

On behalf of: Applicants/Claimants
R. Shaw
3rd statement of witness
Exhibits: RXS3
Date: 27 February 2024

Claim No. QB-2022-BHM-000044

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Between:

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

Claimants

-and-

- (1) NOT USED
- (2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON, IN OR UNDER THE HS2 LAND 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
- (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 60 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM

Defendants

THIRD WITNESS STATEMENT OF ROBERT SHAW

I, ROBERT SHAW, of DLA Piper UK LLP of 1 St. Paul's Place, Sheffield, S1 2JX WILL SAY as follows:

1. I am a solicitor of the Senior Courts of England and Wales and a Legal Director at DLA Piper UK LLP with day to day conduct of this matter under the supervision of my partners. I am authorised to make this statement on behalf of the Applicants.
2. I make this statement in support of the Applicants' application dated 27 February 2024 seeking an order for alternative service.
3. There is now produced and shown to me marked **RXS3** true copies of documents to which I shall refer in this statement and which can be found at <https://www.gov.uk/government/collections/hs2-route-wide-injunction-proceedings> ("**RWI Updated Website**"). Page numbers without qualification refer to that exhibit.
4. On 20 September 2022 an injunction was granted by Mr. Justice Julian Knowles in order to restrain trespass and nuisance on land acquired for the HS2 railway scheme ("**Original Order**").
5. Prior to the Original Order being made, but as part of these same proceedings, on 11 April 2024 Mr. Justice Cotter granted a precursor geographically constrained interim injunction in relation to a piece of land acquired by the Claimants for the HS2 Scheme known as "Cash's Pit" ("**Cash's Pit Injunction**").
6. An application for permission to appeal the Original 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**").
7. The service provisions for the Original 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*" (see paragraph 43 of the Ruling). A copy of the Ruling is at pages 1 to 12 of RXS3.
8. In particular, the Ruling recognised that "*[g]iven the scope of the Injunction, it is clearly impractical for service to be effected along every piece of injuncted land*" (see paragraph 44 of the Ruling).

9. The Original Order contained a sunset date of 31 May 2023 and required that it be reconsidered at a hearing to be listed on approximately a yearly basis between 15 and 31 May to determine whether there is a continued threat which justifies continuation of the injunction.
10. On 10 March 2023 the Claimants applied, inter alia, to extend the sunset clause in the Original Order by 12 months (**“First Review Application”**).
11. The First Review Application was heard by Mr. Justice Ritchie on 16 May 2023 and on 31 May 2023 Mr. Justice Ritchie made an order varying the Original Order and extending the sunset date to 31 May 2024 (**“Injunction Order”**). A copy of the Injunction Order is at pages 13 to 30 of RXS3.
12. Paragraph 12 of the Injunction Order provides that it shall be reconsidered at a hearing to be listed on approximately a yearly basis between 15 and 31 May to determine whether there is a continued threat which justifies continuation of the Injunction Order (**“Yearly Review”**).
13. Schedule A sets out Directions for the Yearly Review of the Injunction Order. In particular paragraph 5 of Schedule A provides that the Claimants are to file and serve *“(in accordance with paragraph 3(a) of this Schedule)”* any applications relevant to the Yearly Review.
14. The Claimants intend to file an application to be dealt with at the Yearly Review seeking, inter alia, to extend the sunset date by a further 12 months (**“Second Review Application”**).
15. On 27 January 2024 the court issued a Notice of Hearing listing the Yearly Review for 15 May 2024. The Claimants have placed a copy of the Notice of Hearing on the RWI Updated Website as required by paragraph 13 of the Injunction Order. A copy of the Notice of Hearing and Certificate of Service confirming service thereof are at pages 31 to 36 of RXS3.
16. When the Injunction Order was prepared in draft by counsel for the Claimants, Schedule A contained provisions setting out how the Claimants should serve any applications relevant to the “Yearly Review”. However, due to what I believe was an

unintentional revision of the draft order in conjunction with counsel for D6 not all of those service provisions were incorporated into the final order that was sealed by the court.

17. Indeed as can be seen in Schedule A:

- 17.1. paragraphs 5 and 8 state that the Claimant is to serve “*(in accordance with paragraph 3(a) of this Schedule)*”; and
- 17.2. paragraph 1.b. states “*and (b) above will be good and sufficient service on the Defendants and each of them.*”

However, Schedule A is missing the specific provision directing how service is to be effected.

18. At pages 37 to 63 of RXS3 is an email from the Claimants’ counsel Richard Kimblin KC attaching the Claimants’ markup of the draft order for submitting to Mr. Justice Ritchie. This contained at Schedule A the following provisions for service in respect of the Yearly Review:

3. *Pursuant to CPR r. 6.27 and r. 81.4, personal service is dispensed with and service of the Review Documents upon the Defendants shall be by:*
 - a. *placing the Review Documents on the RWI Updated Website.*
 - b. *causing to be made social media posts on the HS2 twitter and Facebook pages advertising the date of the Review and the web address of the HS2 RWI Updated Website.*
 - c. *Compliance with 3(a) and (b) above will be good and sufficient service on the Defendants and each of them.*
4. *The Claimants shall email a copy of this Order to solicitors for D6 and any other party who has as at the date hereof provided an email address to the Claimants to the email addresses: HS2Injunction@governmentlegal.gov.uk or HS2Injunction@dlapiper.com.*

19. These provisions are identical to some of those at paragraphs (7.(a)iii), (c) and (d)) for service of the Injunction Order. They also mirror some of the service provisions ordered by HHJ Kelly in a Directions Order dated 15 March 2023 (a copy of which is at pages 64 to 72 of RXS3) that was made prior to the Claimants submitting the First Review Application. See paragraphs 6.a. and d. and 8. of the Directions Order.
20. At pages 73 to 98 of RXS3 is an email from counsel for Defendant No.6, Stephen Simblet KC, putting forwards an amended draft order. Whilst Mr. Simblet KC's email mentions the changes to Schedule A, it does not disagree with the service provisions proposed by the Claimants. However, parts of the service provisions appear to have fallen out of the draft order, but with those references mentioned at paragraph 17 above retained.
21. It is the Claimants' position that the parties intended for the service provisions for the Yearly Review to be as they proposed in their draft of the order.
22. The Court is asked to make a direction for alternative service for the following reasons:
 - 22.1. It is apparent that the service provisions were not an issue between the parties, and appear to have been excluded from the draft order submitted to the Court in error.
 - 22.2. Some order for alternative service will be required in respect of persons unknown.
 - 22.3. The Defendants are itinerant activists, known to move from place to place.
 - 22.4. 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.

22.5. 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.

Statement of Truth

I believe that the facts in this witness statements are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed


Name: **ROBERT SHAW**

Dated: 27 February 2024