

**IN THE HIGH COURT OF JUSTICE
BIRMINGHAM DISTRICT REGISTRY**

B E T W E E N:

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

Claimants/Applicants

-and-

- (1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON, IN OR UNDER LAND KNOWN AS LAND AT CASH'S PIT, STAFFORDSHIRE SHOWN COLOURED ORANGE ON PLAN A ANNEXED TO THE PARTICULARS OF CLAIM ("THE CASH'S PIT LAND")**
- (2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON, IN OR UNDER LAND ACQUIRED OR HELD BY THE CLAIMANTS IN CONNECTION WITH THE HIGH SPEED TWO RAILWAY SCHEME SHOWN COLOURED PINK, GREEN AND BLUE ON THE PLAN ANNEXED TO THE APPLICATION NOTICE ("THE HS2 LAND")**
- (3) PERSONS UNKNOWN OBSTRUCTING AND/OR INTERFERING WITH ACCESS TO AND/OR EGRESS FROM THE HS2 LAND BY THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT WITHOUT THE CONSENT OF THE CLAIMANTS**
- (4) 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 HS2 LAND, OR DAMAGING, APPLYING ANY SUBSTANCE TO OR INTERFERING WITH ANY LOCK OR ANY GATE AT THE PERIMETER OF THE HS2 LAND WITHOUT THE CONSENT OF THE CLAIMANTS**
- (5) MR ROSS MONAGHAN (AKA SQUIRREL / ASH TREE) AND 58 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM**

Defendants/Respondents

CLAIMANTS' SECOND SKELETON ARGUMENT

CS1/x is a reference to paragraph x of the Claimants' First Skeleton Argument

D6S-1/x is a reference to paragraph x of the Skeleton Argument of the Sixth Defendant

D6S-2/x is a reference to paragraph x of the Amended Skeleton Argument of the Sixth Defendant

Introduction

1. The Order of Mr Justice Cotter sealed on 7 April 2022 gave the Claimants liberty to serve rebuttal evidence and/or submissions in respect of the Protection from Eviction Act 1977 (“1977 Act”). This second skeleton argument provides the Claimants’ analysis of the relevant statutory scheme, and further applications and submissions which fall out of that analysis.
2. The submission that the 1977 Act applies where any acquiring authority (i.e. not just HS2) seeks to acquire land from trespassers, licensees, or any other person has very wide implications for all land assembly under compulsory purchase or temporary possession powers. It would create unprecedented uncertainty for promoters of development and infrastructure schemes. If an unevidenced implied licence is also sufficient to invoke the 1977 Act, that would further undermine the established understanding of the exercise of compulsory purchase powers.
3. Although the Sixth Defendant does not now oppose the application for a possession order of the Cash’s Pit Land (D6S-2/16) he does so only on the basis that “he cannot establish a non-excluded licence for the purposes of Section 3 [of the 1977 Act]”, and submits that the 1977 Act remains relevant. The Claimants submit that as a result of that very limited concession, it is necessary for the Court to determine the issues raised by the Sixth Defendant.

Background Principles

4. Schedule 15 of the High Speed 2 (West Midlands – Crewe) Act 2021 (“HS2 Act 2021”) provides that the “nominated undertaker”, which is HS2, may “enter on and take possession” of specified land for Phase 2a purposes. That right to possession is a statutory right to possession, bespoke to HS2, and HS2 does not acquire title to the land in question. In effect, the statutory right to possession under the HS2 Act 2021 overlays the existing title and is good against anyone on the land.

5. It follows that HS2 does not step into the shoes of any freeholder, leaseholder or any other interest in land or contracting party under a licence when it exercises Schedule 15 powers and takes temporary possession.
6. It was common ground at the hearing that HS2 is not the owner of the Cash's Pit Land.

Legal Framework

7. The 1977 Act consolidated the Rent Acts. Part I seeks to protect tenants from being evicted from their homes by landlords without a court order. Part II governs the contents of a valid notice to quit. Part III contains supplemental provisions. The Sixth Defendant relies on Parts I and II of the 1977 Act.

