Amended Under the Slip Rule

Neutral Citation Number: **[2025] EWHC 23 (Admin)**

Case No: AC-2024-MAN-00401

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Manchester District Registry, Civil Justice Centre, 1 Bridge Street West, Manchester M60 9DJ

Date: 20/01/2025

Before :

KAREN RIDGE SITTING AS A DEPUTY HIGH COURT JUDGE

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Between :

THE KING (on the application of)	**Claimants**
KAREN HOLOHAN AND CORMAC HOLOHAN	
- and –	
HIGH SPEED TWO LIMITED (HS2 Ltd)	**Defendant**
-and-	
THE SECRETARY OF STATE FOR TRANSPORT	**Interested Party**

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Karen Holohan and Cormac Holohan acted as Litigants in Person
Charles Streeten and Armin Solimani (instructed by **Government Legal Department**) for the **Interested Party**

Hearing date: 20 November 2024

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JUDGMENT

Deputy High Court Judge Karen Ridge:

Introduction

1. This is an application for interim relief within judicial review proceedings in relation to decisions taken on behalf of the Secretary of State for Transport (SoST) and High Speed Two (HS2) Limited in connection with a Grade II listed building, Stanthorne Hall Farm, Middlewich Road, Stanthorne, Middlewich CW10 9JD (Stanthorne Hall or "the property").

2. The decision under challenge is a decision taken by Mr Robert Middleton on 21 October 2024 on behalf of the SoST to refuse the Claimants' request to consider a lease to the Claimants of the property and to allow the Claimants to enter the land for the purpose of surveying the property. The Claimants are private individuals who have an interest in preserving historic properties. They are members of the Georgian Society but bring this claim in their personal capacities.

Procedural Matters

3. There are a number of applications before the Court. Firstly, the Claimants seek urgent consideration of their application for interim relief in the form of a mandatory order giving them the right to enter and survey the property and an order directing the disclosure of the "Property Condition Report". They further seek permission to commence judicial review proceedings. Finally, there is an application to strike out the SoST's defence and an application for a protected order.

4. By application dated the 13 November 2024 the SoST seeks an order substituting the Secretary of State as Defendant, and an order substituting HS2 as Interested Party. The SoST is the correct Defendant as the relevant decisionmaker and HS2 is involved in the management of Stanthorne Hall and is properly an Interested Party. Those applications for substitution are not controversial and are hereby granted pursuant to Civil Procedure Rule (CPR) 19.2. References from now on to the Defendant are therefore references to the SoST.

5. The second application made by the Defendant is an application under CPR Part 11 confirming that the Court lacks jurisdiction to hear the claim on the basis that the claim was not validly served in accordance with rule 6.10 of the Civil Procedure Rules (CPR). In their response the Claimants have applied to the Court for an order authorising an alternative method of service under CPR 6.15 on the basis that the claim form was served within the required timeframe and there was no prejudice to the Defendant. That application is now agreed by the Defendant. I am satisfied that it is appropriate to make the order as requested and therefore any questions relating to service now fall away.

6. The Claimants have made an application to "strike out the defence". The claim form was sent by email on 5 November 2024. The Acknowledgement of Service (AoS) form and Grounds of Resistance were filed at the Court Office on the 13 November 2024. The rules require that the AoS is filed within 21 days after service of the Claim Form. I can see no basis, procedurally or on the facts, for the Claimants' application and it is therefore dismissed.

Costs Protection

7. An application for a protective costs order (PCO) has been submitted by the Claimants to limit their liability to costs to £3000. This is on the basis that the Claimants are of limited means, although I note that there is no statement to support this contention. The Claimants contend that there is a public interest in maintaining the property given that it is a culturally and historically significant grade II listed building. Further, it is alleged that the property is in a state of disrepair and there are no plans to remediate those matters. The Claimants assert that they have little or no private interest in the case, with no prospect of financial gain and there is a disparity between the Claimants as litigants in person and the SoST with significant resources to call upon.

