



Neutral Citation Number: [2024] EWHC 2557 (KB)

Case No: KB-2024-001765

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/10/2024

Before :

MR JUSTICE JULIAN KNOWLES

Between:

(1) LONDON CITY AIRPORT LIMITED
(2) DOCKLANDS AVIATION GROUP LIMITED

Claimants

and

PERSONS UNKNOWN WHO, IN CONNECTION WITH THE JUST STOP OIL OR OTHER ENVIRONMENTAL CAMPAIGN, ENTER OCCUPY OR REMAIN (WITHOUT THE CLAIMANTS' CONSENT) UPON THAT AREA OF LAND KNOWN AS LONDON CITY AIRPORT (AS SHOWN FOR IDENTIFICATION EDGED RED ON PLAN 1) BUT EXCLUDING THOSE AREAS OF LAND AS FURTHER DEFINED IN THE CLAIM FORM

Defendants

Yaaser Vanderman (instructed by Eversheds Sutherland (International) LLP) for the
Claimants

The Defendants did not appear and were not represented

Hearing dates: **20 June 2024**

Approved Judgment

This judgment was handed down remotely at 10:30 on 11 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. On 20 June 2024 in the Interim Applications Court I granted the Claimants' without notice application for a precautionary injunction to restrain anticipated protests at London City Airport (the Airport) by environmental campaigners and others falling within the description of the Defendants on the order. The planned action would amount to nuisance and trespass. Having read the evidence in advance of the hearing and after hearing Mr Vanderman on behalf of the Claimants, I was satisfied they were entitled to the order they were seeking. These are my reasons for granting the order.
2. The injunction is the sort of 'newcomer injunction' which have been granted by the courts in protest and other cases in recent years. The evolution of this sort of injunction, and the relevant legal principles, were set out by the Supreme Court in *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2024] 2 WLR 45. I will refer to this as *Wolverhampton Travellers* case.
3. Recent examples of such injunctions are: *Jockey Club Racecourses Ltd v Persons Unknown* [2024] EWHC 1786 (Ch); *Exolum Pipeline System Ltd and others v Persons Unknown* [2024] EWHC 1015 (KB); *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB); *Multiplex Construction Europe Ltd v Persons Unknown* [2024] EWHC 239 (KB); *High Speed 2 (HS2) Limited v Persons Unknown* [2024] EWHC 1277 (KB); and *Wolverhampton City Council v Persons Unknown* [2024] EWHC 2273 (KB). The legal basis for newcomer injunctions, and the principles which guide whether they should be granted in a particular case, are therefore now firmly established.

Without notice

4. The application before me was made without notice. I was satisfied this was appropriate for the following reasons.
5. Ordinarily, the Claimants would be required to demonstrate that there were 'good' (as required by CPR r 25.3(1)) or 'compelling' (Human Rights Act 1998, s 12(2)(b) (if it applies here, which the Claimants say it does not, a point I will return to) reasons for bringing an application without notice. Those requirements do not technically apply here as they only affect applications brought against parties to proceedings. In the present case, which relates only to Persons Unknown who are newcomers, there is no defendant: *Wolverhampton Travellers*, [140]-[143]. Nonetheless, I proceeded on the basis that the relevant tests had to be satisfied.
6. I was and am satisfied that there are good and compelling reasons for the application to have been made without notice.
7. In particular, the Claimants were justifiably concerned about the severe harm that could result if Persons Unknown were to be notified about this application. As I shall describe, there have been repeated serious threats about the scale and sort of direct action planned, and this will pose a serious risk of physical harm, financially injurious disruption and huge public inconvenience. The damage caused would for the most part be irreparable. There was plainly a risk that would-be protesters would trespass

upon the Airport before the application was heard and carry out the threatened direct action, thus partially defeating the purpose of the injunction.