8. In Part I, section 3(1) of the 1977 Act states:

“Where any premises have been let as a dwelling under a tenancy which is neither a statutorily protected tenancy **nor an excluded tenancy** and—

- (a) the tenancy (in this section referred to as the former tenancy) **has come to an end, but**
- (b) the occupier continues to reside in the premises or part of them,

it shall not be lawful for **the owner** to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises” (**emphasis added**).

9. Sub-section 2B provides that sub-section (1) applies to any premises occupied as a dwelling under a licence. Sub-section 2C provides that “excluded licence” shall be construed in accordance with section 3A.

10. Section 3A provides, where relevant, that:

“(6) A tenancy or licence is excluded if it was granted as a temporary expedient to a person who entered the premises in question or any other premises as a trespasser (whether or not, before the beginning of that tenancy or licence, another tenancy or licence to occupy the premises or any other premises had been granted to him).

(7) A tenancy or licence is excluded if—...

(b) it is granted otherwise than for money or money's worth”

11. In Part II, section 5 provides that:

“1) Subject to subsection (1B) below **no notice by a landlord or a tenant** to quit any premises let (whether before or after the commencement of this Act) as a dwelling shall be valid unless—

(a) it is in writing and contains such information as may be prescribed, and

(b) it is given not less than 4 weeks before the date on which it is to take effect.

(1A) Subject to subsection (1B) below, **no notice by a licensor or a licensee** to determine a periodic licence to occupy premises as a dwelling (whether the licence was granted before or after the passing of this Act) shall be valid unless—

(a) it is in writing and contains such information as may be prescribed, and

(b) it is given not less than 4 weeks before the date on which it is to take effect.

(1B) Nothing in subsection (1) or subsection (1A) above applies to—

(a) premises let on an excluded tenancy which is entered into on or after the date on which the Housing Act 1988 came into force unless it is entered into pursuant to a contract made before that date; or

(b) premises occupied under an excluded licence” (emphasis added).

12. In Part III, section 8 is the interpretation provision. It states:

“(3) In Part I of this Act “the owner”, in relation to any premises, means the person who, as against the occupier, is entitled to possession thereof.”

13. Section 9(4) provides that:

“Nothing in this Act shall affect the operation of—...

(e) section 13 of the Compulsory Purchase Act 1965.

14. Section 13 of the Compulsory Purchase Act 1965 provides:

“(1) If the acquiring authority are under this Act authorised to enter on and take possession of any land, and the owner or occupier of any of that land, or any other person, refuses to give up possession of it, or hinders the acquiring authority from entering or taking possession of it, the acquiring authority may issue their warrant to the sheriff -

(a) the sheriff, or

(b) the enforcement officer,

to deliver possession of it to the person appointed in the warrant to receive it.

(2) On receipt of the warrant the person to whom it is issued shall deliver possession of any such land accordingly.

(3) The costs accruing by reason of the issue and execution of the warrant, to be settled by the person executing the warrant, shall be paid by the person refusing to give possession, and the amount of those costs shall be deducted and retained by the acquiring authority from the compensation, if any, payable by them to that person.

(4) If no compensation is payable to the person refusing to give possession, or if it is less than the amount of the costs, that amount or the amount by which the costs exceed the compensation, if not paid on demand, shall be recovered by using the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods)], and on application to any justice of the peace for that purpose he shall issue his warrant accordingly.”

15. Paragraph 10 of Schedule 15 of the HS2 Act 2021 provides:

“Section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) applies for the purposes of this Schedule as if—

(a) references to the acquiring authority were to the nominated undertaker,

(b) references to compensation payable to the person refusing to give possession were to compensation payable under this Schedule, and

(c) in subsection (1), for “this Act” there were substituted “Schedule 15 to the High Speed Rail (West Midlands - Crewe) Act 2021”.

