Neutral Citation Number: [2020] EWHC 1952 (QB)

Case No: QB-2020-002013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/07/2020

Before:

MR JUSTICE FREEDMAN

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BETWEEN:

SURREY HEATH BOROUGH COUNCIL	**Claimant**
- and -	
(1) JAMES ROBB **(2) SUZANNE ROBB** **(3) THOMAS ROBB JNR** **(4) KAITLIN ROBB** **(5) SCARLETT ROONEY (AKA SCARLETT SIMMONDS AKA SCARLETT ROBB)** **(6) PERSONS UNKNOWN**	**Defendants**

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Caroline Bolton (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
Alan Masters (instructed by **Mason & Co**) for the **First 5 Defendants**

Application on paper: by application dated 13 July 2020 and by written submissions dated 13 July 2020 for the Defendants and 15 July 2020 for the Claimant

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Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be Monday 20th July 2020 at 2.00pm.

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I Introduction

1. This is an application on behalf of the first five named Defendants for recusal on the ground of apparent bias. References to the Defendants are generally to the named Defendants. The application was intimated at a hearing on 8 July 2020 and was the subject of a formal application on 13 July 2020 supported by a skeleton argument. There was an argument in response on 15 July 2020. On 19 June 2020, I heard argument about the continuation of injunctions granted without notice on 12 June 2020 by Murray J. Judgment was given orally on 22 June 2020 continuing the injunction until a return day on 1 July 2020. A written judgment was handed down on 24 June 2020 about aspects of the hearing for 1 July 2020. I sat again on 1 July 2020. Judgment was given orally on 6 July 2020 continuing interim injunctions until a speedy trial fixed for 24 August 2020. It is said that since the judgments were in favour of the Claimant and interim findings were made supportive of the Claimant and against the Defendants that I should recuse myself. It was submitted on behalf of the Defendants that on the facts a reasonable, fair-minded and objective observer would see the real possibility of unconscious bias and the unlikelihood that I would maintain the necessary detachment to look again at the issues of law and fact and make a judgment on proportionality without being affected by my previous judgments in this matter: see paragraphs 17 and 18 of the Defendants' skeleton.

II The history of the action

2. The action is brought by a local authority under section 187B (1) of the Town and Country Planning Act 1990 to prevent any development work from some land owned by the Defendants and to prevent their occupation of the same as a caravan site. In effect, the latter part of what is sought is an order removing the Defendants from site. It is said by the Defendants that this ought not to have been made at a without notice stage by Murray J, nor continued at an interim stage. Such an order, submit the Defendants, should, if at all, be made only following what was described as a full Porter hearing following live evidence and cross-examination. Mr Masters, Counsel on behalf of the Defendants, says that it was wrong in principle as a matter of proportionality and there was an interference with the human rights of the Defendants under ECHR Article 6 (right to a fair trial and due process), Article 8 (private life including respect for their home) and Article 14 (including rights of gypsies to be protected from discrimination by a public authority). The rights of children are also invoked, especially under Article 8 and under Article 3 of the United Nations Convention on the Rights of the Child.

3. The Claimant, by Ms Bolton of Counsel, submits that this was an appropriate order in the circumstances of the case. It is not necessary to set out the detailed arguments which have been referred to in the judgment of Murray J and in my judgments. This is not the first case between the parties, and the Claimant places some reliance on a judgment between it and some of the Defendants in a case involving a site of *Surrey Heath BC v Shir and Robb and others* [2019] EWHC 3251 (QB) (HH Judge Sarah Richardson). The concern is, in particular, that the development is in a green belt and heritage area without prior planning approval.

4. The judgment of 22 June 2020 was for the continuation of interim injunctions. I expressed the view that the injunction should be for limited duration. This was the first return day, and it was inappropriate for the injunction to be beyond a further return day. The Defendants had had very limited time to put in evidence, and there was very little evidence from the Defendants for that first on notice interim hearing. I gave directions so that the injunction would only be to a return hearing, which was fixed for 1 July 2020 and I gave directions for further evidence in the interim.

5. At the conclusion of my judgment on 22 June 2020, Mr Masters on behalf of Defendants sought that the hearing fixed for 1 July 2020 should be held in court (rather than by video) and that cross-examination should take place. I reserved judgment on this and issued a written judgment on 24 June 2020 in which I said that the hearing would take remotely and that there would not be cross-examination but that the application could be renewed at that hearing. That would be in the light of the evidence then available.

