

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

**Before: Mr Justice Marcus Smith
On: 13 April 2021**

Claim No: PT-2020-BHM-000017



PT-2020-BHM-000017

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 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 CLAIMANT(S) 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) LARCH MAXEY
(7) PAUL SANDISON
(8) TERRY SANDISON

Defendants / Respondents

ORDER

EXTENDING THE DURATION OF THE INJUNCTION MADE BY MARCUS SMITH J ON 19 JANUARY 2021

PENAL NOTICE

IF YOU THE WITHIN NAMED DEFENDANTS OR ANY OF YOU DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED

IMPORTANT NOTICE TO THE DEFENDANTS

This Order prohibits you from doing the acts set out in this Order. You should read it very carefully. You are advised to consult a solicitor as

soon as possible. You have the right to ask the Court to vary or discharge this Order.

FURTHER TO the Order made in these proceedings by Andrews J on 17 March 2020 (“the **March 2020 Order**”), **AND** the extensions made by Marcus Smith J on 17 December 2020 (“the **December 2020 Order**”) and on 19 January 2021 (sealed on 28 January) (“the **January 2021 Order**”).

AND UPON the Claimants’ application by Application Notice dated 26 March 2021, pursuant to the provisions at paragraphs 11-15 of the January 2021 Order, to extend the duration of the injunction contained at paragraphs 3 to 5 of the January 2021 Order and to add the Sixth to Eighth named Defendants (“the **Substantive Amendment Application**”).

AND UPON hearing Mr Michael Fry and Mr Jonathan Welch, counsel for the Claimants; and Fifth Defendant, Seventh Defendant and Eighth Defendant (appearing in person without representation).

AND UPON reading the Application Notice dated 26 March 2021 and the two witness statements of Mr Richard Jordan (dated 26 March 2021 and 9 April 2021).

AND UPON the Claimants indicating that they are content to provide to any named Defendants or persons unknown copies of further evidence or other documents filed in these proceedings from time-to-time at an email address provided to the Claimants, and place all such documents online to be publicly accessible.

AND UPON the Court accepting the Claimants’ renewed undertaking that the Claimants will comply with any order for compensation which the Court might make in the event that the Court later finds that this Order has caused loss to a Defendant and the court finds that the Defendant ought to be compensated for that loss.

IT IS ORDERED THAT:

Continuation of January 2021 Order

1. The long-stop date of 30 April 2021 at paragraph 5 of the January 2021 Order be deleted, and the injunctions at paragraphs 3 to 5 of the January 2021 Order shall continue until 31 October 2022 or further order.

2. The injunction at paragraphs 3 to 5 of the January 2021 Order (as amended by paragraph 1 above) shall, further, apply to the Fifth to Eighth Defendants as well as the First and Second Defendants. Accordingly, the injunction which continues as against the First and Second and Fifth to Eighth Defendants is – for the avoidance of doubt – henceforth as set out in paragraphs 3 to 5 of this order.

Injunction in force

3. With immediate effect, and save for the matters set out in paragraph 4 of this Order:
 - 3.1 The First Defendant and Fifth to Eighth Defendants and each of them are forbidden from entering or remaining upon the Cubbington Land, being the land shaded green, blue and pink and outlined red on Plan A (“the **Cubbington Site**”); and
 - 3.2 The Second Defendant and Fifth to Eighth Defendants and each of them are forbidden from entering or remaining upon the Crackley Land, being the land shaded green, blue and pink and outlined red on Plan B (“the **Crackley Site**”).
4. Nothing in paragraph 3 of this Order:
 - 4.1 Shall prevent any person from exercising their rights over any open public right of way over the land. Those public rights of way shall, for the purposes of this Order, include the “unofficial footpath” between two points of the public footpath “PROW 130” in the location indicated on Plan C annexed to the Particulars of Claim and reproduced as an annexe to this Order;
 - 4.2 Shall affect any private rights of access over the Land held by any neighbouring landowner.
5. The order at paragraph 3 above shall remain in effect until trial or further order or, if earlier, a long-stop date of 31 October 2022.

Service

6. Pursuant to CPR r.6.27, the steps taken by the Claimants to serve this Substantive Amendment Application on the First, Second and Fifth to Eighth

Defendants shall amount to good and proper service of the Substantive Amendment Application on those defendants.