16. Paragraph 1 of Schedule 15 provides that HS2 may enter onto and take possession of specified land. Paragraph 4 sets out the procedure:

“Not less than 28 days before entering upon and taking possession of land under paragraph 1(1) or (2), the nominated undertaker must give notice to the owners and occupiers of the land of its intention to do so.”

- a “temporary possession notice”.

Submissions

Right to Possession

17. HS2’s statutory right to possession under the HS2 Act 2021 is better than all other parties, including the owner of land, and anyone in occupation or possession of the land after service of a relevant notice and expiry of the relevant time period without HS2’s consent is a trespasser.
18. On that basis, HS2 is entitled to an order for possession against any other party on the land, including the owner, and any party who may or may not have a contractual relationship with the owner.

Requirement for a court order

19. If HS2 has served a temporary possession notice, it is not obliged to issue any further notices. Moreover, it is explicitly not obliged to bring court proceedings in order to recover possession.
20. The 1977 Act is divided into two parts. Part I prevents eviction without a court order from residential premises in certain circumstances where there was a lawful lease or licence that has come to an end¹. This is disapplied in respect of HS2 by operation of section 9(4) of the 1977, which provides that nothing in the 1977 Act affects the operation of section 13 of the Compulsory Purchase Act 1965 (“1965 Act”).
21. Section 13 of the 1965 Act is applied to the HS2 Act 2021 by paragraph 10 of Schedule 15 that Act. It is accepted in D6S-1/11 and 13(ii) that HS2 has a legal right to possession of land provided that the statutory notice requirements set out in the HS2 Act 2021 are

¹ Furthermore, the assertion made orally through Counsel by the Sixth Defendant was that the implied licence had not (it was claimed) been terminated. On that basis, it would not have “come to an end” for the purposes of section 3(1)(a) of the 1977 Act

met and that HS2, having followed that process, had a right to possession on 24 March 2022.

22. It follows that HS2 does not require a court order to be entitled to possession, nor in order to issue a statutory warrant in respect of that possession.
23. This is the complete answer to the asserted statutory time bar imposed by the 1977 Act.

Notice to Quit

24. Part II of the 1977 Act concerns notice to quit and serves to illustrate the bespoke statutory position which HS2 occupies under the HS2 Act 2021. None of the provisions as to the validity of a notice to quit can apply to HS2 as it is not the landlord or the licensor of the relevant land.
25. The Sixth Defendant asserted that the Cash's Pit Defendants benefitted from an implied licence. Notwithstanding that the Sixth Defendant has been unable to provide any evidence for that assertion, a licence is not an interest in land. If such a licence were to exist, it would be a contract. There is no statutory provision which provides that upon the exercise of Schedule 15 powers of temporary possession, HS2 is bound by or party to any contract.

Excluded Licence

26. Notwithstanding the statutory reasons why the Sixth Defendant's reliance on the 1977 Act has no merit, and for completeness, the 1977 Act provides that a licence which is not for "money or money's worth" is an excluded licence.
27. There is no evidence before the Court that the asserted licence is for money or money's worth: this is unsurprising, as were it the case that the owner of the Cash's Pit Land ("Owner"), had entered into a contract to allow the Cash's Pit Defendants to construct fortifications and tunnels on land which was subject to temporary powers under the HS2 Act 2021 in return for money or services in lieu of money, the Owner would incur significant liability in respect of a) clearing the Cash's Pit Land and the cost of these proceedings and b) any harm caused when HS2 does take possession under its powers.

28. The Sixth Defendant suggested through counsel that the alleged implied licence was for money or money's worth as the Cash's Pits Defendants were providing "security". That submission is unproved, and if it were to be maintained, both the Cash's Pit Defendants and the Owner are in breach of security industry regulations, as any such arrangement would be "licensable conduct" pursuant to section 3 and Schedule 2, Part 1 of the Private Security Industry Act 2001.

