

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION



No. QB-2020-001222

[2020] EWHC 2153 (QB)

Heard remotely by  
Skype on 8 July 2020  
c/o Royal Courts of Justice  
Strand, London WC2A 2LL

Monday, 13 July 2020

Before:

MR JUSTICE KERR

B E T W E E N :

HILLINGDON BOROUGH COUNCIL

Claimant

- and -

(1) PERSONS UNKNOWN

Defendants

REMAINING OR OCCUPYING WITHOUT CONSENT OF THE CLAIMANT ON THE CLAIMANT'S LAND AT HAREFIELD MOOR AND HILLINGDON OUTDOOR ACTIVITY CENTRE, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN EDGED IN RED ON THE CONSOLIDATED PLAN ANNEXED TO THE CLAIM FORM

(2) PERSONS UNKNOWN

ENTERING ONTO THE CLAIMANT'S LAND FOR THE PURPOSE OF TAKING PART IN PROTESTS AGAINST THE HS2 CONSTRUCTION WORKS TAKING PLACE ON LAND ADJOINING THE CLAIMANT'S LAND AT HAREFIELD MOOR AND HILLINGDON OUTDOOR ACTIVITY CENTRE, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN EDGED IN RED ON THE CONSOLIDATED PLAN ANNEXED TO THE CLAIM FORM

(3) MARK KEIR

(4) [deleted by consent]

(5) [deleted by consent]

(6) LARCH MAXEY

(7) VAJDA ROBERT MARDECHAJ

(8) IAIN OLIVER

(9) [deleted by consent]

(10) CONNOR NICHOLLS

(11) PAUL SANDISON

(12) TOM DALTON

(13) STEPHANIE ROBINSON

(14) ROBLYN MAXEY

(15) JESSICA HEATHLAND-SMITH

(16) ELLA DORTON  
(17) VIVIAN HOHMANN  
(18) CHRISTOPHER COURT-DOBSON  
(19) KARLE COLLINS  
(20) SAM GOGGIN  
(21) FABIO RAPISARDI  
(22) ALAN LOFTING  
(23) ALAN EDWARDEFENDANTS

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MR STEVEN WOOLF appeared (remotely) on behalf of the Claimant

The Defendants appeared (remotely) in person

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## **J U D G M E N T**

MR JUSTICE KERR:

### Introduction

1. This application is made by the claimant local authority (**Hillingdon**) for an injunction to prevent the defendants and persons unknown from doing certain acts on land at Harefield Moor owned by Hillingdon, adjoining the site of construction works for part of the High Speed 2 (**HS 2**) railway line. Hillingdon submits that 21 named defendants (**the defendants**) and others are trespassing on the land and committing acts of nuisance.
2. Hillingdon brings the claim under Part 8 of the Civil Procedure Rules and under section 222(1) of the Local Government Act 1972. Section 222(1) gives it power to make the application on the basis that it considers it “expedient for the promotion of the interests of the inhabitants of their area” to do so.
3. The defendants, or those of them who appeared at the remote hearing held on 8 July 2020 or filed written evidence, object to the application. They say they are doing no more than exercising their right to protest against the HS 2 project. They submit that their use of Hillingdon’s land is reasonable and that it would be an unacceptable interference with their right to protest if the injunction were granted.
4. I want to emphasise that the court is neutral on the issue of whether or not the HS 2 project should go ahead and on the moral, scientific, environmental, economic and other arguments for and against HS 2. Judges must not be drawn into contentious political and social issues, especially ones which sharply divide persons unknown public opinion. We are however required to apply the law. That, and only that, is what I am doing in this judgment.

5. The application came before Laing J on 18 May 2020. She adjourned the application to enable individuals, who appeared at the remote hearing before her and expressed a desire to be joined as defendants, to be served with the proceedings and joined as defendants. She set a timetable for filing of witness statements. Hillingdon and some of the defendants filed witness statements in accordance with, or nearly in accordance with, that timetable.
6. I also received some late witness statements, which Hillingdon did not object to me reading. I thought it right to do so. One came from a freelance photographer and artist who is not a defendant but could potentially be subject to any injunction as a “person unknown” or as alleged facilitator of a breach. He emphasised the importance of bearing persons unknown public witness through dissemination of visual images about what the HS 2 interests are doing.
7. The defendants explained that some of them have been living in difficult conditions in recent weeks, with limited access to electric power generation. Some have not had stable accommodation and have lost access to their possessions or some of them. At least some defendants were hoping to be represented before me by a barrister, but unfortunately that proved impossible to arrange.
8. Hillingdon was represented by counsel, Mr Woolf. A majority of the 21 named defendants appeared on the Skype remote hearing before me and represented themselves. Those who appeared on the video call spoke eloquently against the grant of the injunction and the importance of upholding their right to protest persons unknown publicly and effectively against the HS 2 project.
9. Hillingdon seeks to amend the application to narrow down the parcel of land shown on the map annexed to the application, and substitute a new map with a smaller parcel of land annexed. That is because, since the application was first made in March 2020, the HS 2 interests (to which I will refer collectively as “**HS 2**”) have taken control of a part of the land formerly, and at the start of these proceedings, controlled by Hillingdon. The injunction is therefore no longer sought in respect of that part of the land.
10. No one objected to the application being amended to narrow it down in that way; nor, with three exceptions, formally to add the 21 named defendants served with the proceedings at the direction of Laing J. The three exceptions are Mr Joe Rukin, Ms Sarah Green and Ms Johanna Rogers. It is now agreed that they will not be added as defendants or if they are already defendants they will be removed, with no order for costs either against them or in their favour. I grant permission to amend the application on that basis.
11. Hillingdon has also brought separate proceedings for possession of the land in question. I will refer to “**the land**” meaning the narrowed down parcel of land annexed to the latest witness statement of Mr Rajesh Alagh, the Borough Solicitor for Hillingdon.
12. I do not have details of the possession proceedings except that I am told they are stayed because of the automatic stay of possession proceedings generally provided for by an exceptional practice direction in the light of the current health emergency. Mr Woolf informed me that he expects those proceedings to fall away if he is successful in obtaining the injunction Hillingdon seeks.

