



Neutral Citation Number: [2024] EWHC 2599 (KB)

Case No: KB-2024-002210

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/10/2024

Before :

MR JUSTICE JULIAN KNOWLES

Between :

HEATHROW AIRPORT LIMITED

Claimant

- and -

**PERSONS UNKNOWN WHO (IN CONNECTION
WITH JUST STOP OIL OR OTHER
ENVIRONMENTAL CAMPAIGN) ENTER,
OCCUPY OR REMAIN (WITHOUT THE
CLAIMANT'S CONSENT) UPON 'LONDON
HEATHROW AIRPORT' AS IS SHOWN EDGED
PURPLE ON THE ATTACHED PLAN A TO THE
PARTICULARS OF CLAIM**

Defendants

Katharine Holland KC and Jacqueline Lean
(instructed by Bryan Cave Leighton Paisner) for the Claimant
The Defendants did not appear and were not represented

Hearing date: **9 July 2024**

Approved Judgment

This judgment was handed down remotely at 10:30 on 14 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. Following a hearing on 9 July 2024 I granted the Claimant's without notice application for a precautionary injunction to restrain anticipated protests at Heathrow Airport (the Airport) by environmental campaigners and others falling within the description of the Defendants on the Order. The Claimant is the owner and operator of the Airport. It says the planned action would amount to trespass and nuisance.
2. Having read the evidence in advance, and after hearing Ms Holland KC on behalf of the Claimant, I was satisfied it was entitled to the order it was seeking. These are my reasons.
3. 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 the *Wolverhampton Travellers* case.
4. 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.
5. A few weeks before the present application I granted a similar application by the operators of London City Airport to restrain the same sort of anticipated conduct which the Claimant fears.

Without notice

6. The application before me was made without notice. I was satisfied this was appropriate for the following reasons.
7. 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, 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.
8. I was and am satisfied that there are good and compelling reasons for the application to have been made without notice.

9. In particular, the Claimant was 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.
10. 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), [80]-[81], [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

11. The evidence in support of the application principally comes from Jonathan Coen, the Airport's Director of Security, and Akhil Markanday, of Bryan Cave Leighton Paisner, the Claimant's solicitors. I will refer to their statements as 'Coen' and 'Markanday' respectively, meaning no discourtesy.
12. Just Stop Oil (JSO) 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.
13. JSO'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.”
14. The Airport is Europe's busiest airport. The average number of daily flights exceeds 1,300, with an average of nearly 227,000 passengers daily. It is a designated Critical National Infrastructure site. It is the Claimant's case that it is a clear and obvious target for the planned disruptive action, and, indeed, features in one of the videos on the JSO website promoting the proposed campaign.
15. Details about the campaign of disruption at airports being organised and/or publicised by the Defendants are set out in Markanday, [14]-[24,] and Coen, [23] – [25]. Examples of recent unlawful actions at airports generally (supporting the Claimant's concerns as to the apprehended actions) and at or directed at the Airport previously are set out in Markanday, [25]-[28], and Coen, [26]-[28].

16. By way of summary, in March 2024, the Daily Mail reported that environmental activists associated with the JSO campaign were planning a campaign of disruptive action at airports over the summer of 2024, advocating actions such as:
 - a. Cutting through fences and gluing themselves to runway tarmac;
 - b. Cycling in circles on runways;
 - c. Climbing onto planes to prevent them from taking off; and
 - d. Staging sit-ins at terminals ‘day after day’ to stop passengers getting inside airports.
17. At the relevant time JSO’s own website emphasised that the group plans to target action on airports during the summer of 2024, with recent updates on its fundraising pages stating (inter alia) that ‘We’re escalating our campaign this summer to take action at airports’ and ‘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.**’
18. In June 2024 JSO sent a letter to MPs threatening further action if its demands were not met by a deadline of 12 July 2024. That was three days after the hearing before me. That was plainly an imminent threat.
19. UK and foreign airports, including Heathrow, have previously been the subject of unlawful trespass or other disruptive actions by environmental activists, including:
 - a. Two JSO supporters breaching the perimeter fence at Stansted Airport on 20 June 2024, and spraying paint over private jets (Markanday, [25]);
 - b. Extinction Rebellion activists blocking access to Farnborough Airport on 2 June 2024 (Markanday, [26]);
 - c. A group affiliated with JSO, called Last Generation, causing disruption at Munich airport on 18 May 2024, including people gluing themselves to the runway (Markanday, [27]);
 - d. On 27 September 2021, climate change protestors defied a court order and blocked part of the M25 at Heathrow (Coen, [28(a)]);
 - e. In September 2019, the climate change group, Heathrow Pause, attempted to disrupt flights into and out of the Airport by flying drones in the Airport’s exclusion zone (Coen, [27(a)]); and
 - f. On 13 July 2015, 13 members of the climate change protest group ‘Plane Stupid’ broke through the perimeter fence and onto the northern runway at the Airport. They chained themselves together in protest, disrupting hundreds of flights (Coen [27(c)]).

