

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Between:

(1) HIGH SPEED TWO (HS2) LIMITED

(2) THE SECRETARY OF STATE FOR TRANSPORT

Claimants

-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 ORDER DATED 11 APRIL 2022 ("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, AND GREEN ON THE HS2 LAND PLANS AT <https://www.gov.uk/government/publications/hs2-route-wide-injunction-proceedings> ("THE HS2 LAND") WITH THE EFFECT OF DAMAGING AND/OR DELAYING AND/OR HINDERING THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES
- (3) PERSONS UNKNOWN OBSTRUCTING AND/OR INTERFERING WITH ACCESS TO AND/OR EGRESS FROM THE HS2 LAND IN CONNECTION WITH THE HS2 SCHEME WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT, WITH THE EFFECT OF DAMAGING AND/OR DELAYING AND/OR HINDERING THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES 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

CLAIMANTS' SKELETON ARGUMENT FOR DIRECTIONS

References

[AB/*x*] – page *x* of the Application Bundle which accompanies this application for directions

[IO/*x*] – paragraph *x* of the Order of Mr Justice Julian Knowles made on 20 September 2022

[J/*x*] – paragraph *x* of the Judgment of Julian Knowles J in [2022] EWHC 2360 (KB)

[CR/*x*] – paragraph *x* of the Court of Appeal Ruling dated 9 December 2022

Introduction

1. This application for directions arises from the Order of Mr Justice Julian Knowles made on 20 September 2022 (“**Injunction Order**”) [AB/8-27].
2. The history of this application may be stated briefly. Following the Claimants’ application, two directions hearings, a precursor geographically constrained interim injunction (“**Cash’s Pit Injunction**”) and a directions order [AB/1-7] (“**Directions Order**”), Mr Justice Julian Knowles heard the Claimants’ application for an interim injunction to restrain trespass and nuisance across the Claimants’ land (the “**HS2 Land**”) on 26 – 27 May 2022. The hearing was contested, and the learned judge’s judgment sets out comprehensively the issues he determined [2022] EWHC 2360 (KB).
3. An application for permission to appeal the Injunction Order was made by Mr Knaggs (D6), and refused by the Court of Appeal by order made on 9 December 2022. Coulson LJ issued a ruling on the application (“**Ruling**”).
4. The Injunction Order was made with immediate effect and until 23.59 on 31 May 2023 [IO/3] and subject to a yearly review requirement. By [IO/15], the Claimants are responsible for arranging that yearly review hearing. The Claimants have made contact with the Court, and Notice of Hearing Date [AB/117] was issued on 13 January 2023. This application for directions relates to that review hearing (“**Review**”).
5. [IO/15] also provides that the Claimants shall “place details of any such hearing on the HS2 Proceedings Website”. It is arguable therefore that the learned judge considered that such placement was sufficient to serve notice of the Review on interested parties, particularly given:

- a. Service of the Injunction Order was “extensive and inventive” [J/229]
- b. The dates for the review hearing are given as between 15 – 31 May in [IO/15]
- c. Interested Parties have been able to register on the HS2 Proceedings Website to receive emails notifying them of updates to the website.

Submissions on Directions

6. However, notwithstanding the position set out above, the Claimants seek directions in substantively the same terms as the Directions Order for the Review. The reason is that Claimants are likely to seek certain amendments to the Injunction Order (which may also necessitate permission to amend the Particulars of Claim), which may include:
 - a. the removal of certain defendants;
 - b. potentially, the addition of new defendants;
 - c. the removal of references to the Cash’s Pit Land and Cash’s Pit Defendants from the Injunction Order;
 - d. the updating of the meaning of “the HS2 Land” as defined in the Injunction Order; and
 - e. clarifications to the text of the Order and Annexes to address concerns which have arisen since the Injunction Order was granted.
7. The service provisions for the Injunction Order were considered on the papers by the Court of Appeal. The Ruling makes plain that the service provisions in the Injunction Order were appropriate, indeed, “...more than sufficient to comply with the guidance in *Canada Goose*” [CR/43]. As those service provisions were a continuation of the earlier provisions, challenging those provisions would be “an abuse of the court process” [CR/42].
8. In particular, the Ruling recognised [CR/44] that “[g]iven the scope of the Injunction, it is clearly impractical for service to be effected along every piece of injunctioned land”.
9. The reason for the amendment to the website address relevant to the Injunction Order is simply to improve the functionality of the online hosting of the proceedings, as set out in the Tenth Witness Statement of Julie Dilcock dated 3 March 2023 which

accompanies this application for directions. As Ms Dilcock sets out, the provisions in place to ensure notification of the updated website address are:

- a. Placing a copy of the directions order made by the Court on the HS2 Proceedings Website.
- b. Placing a notice on the HS2 Proceedings Website stating that in the future, documents will be uploaded to the RWI Updated Website, and including in that notice a link to the RWI Updated Website.
- c. Retaining the HS2 Proceedings Website unless and until given permission by the Court to delete that website.
- d. Copying the documents already uploaded to the HS2 Proceedings Website to the RWI Updated Website.
- e. Anyone who had registered their email address on the HS2 Proceedings Website for notifications will be updated when the directions order and notice are uploaded to the HS2 Proceedings Website. In that manner, anyone who has been interested in the proceedings and registered will automatically receive a notification.

10. Each of these provisions are sufficient such that anyone who wants to access the Review documents (and any further documents relating to these proceedings) will be able to do so with minimal inconvenience.

The Draft Directions

11. As to each of the paragraphs of the proposed draft Order:

Definitions

12. Paragraph 1 provides defined terms in the draft Order. These match the defined terms of the Injunction Order so far as relevant. The Court will note that a new definition of “RWI Updated Website” has been introduced. The purpose of this new definition is to define an updated website address to host the documents relevant to the Review and any documents relating to the wider proceedings in the future.

Service by Alternative Method – Review Documents

13. The Claimants seek directions for alternative service, pursuant to CPR 6.27.
14. Paragraphs 2 to 4 contain provisions for alternative service. By CPR 6.20, the Review Documents must be served personally as against persons unknown (as the other methods of service listed in CPR 6.20 are not applicable to such persons) or by “any method authorised by the court under rule 6.27”.
15. There is no substantive difference between the proposed provisions in this draft Order and the Directions Order for the underlying application.
16. The Court is asked to make a direction for alternative service for the following reasons:
 - a. The Defendants are itinerant activists, known to move from place to place.
 - b. The Defendants tend not to have fixed abodes, places of work or other permanent addresses whereby the Claimants would be able to serve them in a reasonable and proportionate time.
 - c. The Claimants submit that in circumstances where individuals have already breached and been committed in relation to the Cash’s Pit Injunction, there is a real risk that the Defendants will seek to evade service simply to run up costs for the Claimants.
 - d. As set out above in submissions, the alternative service provisions proposed have already been found to be sufficient to comply with the relevant tests by the High Court and the Court of Appeal.
17. Paragraphs 5 - 15 seek to provide for effective case management of this application. These paragraphs provide the default position, and whilst a party is explicitly not prevented from making an application to adduce late evidence, or to address the Court, the need for an application will allow the Court discretion, and put the parties on notice of the consequences of such an application.
18. Paragraphs 16 – 18 provide the website address for any document relating to the underlying proceedings.

19. Paragraphs 19 – 20 provide for contact details for the Court and the Claimants.

Conclusion

20. Subject to any amendments the Court considers appropriate, the Court is respectfully asked to make the directions order as drafted.

7 March 2023

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