8. I carefully considered the Convention rights of the Defendants. However, the Airport is private land, and for the reasons I explained in *High Speed Two (HS2) Limited v Persons Unknown* [2022] EWHC 2360 (KB), [131], these Convention rights are not therefore engaged. Persons unknown have no right to enter the Airport (save for lawful and permitted purposes) or to protest there. The position is therefore different from injunctions or laws restricting assembly and protest on the highway or public land, where the Convention is engaged: cf. *Re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] AC 505; *Birmingham City Council v Afsar* [2019] EWHC 1560 (KB).

Background

9. The application was brought by the Claimants on the basis of their belief that the Defendants are or were organising and had widely publicised a nationwide campaign of direct action to disrupt airports during the summer of 2024 (the Airports Campaign). The Claimants' application for injunctive relief was to restrain such threatened acts of trespass and nuisance at London City Airport. The whole of the site covered by the injunction is private land. (I should also add that a few weeks after I heard the Claimants' application, I heard an application for, and granted, a similar injunction in respect of Heathrow Airport on much the same basis).
10. The evidence is principally contained in the witness statements of Alison FitzGerald, the CEO of London City Airport and a director of each of the First and Second Claimants, and Stuart Wortley, of the Claimants' solicitors, and their exhibits.
11. Just Stop Oil is one of a number of groups which in recent years have become prominent for staging public protests. Each of these organisations shares a common objective of reducing the rate of climate change and each of them has used acts of civil disobedience to draw attention to the climate crisis and the particular objectives of their organisation.
12. Just Stop Oil's website refers to itself as:

“a non-violent civil resistance group demanding the UK Government stop licensing all new oil, gas and coal projects.”
13. In his witness statement at [32]-[41], under the heading 'Just Stop Oil – 2024 Threat to Disrupt Airports' Mr Wortley describes how in spring 2024 Just Stop Oil announced a nationwide summer campaign targeting airports in order to 'put the spotlight on the heaviest users of fossil fuels and call everyone into action with us'. At [32] he said this:

“32. The on-line edition of The Daily Mail for 9 March 2024 included a story about an undercover journalist who had successfully infiltrated a JSO meeting in Birmingham earlier that week. Apparently the meeting had been attended by over 100 activists. The following text is an extract from that story:-

“At the meeting, which was attended by an undercover reporter, JSO co-founder Indigo Rumbelow was greeted by cheers as she told the audience:

'We are going to continue to resist. We're going to ratchet it up.

We're going to take our non-violent, peaceful demonstrations to the centre of the carbon economy. We're going to be gathering at airports across the UK.'

Ms Rumbelow, the 29-year-old daughter of a property developer, has previously been arrested for conspiracy to cause public nuisance during the King's Coronation and made headlines last year when Sky News host Mark Austin had to beg her to 'please stop shouting' during an interview.

Outlining a blueprint for causing travel chaos, she advocated:

- Cutting through fences and gluing themselves to runway tarmac;
- Cycling in circles on runways;
- Climbing on to planes to prevent them from taking off;
- Staging sit-ins at terminals 'day after day' to stop passengers getting inside airports.

Miss Rumbelow told the crowd:

'We're going to be saying to the Government: 'If you're not going to stop the oil, we're going to be doing it for you.'

She cited similar protests to use as inspiration for their action, including Hong Kong students 'gathering in sit-ins in the entrances to airports, closing and disrupting them, day after day' during their protests against Chinese rule in 2019.”

14. At [35] he referred to an article in the *Evening Standard*:

“35. The Evening Standard article referred to another meeting (also attended by an undercover journalist) and which included the following text:-

“... Just Stop Oil’s Phoebe Plummer reportedly warned of ‘disruption on a scale that has never been seen before’ at a meeting attended by an undercover journalist. The group has been critical of the airline industry over its carbon footprint.

She said: ‘The most exciting part of this plan is that [it’s] going to be part of an international effort. Flights operate on such a tight schedule to control air traffic that with action being caused in cities all around the world we’re talking about radical, unignorable disruption.’