20. In the London City Airports case (see above) I also had evidence about protests by environmental activists there in 2019.
21. I was and am satisfied on all of the Claimant's evidence that there is real threat of disruptive protest to the Airport by environmental protesters. For reasons I will come to, this protest will not be lawful.
22. I turn to the question of harm.

Risk of harm

23. I was and am satisfied that the anticipated protest would cause a serious risk of harm; those harms being serious injury and death; financial harm; and unquantifiable inconvenience. I adopt the analysis in [17] et seq of the Claimant's Skeleton Argument and highlight the following.
24. The Airport is a busy, operational site serving passengers and cargo, with two runways and, as I have said, around 1,300 flight every day. As a Code F compliant airport (an International Civil Aviation Organisation designation), it can receive the largest aircraft which many other airports cannot, and accordingly has a higher proportion of long-haul aircraft landing than other UK airports (Coen, [31]).
25. In his witness statement Mr Coen says at [29]:

“29. Heathrow is a complex operational environment. Health and Safety is naturally taken very seriously and we consider there to be a real risk that any unlawful direct action at the Airport may endanger our staff, other companies' staff, our passengers, other legitimate visitors and the participants themselves.”
26. The risks of harm are set out by Mr Coen at [29]-[33]. The risks to life and limb principally arise from:
 - a. Trespassers being struck by landing, departing or taxi-ing aircraft, or others being struck by aircraft having to take evasive action (Coen, [30]);
 - b. Trespassers coming too close to a jet engine (Coen, [30(a)]);
 - c. Emergency services and the Airport's own rescue and fire-fighting services potentially having to put themselves at risk to remove and/or rescue trespassers (and in the event of an airfield emergency, their response potentially being hampered) (Coen [30(c)]);
27. There would also be severe disruption to passengers, and the proper operations of the Airport more generally (Coen, [43]). The potential economic loss to the Claimant would be significant (Coen, [37]). The disruption would have effects beyond the Airport itself, including, but not limited to, the potential need for other airports to find capacity to accommodate in-bound flights which might have to be diverted from Heathrow (Coen, [34(f)]); the need to divert additional Police resources to the Airport

(Coen, [34(g)]); disruption to the highway network (Coen, [34(d)]); and impacts on businesses and wider economy given the contribution which the Airport makes to the wider economy (Coen, [12]-[13], [15] and [34(b)]).

The site

28. The Airport occupies a very large area. I am satisfied that the site to be covered by the injunction is clearly shown on the plans produced by Mr Markanday that are in the bundle and which form part of the Order. I can summarise matters as follows.
29. The land within the Airport perimeter comprises a significant number of land parcels registered at HM Land Registry. A Schedule of Titles is appended to the Particulars of Claim. The land which is owned by the Claimant, either freehold or leasehold, is shown on one of the plans in the bundle; this equates to the area shown edged purple on Plan A to the Particulars of Claim.
30. A number of the parcels of land listed in the Schedule of Titles are subject to leases to third parties. Those parts of the Airport which are subject to above-surface leases are shown hatched blue on Plan A.
31. There are, in addition, a number of areas, within terminal buildings which are occupied by third parties. (As explained in Markanday, [12], in light of the complexity of seeking to show which parts of different floors of the terminal buildings are subject to leases (etc) to third parties, for the purposes of this claim, the terminal buildings are excluded from those parts of the Airport to which the Claimant asserts an immediate entitlement to possession by virtue of its freehold/leasehold ownership). These areas are shown shaded orange on Plan A. Those parts of the Airport to which the Claimant asserts an immediate entitlement to possession, in its capacity as freehold or leasehold owner under the titles shown in the Schedule of Titles, are therefore those areas shown shaded yellow but excluding those areas hatched blue or shaded orange on Plan A.
32. As operator of the Airport, the Claimant holds a certificate for the operation of the Airport issued by the Civil Aviation Authority (CAA) under the relevant legislation (the Certificate). It also has an Economic Licence granted by the CAA under Part 1 of the Civil Aviation Act 2012 (the Licence). In broad terms, these confer the right to control the Airport and the right to charge fees.
33. The Claimant has also made the Heathrow Airport – London Byelaws 2014 (the Byelaws) pursuant to s 63 of the Airports Act 1986. They regulate the use and operation of the Airport, and the conduct of all persons while within the Airport. They came into force on 13 April 2014. Section 64 makes it an offence punishable by a fine to breach byelaws made under s 63. Several of the byelaws are relevant, but for example, Byelaw 3.19 provides:

“no person shall organise or take part in any demonstration, procession or public assembly likely to obstruct or interfere with the proper use of the Airport or obstruct or interfere with the safety of passengers or persons using the Airport”

Causes of action

34. The Claimant seeks an injunction to restrain acts it said would constitute trespass and nuisance.
35. I am satisfied that the Claimant has an overwhelmingly strong case and that there is (or would be) no realistic defence. I will say more about this later.

Legal principles

36. 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

37. 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.
38. I was satisfied that this application was not premature and that, for the reasons I gave earlier, there is more than a real risk of harm.