6. At that stage, it was not intended that I would be the Judge for the hearing on 1 July 2020. However, following discussion with the Judge in Charge of the QB list later that week on 25 June 2020, it was arranged in the interests of continuity that I would sit on 1 July 2020. In the meantime, the Defendants made an application for an adjournment returnable on 1 July 2020 so that cross-examination could occur at the full Porter hearing and that arrangements could be made for the Defendants to attend a

hearing in Court. It was said that arrangements for their attendance at a remote hearing could not be made.

7. The adjournment application was made at the start of the hearing, and I decided that I would not allow the adjournment. However, at my instigation and with the consent of the parties, a speedy trial would be ordered. I explored with the parties when would be convenient. A hearing of 24 August 2020 was arranged on the basis that I would be the trial Judge and I would deal with the case management in the interests of continuity, including having a pre-trial review.

8. It was not convenient for the parties for me to rule on the application later that week, and accordingly my judgment was agreed to be given on 6 July 2020. I gave that judgment and continued the injunctions until the speedy trial including the injunction restraining occupation of the land until the speedy trial. I sought to set down directions for the speedy trial. However, it became apparent that there were too many points of disagreement, and not sufficient time available in view of my other judicial commitments. Accordingly, the parties were asked to seek to agree directions and, if anything could not be agreed, then the Court would adjudicate upon that.

9. There were sent to the Court on 7 July 2020 draft directions of the parties with many of the items agreed including the principle of the speedy trial for 24 August 2020 and that I should be the trial Judge. When it became apparent that there were areas of disagreement in particular about the provision of information by the parties respectively, I fixed a remote video hearing at 4pm on 8 July 2020 to deal with the outstanding directions.

10. Towards the end of the hour allocated for that hearing, and after detailed oral submissions had been made about the further information sought, Mr Masters on behalf of the Defendants sought orally that I should recuse myself on the ground of apparent bias. This was the first time that this had been intimated either to the Court or to the Claimant. Ms Bolton for the Claimant submitted that no such application should proceed without the full grounds being set out in writing. I said that I would say no more until having thought about it overnight. I also would not rule on any outstanding matters whilst the bias application was being considered.

11. In the morning of 9 July 2020, in the course of an email from my clerk, it was indicated to the parties that no application for recusal could be made without a formal application stating the full grounds and any evidence in support to be issued and served by 1pm on 13 July 2020. The Claimant was to serve any evidence in reply on 14 July 2020 and skeleton arguments were to be exchanged on 15 July 2020. An oral hearing could be requested by the Claimant or the Defendants in which event that would take place on 16 July 2020. There was no objection to the proposed timetable which was formalised by an order on 10 July 2020.

12. The application was issued after 2.30pm on 13 July 2020 and was supported by a skeleton argument. It stated that no hearing was required. Unfortunately, it was not served until the afternoon of 14 July 2020, Mr Levy wrote to my clerk to say that the email had remained in his outbox. The Claimant did not serve any evidence but sent a responsive skeleton argument in the afternoon of 15 July 2020. The Claimant stated that it did not require a hearing.

13. The application is predicated upon the Court having determined each point against the Defendants, such that there has been a pre-judgment of any further hearing or that there is a real possibility of pre-judgment. In that regard, there are certain factors to be noted about the history of the matter to date over the last few weeks which bear on the application.

14. First, the application on 19 June 2020 was intended to be until trial or further order. It was at the Court's instigation at the outset of the hearing that the hearing should be only an interim hearing for a short period of time so as to enable a further interim hearing when the Defendants had further time to prepare. They had been served shortly after 12 June 2020, but the first witness statement of Julia Greenfield was not served until 17 June 2020. The result is that the evidence of Mr James Robb was very limited on 18 June 2020, although there was an expert's report of Mr Brian Woods. The Court therefore took the initiative to suggest that there be a further hearing on 1 July and gave directions for the future conduct of the action. That was a standard approach to a case, but the initiative came from the Court so that the Defendants would have an opportunity to put in further evidence and have a more effective oral hearing.