She added: ‘It’s time to wake up and get real – no summer holiday is more important than food security, housing and the lives of your loved ones. Flying is also a symbol of the gross wealth inequality that’s plaguing our society and if we want to create change we need to adopt a more radical demand.’

Just Stop Oil is planning an alliance with Europe-based A22 Network to cause disruption at major international airports.”

15. Other evidence cited by Mr Wortley is published material from Just Stop Oil stating that:
- a. “We need bold, un-ignorable action that confronts the fossil fuel elites. We refuse to comply with a system which is killing millions around the world, and that’s why we have declared airports a site of nonviolent civil resistance.”
 - b. “We’ll work in teams of between 10-14 people willing to risk arrest from all over the UK. We need to be a minimum of 200 people to make this happen, but we’ll be prepared to scale in size as our numbers increase.”
 - c. “Our plan can send shockwaves around the world and finish oil and gas. But we need each other to make it happen. Are you ready to join the team?”
 - d. “We’re going so big that we can’t even tell you the full plan, but know this — Just Stop Oil will be taking our most radical action yet this summer. We’ll be taking action at sites of key importance to the fossil fuel industry; super-polluting airports.”
 - e. “This summer’s actions across multiple countries will go down in history.
16. At [41] he quotes an email sent by Just Stop Oil to supporters:

“On 6 June 2024, JSO sent an email to subscribers in the following terms:-

“This is the most exciting email I’ve ever sent. As many of you already know, this summer Just Stop Oil is taking action at airports.

That’s exciting right? Well, there’s more.

We won’t be taking action alone.

Resistance groups across several countries in Europe have agreed to work together. That means this summer’s actions will be internationally Coordinated.”

17. I was shown, and also read, evidence about earlier disruptive protests at London City Airport. In 2019 Extinction Rebellion carried out similar direct action at the airport, namely:
 - a. A large group of individuals blocked the main entrance to the Airport.
 - b. A large group of individuals occupied the DLR station adjoining the Airport.
 - c. One individual climbed onto the top of an aircraft and glued himself onto it.
 - d. One individual boarded a flight and refused to take his seat.
18. In her witness statement at [28] Ms Fitzgerald explains that there are:

“28. ... a number of unusual features of London City Airport which make it an obvious target for protestors including environmental protestors. These include the following:-

28.1. the airport is close to the centre of London (and therefore easily accessible);

28.2. the runway is immediately adjacent to (and accessible directly from) Royal Albert Dock and King George V Dock;

28.3. the distance between the Main Terminal Building and the runway is short; and

28.4. there are no physical barriers between the Main Terminal Building and the aircraft stands (such as air-bridges which most airports use and which provide an useful means of preventing trespass by protestors).

29. Given that we do not have air bridges, all passenger movements between the terminal building and the aircraft stands (which involve crossing the access road which is used by multiple vehicles which service the airport) are carefully supervised by our ground-staff.”

19. Also in relation to Extinction Rebellion, on 2 June 2024, environmental activists blocked access to Farnborough Airport. It was reported that more than 100 individuals took part and several were arrested.
20. As Mr Wortley describes at [25]-[31], this actual and intimated campaign of nationwide direct action has echoes of the direct action taken against the energy sector in spring 2022, which resulted in substantial disruption and hundreds of arrests.
21. In short, I was and am satisfied on the evidence that there is and was evidence of a genuine threat to the Airport's operations by environmental protesters.
22. I turn to the nature of that threat.

Risk of harm

23. In this case the risk of harm is not just to the Airport and passengers by virtue of the planned disruption. There is also a direct risk of harm to the protesters and others.
24. The risks of harm posed by the Airports Campaign are significant and are set out by Ms FitzGerald in her statement at [27]-[32] and [36]. In particular, there are the health and safety risks of untrained and unsupervised trespassers carrying out direct action on a taxiway and runway. These risks affect not just the trespassers themselves, but also airport and airline staff as well as the emergency services.
25. The risks include serious injury and even death arising from:
 - a. Coming too close to a jet engine (a person coming too close to an operating engine can be sucked in and killed).
 - b. People being struck by landing, departing or other aircraft as well as those aircraft having to take evasive action in order to avoid injuring trespassers.
 - c. Being struck by other vehicles travelling between the terminal building and aircraft stands as well as those vehicles having to take evasive action to avoid injuring trespassers.
 - d. Falling from a height if trespassers climb on top of aircraft or onto the roofs of buildings and have to be removed.