'Newcomer' or 'Persons Unknown' injunctions

39. 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).
40. 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.
41. 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 Claimant's case by reference to them.
42. *There must be a civil cause of action identified*: here, the causes of action are trespass and nuisance.
43. In relation to trespass, as set out [5] of the Particulars of Claim, the Claimant is entitled to immediate possession of those parts of the Airport shown shaded yellow on Plan A in its capacity as the registered freehold or leasehold proprietor of those parts of the Airport. The availability of injunctive relief to restrain an anticipated trespass of land to which a landowner is entitled to immediate possession is well established:

see, for example, *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780.

44. However, it is also well established that an entitlement to exclusive possession, or actual possession itself, is not required where possession, or injunctive relief, is sought against trespassers: *Manchester Airport Plc v Dutton & ors* [2000] 1 QB 133. In *High Speed Two (HS2) Limited v Four Categories of Persons Unknown* [2022] EWHC 2360 (KB), in granting injunctive relief to restrain protests over the HS2 route and other land, I said at [77]: ‘In relation to trespass, all that needs to be demonstrated by the claimant is a better right to possession than the occupiers’, citing *Dutton* at p147.
45. In *Mayor of London v Hall* [2011] 1 WLR 504, the Court of Appeal was satisfied that the Mayor of London, as the person with ‘control’ of Parliament Square Gardens, could properly seek injunctive relief against the defendants founded in trespass, even though title was vested in the Crown ([22]-[27]).
46. The Claimant plainly comes within these principles. As well as its title holding over the relevant parcels of land, it is the operator of the Airport as a whole and so in control of it. It holds the Certificate and the Licence, which mean that it is responsible for the safe and efficient operation of the Airport. And it has made byelaws pursuant to the power given to it by s 63 of the Airports Act 1986 which regulate the use and operation of the airport and the conduct of all persons within the Airport.
47. As the Defendants have no interest, estate or other right to possession of the Airport, or right to enter it without permission (which they do not have), there can be no dispute that the Claimant enjoys a better right to possession of the Airport than they do. As set out in Coen, [20], whilst it is the case that large parts of the Airport are broadly open to the public, that is with the Claimant’s permission and consent for legitimate short-term purposes connected with Heathrow’s status as an airport – for example, to travel themselves or to drop-off/collect other travellers. That general consent is subject to compliance with the Byelaws.
48. The Claimant is therefore entitled to injunctive relief to restrain trespass over the whole of the Airport, as shown edged purple on Plan A, being the land over which it has control even if not, by reason of title, an immediate right to possession in its capacity as landowner.
49. I turn to nuisance. This can either be private nuisance or public nuisance.
50. The essence of a claim for private nuisance is that the acts of the defendant have wrongfully interfered with the claimant’s use and/or enjoyment of its property. I am satisfied that in the present case, the acts complained of would fall into this category of nuisance by interference with enjoyment discussed in *Clerk & Lindsell on Torts* (24th Edn), [19-08].
51. A public nuisance is one which ‘inflicts damage, injury or inconvenience on all the King’s subjects or on all members of a class who come within the sphere of a neighbourhood of its operation’: *High Speed 2 (HS2) Limited*, [84]. A public nuisance

is actionable in private law if the claimant can establish that he has sustained a particular damage or injury other than and beyond the general injury to the public, and that such damage is direct and substantial: *Benjamin v Storr* (1873-74) LR 9.

52. I am satisfied that the Defendants' threatened conduct satisfies these tests and would constitute a public nuisance. The actions apprehended by the Claimant would substantially affect members of the public, including, but not limited to persons wishing to use the Airport for the purpose of air travel - as well as the Claimant.
53. *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.
54. *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.
55. *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."
56. In the case before me, there is more than a real risk of grave injury and death, as I explained earlier. Other harm would also result.
57. *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 many people. Further, the evidence of Mr Coen shows that the economic loss to the Claimant would be huge and of such a scale that there is no credible reason to believe that any of the Defendants could or would meet any such award (Coen [39(d)]).
58. *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.
59. *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.

60. *The prohibitions must match the pleaded claim(s)*: I am satisfied that this requirement has been fulfilled.
61. *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.
62. *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

63. Cross-undertaking in damages: the order contains an appropriate cross-undertaking.
64. 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.
65. I was and am satisfied that the existence of byelaws is not a sufficient means of control and that an injunction is necessary. Byelaws have not prevented previous disruptive protests. Although handed down after the hearing in this case, I would also adopt my reasoning in *Wolverhampton City Council*, [35]-[43], where I granted injunctions to prevent so-called car cruising (in effect, organised dangerous driving) on when it is appropriate to grant an injunction in support of the criminal law. I am satisfied the relevant tests are satisfied here.
66. At [43] of its Skeleton Argument the Claimant made submissions in compliance with its duty of full and frank disclosure on reasons why it might be said not to be appropriate to grant an injunction.
67. Firstly, it 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.
68. Second, it 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 injunction relief. The Airport is an obvious target, as Mr Coen said.

69. Third, it referred to arguments based on the Defendants' Convention rights. These have no application for the reasons explained earlier.

Conclusion

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