13. There are two categories of “persons unknown” against whom the injunction is sought. They are respectively the first and second defendants and are described thus in the claim documents:

“(1) PERSONS UNKNOWN REMAINING ON OR OCCUPYING WITHOUT CLAIMANT CONSENT OF THE REVISED CLAIMANT’S LAND AT HAREFIELD MOOR AND HILLINGDON OUTDOOR ACTIVITY CENTRE, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN COLOURED IN BLUE AND EDGED IN RED ON THE AMENDED CONSOLIDATED PLAN ANNEXED TO THE AMENDED CLAIM FORM;

(2) PERSONS UNKNOWN ENTERING ONTO THE CLAIMANT’S LAND FOR THE PURPOSE OF TAKING PART IN PROTESTS AGAINST THE HS2 CONSTRUCTION WORKS TAKING PLACE ON LAND ADJOINING THE REVISED CLAIMANT’S LAND AT HAREFIELD MOOR AND HILLINGDON OUTDOOR ACTIVITY CENTRE, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN COLOURED IN BLUE AND EDGED IN RED ON THE AMENDED CONSOLIDATED PLAN ANNEXED TO THE AMENDED CLAIM FORM”

14. So, the first category of persons unknown is those remaining on or occupying the land without Hillingdon’s consent. The second category is those entering onto the land for the purpose of taking part in protests against the HS 2 works. The named defendants are clearly alleged to have done both those things.

### The Facts

15. Hillingdon owns the land at Harefield Moor, comprising woodland and open land. There is also a lake there used for fishing and boating; and the Hillingdon Outdoor Activity Centre (the **Activity Centre**), which has been closed recently due to the current pandemic. It is run on behalf of or in association with Hillingdon.
16. The defendants are among those taking part in activities protesting against the HS 2 project. They wish to prevent it from proceeding by persuasion and, in some instances, by acts of “civil disobedience”, the phrase that has appeared on social media from supporters of the protest. There are, I am prepared to infer, others taking part whose identity Hillingdon does not know.
17. One of the defendants referred to an “honourable tradition” of civil disobedience, subsequently vindicated by history. In the defendants’ evidence, parallels were drawn with other cases such as the civil rights movement in the USA and the suffragettes here.
18. In May 2019, Mr David Holland QC, sitting as a deputy judge of the High Court, granted an injunction in a claim brought by the Secretary of State for Transport and High Speed Two (HS 2) Limited against persons unknown and some of the current named defendants, and against others not now named, prohibiting entry onto HS 2’s land and prohibiting acts of interference with HS 2’s activities and those of its contractors leaving and entering the construction site.
19. The protesters were forced by that order to vacate HS 2’s land. There is a protest camp on an adjacent road, Harvil Road, which is a public highway. There are some tents there and some protesters have been camped there for a considerable time. The protesters also established a new camp on the land, i.e. Hillingdon’s land at Harefield Moor. There are up to about 20 tents including a large green area under open canvass used as a kitchen.
20. This “protest camp” on the land has been there since about September 2019. Since then, a varying number of tents and other makeshift accommodation such as a tree house have been present. The number of protesters varies and it is difficult to be accurate. My impressionistic estimate from the evidence is that the normal numbers vary from a handful to perhaps a couple of dozen at any one time.