15. Secondly, whilst the Court refused on 24 June 2020 in its written judgment to direct cross-examination for the hearing of 1 July 2020, and thereafter did not allow an adjournment, the initiative to direct a speedy trial came from the Court. This came about because the Defendants wished to have what they called a full Porter hearing at as an early a stage as possible. That, on their own case, could not be 1 July 2020, because they were not yet prepared. Although the Court found that there was no case made out for cross-examination at an interim hearing, it sought to arrive at a solution that the full Porter hearing including cross-examination would occur at an early stage. The direction of a speedy trial would mean that disclosure would take place quickly which would enable the cross-examination to be more meaningful. The Court explored whether the trial could occur before the end of term, but it became readily apparent that that would have been too quick to be manageable on the part of the parties. The parties agreed that a speedy trial would be possible on 24 August 2020 and during that week. That discussion occurred in the course of the hearing on 1 July 2020.

16. From the perspective of the Claimant, a speedy trial was not an advantage in that it front-loaded the costs. More attractive for many claimants would be a more leisurely path to trial such as occurred in the previous case of *Surrey Heath BC v Shir and Robb and others* above where the interim injunction was granted without cross-examination and where the trial would not be listed to come on until months later. In fact, the case settled in the interim. It follows that a speedy trial was designed to give to the Defendants much of what they sought, namely a full airing to their rights including cross-examination at an early stage. There was a problem about the long Vacation and the general unavailability of judges, but the parties agreed that it would facilitate matters if I would be the Judge to case manage the action and then hear it. The Defendants say in their skeleton argument that they do not object to a speedy trial, but it is rather better than that in that the order for the speedy trial was designed to give to the Defendants what they sought, namely an early full evaluation of the

matter with oral evidence and cross-examination. The Defendants did not get what they wanted to the extent that the order of Murray J that the Defendants should not remain on the site was continued until the speedy trial.

17. Thirdly, the background to the making of this application is that the parties agreed in principle on 1 July 2020 to a speedy trial with my being the trial judge. As noted above, on 7 July 2020, the parties submitted their separate directions which included a speedy trial before me. The parties were agreed that the hearing of a pre-hearing review would be before me on 31 July 2020 and that the trial would commence on 24 August 2020 before me, and directions in the same terms were included in the Claimant's and the Defendants' drafts respectively submitted to the Court. At the hearing on 8 July 2020, the Defendants addressed the Court on issues regarding further information sought from the Claimant and a submission that there should be no joint report of the expert. After almost an hour of the hearing, the Defendants indicated that the Court went on to an application to recuse. The Defendants are not precluded from making the application. There is no waiver point. However, the sequence of events in this paragraph may indicate that this was not an obvious case of an appearance of bias.

18. Fourthly, the judgment of 22 June 2020 was expressly stated to be based on the evidence as it then was, and in the expectation that the evidence of the Defendants at the return day of 1 July 2020 would be fuller. In my judgment of 6 July 2020, I referred to shortcomings of the evidence which led to the order of 22 June 2020 being renewed. However, I went on to make observations. They are quoted here not based on a transcript but on my notes prior to the judgment. It is possible that some ex tempore changes will have been made as I read it out on 6 July 2020. I quote as follows:

"It is important to make clear the following. Although in my judgment, the Defendants have had the opportunity to provide further evidence and information in advance of the hearing than the information which they did, this will be irrelevant for the case at trial. Likewise, the fact that I have come to the judgment for the purpose of an interim injunction only that the case is of sufficient strength to justify the making and the continuation of the injunction including about not living on the site, the issues at trial are entirely different.

It is precisely to accommodate the submissions of the Defendants that there is to be a speedy trial. In making his application for cross-examination, Mr Masters recognises, as does the Court, that it happens frequently that a case which appears strong on paper changes its complexion following cross-examination. Of course, that might work to the advantage of the Claimant or the Defendants. Further, whether the paucity of evidence at this stage is justified or not, at trial the Defendants will have the opportunity to present a much fuller case. The Claimant also has the opportunity to supplement its case. In short, the trial of the action will be what Mr Masters called the full Porter hearing, and this is a very different exercise from the interim hearing. The Court will try the matters on the basis of the evidence as presented, both the written evidence of witnesses and the documentary evidence and with the advantage of observing cross-examination of witnesses. The trial will not be by

reference to the considerations at this interim stage, but by reference to all the evidence and argument at that stage.

The parties have agreed to most of the directions. There is a question as to the time for the witness statements. It has been agreed that I should try the case. That continuity will enable the Court to case manage through to and including trial. In my judgment, this ought to be before the end of term. I say this because I wish to have the PTR on the last day or two of term since I do not know if I shall be sitting in the first week of August. That involves some minor changes to the timetable."