The Site

26. Plan A in the bundle shows the land owned/leased by the Claimants. The Claimants between them hold the freehold or leasehold title to the land shown on the Plan. There is a tenancy at will on one parcel of land.
27. Plan 1 and Plans 2-8 in the bundle shows the extent of the land sought to be covered by the injunction, and the areas excluded. As I have said, all of the affected land is private land.

Legal principles

28. I recently reviewed some of the relevant case law in this area in my judgment in *Wolverhampton City Council v Persons Unknown* [2024] EWHC 2273 (KB), to which the reader is referred.

Precautionary relief

29. The test for precautionary relief of the type sought by the Claimants is whether there is an imminent and real risk of harm: *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, [34(1)] (Court of Appeal) and the first instance decision of Morgan J: [2017] EWHC 2945 (Ch), [88]. See also *High Speed Two (HS2) Limited*, [99]-[101]. 'Imminent' in this context simply means 'not premature': *Hooper v Rogers* [1975] Ch 43, 49. I was satisfied that this application were not premature and that, for the reasons I have gave earlier, there is more than a real risk of harm.

'Newcomer' or 'Persons Unknown' injunctions

30. As I explained earlier, the law in relation to this type of injunction was set out by the Supreme Court in *Wolverhampton Travellers*. In *Valero*, [58], and *Multiplex*, [11], Ritchie J set out a list of factors to be satisfied in the protest context (albeit in the former case the context of a summary judgment application).
31. As Mr Vanderman pointed out in his Skeleton Argument, [22], the present application is for injunctive relief against pure trespassers on private land. It is, therefore, unlike, for example, *Wolverhampton Travellers*, which involved injunctive relief sought by local authorities against Travellers (in respect of whom they have statutory duties) on local authority land; *Valero*, which involved injunctive relief against protesters, on both private and public land, and which therefore materially engaged Article 10 and 11 ECHR rights; and (I might add) the *Abortion Services* case, which concerned protests on public land.
32. Notwithstanding this, many of the *Valero* and *Multiplex* factors are still relevant to this application, which involves Persons Unknown who are newcomers, and I propose to analyse the Claimants' case by reference to them.

Discussion

33. I am satisfied that the *Valero* and *Multiplex* factors are satisfied here for the following reasons. I have italicised the factors.
34. *There must be a civil cause of action identified*: here, the causes of action are nuisance and trespass. In relation to trespass, Persons Unknown are threatening, by the Airports Campaign, to carry out the commission of intentional acts which result in the immediate and direct entry onto land in the possession of another without consent. All that needs to be shown is that the Claimants have a better right to possession than the Defendants: *High Speed 2 (HS2) Ltd*, [77]. That is plainly the case here. In addition, Persons Unknown have no licence to enter the Land for the purpose of carrying out protest or direct action.
35. To make this clear, the Claimants have published a notice on its website confirming this. In addition, such conduct is prohibited under Byelaw 3(12) of the London City

Airport Byelaws 1988 (made under *inter alia* s 63 of the Airports Act 1986 and s 37 of the Criminal Justice Act 1982). This makes it a criminal offence ‘to enter or remain at London City Airport for the purpose of carrying out a protest or taking part in any demonstration, procession or public assembly’. The same notice has also been affixed at various locations around the Airport: see Ms FitzGerald, witness statement, [17].