Warrant

29. HS2 is entitled to issue a statutory warrant pursuant to paragraph 10 of Schedule 15 of the HS2 Act 2021 and section 13 of the 1965 Act on expiry of the temporary possession notice if the occupiers refuse to give up possession of the land or a refusal is apprehended. Video 6 of Exhibit RJ2 makes it very clear that the Cash's Pit Defendants will not only not give up possession (and have not done so since the requirement arose on 24 March 2022), but will actively resist HS2 in taking possession of the Cash's Pit Land.
30. To that end, the Cash's Pit Defendants have constructed tunnels under the Cash's Pit Land (see Video 6 Exhibit RJ2 and Video 1 of JAD5). In Video 1 of JAD5, the Sixth Defendant states:

"We've got tunnels everywhere, we've got people everywhere, we've got treehouses everywhere, we've got people ready to lock-on"

31. Such activity is extraordinarily dangerous, and carries significant risk of serious injury and death both to the activists and to the HS2 staff and emergency services personnel in the event of an eviction or emergency situation. Video 22 of RJ2 shows the reprehensible lengths to which activists are prepared to go in order to maim and injure those seeking to remove them from land.
32. Notwithstanding the power to issue a warrant, and hence to commence the eviction at any point from 24 March 2022, HS2 has applied for a possession order. The reason is that a warrant does not carry the same legal consequences as a High Court writ of possession. In particular, it is an offence under section 10 of the Criminal Law Act 1977 to resist or intentionally obstruct a High Court Enforcement Officer engaged in executing a writ issued by the High Court. High Court Enforcement Officers, when executing a

writ, explicitly and repeatedly inform trespassers of this when executing a writ and HS2 would expect this to encourage the Cash's Pit Defendants to leave the Cash's Pit Land rather than engage in dangerous resistance.

Interim Injunctive Relief

33. The Claimants note the Court's wariness in respect of the Claimants' application for an injunction to cover the whole of the HS2 route. However, the Claimants continue to consider that such an injunction is necessary to prevent continual, dangerous and unwarranted trespass.
34. As an interim measure, the Claimants seek immediate interim injunctive relief as regards the Cash's Pit Land, and the HS2 Land surrounding it ("Cash's Pit Injunction"). The evidence before the Court shows a direct and immediate threat of trespass and obstruction of access to that land². The Claimants are entitled to injunctive relief to restrain that unlawful activity for the reasons set out in CS1/35 - 52.
35. Both the Cash's Pit Land and the relevant HS2 Land parcels form part of the Route-Wide Injunction application. The difference is that they are more geographically discrete. Each of the areas of land is land which has either been subject of trespass, or is close enough to the unauthorised encampment that the Claimants' reasonably fear it will become the target of trespass should the Court not grant injunctive relief.
36. For example, there has been actual trespass on the adjacent HS2 Land (page 126 of the PDF HS2 Land Maps Part 2 (map number: 157) as follows:
 - 36.1 On 10 March 2022, trespass and attempts to climb onto diggers by activists including D17, D19 and D63, see Video 46 of RJ2 and description at paragraph 78 of Jordan 1. In the video, D17 says:

"...the staff are surrounding the digger, as soon as any of us get an opportunity we are gonna (sic) go for it".

² Video 6, RJ2

36.2 D19 is seen being physically carried away from the digger following an unsuccessful attempt to climb it in the first 10 seconds. D17 then encourages others to join “if anyone from the gate fancies a bit of a run around, then feel free to walk up and join us”. D17 goes further and states “when one of us gets an opportunity we are going to take this machine”. D17 then states “due to the number of protestors heading towards the machine someone has told the machine driver to stop the work, which to us is as effective as somebody being on top of it as ultimately it’s stopping the work”.

36.3 On 14 March 2022, there was mass trespass on the same land (see Video 47 of RJ2) described at paragraph 79 of Jordan 1. In the video, D17 states:

“...the aim of the game is to stop HS2 from actively working today and you better bet your arse we are going to do it”.