III The law

19. It is of fundamental importance that judicial decisions should be made free from bias or partiality. It has long been recognised that justice must not only be done, it must also be seen to be done see *R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256.

20. The classic statement in respect of the legal test for apparent bias is not in dispute. It is taken from [103] of the speech of Lord Hope in *Porter v Magill* [2002] 2 AC 357, whether:

    "the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased".

21. As Lord Hope stated at [102-103], this was a minor modification from the test used in *re Medicaments and Related Class of Goods (No.2)* [2001] 1 WLR 700 per Lord Phillips MR at [85]:

    > *"The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead* ***a fair-minded and informed observer to conclude that there was a real possibility… that the tribunal was biased****"*[1] (emphasis added).

22. Mr Masters helpfully drew attention to the judgment of Lord Hope in *Helow v Secretary of State for the Home Department* [2008] 1 WLR 2416 (*"Helow"*) setting out the characteristics of the notional fair-minded and informed observer as follows:

    "2. The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in Johnson v Johnson (2000) 201 CLR 488, 509, para 53. Her approach must not be confused with that of the person who has brought the complaint. The "real possibility" test ensures that there is this measure of detachment. The assumptions that the complainer makes are not to be attributed to the observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their

[1] The words omitted were "or a real danger, the two being the same", which Lord Hope said should be excluded: see paragraphs 102-103, because they did not appear in the Strasbourg jurisprudence.

weaknesses. She will not shrink from the conclusion, if it can be justified objectively, that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.

3. Then there is the attribute that the observer is "informed". It makes the point that, before she takes a balanced approach to any information she is given, she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment."

23. In *Locabail (UK) Limited v Bayfield Properties Ltd* [2000] QB 451 (*"Locabail"*), it was stated by Lord Bingham CJ, Lord Woolf MR and Sir Richard Scott V-C in a joint judgment at [25] that:

"...By contrast, a real danger of bias might well be thought to arise if .... on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakauta v. Kelly (1989) 167 C.L.R. 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be."

24. There has been specific consideration of the effect of judicial hearings and rulings at interim stages on the ability of the same Judge to adjudicate at trial. The Court of Appeal in *JSC BTA Bank v Ablyazov* [2012] EWCA Civ 1551 (*"Ablyazov"*) stated at paragraph 62 the findings of the ECtHR in *Morel v France* (2001) 33 E.H.R.R.47: "*..Furthermore, the mere fact that a judge had taken decisions before the trial cannot in itself be regarded as justifying anxieties about his impartiality. What matters is the scope of the measures taken by the judge before the trial. The fact that a judge has detailed knowledge of the case likewise does not mean that he is prejudiced in such a way that he cannot be regarded as impartial when the case comes to trial. Nor, lastly does the fact that a judge makes a preliminary assessment of the available data mean that he is pre-judging the final assessment. The final assessment must be made with the judgment and be based on the evidence adduced and discussed at the hearing…"*.

25. At paragraph 65, it was stated:

"*The authorities suggest the following conclusions. First, although the principles of apparent bias are now well established and have not been in dispute in this case, the application of them is wholly fact sensitive. Secondly, a finding of pre-judgment has been rare. Livesey and Timmins v Gormley (one of the Locabail cases) are examples, but their circumstances bear no relationship to the circumstances of this case. Thirdly, although discussion of pre-judgment issues are not uncommon in Strasbourg jurisprudence, they tend to fall within the criminal sphere where special problems arise in civil law countries through the use of examining magistrates at earlier stages of the criminal process, and the use of judges to decide guilt at both trial and appeal levels (the appeal is a complete rehearing of guilt and innocence). Mr Bear has told us that he has as yet found no Strasbourg authority in which a doctrine of pre-judgment has been used to disqualify a judge in civil proceedings. Fourthly, although no doubt matters of mere convenience cannot palliate the appearance of bias, and the application of the doctrine of apparent bias is not a matter of discretion as distinct from assessment on all the facts of the case), it is relevant to consider, through the eyes of the fair-minded and informed observer, that there is not only convenience but also justice to be found in the efficient conduct of complex civil claims with the help of the designated judge. Fifthly no example of a designated judge being required to recuse himself or herself has been found. In Arab Monetary Fund v Hashim Bingham MR said that the replacement of Hoffmann J by a different judge for trial was an "indulgence to Dr Hashim", where he had shown "no grounds whatsoever for a change of judge". Sixthly, a case for recusal may always arise, however, where a judge has previously expressed himself in vituperative or intemperate terms. That, however, has not been alleged in this case.*"