21. Hillingdon has title to the land and has produced Land Registry title documents which clearly establish its title. There are also persons unknown public rights of way on the land: footpaths and at least one bridleway used by horses as well as people. There is evidence that some persons unknown public rights of way are not accessible because of the HS 2 construction work.
22. Hillingdon has not produced any decision documents relating to intended and permitted uses of the land. For example, there is no evidence that it is designated as an open space or as a park, which is what most people would consider it to be. Nor do I have any planning documents indicating intended use but it is clear that the public are welcome and enjoy general recreational use of the land with Hillingdon's consent.
23. The lake is used for boating and fishing. The land is popular with members of the public going for walks with and without dogs. There are beautiful scenes there. There is also an angling club which operates on a subscription basis for anglers who pay for the right to fish in the lake. It is regularly stocked and restocked with fish. Recently, large numbers of carp were introduced into the lake for the benefit of the anglers. The angling club has received complaints from anglers that their sport is being disturbed by the protests.
24. Sometimes anglers are allowed by Hillingdon and the angling club to stay overnight in a tent when doing night fishing. The defendants' evidence includes photographs of litter left by anglers on some occasions; in particular, old fishing equipment. This is relied on to counter accusations by some of Hillingdon's witnesses that the protesters have left litter on the land, sometimes including soiled toilet paper and dog and human waste. There is photographic evidence of the digging of an earth closet or latrine at the camp.
25. The evidence from Hillingdon's witnesses includes certain incidents, said to have taken place mainly last year and early this year rather than in the immediate past. They are alleged sporadic acts said to amount to nuisance: leaving dogs off the lead and not under proper control, swimming naked in the lake, holding yoga sessions, leaving litter and waste, ferrying supplies by wheelbarrow and by a dinghy on the lake; the odd confrontation between dogs or their owners, alleged breaches of "dog etiquette", and the like.
26. There are no allegations of violence or criminal conduct on the land by the protesters or indeed by others against the protesters. The scene has been one of non-violent demonstration, though with some tensions. There is no evidence of any action taken by Hillingdon or anyone else against any of the protestors, or anyone else, for breach of by-laws. One of Hillingdon's witnesses resident at the Activity Centre said she felt uncomfortable going out at night because of the nocturnal presence of the protestors.
27. The Activity Centre is closed at the moment because of the health emergency. Normally, and until lockdown earlier this year, it provided outdoor activities especially for children and teenagers, including overnight camping and sailing. I infer that these outdoor activities, including overnight camping, take place in return for payment and with Hillingdon's consent. The Activity Centre has some outbuildings used as accommodation. There are a few privately owned (not Hillingdon owned) properties nearby.
28. As far as noise is concerned, Hillingdon complains that the protesters play loud music and sometimes bang on metal objects repeatedly. The latter but not the former is one of the acts of protest Hillingdon seeks to prohibit. The defendants respond that the noise they

make is nothing compared to the noise made by the HS 2 construction works, which start early in the morning.

29. In January 2020, an invitation was issued on social media to a weekend of “non-violent resistance” and “civil disobedience” where “rebels can join the rebellion through disco”. The protesters were very upset at the felling of trees to make way for HS 2, due to take place on 31 January 2020. The social media included the words: “[f]or anyone fishing take your ear plugs!!!”, as Hillingdon emphasises; but also the sentence: “[t]here will be walks around the beautiful lakes and woods to highlight what will be lost if HS 2 plans go ahead”.
30. One of Hillingdon’s witnesses gave evidence of a marked increase in activity, tension and anti-social behaviour by the protesters over the weekend of 22 to 24 May 2020, shortly after the hearing before Laing J. The defendants, for their part, complain of persistent trolling on social media and rough treatment, often amounting to assault, in particular on 16 to 18 June 2020, at the hands of persons describing themselves as High Court officials or bailiffs.
31. A theme of the complaints made in the defendants’ evidence is that they are being treated as “other”, as gypsies and travellers are, and that the real reason for hostility towards them is that they are daring to protest.
32. Hillingdon disclaims all knowledge of the eviction incident in June 2020, denying through Mr Woolf that it related to any eviction from land of Hillingdon’s. It is not clear what court order, if any, was being enforced. One of the defendants suggested that it was an eviction from Hillingdon’s land but that is not accepted by Hillingdon and is not a dispute I can resolve.
33. The defendants gave eloquent evidence of their deep concerns about the environmental effect of the HS 2 project, if it proceeds. They reasoned that the public interest in their protests continuing was strong because the environmental damage would be very great, notably through water contamination and loss of habitat for numerous species of wildlife, as well as loss of amenity and natural beauty for those whose interests Hillingdon considers it expedient to promote by stopping the protests.
34. Hillingdon, not suprisingly, would not be drawn into political statements about the pros and cons of HS 2 but emphasised its responsibility to ensure appropriate use of the land for walkers, anglers and other members of the public affected by the protestors’ actions and behaviour.

### The Application

35. Mr Woolf submits that the 18 remaining named defendants and “persons unknown” should be restrained from doing five things: (1) occupying the land overnight using tents; and committing the following types of protest actions, viz. (2) attaching persons to other persons or objects so as to create an obstruction; (3) attaching a person or persons to fences, gates or barriers; (4) banging objects so as to cause noise; and (5) standing, sitting or lying down in front of vehicles.
36. Hillingdon does not, as was clarified at the hearing, seek injunctive relief against specific acts of nuisance such as urinating and defecating on the land, failing to keep dogs on a

lead, failing to clear up dog excrement, swimming in the lake (clad or unclad), holding yoga sessions, engaging in conversation with anglers and so forth.