36. In relation to nuisance, Persons Unknown are also threatening undue and substantial interference with the Claimants’ enjoyment of their land, amounting to a private nuisance.
37. *Sufficient evidence to prove the claim*: I am satisfied that there is sufficient evidence to prove the claims as set out above. There is more than a ‘serious issue to be tried’. It is overwhelmingly certain that the Claimants would prevail at trial.
38. *Whether there is a realistic defence to the claims*: I do not consider that there is or can be a realistic defence to the claims. As explained earlier, I do not consider that the Convention has any application in case.
39. *The balance of convenience and compelling justification*: in *Multiplex*, [15], Ritchie J said:

“It is necessary for the Court to find, in relation to a final injunction, something higher than the balance of convenience, but because I am not dealing with the final injunction, I am dealing with an interlocutory injunction against PUs, the normal test applies. Even if a higher test applied at this interlocutory stage, I would have found that there is compelling justification for granting the *ex parte* interlocutory injunction, because of the substantial risk of grave injury or death caused not only to the perpetrators of high climbing on cranes and other high buildings on the Site, but also to the workers, security staff and emergency services who have to deal with people who do that and to the public if explorers fall off the high buildings or cranes.”
40. In the case before me, there is more than a real risk of grave injury and death, as I explained earlier.
41. *Whether damages are an adequate remedy*: this criterion is plainly not applicable in the present case, where Claimants seek to restrain conduct which has caused and is capable of causing considerable non-pecuniary harm to many people.
42. *Procedural requirements relating to the conduct*: these are, principally, that: (a) the persons unknown must be clearly identified by reference to the tortious conduct to be prohibited; and (b) there must be clearly defined geographical boundaries. I am satisfied that these requirements have been fulfilled.
43. *The terms of the injunction must be clear*: the prohibited conduct must not be framed in technical or legal language. In other words, what is being prohibited must be clear to the reader. I am satisfied this requirement is made out. The prohibitions have been set out in clear words.

44. *The prohibitions must match the pleaded claim(s)*: I am satisfied that this requirement has been fulfilled.
45. *Temporal limits/duration*: the injunction is time limited to five years and provision is made for annual reviews. Furthermore, there is always the right of any person affected to come to court at any time to seek a variation or discharge of the injunction: *High Speed 2 (HS2) Limited v Persons Unknown* [2024] EWHC 1277 (KB), [58]-[59]. As the claim is being brought against Persons Unknown only, no return date hearing or final hearing is required.
46. *Service of the order*: this is an especially important condition. I am satisfied that the service provisions contained in the order will be sufficient to bring the injunction to the attention of the public.

Other matters requiring consideration

47. Cross-undertaking in damages: the order contains an appropriate cross-undertaking.
48. As some of what the order prohibits is criminal by virtue of the Airport's Byelaws (see above) I considered whether the injunction was necessary. In *Wolverhampton Travellers*, [216]-[217], the Supreme Court said that if byelaws are available to control the behaviour complained of then consideration must be given to them as a relevant means of control in place of an injunction.
49. I was and am satisfied that the existence of byelaws is not a sufficient means of control and that an injunction is necessary. They were not sufficient to stop the Extinction Rebellion protests at the Airport in 2019, described earlier. Although handed down after the hearing in this case, I would also adopt my reasoning in *Wolverhampton City Council*, [35]-[43], on when it is appropriate to grant an injunction in support of the criminal law. I am satisfied the relevant tests are satisfied here.
50. In his Skeleton Argument at [26] in accordance with his duty of full and frank disclosure, Mr Vanderman set out some arguments that could be made against their application for an injunction.
51. Firstly, he said it could be argued that there is no justification for this application to have been made without notifying Persons Unknown. I addressed this earlier.
52. Second, he said it could be argued that there has been no direct threat against the Airport in particular, such that a precautionary injunction ought not to be granted. In other words, that there is not a sufficiently imminent risk. For the reasons set out above, I was satisfied there was the necessary imminence. It is not necessary to wait for the necessary harm to have occurred before applying for injunctive relief.

Conclusions

53. It was for the substance of these reasons I granted the injunction.