstances in which that footpath was closed are set out at paragraph 20 of Payne 1. Heras fencing across the former footpath was moved by those gaining access.
- 9.3. One of those individuals who thereby gained access to the Cubbington Land is believed and so averred to be the Third Defendant, Matthew Bishop. It is believed and averred that he remains in occupation of the Cubbington Land.
- 9.4. The Claimants do not otherwise know the names of the persons who entered onto or remain in occupation of the Cubbington Land, and so the claim for possession of this land is brought against persons falling within the definition of the First Defendant.
- 9.5. The First and/or Third Defendants thereafter established a protest camp in the approximate location marked ‘Protest Camp 1’ on Plan C.
 - (i) Protest Camp 1 currently comprises approximately 12 small tents with additional tarpaulin structures, a gazebo style structure and a large ‘yurt’ style tent.

- (ii) The First and/or Third Defendants or some of them have built an elevated platform within one of the trees adjacent to Protest Camp 1 with climbing ropes attached to other nearby trees.
 - (iii) The First and/or Third Defendants, or some of them, have also built a long drop latrine on the Cubbington Land adjacent to Protest Camp 1, in the approximate position marked “Y” on Plan C.
- 9.6. The First and/or Third Defendants thereafter established a further protest camp in the approximate location marked ‘Protest Camp’ on Plan C. Protest Camp 2 is smaller than Protest Camp 1. It comprises approximately 6 small tents with additional tarpaulin structures to provide and increase the size of the shelter.
- 9.7. The First and/or Third Defendants have also:
- (i) built other wooden structures on the Cubbington Land, including using materials and brush from trees within the woodland;
 - (ii) lit fires in the wooded areas of the Cubbington Land, and hung clothes and other items from trees in the vicinity of the two protest camps.
 - (iii) Erected handmade signs on the Cubbington Land encouraging and directing people to visit the two protest camps.
10. In connection with their occupation of the Cubbington Land, the First and/or Third Defendants have interfered with the works being carried on by the Claimants’ contractors and sub-contractors on the Cubbington Land. Examples of such incidents are set out at §§17-19 of the First Witness Statement of Jeremy Tadeusz Corvin-Czarnodolski filed in support of this claim (“**Corvin 1**”).
11. The number of persons on the Cubbington Land is fluid with the position on the ground changing on a day to day basis:
- 11.1. Individuals regularly move between Protest Camp 1 and Protest Camp 2 such that, whilst there is a constant trespass, it is never the same individuals at the protest camps.
- 11.2. Persons unknown also come and go from the camps with new persons

unknown entering onto and joining the protest camps regularly such that the total number of persons unknown appears to change on daily/weekly basis.

11.3. There is a larger presence of persons unknown at both camps throughout the daytime hours with numbers reducing at night.

11.4. There remains a constant presence of persons unknown on the Cubbington Land.

12. On 11 October 2019, the Claimants gave the occupiers of the Cubbington Land written notice to quit. The circumstances of that notice are set out at §§33-34 of Corvin 1. The First and Third Defendants (or some of them) remained, and remain, in occupation of the Cubbington Land thereafter without the consent of the Claimants.

13. In the premises, the Claimants are entitled to and so claim an order for possession of the Cubbington Land.

The Crackley Land

14. The circumstances in which the Crackley Land has been occupied are as follows:

14.1. A group of individuals entered onto the Cubbington Land on or around 13 October 2019. The Claimants believe that these individuals initially accessed the Crackley Land via an open public footpath noted at PROW W165x on the plan appended hereto as “**Plan D**” on or around 13 October 2019.

14.2. They then departed from the public footpath and have remained on the Cubbington Land since then, and have been joined by other individuals from time-to-time, without the consent of the Claimants.

14.3. One of those individuals who thereby gained access to the Crackley Land is believed and so averred to be the Fourth Defendant, Joe Rukin. It is believed and averred that he remains in occupation of the Crackley Land. It is further believed and so averred that the Fourth Defendant had occupied the Cubbington Land prior to his entry onto the Crackley Land.

14.4. The Claimants do not otherwise know the names of the persons who entered

onto or remain in occupation of the Crackley Land, and so the claim for possession of this land is brought against persons falling within the definition of the Second Defendant.

14.5. Having gained entry to the Crackley Land, the Second and/or Fourth Defendants thereafter established a protest camp in the approximate location indicated on Plan D.

14.6. The protest camp:

- (i) Currently comprises approximately seven small tents with associated tarpaulin structures.
- (ii) A toilet tent has been constructed in the position indicated on Plan D.
- (iii) The number of occupiers of the camp fluctuates, between approximately 2 to 5 people.