37. Mr Woolf submitted that there was no defence to the allegation of trespass. He also contended that there are at least triable issues that acts of nuisance have been committed and that the balance of convenience favours the grant of the injunction.
38. As I understood his submissions developed orally, the cause of action in trespass was founded on absence of consent to enter the land for the purpose of carrying out the acts of nuisance alleged and for the purpose of carrying out the five types of protest Hillingdon wants to stop; rather than a blanket withdrawal of consent to the defendants or the two categories of “persons unknown” entering the land at all.
39. Mr Woolf accepts that the test for an interim injunction until trial is the usual one known as the *Cyanamid* test: whether there is a serious issue to be tried that the claimant has a good cause of action against the defendant; whether damages would be an adequate remedy; and whether the balance of convenience and justice favours the grant of an injunction. Mr Woolf accepts, however, that this includes further considerations of human rights and principles applicable to grant of relief against persons unknown as well as named defendants.
40. So far as the former is concerned, he referred me to the usual authorities, culminating in the Court of Appeal’s decision in the *Canada Goose* case (see *Canada Goose UK Retail Ltd v. Persons Unknown* [2020] EWCA Civ 303), in the judgment of the court (Sir Terence Etherton MR, David Richards LJ and Coulson LJ), at [82]. I will read this out since we have unrepresented parties before the court:

“(1) The “persons unknown” defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The “persons unknown” defendants must be people who have not been identified but are capable of being identified and served with the proceedings ... . In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the “persons unknown”.

(2) The “persons unknown” must be defined in the originating process by reference to their conduct which is alleged to be unlawful.

(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief.

(4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as “persons unknown”, must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant’s rights.

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant’s intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction

without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. ...”

41. Mr Woolf submitted that those requirements are met here, in the case of the injunction he seeks.
42. In his written argument, he argued that the establishment of the camp was tortious, i.e. a wrongful act, apart from the separate acts of nuisance, on the basis that setting up the camp was a straightforward act of trespass: see his skeleton argument at paragraph 20. This was on the basis that the land is “private land” and there is “no just nor lawful reason for anyone to remain on and occupy the Land”.
43. In case that seems a bit too sweeping, I think that by “anyone” he must mean anyone intending to sleep in a protest camp tent or commit the acts of nuisance alleged. In the skeleton argument at paragraph 20 it is also said that the “quiet enjoyment of the Land has been significantly prejudiced by the establishment of the .... camp.” So he must mean those who in some way are protesting by being part of the camp. He drew a comparison with trespassers who set up a woodland camp; see *Secretary of State for the Environment v. Meier* [2009] UKSC 11.
44. As for human rights considerations, Mr Woolf properly reminded me that articles 10 and 11 of the European Convention on Human Rights are both relevant. The former is a qualified right, protecting the right to freedom of expression, including freedom to hold opinions and to receive and impart information and ideas. The latter is a qualified right protecting the right to freedom of peaceful assembly and association with others.
45. Mr Woolf referred in his skeleton argument to both Strasbourg and domestic case law underlining how jealously these rights are guarded by the courts responsible for applying those articles.
46. Section 12 of the Human Rights Act 1998 is also relevant. I will set out the relevant parts of it, since the unrepresented defendants may not be familiar with it:

12.— **Freedom of expression.**

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied—

(a) that the applicant has taken all practicable steps to notify the respondent; or

(b) that there are compelling reasons why the respondent should not be notified.

(3) ...

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

(a) the extent to which—



- (i) the material has, or is about to, become available to the public; or
- (ii) it is, or would be, in the public interest for the material to be published; ...”

47. Mr Woolf did not mention section 12(4) but it is clearly engaged here, both because of the general opening words and because the application relates in part to material the defendants claim, and which appears to the court, to be “journalistic”; and to “conduct connected with such material”. The defendants’ evidence includes an intention to disseminate via social media and other media outlets, with as much publicity as possible, reportage and visual images showing and discussing the impact of the HS 2 works.