26. There is a further citation from Rix LJ at paragraph 57 referred to the unreported case of *Arab Monetary Fund v Hashim* (CA, unreported, 28 April 1993) and the Judgment of Bingham MR: "*In a case such as this, in which interlocutory applications proliferate, it may well be that one side fares more successfully, perhaps much more successfully, than the other. There are a number of possible explanations for this, the most obvious being that the successful party has shown greater judgment, determination and knowledge of the rules than its opponent. Mr Ross-Munro accepted, as we understood, that no inference of apparent bias could be drawn from the fact that most, or all, interlocutory applications had been decided against Dr Hashim. We agree….*"

27. Bias includes giving the impression of having pre-judged any issue. In *Otkritie International Investment Management Ltd and others v Urumov* [2014] EWCA Civ 1315 "Otkritie", Longmore LJ referred to the applicable principle at [13] (with whom Moore-Bick and Laws LJJ agreed) as follows:
"There is already a certain amount of authority on the question whether a judge hearing an application (or a trial) which relies on his own previous findings should recuse himself. ***The general rule is that he should not recuse himself, unless he either considers that he genuinely cannot give one or other party a fair hearing or that a fair-minded and informed observer would conclude that there was a real possibility that he would not do so****. Although it is obviously convenient in a case of any complexity that a single judge should deal with all relevant matters, actual bias or a real possibility of bias must conclude the matter in favour of the applicant;* ***nevertheless there must be substantial evidence of***

actual or imputed bias before the general rule can be overcome. *All the cases, moreover, emphasise, that the issue of recusal is extremely fact-sensitive. "* (emphasis added)

28. In that case, the Judge had recused himself despite his belief that he was not precluded from trying the next part of the case which was a committal. The Court of Appeal reversed that decision and ordered that he continue to hear the matter since there was no basis for him to have recused himself.

29. Finally, Ms Bolton drew to the attention of the Court a further passage in *Locabail (UK) v Bayfield Properties Ltd* above at paragraph 22 to the following effect:

"*Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour*."

IV Submissions of the Defendants

30. The Defendants submit that having already *"tried the issues twice and ruled against the Defendants' argument at law and fact and on the issue of proportionality"* that this casts doubt on the ability of this Judge to remain objective in the context of the previous rulings. They refer to the Judge having *"comprehensively ruled twice in favour of the Council on the credibility of the Defendants on the issues and facts and on the Defendants solicitors on the issue of the Defendants inability to participate".* They say that *"on the issue of proportionality he has found not just once but twice against each Defendants".* It is then said that this would *"to the reasonable observer give rise to the view that it would be unlikely that the Learned Judge would be able to ignore his previous finding and rulings and finding on proportionality and that there was a real prospect or danger of unconscious bias"*: see paragraphs 11-14 of the Defendants' skeleton argument.

31. Exception is taking to the reserving of the matter so that the same Judge is to be the judge dealing with the trial. It is said that there was no need for this where other judges could have tried the case. *"Indeed the mere fact that the Learned Judge has sought to reserve this matter to himself would I submit give in the reasonable observer that concern that there was an appearance of bias, in circumstances where there was no administrative reason why the reservation needs to be made"*: see paragraphs 15-16 of the Defendants' skeleton argument.

V Submissions of the Claimant

32. The Claimant referred to the parts of the judgment of 6 July 2020 which I have quoted above. It therefore submitted that it was wrong to say that the Court had "*tried the case*" or heard "*full argument*". The Court had done no more than to make "*a preliminary assessment of the available data"* on an interlocutory basis (*JSC BTA Bank v Ablyazov*, especially at paragraph 62 quoted above).

33. There is no evidence to support the assertion that other Judges will be available to support a 5-day hearing during vacation. In any event, there were clear and justified reasons why this case was reserved to this Judge and why it should be so reserved. As regards the trial, it was agreed between the parties and was arranged to assist the parties. It is to be deemed a benefit to justice for a matter to be dealt with by a designated Judge who has prior knowledge of the case as stated in the fourth point in paragraph 65 quoted above in *Ablyazov*. In any event, the quotation from *Locabail* at paragraph 22 referred to above is relied upon.