36.4 On 25 March, there was trespass and interference with fencing operations on the same land (see Videos 2 to 5 of JAD5) described in Dilcock 2. In Video 4 of JAD5, D6 says:

“Obviously we don’t want any work to [sic] be done... it’s just about the delay and cost, time and showing them for what it is”

37. Further, numerous threats have been made to continue trespassing on the HS2 Land generally and specifically on the land in this area. For example, in Video 5 of RJ2 described in paragraph 21 of Jordan 1, D17 says:

“You can see there’s two juicy diggers over there, just waiting to be surfed and there’s plenty of opportunities disrupt – and another one over there as well. It’s a huge, huge area so it takes a lot of them to, kind of, keep us all under control, particularly when we spread out. So yeah. If you wanna get involved with direct action in the very near future, then please get in touch with us at Bluebell or send me a message and we’ll let you know where we are, where we’re gonna be, what we’re gonna be doing and how you can get involved and stuff like that. Loads of different roles, you’ve not just, people don’t have to run around fields and get arrested or be jumping on top of stuff or anything like that, there’s lots of gate blocking to do and stuff as well, yeah so you don’t necessarily have to be arrested to cause a lot of disruption down here and we all work together to

cause maximum disruption ... Share this video, let's get it out there and let's keep fucking up HS2's day and causing as much disruption and cost as possible. Coming to land near you."

38. On 24 February 2022 (during service of the temporary possession notice) in Video 4 of RJ2 described in paragraph 21.13 of Jordan 1, D6 says:

"So they're going to take your tax-payers' money to make us homeless. But, the thing is, we'll just move on. And we'll just do it again and again and again. You know? So what's the point? What's the point in spending all that money and move it along? Tell you what the point is: it's because we're two sides of the same fucking arse cheek and we just make them a load of money. That's the point. They can't just leave us alone to peacefully protest, they want to make money out of it. Your tax-payer's money. Then they'll blame us for spending that, but they choose to spend it every single step of the way".

39. D6's response to a comment on the post of Video 4 of RJ2 to Facebook states:

"...we can fight the injunction and we will resist and fight the eviction, we need all Hands to the pump but we're ready, we won't go down easy and this isn't the end of us, our camps or the protests." (page 26 of RJ1).

40. On 23 February 2022 in Video 3 of RJ2 described in paragraph 21.12 of Jordan 1, D6 discusses the potential (at that point – now actual) Balfour Beatty injunction:

"I mean, but [laughs] little do Balfour Beatty know, they are a national company and it will cost them an arm and a leg because it's just one gate and we will just hit all the other gates. To that end, that's why we're trying to raise money for a minibus because if they do get this injunction then we can carry on this game and we can hit every HS2, every Balfour Beatty gate and with that it's just lawful peaceful protest using our freedom of expression and assembly. So bring it on HS2. I'm gonna put the crowd-funder on the thing. I really, really need help to get this minibus. We're really close. We've been saving all of that money. It does cost quite a lot to get the insurance on that for quite a few of us. But with that we can get more camps. We can get more gates that we can be

seen and get everywhere we need to be. So please help, please give us support. And obviously we need money to fight this. We need money to fight this injunction, you know, look at this paperwork. So, yep, please come – just come and help us. Come and help us build. Come and help us dig.”