#### The Order Hillingdon Seeks

48. The way Hillingdon presented its case in the documents risked giving the wrong impression that it was saying the protesters should be prevented from protesting on the land at all, in any way.
49. Thus, the description of the “persons unknown” first defendant referred to persons remaining on or occupying the land “without consent of the claimant”. That is puzzling for a lawyer or non-lawyer alike. Who is in and who is not in the class of persons lacking Hillingdon’s “consent” to enter its land?
50. A possible answer would be those described as the “persons unknown” second defendant: “persons unknown entering onto the ... land for the purpose of taking part in protests against the HS2 construction works...”.
51. A theme in Hillingdon’s evidence was that the protesters ought to be content to protest from the Harvil Road site on the public highway. For example, Mr Nathan Welch, Hillingdon’s anti-social behaviour and environmental enforcement officer, stated at paragraph 26 of his witness statement:
- “The Claimant’s Land is a natural and wild habitat and is available for all persons to use and enjoy, but that use and enjoyment does not include occupation in the form of a protest camp *and/ or protesting*. There are other locations in the vicinity for the HS2 protesters to exercise their entitlement to protest and the Council’s land should not be the subject of encampments *nor a location for protesting*, when other areas would be more effective and more on the public areas in the vicinity of the HS2 construction works [*my italics*].”
52. This gave the wrong impression that Hillingdon was saying the protesters could protest if they want to but should not do so on Hillingdon’s land. It takes a careful reading of the draft order to realise that, as Mr Woolf clarified in oral submissions, such is not Hillingdon’s case.
53. The draft order at paragraph 6 says the defendants are to be restrained from “remaining on or occupying the revised Claimant’s Land coloured blue ...”; and under paragraph 8 they are to be “forbidden from entering onto the revised Claimant’s land for the purposes of taking part in protests”.
54. That also looks very much like a blanket prohibition against protesting against HS 2 on the land at all, until you read paragraph 9, which says that taking part in protests “includes” the four types of specific conduct already mentioned: attaching persons to other persons or objects so as to create an obstruction; attaching a person or persons to fences, gates or barriers; banging objects so as to cause noise; and standing, sitting or lying down in front of vehicles.

55. But, does it “include” *only* those four types of conduct, or does it *include* them without being *limited* to them, as Mr Welch apparently would have it? The lack of clarity is regrettable with unrepresented opponents who would need to know if they are at risk of contempt of court.
56. Mr Woolf clarified at court that, Mr Welch’s evidence notwithstanding, the former not the latter interpretation is intended. Apart from overnight sleeping, only the four specific types of protest conduct should be prohibited, on Hillingdon’s case.
57. Then, you have to look carefully at paragraph 12 of the draft order to see what is meant by “occupying” or “remaining” on the land. It has to be “for the purposes of overnight dwelling”. This at least makes tolerably clear that the injunction sought relates to the presence of tents for sleeping in overnight.
58. The protesters, it is now clear, are not intended to be prevented from going for walks on the land as other ordinary citizens can. And they would not be in contempt of court if they protest in other ways while doing so, for example by singing or carrying banners.
59. The lack of clarity in the documents was regrettable; it unnecessarily raises the temperature of the proceedings in sensitive, difficult and controversial circumstances. Nor was the temperature lowered by Hillingdon’s mistaken assertion (by ticking a box on the claim form) that the claim included no issues under the Human Rights Act 1998; a point that did not escape the notice of the unrepresented named defendants.
60. I add one further comment. One of Hillingdon’s witnesses said she would have expected the protesters to have kept a “low profile” after the hearing before Laing J in May 2020. That is a misunderstanding of the purpose of the protesting. It can only be effective if it catches persons unknown public attention. Keeping a low profile does not.

### The Case for the Defence

61. Turning to the case advanced by the named defendants and their supporters: in addition to some defendants filing witness statements, a majority of the 21 named defendants (of whom 18 now remain) attended the remote Skype hearing, lasting about 2 hours 45 minutes, and spoke eloquently at the hearing in opposition to the grant of the injunction.
62. An adjournment was sought by one of the defendants, without any prior notice, six minutes into the hearing. I heard argument and refused the adjournment, for reasons I gave orally during the hearing. There was no other request for a hearing in a physical court room, either before, during or after the hearing.
63. We then proceeded to the substance. With one exception, the parties were courteous and respectful of the court’s authority, for which I was grateful. The exception was that one of the defendants (the record shows which one) called me a “fucking wanker” quite early on in the hearing.
64. Whatever the merits of the proposition, the language was not appropriate. I explained that the remote hearing was taking place in a court of law, just as if we were in a physical court room at the Royal Courts of Justice on the Strand. The bad language and offence to the court was not repeated so I let it go – this time.