8. In the claim form the Claimants have indicated that this is not an Aarhus Convention claim. The claim involves private rights. It is not an environmental claim dealing with the use of land and as such it does not fall within the Aarhus convention. The application is for a protective costs order and it has addressed the merits outlined in section 88(1) of the Criminal Justice and Courts Act 2015.

Section 88(3) of that Act provides that the Court may make a costs capping order only if leave to apply for judicial review has been granted. I shall return to this matter later.

Background

9. The property was purchased by the SoST under a discretionary scheme to acquire properties affected by the route of Phase 2B of the HS2 rail scheme. As part of that acquisition process the condition of the property was assessed to inform its valuation and a Property Condition Report was produced in February 2023. HS2 thereafter negotiated the purchase of the property on behalf of SoST in the knowledge that the property was in a poor condition. The SoST acquired the property on 27 March 2023, and it was placed under the management of Carter Jonas LLP as agents.

10. Mr Rob Middleton, Deputy Director of the HS2 Land Property at the Department of Transport, explains in his witness statement the ongoing approach to management of the property. Stanthorne Hall has been subject to annual inspection reports which focus on hazards and risks, as well as fortnightly internal and external inspections. Two further reports, the Costs Feasibility Report of 26 October 2023 and the Preservation Works Report of 22 January 2024 set out detailed repair works, and budget costs based on two options. Those reports have been used to inform decisions as to what works to carry out having regard to the status of Phase 2B of the HS2 scheme.

11. The costs of circa. £909,000 for full refurbishment and circa. £676,000 to bring the property up to lettable standard were deemed unattractive given the status of HS2. A further report setting out the costs of preservation works alone was then prepared on 22 January 2024. Mr Middleton explains that HS2 Ltd then instructed Carter Jonas to proceed with further detailed work in order to progress the carrying out of the preservation works.

12. On 30 July 2024 the Claimants approached the Department of Transport (DoT) to express an interest in the property, asking to move into the property on a rentto-buy basis. An approach was also made to HS2 which was forwarded to Carter Jonas. Carter Jonas then replied to the Claimants to explain that they managed the property and there were no plans to dispose of it at that time. This

was followed by a series of other contacts and enquiries from the Claimants directed at Carter Jonas and the DoT.

13. On the 29 August 2024 the Claimants sought to take on Stanthorne Hall subject to a full repairing and insurance (FRI) contract, subject to them conducting a condition survey to facilitate the proposed lease. The SoST refused that request on the basis that the property was in an unsafe condition and the costs of bringing it up to a lettable standard were in excess of half a million pounds. They further refused to disclose the Property Condition Report which had been obtained prior to the purchase of Stanthorne Hall by the SoST.

14. On the 21 October 2024 Mr Middleton wrote to the Claimants with a full explanation as to the Defendant's position. That letter said:

> "I am writing in response to your recent correspondence regarding Stanthorne Hall. We have grouped these together under our reference TO-00023018.
>
> I am sorry to hear about the issues you are experiencing and acknowledge your urgent wish to find an alternative home for your family and animals. You are clearly enthusiastic and excited by your proposal to enter into a "full repair and insure" (FRI) tenancy agreement regarding Stanthorne Hall, and I can see that you are frustrated and disappointed with some of the replies you have received.
>
> My purpose in writing to you today is to provide a response to your questions and seek to explain more clearly why, regrettably, it is not possible for us to agree to your proposal.
>
> Many of your questions relate to the condition of Stanthorne Hall. You have asked why it is that the cost of remediation works is estimated at around £500k, given that this property was occupied until recently.
>
> As with all newly acquired properties, when the property was acquired for the Secretary of State, a review of its condition was

commissioned, to assess whether it could be let. This review found that extensive works are required to bring the property to a regulatory and legally compliant and lettable standard. While some of these works are cosmetic, in the most part they are essential from a compliance, safety or preservation perspective, for example works are required to the electrical and fire systems and to the oil boiler. We need to ensure properties are safe and secure to live in, and the scale of these costs are due in part to the size and age of Stanthorne Hall, together with its Grade 2 listed status.