41. It is submitted that the Cash’s Pit Land and the HS2 Land in the immediate vicinity of the Cash’s Pit Land are under direct and immediate threat of trespass and obstruction of access. In those circumstances, the First Claimant is entitled to and seeks injunctive relief restraining that unlawful activity. The Court will note that the draft injunction includes a mandatory order that the Defendants cease tunnelling activity on the land and leave the tunnels and the land immediately. This specific mandatory injunction is necessary because of the very significant danger that the continued occupation of make-shift tunnels presents (see paragraph 29.7 of Jordan 1).
42. As set out in the Particulars of Claim and Claimants’ First Skeleton Argument, the Claimants fear that a limited injunction will result in activists trespassing and obstructing other HS2 Land not protected by an injunction. As demonstrated in the video evidence exhibited to Jordan 1 and Dilcock 2, and explained in the witness evidence, the longer that HS2’s land is unprotected, the more likely it is that activists will trespass on HS2’s land, construct tunnels and other fortifications to resist eviction, and hence increase both the threat to life, and the costs to the taxpayer, through their actions. For that reason, the Claimants seek also a leave to apply provision on an urgent basis should further protection become necessary before the Court considers the Route Wide Injunction Application.
43. The Claimants will prepare a draft injunction order before the hearing on Monday 11 April 2022. The relevant plans have been extracted and will be appended to that draft order.

Failure to evidence submissions

44. It is plain now that the submissions made to the Court at the hearing on 5 April 2022 were and are unsustainable. No evidence has been provided to make good the submission that there was an implied licence, nor to make good the surprising oral submission that the Cash’s Pit Defendants were occupying the land for money or money’s worth.

45. The Court should place no weight at all on those submissions. The Claimants note that the Sixth Defendant no longer opposes the making of a possession order, although continues to assert (D6S-2/15) that despite there being no evidence whatsoever a licence may be inferred. No authority is provided for this proposition.
46. The effect of the Sixth Defendant's entirely unwarranted submissions is that the eviction of the Cash's Pit Defendants has been delayed. The consequences of this are serious, and, it is submitted, the Court has been placed in an untenable situation. The delay which has now been imposed on the eviction of the Cash's Pit Defendants has the potential to make the eviction less safe and thus increase the risk of serious harm to activists, emergency service personnel and HS2 staff and contractors.

Time Period for Eviction

47. The submission in D6S-2/17 that the Sixth Defendant is "a former licensee" and thus entitled to any period to remove himself and his possessions is unsupported by any evidence. It is a bare assertion. The Court was clear in the hearing, and in the Order dated 5 April 2022 that 11am on Friday 8 April 2022 was the deadline for service of any further evidence or submissions. No further evidence has been provided, and the Court ought not to entertain any last minute evidence in the circumstances. Further and even were this the case, there is no such requirement placed upon HS2 to afford such time beyond that already given under the temporary possession notice before taking possession of the land (under warrant if necessary).
48. It is an unattractive starting position for submissions that a possession order and eviction should be subject to delay where that would in substance maintain the trespass and would be likely to make the eventual eviction materially more dangerous. In any event, at the date of the hearing on 11 April 2022 it will have been 46 days since HS2 served its temporary possession notice. In those 46 days, rather than removing himself and his possessions from the Cash's Pit Land, it is plain from the evidence that D6 and the other Cash's Pit Defendants have instead used that time to continue to tunnel, fortify and encourage other trespassers to enter onto the Cash's Pit Land in order to resist eviction.
49. The Sixth Defendant pleads a common law entitlement to "a reasonable period to remove himself and his possessions from the land". He relies on the *obiter* comments made in

Gibson v Douglas [2016] EWCA Civ 1266. That case can be distinguished as it did not concern trespassers, nor did it concern the position where i) there was an immediate statutory right to possession in order to construct significant national infrastructure; ii) there was no suggestion that it was even possible that Mr Gibson would use the time afforded to him to make his eventual eviction materially more dangerous; iii) there was no suggestion that the activities Mr Gibson had undertaken were dangerous in themselves; and iv) Mr Gibson could evidence his licence, and had not entered, or remained, as a trespasser.