65. More to the point, the defendants made cogent arguments orally and in writing to the effect that Hillingdon was trying to evict them from the very land they were trying to protect from destruction, ironically under the guise of promoting the interests of the very local people whose enjoyment of the land's natural beauty and amenities would be harmed if HS 2 proceeds.
66. They made arguments to the effect that Hillingdon is itself under duties to protect and conserve the natural beauty of the land and was failing to live up to that responsibility; and that the HS 2 construction works ought not to be regarded as permissible under the law even though they had been approved, without a free vote, in Parliament.
67. They emphasised that the protest was non-violent. There had been arrests, which they considered unjustified and about which they complained strongly, but only one conviction for an offence of criminal damage months earlier by an over-zealous protester whose action they did not condone.
68. The accusations of nuisance, e.g. by dog fouling and not clearing up, are strenuously denied. They assert that they and their dogs have been subjected to hostile treatment by other dog owners hostile to the protest. They assert that the public interest in the protest being allowed to continue effectively is strong because there is much unvoiced public opposition to HS 2.
69. They accuse HS 2 of circumventing the law with illegal evictions, ignoring environmental law requirements such as the prohibition against disturbing nesting birds. They contend that Hillingdon is doing nothing to protect the land against these depredations, instead targeting those concerned to expose them. They submitted that public rights of way have been unlawfully closed.
70. A number of the defendants made the point that without the camp as a base, they would not be able to continue bearing witness publicly to the activities of HS 2 by creating and disseminating photographic images and written reporting, as the construction works take place at night as well as by day. They repeatedly complained that HS 2 and its supporters had not been held to account.
71. They complained of differential and preferential treatment given to the anglers; if they are allowed to camp, why should not the protesters? They argued that the Harvil Road site was unsafe and too small and not close enough to HS 2's activities to create direct images and reporting of the construction work.
72. One defendant even sought to invoke the right to life under article 2 of the European Convention, suggesting, broadly speaking, that it was engaged because of the threat to life posed by HS 2's activities.

### Reasoning and Conclusions

73. Hillingdon asserts two separate causes of action, trespass and nuisance. Both are common law torts founded on property ownership. The wronged person is the legal owner of the property in issue.
74. Trespass is simply going onto someone's land without the owner's consent. It is committed by any unjustifiable intrusion by one person upon land in the possession of

another (see *Clerk & Lindsell on Torts*, 22<sup>nd</sup> edition, at 19-01). Consent of the owner to enter the land is, obviously, a defence to an action for trespass.

75. Nuisance is “the infringement of the claimant’s interest in property without direct entry by the defendant, and generally actionable on proof of special damage” (*ibid.* at 20-02).
76. Hillingdon’s starting point is the proposition that the land is in Hillingdon’s ownership and is, in Mr Woolf’s phrase, “private land”. As a matter of purely private law, that is correct. Hillingdon holds the title to the land and is its legal owner.
77. But in the present case, Mr Woolf’s bare assertion of ownership must be subject to qualification. The first reason is that Hillingdon is not a private body. It is a public body and a pure creature of statute. It has no existence independent of statute and its powers and duties are those conferred upon it by statute.
78. As a public body, Hillingdon does have the power to enjoy and use this and other land and property in its ownership. But it does not enjoy quite the same freedom to deal with its land as it would if it were a private individual or a private company. It must deal with the land in accordance with its statutory functions and not in a manner that would breach them.
79. As far as the evidence goes, the land is not designated under statutory powers for particular uses or types of use; for example, as a park. I do not know whether its use is also conditioned by the exercise of planning powers. I assume not, since there is no evidence on the point.
80. The second qualification is that the land includes many public rights of way. Hillingdon cannot (without specific legal justification) stop members of the public using those rights of way; its ownership of the land is subject to the public’s right to use them.
81. Thirdly, as a public authority, Hillingdon is required by section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the rights of any person (whether a protester, angler, railway builder or anyone else) under the European Convention on Human Rights (to which I will refer as **Convention rights**). These include articles 10 and 11, already mentioned.
82. To summarise: Hillingdon, as legal owner, can use the land and consent or withhold consent to others using it as it thinks fit, provided it does so without infringing any statutory duty, preventing members of the public using the public rights of way and subject to not acting in a manner incompatible with a person’s Convention rights.
83. With that introduction, I consider first Hillingdon’s cause of action for trespass. Hillingdon has clearly consented to members of the public coming onto the land and using it. Those who do so are not trespassers. They have Hillingdon’s permission to be there. As owner, it could (subject to the above mentioned constraints) ban specific individuals from entering but it has not done so.
84. The formulation of the first category of persons unknown is “persons ... remaining or occupying without consent”. If applied to persons generally, this makes no sense since there is a general consent for members of the public to go onto the land. It only makes sense once it is appreciated that “remaining or occupying” bears the unusually narrow meaning in the draft order, i.e. remaining “for the purposes of overnight dwelling”.