14.7. There remains a constant presence of persons unknown on the Crackley Land

14.8. Signs have also been placed by the Second and/or Fourth Defendants on Heras fencing at the Crackley Land encouraging and directing visitors to the protest camp.

15. In connection with their occupation of the Crackley Land, the Second and/or Fourth Defendants have interfered with the works being carried on by the Claimants' contractors and sub-contractors on the Crackley Land. Examples of such incidents are set out at §24 of Corvin 1.

16. On 28 October 2019, the Claimants gave the occupiers of the Crackley Land written notice to quit. The circumstances of that notice are set out at §35 of Corvin 1. The Second and Fourth Defendants (or some of them) remained, and remain, in occupation of the Crackley Land thereafter without the consent of the Claimants.

17. In the premises, the Claimants are entitled to and so claim an order for possession of the Crackley Land.

Injunction

18. Each of the Defendants has trespassed upon the Cubbington and/or Crackley Land as a means of protest in opposition to the HS2 Scheme. Each is understood to be opposed to the continuation of the HS2 Scheme on environmental, economic or other grounds. It is to be inferred from the circumstances set out above that the Defendants by their unlawful trespass on to the Cubbington Land and Crackley Land wish to prevent or delay or render more difficult and expensive the works on the sites by the Claimants and their contractors.
19. The Claimants fear that once possession of the Cubbington Land and the Crackley Land has been obtained, there is a real risk that the Defendants will seek to return to the sites unless otherwise restrained. In particular:
 - 19.1. Persons unknown on the site have made clear to the HS2's contractors and employees on the ground that there are other members of their group who are not currently present on the Land but are willing to 'rotate' with the persons unknown presently occupying the Land for the purpose of the protest.
 - 19.2. Given the detail set out in these Particulars of Claim and the accompanying evidence of acts of trespass, there is a real risk that the Defendants will return to the Land as soon as the Claimants begin to undertake works.
 - 19.3. Furthermore, given the nature of the Land (its geographical location and topography), physically and logistically it is difficult (if not impossible) to properly secure it such that further trespass can be prevented. The Heras security fencing which the Claimants utilises to secure parcels of land in the woodland to prevent access by the wider public and the Defendants is little deterrent to those who are intent on gaining access to the Land unlawfully.
20. Accordingly, the Claimants seek appropriate injunctive relief restraining the Defendants with immediate effect from trespassing on either the Cubbington Land or the Crackley Land.

Declaratory Relief

21. The Claimants also seek a declaratory relief confirming their immediate right to possession of both the Crackley Land and the Cubbington Land.

AND THE CLAIMANTS CLAIM

- (1) An order that the First and Third Defendants give vacant possession of the Cubbington Land to the Claimants forthwith
- (2) An order that the Second and Fourth Defendants give vacant possession of the Crackley Land to the Claimants forthwith
- (3) Injunctive restraining: (a) the First ~~and Fifth to Eighth Third and Fourth~~ Defendants from entering upon the Cubbington Land in the future; and (b) the Second ~~and Fifth to Eighth, Third and Fourth~~ Defendants from entering upon the Crackley Land in the future.
- (4) Declaratory relief confirming the Claimant's immediate right to possession of the whole of the Cubbington Land and the Crackley Land.
- (5) Costs
- (6) Further and other relief

STATEMENT OF TRUTH

The Claimants believe that the facts stated in these Particulars of Claim are true. I am duly authorised to sign this statement on behalf of the Claimants.

Signed:.....

Position:.....

Claimants' Solicitor

Date:...~~19th February 2020~~

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(2) HIGH SPEED TWO (HS2) LIMITED

Claimants

-and-

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CLAIMANTS ON LAND AT SOUTH CUBBINGTON
WOOD, SOUTH OF RUGBY ROAD, CUBBINGTON,
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BLUE AND PINK AND EDGED IN RED ON PLAN A
ANNEXED TO THE PARTICULARS OF CLAIM
- (2) PERSONS UNKNOWN ENTERING OR
REMAINING WITHOUT THE CONSENT OF THE
CLAIMANTS ON LAND AT CRACKLEY WOOD,
BIRCHES WOOD AND BROADWELLS WOOD,
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(5) ELLIOTT CUCIUREAN

(6) IAN "LARCH" MAXEY

(7) PAUL SANDISON

(8) TERRY SANDISON

Defendants

PARTICULARS OF CLAIM

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