50. There is no reason why the Cash's Pit Defendants should not deliver up possession of the Cash's Pit Land forthwith. HS2 has an immediate statutory right to possession, and possession should not be delayed yet further. The Cash's Pit Defendants have no right or reason, whether implied or otherwise, to be on the Cash's Pit Land: they are trespassers. Moreover, any delay to possession and eviction may increase the risk of serious harm to activists, emergency services personnel and HS2 staff and contractors.
51. If it asserted that a forthwith possession order and eviction would breach Article 8, that submission would be contrary to authority and should be rejected. In *Ackroyd v HS2* [2020] EWHC 1460 (QB) (Authorities Bundle 1), Swift J held:

“10. ...I am also prepared to accept it is arguable that there has been some breach of Article 8 vis-à-vis the Applicants, although it seems to me that the nature of any interference with the rights under Article 8(1) is very limited indeed... each entered the premises not as their home but as a site of protest. That is a matter which clearly goes to the extent of any interference with Article 8 rights....

11. But even assuming the existence of some form of interference with rights protected by Article 8 the question of justification must be considered. It is inevitable that, were a breach of Article 8 rights to be demonstrated, a court would conclude that the removal of Mr Ackroyd and Ms Zieniuk was justified. The steps taken to remove them were taken by an owner of land who is seeking to fulfil an important statutory objective.”

52. It is submitted that the reasoning of the Divisional Court in *DPP v Cuciurean* [2022] EWHC 736 (Admin) (Authorities Bundle 10) at paragraphs 26 – 50 which concerned Articles 10 and 11 applies with equal force in respect of Article 8.

Conclusion

53. For the reasons set out in CS1/14 – 34, it is respectfully submitted that the Claimants are entitled to a possession order, declaratory relief (CS1/56) and injunctive relief (above, and CS1/35 – 52).

54. Each of the submissions made at the hearing summarised at D6S-1/13 were wrong in law:

54.1 There is no requirement for HS2 to serve a notice to quit. Moreover, given the wording of section 5 of the 1977 Act, it is not possible for HS2 to serve a notice to quit at all in this case: it is not the licensor. The without prejudice notice which HS2 served on 6 April is not required, and is of no legal effect, on the basis that HS2 is not landlord or licensor. To avoid any confusion, a disclaimer was placed prominently on the without prejudice notice.

54.2 The right to possession crystallised when the HS2 Act 2021 received Royal Assent. However, the entitlement to take possession and enter onto the relevant land only comes into force following expiry of a temporary possession notice given pursuant to paragraph 4(1). Thereafter, HS2 is entitled to immediately take possession and if possession is refused or a refusal apprehended, HS2 is entitled to issue a warrant to a High Court Enforcement Officer to deliver possession of the land to it. HS2 is also entitled to issue possession proceedings immediately on expiry of a temporary possession notice.

54.3 For the reasons set out, HS2 cannot serve a notice to quit, nor is there any requirement for it to do so, as following expiry of the temporary possession notice period (agreed here to be 24 March 2022) it has an immediate right to enter and take possession and may issue a warrant in respect of the same.

55. It is accepted at D6S-1/6 that the Claimants served the temporary possession notice relating to the Cash's Pit Land on 23 February 2022. The Sixth Defendant no longer opposes the application for a possession order (D6S-1/16). It follows that the Claimants are entitled to immediate possession of the Cash's Pit Land and have been since 24 March 2022. The Court is asked to order possession forthwith.

Costs

56. The Court made clear that the reason possession was adjourned was only to consider the arguments put forward by the Sixth Defendant. The Sixth Defendant's assertion that the claim for possession is genuinely disputed on grounds which appear to be substantial is unsustainable and failed to provide the Court with the full text of the 1977 Act.

57. The Claimants seek their costs of this additional hearing. The Claimants note that the Sixth Defendant has a gofundme page which currently indicates funds of £7,901(<https://www.gofundme.com/f/bluebellwoods>), which are intended to be used, amongst other things, "to build structures in order to defend the land, whilst living amongst nature".

58. The Claimants' have been put to substantial cost and the eviction of the Cash's Pit Land has been delayed as a consequence of the submissions made by the Sixth Defendant, in circumstances where the Sixth Defendant has been unable to provide any evidence to corroborate what was asserted. It is submitted that the Claimants are thus entitled to their costs.

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