34. The argument that ruling against a party on an interlocutory basis even on a repeated basis is grounds for an application of apparent bias has been roundly rejected by the courts as is evident from the authorities listed above.

VI Discussion

35. The submissions of the Defendants do not distinguish between the trial of the case or the interim hearings which have taken place to date. When it is said that the Court has "tried this case" or "heard full argument", the Court has done neither. There are the following points here, namely

    (1) The Court has ruled on contested interim hearings, but the case has not been "tried" in the sense that the trial has not taken place. The Defendants asked for a full Porter hearing to take place involving live evidence and cross-examination. It was this application which led to the Court suggesting and then with the consent of the parties fixing a speedy trial so as to have that hearing at the earliest realistic opportunity.

    (2) The Court has not heard "full argument" in that the full evidence for trial has not been prepared. The Defendants' case on 1 July 2020 was that they had not yet had sufficient time to prepare their evidence and to address an email of the Claimant's solicitors seeking responses on about 12 points. The Court recognised the evidence at trial would be likely to much fuller than the evidence presented thus far. The substantive evidence amounted to short witness statements of Mr James Robb and two expert reports of Mr Brian Woods. It was indicated at a trial that far more extensive evidence would be deployed, as is often the case. Without such evidence, there has not been full argument.

    (3) The Court has not heard any evidence in the sense that no oral evidence has been given. Indeed, an application was made for cross-examination so that oral evidence would be admitted. As indicated, this led to the order for a speedy trial.

36. Before any suggestion of apparent bias, indeed at a time when a speedy trial before me had been agreed, my judgment of 6 July 2020 specifically adverted to the difference between interim hearings and a trial. This is set out in the paragraphs which I have quoted above.

37. The difference can be summarised as follows. At the interim hearings, as regards the merits the Court was considering whether there was a sufficiently strong prima facie case made out to justify an order which though couched in prohibitory terms was akin to an order removing the Defendants from the site. It then went on to consider the balance of convenience between the parties in respect of the orders proposed.

38. Although that involves a consideration of the merits, it is a very different exercise from a trial of the action. First, it is based on limited evidence in several senses including the following, namely (1) it is restricted to such written evidence as the parties have advanced at that stage, which in the case of the Defendants has been very limited for the hearing of 19 June 2020, but remained quite limited for the hearing of 1 July 2020, (2) it did not include any oral evidence, and in particular there was no opportunity to observe the witnesses and particularly being questioned through cross-examination, and (3) there was no disclosure of documents ordered in advance, such as to make the scope of the enquiry much more searching and thorough. Secondly, insofar as there is an examination of the merits, it is of a very limited and provisional nature, very unlikely a trial which is the full and final determination of the merits. The relative length and depth of the examination of the interim stages compared to the trial itself (estimated to be 3 days with a week reserved for the hearing) is indicative of the difference. Thirdly, the interim stage is provisional, not least where it is known that the trial will be heard shortly as was the case of a determination knowing about the speedy trial to follow.

39. A fair-minded and informed observer would recognise the distinctions between trial following disclosure and involving oral evidence with cross-examination on the one hand and interim injunctions on the other hand. Those paragraphs towards the end of my judgment of 6 July 2020 would resonate with the fair-minded and informed observer. They would indicate that no pre-judgment has been made and that it is only at the trial is when the full evaluation would be made. In no sense is there any question of the judgments given at the interim stage influencing the judgment, whether the Judge hearing the trial was the same Judge or some other Judge. In short, when it comes to trial, there is no question of pre-judgment. This is entirely consistent with the jurisprudence in the area, particularly as quoted above, by Rix LJ in the *Ablayazov,* and also by Longmore LJ in *Otkritie.*

40. Even if those paragraphs had not appeared in the judgment, the fair-minded and informed observer would realise that there was no real possibility that the interim hearings would give rise to the tribunal being biased. It is in the nature of cases that the trial exercise is fundamentally different from the evaluation made on limited evidence and for a limited purpose at the interim stage. It follows that those paragraphs would tell the informed observer what was already known, namely that there was no pre-judgment at the stage of making interim orders.