7. Pursuant to CPR r. 6.27 and r. 81.4(c) and (d) service of this Order on the First and Second Defendants shall be dealt with as follows:

7.1 The Claimants shall affix sealed copies of this Order in transparent envelopes in at least one location within the Cubbington Land and in at least one location within the Crackley Land.

7.2 The Claimants shall position (four) 4 signs, at the four locations marked on Plans A and B with red crosses, which are approximately 1.5m x 1m in size, advertising the existence of this Order (together with a map of the Land of at least A2 size) and providing a web link and the Claimant's solicitors contact details for copies of the Order (or further information in relation to it.)

7.3 The Claimants shall email a copy of the Order to the following email addresses:

(i) crackleyresidents@hotmail.co.uk

(ii) peter.delow@ntlworld.com

(iii) wendyhoulston@hotmail.com

(iv) helpstophs2@gmail.com

7.4 The Claimants shall further advertise the existence of this order in a prominent location on the websites:

(i) <https://hs2inwarwicks.commonplace.is/>; and

(ii) <https://www.gov.uk/government/organisations/high-speed-two-limited>,

together with a link to download an electronic copy of this Order.

7.5 The Claimants shall also leave sealed copies of this Order at the protestor campsite marked "Camp 2" on the Plans.

7.6 The Claimants shall, every six months, secure publication of a notice and map of the injunction in the Leamington Observer.

8. The taking of such steps set out at paragraph 7 shall be good and sufficient service of this Order on the First and Second Defendants and each of them. This Order shall be deemed served on those Defendants the date that the last of the above steps is taken, and shall be verified by a certificate of service.
9. Pursuant to CPR r. 6.27 and r. 81.4(c) and (d) 8 service of this Order on the Fifth to Eighth Defendants shall be dealt with by sending a copy of this Order to:
 - 9.1 in the case of the Fifth Defendant, his solicitors by email to: nhall@robertlizar.com;
 - 9.2 in the case of the Sixth to Eighth Defendants, personally by email to those email addresses held by the Claimants' solicitors.
10. The Court will provide sealed copies of this Order to the Claimants' solicitors for service (whose details are set out below).

Further directions

11. The Defendants or any other person affected by this order may apply to the Court at any time to vary or discharge it but if they wish to do so they must inform the Claimants' solicitors immediately by emailing rob.shaw@dlapiper.com. Schedule A to this Order indicates the process which should be followed for any such application.
12. Any person applying to vary or discharge this order must provide their full name and address, an address for service, and must also apply to be joined as a named defendant to the proceedings at the same time (unless they are already named as a defendant).
13. Any person wishing for this matter to proceed to trial and to defend the claim must serve an Acknowledgment of Service pursuant to CPR Part 8.3. Schedule B to this Order provides an indicative process for this course of action.
14. The Claimants have liberty to apply to extend or vary this Order or for further directions.

15. Save as provided for above, the Claim be stayed generally with liberty to restore.
16. Costs reserved. If the Claimants intend to seek a costs order against any person in respect of any future applications in these proceedings or any future hearing, then they shall seek to give reasonable advance notice of that fact to that person.

Communications with the Court and Claimants

17. All communications to the Court about this Order (which should quote the case number) should be sent to:

Court Manager
Birmingham Civil and Family Justice Centre
High Court of Justice
Chancery Division
Priory Courts
33 Bull Street
Birmingham B4 6DS

The telephone number is 0121 681 4441. The offices are open weekdays 10.00am to 4.00pm.

18. The Claimants' solicitors and their contact details are:

DLA Piper UK LLP of:
1 St Paul's Place
Sheffield S1 2JX
Tel: +44 114 283 3312
Email: rob.shaw@dlapiper.com
Ref: RXS/380900/346

Dated: 3 May 2021

SCHEDULE A – STEPS TO VARY OR DISCHARGE THIS ORDER

If, in accordance with paragraph 10 above, any Defendant or any other person affected by this Order wishes to apply to vary or discharge this Order, to ensure effective case management by the Court the following indicative steps are expected to be followed (although these are not binding directions):