85. What Hillingdon is saying is that it does not consent to persons using the land for overnight dwelling and that they are therefore trespassers. It is then necessary to distinguish overnight dwelling from overnight angling or overnight camping by Activity Centre clients taken on a camping trip. They, it must be understood, are not included within the withdrawal of consent for overnight dwellers.
86. The protesters' camp differs from the camping by anglers and trippers by reference to its purpose, which is to protest; though, for some, it may be their home as well. The end point of this analysis, though rather opaque in the claim documents, seems to be that Hillingdon has withdrawn consent to go on the land to anyone whose purpose in doing so is to sleep overnight on the land as a protester or dweller or both.
87. I believe I am right in saying that the same withdrawal of consent would apply to non-protesters intending to camp wild, for example, hikers, ramblers or HS 2 engineers. I can accept on the evidence, vague and unclear though it is, that Hillingdon's default position is that it does not consent to overnight camping. The general consent to enter the land is limited to presence on the land, by day or night, but does not extend to overnight sleeping. The exceptions to that in the case of anglers and trippers are specific and paid for.
88. It appears to be by that route that the named defendants and the relevant category or persons unknown, imperfectly defined in the claim documents, are said to have become trespassers. By going onto the land for the unauthorised purpose of overnight sleeping, they are trespassing; while the generality of people still have Hillingdon's consent to go onto the land. Thus stated, the cause of action in trespass does make sense.
89. I turn to the cause of action in nuisance. The alleged acts of nuisance are stated piecemeal in the witness statements. They are diffuse and ill particularised. The damage is not properly pleaded. The allegations are clearly unsuitable for a Part 8 claim. Hillingdon must have known they would be strenuously denied. The disagreements had been rehearsed in correspondence and on social media.
90. Dates, times, places and the identity of individual wrongdoers are not properly pleaded. On Hillingdon's case, the protesters are all tarred with the same brush because they are protesters. That seems to me unjust. There are some weak triable issues that some acts of nuisance have been committed. But the case on nuisance is very thin. Many of the alleged acts date from March 2020 and earlier. And the relief sought does not match the alleged acts. For example, an injunction to restrain the holding of yoga sessions, naked swimming or the playing of loud music is not sought.
91. In so far as the alleged acts of nuisance are linked to the presence of the camp, they are not much better. Dogs may be off the lead and their excrement may not always be cleared up, but that is a common occurrence in the case of non-protesters. Litter may be left by protesters or anglers or both. The leaving of litter is usually prohibited by bye-laws which are there to be enforced.
92. Camping may lead to campers urinating or defecating at night. But that is also the case for Activity Centre tripper campers and even the most doughty angler might not hold out for 72 hours. It smacks of differential enforcement to single out the protesters for the purpose of a claim in nuisance without clear and convincing evidence that their conduct is markedly and persistently worse than anyone else's.

93. What order, if any, should I make? Hillingdon is a public body obliged to respect the protesters' Convention rights, in particular those arising under articles 10 and 11 of the Convention, imported into our law by the 1998 Act. It is also obliged to respect the rights of other users of the land and has formed the view that it is expedient for the promotion of the interests of the inhabitants of their area to bring this case.
94. I agree with Mr Woolf that Hillingdon has taken all reasonable steps to identify and serve the named defendants and that it cannot be expected to do more to identify the classes of "persons unknown"; though the definition of that class is imperfect for reasons already given. Section 12(2) of the Act is complied with and I am not precluded by that provision from granting injunctive relief.
95. Where as in this case the injunction is sought at the interim stage and not at the full trial, the test I have to apply is known as the *Cyanamid* test, after the case in which it was introduced. I have to consider first, whether there are serious issues to be tried that Hillingdon has been wronged as it alleges. Second, if that is so, I have to consider whether damages would be an adequate remedy for either side. Third, I have to consider the balance of convenience and justice.
96. At the first stage, I am satisfied that there is a serious issue to be tried, to the effect that acts of trespass are being and have been committed by overnight sleeping; and by engaging in conduct such as attaching persons to other persons and objects, lying down in front of vehicles and banging objects to make noise.
97. At the second stage, it is clear that damages would not be an adequate remedy for either side. This case is not about money. At the third stage, I have to ask myself whether, if the injunction is granted and it turns out at the full trial (with oral evidence and cross-examination of witnesses), that it should not have been granted on the merits, that is more just or unjust than if the injunction is refused and it turns out at trial that it should have been granted on the merits.
98. It is also necessary to take into account that the court, like Hillingdon, is obliged under section 6 of the 1998 Act to act in a manner compatible with the defendants' Convention rights; and obliged under section 12(1) and (4) of that Act to have particular regard to the importance of the Convention right to freedom of expression and, in relation to journalistic material and conduct connected with it, to the extent to which it is or will be publicly available and the extent to which it is in the public interest for the material to be published.
99. In that context, I do not give very great weight to the contention of Mr Welch and others that the protesters are spoiling the enjoyment of others who use the land for recreational purposes. Protesting is an activity not intrinsically less legitimate than angling or building a railway. The case on nuisance is thin, as I have said. It is true that protesting, like construction work, disturbs others with noise and intrusive attention seeking. Angling also annoys some people. It prevents others from approaching the water's edge.
100. One of the social media posts relied on by Hillingdon did warn anglers to bring ear plugs when the protest against tree felling was to take place (as long ago as January 2020). But the same post also referred to beautiful woodland walks being taken to see what is to be lost if HS 2 goes ahead. There must be mutual tolerance; though I recognise also and take into account that the anglers pay a subscription fee for their right to fish.