You have suggested that these costs imply the condition of the property must have deteriorated significantly since it was acquired, but I can assure you this is not the case. The works relate to the condition of the property when it was acquired. You have also asked whether the costs included works to convert the property or parts of it into flats. I can confirm that this is also not the case, and these works relate solely to bringing the Hall to a lettable condition.

With regard to your proposal to occupy the property on an FRI lease, I am afraid this is not something we are able to agree to. This form of tenancy is not something that we consider appropriate for any properties that have been acquired on our behalf. That is because, regardless of the form of any tenancy agreement, we are always obliged to ensure the safety of our tenants. It is not feasible to consider an agreement that would purport to waive or delegate the responsibility to conduct the works needed to this property with your family in occupancy.

We will be able to make longer-term plans for the future of Stanthorne Hall in the coming months. The Government is reviewing the position it has inherited and will set out its plans in due course. If, in future, Stanthorne Hall is no longer required then it will be sold in line with the Government's "Managing Public Money" rules through a disposal programme.

> You have asked for an independent surveyor to assess the condition of the property. A survey is usually conducted as part of the due diligence process for a sale or disposal. Having provided you with further detail on the property, our legal obligations and our position that we are not willing to consider an FRI lease for this property, I hope you will agree that an independent assessment would now serve no purpose.
>
> I appreciate this is not the response to your proposal that you would like. I hope you will agree that this letter demonstrates that we have fully considered your proposal and that we have now set out more clearly the reasons why we cannot agree to it.
>
> I and my colleagues sincerely hope you are able to find an alternative property that meets your requirements."

15. This letter was followed by a second letter from Mr Middleton dated 29 October 2024 which clarified matters further. The second letter confirmed that Mr Middleton's comments that FRI leases were not something the DoT would consider in relation to residential properties.

16. In his witness statement Mr Middleton explains that the primary reason as to why the agreement as suggested by the Claimants is unfeasible is because it would require a lease agreement with a longer term that is usually granted under Crown Tenancy Agreements for HS2 property. Understandably, with a project such as HS2 the SoST seeks to ensure that all land which may be necessary for the project is kept available or reasonably available and there are no unnecessary constraints placed upon future disposal options.

Grounds for Judicial Review

17. The Claimants contend that the decision was made considering irrelevant information regarding FRI contracts and that essentially, Mr Middleton as decision-maker, was under a misapprehension as to the nature of such contracts.

This ground is entirely without foundation. Mr Middleton is a professional civil servant who had the benefit of, and sought advice from, expert colleagues. The reasons set out in his letter for not entertaining the grant of an FRI lease were clear and cogent and based on sound judgments.

18. There is no suggestion that Mr Middleton believed that FRI contracts were not compatible with Crown Tenancy Agreements. Rather it was the case that the decision was made having regard to economic considerations and other factors including the costs of bringing the residential property up to a lettable standard when viewed in light of the likely returns on tenant income given the need to retain flexibility of ownership in the face of uncertainty over the Government's plans for HS2.

19. Moreover, the Defendant was not legally required to accept the Claimants' proposal or their offer to pay for an independent survey. The Defendant already had the benefit of its own professional surveys, and it was entitled to rely on those when making a decision. There is nothing to suggest that the Defendant took into account irrelevant information.

20. There is no identified failure to have regard to material considerations. The DoT made it clear that the key concern was the condition of the property and that they were in the process of surveying and assessing its condition. Those surveys informed the approach taken. Similarly, I do not accept the proposition that the DoT did not have regard to value for money for the taxpayer. The relative costs of any works were kept under review. Financial issues and value for money were clearly at the forefront of the decision-making processes.
Ground 1 is hopeless.