1. Any party seeking to contest the Claimants' entitlement to interim relief should file with the court (i.e. send to the court) and serve (i.e. send to the Claimants):
 - (a) An N244 application form¹;
 - (b) Written grounds for the application (i.e. reasons for the proposed variation/discharge of the Order) – this may be contained within the N244 application form or on in a separate document; and
 - (c) A witness statement(s) containing and/or appending all of the evidence to be relied upon in support of the application.
2. In order to file the above documents with the Court, the applicant should:
 - (a) Send physical copies of the documents to the address at paragraph 17 of this Order; and/or
 - (b) Speak to the Court to obtain an address to send electronic copies of the documents to.
3. In order to serve the above documents on the Claimants, the applicant should:
 - (a) Send physical copies of the documents to the address at paragraph 18 of this Order; and/or
 - (b) Send electronic copies of the documents to the e-mail address at paragraph 18 above.
4. The person making the application should indicate to the Court and Claimants whether they consider the matter requires a court hearing or can be dealt with by the judge reviewing the paper application and any response from the Claimants.

¹ See the following link which provides a digital version of the form, and guidance notes: <https://www.gov.uk/government/publications/form-n244-application-notice>;

5. Thereafter the Claimants (i.e. HS2) shall have 14 days to file and serve evidence and submissions in response, including as to whether an oral hearing is required to determine the application.
6. Within 21 days, the Court shall decide whether a hearing is necessary, and/or may request from the parties evidence on any further matters necessary to determine the application. If the Court decides that a hearing is necessary, it shall seek to schedule the hearing (accommodating availabilities of the parties) within 42 days (6 weeks).
7. If the Court decides that further evidence is needed from either party, it may set strict deadlines by which that evidence must be filed. Both parties should be aware that the Court may restrict the use of evidence which is filed late or impose other penalties for non-compliance.

SCHEDULE B - STEPS TO BRING MATTER TO TRIAL

If, in accordance with paragraph 12 above, any Defendant or other person affected by this Order wishes to apply bring the Claimant's proceedings (whether as a whole or in part) to final trial, to ensure effective case management by the Court the following indicative steps are expected to be followed (although these are not binding directions):

1. If not already so, the party must apply to become a named defendant to the claim. This can be done by filing with the court (i.e. send to the court) and serving (i.e. send to the Claimants)
 - (a) An N244 Application form²; and
 - (b) a short statement explaining the reason for applying to become a named defendant (i.e. in order to contest the Claimants' claim).
2. In order to file the above with the Court, the applicant should:
 - (a) Send physical copies to the address at paragraph 17 of this Order; and/or
 - (b) Speak to the Court to obtain an address to send electronic copies to.
3. In order to serve the above on the Claimant, the applicant should:

² See the following link which provides a digital version of the form, and guidance notes: <https://www.gov.uk/government/publications/form-n244-application-notice>;

- (c) Send physical copies to the address at paragraph 18 of this Order;
and/or
 - (d) Send electronic copies to the to the e-mail address at paragraph 18
above.
4. The party seeking to contest the claim and bring the matter to trial must then file and serve (see above as to how this is to be done):
- (a) An Acknowledgement of Service using form N210,³ explaining the reasons for contesting the claim (whether as a whole or in part); and
 - (b) A witness statement(s) containing and/or appending all the evidence to be relied upon in support of the Acknowledgment of Service (i.e. evidence explaining the basis for contesting the claim).
5. Thereafter the Claimants (HS2) shall have 14 days to file and serve any evidence in reply.
6. The Court shall then list a hearing date for the final trial of this matter or a hearing date for a Case Management Conference, at which it will give directions to parties for any further steps required prior to the final trial (such as filing further evidence). The Court may set strict deadlines by which the further steps must be taken and both parties should be aware that the Court may restrict the use of evidence which is filed late or impose other penalties for non-compliance.

SCHEDULE C - USEFUL REFERENCES AND RESOURCES

The attention of all parties is drawn to the following references and resources:

Bar Pro Bono Unit – A possible avenue for obtaining free legal advice and/or representation: <https://weareadvocate.org.uk/>

Support Through Court (formerly Personal Support Unit) – An organisation supporting litigants in person: <https://www.supportthroughcourt.org/>

³ <https://www.gov.uk/government/publications/form-n210-acknowledgment-of-service-cpr-part-8>

Chancery Division Guide: <https://www.gov.uk/government/publications/chancery-guide>

Chancery Division Interim Applications Guide for Litigants in Person:
<https://www.judiciary.uk/publications/guide-litigants-person-chancery/>

Civil Procedure Rules Part 8: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part08>

Help with Court Fees website: <https://www.gov.uk/get-help-with-court-fees>