41. I observed in those paragraphs that a case which appears strong on paper frequently changes its complexion following cross-examination. That is to do no more than to state what is known to the informed observer of courts, and what has been the subject of judicial comment at the highest levels. In the House of Lords,

Lord Steyn in *Medcalf v Weatherill* [2002] UKHL 27; [2003] 1 A.C. 120 at [42], when considering wasted costs orders, said:
"The law reports are replete with cases which were thought to be hopeless before investigation but were decided the other way after the court allowed the matter to be tried."

42. This comes to provide a context for the law cited above, particularly as cited in the *Ablyazov* case from *Morel v France.* The decisions taken before trial do not without more found a basis for anxieties about impartiality, nor does the familiarity of the Judge with the case, nor does a preliminary assessment of the available data. The final assessment must be based on the evidence adduced and discussed at the trial.

43. My continued involvement in the case and in particular its fixing for a speedy trial where I was to be the Judge was in order to provide the continuity both as regards the trial, but also in respect of case management particularly during the month of August where judicial resources are relatively limited. There is an analogy with that of a designated judge as discussed by Rix LJ in *Ablyazov* where he made the points that (a) "*there is not only convenience but also justice to be found in the efficient conduct of complex civil claims with the help of the designated judge"* and (b) there was *"no example of a designated judge being required to recuse himself or herself has been found."*

44. When the recusal was first articulated orally, and again in the skeleton argument (paragraph 12), there was a concern that there had been judgment on the Defendants solicitors on the issue of the Defendants' inability to participate. This arose because it was submitted that the Defendants had not an ability to participate in the remote hearings. My judgment stated that no evidence had been given as to the inability to arrange participation at a solicitors' office or other offices which it was expected would have been possible. That falls very far short of finding the evidence of a witness as being unreliable. Even such a finding, according to paragraph 25 of *Locabail*, does not without more found a basis for recusal. It was not a gratuitous remark because it fell for adjudication in the context of the adjournment application. In the circumstances, it cannot found a basis for a recusal application.

45. Likewise, to the extent that there were observations about the conduct of the Defendants in the judgments, they have been couched at each stage as an evaluation based on the limited evidence available and for the limited purpose. Whilst a sufficiently strong prima facie case was made out in order to make interim injunctions including preventing continued occupation on site, it was stated that this was on the basis of the evidence as it then stood and no more. When it comes to trial, these evaluations do not carry weight: it is the evidence placed before the Court at that stage following disclosure and what is likely to be more extensive evidence and the presentation of the witnesses in the witness box and detailed cross-examination which will give rise to the decisive evaluation in this case. A fair-minded and informed observer would consider that those rulings do not give rise to any real possibility of bias nor any real ground to doubt the ability of the same judge to try the case objectively and without bias.

46. In any event, the submission that any adverse ruling at the interim applications would give rise to a fair-minded and informed observer forming a view that there was a real possibility of bias of the judge is contrary to the authorities referred to above. It has been repeatedly stated that even multiple findings against a litigant would not sustain any reasonable apprehension of possible bias. The mere fact that a judge had taken decisions before the trial cannot in itself be regarded as justifying anxieties about their impartiality. The extensive quotations from *Ablyazov* above show very clearly how the Courts would not find pre-judgment without more in such a civil case. Likewise, in *Locabail*, it was made clear that findings against a witness or a party at an interim will without more not found a basis for apprehending a real possibility of bias. All of this must yield to the particular facts of each case, but there is nothing in all the circumstances of this case to indicate to a fair-minded and informed observer any real possibility of bias, or any real ground for doubt.

47. Finally, there is a particular circumstance to be added to all of the other matters set out above. It is the fact that the Court has acceded to the request of the Defendants to have an early Porter hearing by ordering a speedy trial. This is intended to bring about in terms of dispute resolution that which the Defendants wish in the context of the litigation, namely an early and full resolution of the case with oral evidence and cross-examination. It follows that viewing the orders of the Court as being entirely one way is not to give weight to this important feature. A fair-minded and informed observer would take this into account as a yet a further point in the evaluation that there is no real possibility of bias against the Defendants.

VII Disposal

48. In ruling on this application, all the relevant circumstances placed before the Court on behalf of the Defendants have been ascertained. Having considered all of the circumstances of the case, I am satisfied that the fair-minded and informed observer would not apprehend a real possibility of bias by my continuing to deal with this case up to and including trial. There is no reason for me to recuse myself. I dismiss the application.