21. Ground 2 concerns an allegation that the decision not to enter into a FRI contract with the Claimants and not to allow them to survey the property was irrational. That too, it completely without foundation. In bringing the HS2 project to

fruition it was necessary for the SoST to begin to assemble land which may be necessary for completion of the project. The property was purchased by the SoST and was not on the market. It was not in a lettable condition and without significant repair works to bring it up to a lettable standard, the SoSt would be

be in breach of landlord's duties. The new Government was reviewing its position with regards to the HS2 project and, as explained by Mr Middleton, it was important to retain control over the land pending final decisions.

22. The refusal of the Claimants' request was entirely rational and based on sound professional judgments balancing the necessary repair costs and other factors. There can be no suggestion that there was any legitimate expectation created that the property would be offered on a FRI contract. Whilst the Claimants seem to suggest that acceptance of their offer would reduce the cost to the public purse, there is no evidence to support that contention. The decision was based on professional reports regarding the works necessary to bring the property up to lettable standards and the likely costs of those works.

23. The Claimants refer to the risk of arson or other damage but it is clear that the property is being professionally managed by Carter Jonas with regular internal and external inspections to address those risks. This ground is entirely without foundation.

24. Ground 3 suggests that the procedures followed in the decision-making process were unfair. The decision maker, Mr Middleton, is employed by DoT and there is no suggestion of bias in his decision making. Mr Middleton has taken care to explain the decision and to be as transparent as possible given any necessary commercial sensitivities such as disclosure of the Property Condition Report. There is no basis whatsoever to contend that there has arguably been bias on the part of Mr Middleton.

25. Under this ground the Claimants further assert that the Defendant failed to have lawful regard to the impact on the listed property, contrary to provisions in the National Planning Policy Framework (NPPF) 2012. Current planning policy in the NPPF published in December 2024 sets out objectives in relation to plan making activities and decisions in relation to planning applications. The decision under challenge here relates to a decision about leasing the property and they are not material to that decision. Likewise, section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out relevant considerations for decision making when determining applications relating to

listed buildings. It is not directly relevant to the decision under challenge and there is no breach of the statutory duty in section 16.

26. Other matters raised under this ground amount to generalised allegations about the interests of Carter Jonas in execution of the contract with HS2 to manage such properties. The Claimants appear to be under the misapprehension that Mr Middleton works for HS2 when this is not the case. Any complaints regarding the process undertaken within the Freedom of Information request is a matter for alternative remedy elsewhere. It does not fall within the ambit of this claim. There are no matters which are remotely arguable. This ground is not arguable.

27. It follows that there are no grounds upon which permission to commence judicial review proceedings should be granted. Permission is refused.

Interim Relief

28. The claim is entirely without foundation. I have refused permission to commence judicial review proceedings. There are no matters which justify the urgency which the Claimants urge upon the Court. The Claimants have made a request within the interim relief application for a direction for disclosure of the Property Condition Report. That request was refused and the Claimants took matters to the Information Commissioner. The decision on release of the report is therefore subject to alternative statutory appeal processes. Since judicial review is a remedy of last resort, it is not appropriate for this court to intervene in that matter at this point.

29. The application for interim relief is not justified in the absence of any arguable grounds. That application is also dismissed.

30. Finally, it follows that I need not consider the question of the costs cap given that permission has been refused. Even if my interpretation of section88(3) is wrong, I am satisfied that the tests for imposing a PCO have not been met.

These proceedings do not fall within the category of public interest proceedings and the Claimants are seeking to obtain a private interest in terms of lease to themselves. Further the number of people affected by the decision is low and

there are no points of public importance which have been demonstrated by the litigation.

31. I would ask Counsel for the Defendant to draw up an Order for my approval reflecting the terms of this judgment. The Order should be sent to the Claimants for their comments on the draft Order only beforehand.