101. It is now clear that Hillingdon has not withdrawn its consent for the protesters to enter onto the land at all, but only for overnight sleeping and four specific forms of protest. The injunction sought is narrower than I, and I suspect some of the defendants, thought. I therefore need not consider further whether to impose any wider injunction.
102. While no order is sought prohibiting naked swimming, urinating or defecating on the land or other specific acts that might amount to a nuisance, that does not mean such acts are permitted by law. The protesters are subject to the general law like everyone else. Such activities are likely to be prohibited or restricted by bye-laws which bind the protesters, anglers, dog walkers and outdoor camping trippers alike. Everyone must clear up after their dogs and keep them under control, as the law requires.
103. I would not be prepared to grant an injunction that would prevent a protester from walking on the land carrying a protest banner or singing anti-HS 2 songs. The question is whether to grant a limited injunction to prohibit trespass by named defendants and persons unknown by:
- (1) sleeping overnight on the land without express permission;
  - (2) attaching persons to other persons or objects so as to create an obstruction;
  - (3) attaching a person or persons to fences, gates or barriers;
  - (4) banging objects so as to cause noise; and
  - (5) standing, sitting or lying down in front of vehicles.
104. I have come to the conclusion that it would be appropriate to grant an interim injunction, pending a full trial later this year or early next, to prohibit that limited class of acts. The prohibitions do not prevent the protesters from protesting, both on and off the land. They do restrict the ways in which they can do so on the land.
105. I would like to explain my reasons. I return to the point that the court occupies a position of strict neutrality in the argument about the merits of HS 2. The detractors of HS 2, the defendants and many others, have been eloquent in their condemnation. We have all also heard passionate arguments the other way from those who say it is good for jobs, good for the economy, that we need a modern railway, that it will bring prosperity to the north, that environmental damage will be minimal, and so forth.
106. The merits of the arguments for and against HS 2 are not of the slightest concern to me in deciding this case. But I must and do recognise that the issue is one of the utmost public importance, with acutely polarised views. The public importance of the issue goes even beyond HS 2; it engages more broadly the decarbonising of the economy and confronting the reality of climate change.
107. The importance of these issues is such that the weight to be given to the right to protest about them is very considerable. This is not a case where the public interest in upholding a Convention right is weak; as for example, it would be where there is a wish to report the identity of a vulnerable child. So important are the issues here that the right to protest about them is very important too.

108. Having said that, I do not go as far as to accept that the right to life under article 2 of the Convention is engaged here, as was suggested by one of the defendants. Any threat to life (for example, through water contamination or global warming) is too indirectly linked to the HS 2 construction project to be capable of raising an article 2 issue.
109. On the other side of the balance, there is the right of Hillingdon as landowner to regulate the use of its land and its power under section 222 of the LGA 1972 to bring civil proceedings to promote the interest of its inhabitants; here, in particular, people who use the land but are not protesters; families, dog walkers, anglers and others.
110. I think it would be inappropriate for Hillingdon to be compelled to tolerate the unwanted presence on its land of overnight sleeping protesters. To do so would give the protesters special and preferential treatment over other ordinary citizens, who on the evidence are not allowed to camp on the land without special permission for which payment is made.
111. I do not think the protesters' ability to protest is very seriously impaired by a ban on overnight sleeping accommodation on the land, so that the special privilege of being allowed to do so should be effectively granted to them by this court. Hillingdon should not be drawn against its will into the politics of pro- and anti-HS 2 discourse.
112. In short, the land is not a free camp site. Hillingdon is acting reasonably by acting to prevent unrestricted and unregulated overnight camping. If the protesters are allowed to do it, why should not anyone else be allowed to do it? Their numbers could swell greatly and they could be joined by others, for example, rambblers, hikers, holiday makers, homeless people and others less interested in protesting than the opportunity for free camping.
113. Enjoyment of the land by others would then be seriously impeded. Insanitary conditions would be impossible to avoid. Being a protester does not give you rights that others do not have. Invoking articles 10 and 11 of the Convention does not put you in a better legal position than other ordinary members of the public who are not allowed to camp.
114. If you want to camp on someone else's land, you should negotiate with the owner and offer terms such as those available to anglers and trippers who are customers of the Activity Centre. If the owner refuses, you should not camp on the owner's land as by doing so you are trespassing and the owner is entitled to ask for an injunction to stop you from trespassing.
115. The overnight sleeping by anglers and Activity Centre trippers is not in the same category. They have the owner's permission and the protesters do not. They pay for the privilege and the protesters do not. I conclude that the injunction to restrain overnight sleeping should be granted.
116. What about the four specific types of protest? I accept that these acts, if committed, are disruptive of others' enjoyment of the land and activities on it. They prevent others from going about their lawful business. I do not think the protesters' Convention rights should make those acts inviolable. Those Convention rights are not absolute.
117. The right to freedom of expression under article 10:
- "... carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society,



in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others ... .”

118. The right to freedom of peaceful assembly and association with others under article 11 may be subject to restrictions prescribed by law which:
- “... are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”
119. I think the modest restrictions on the protesters’ rights to protest embodied in a prohibition of the aforementioned four specific types of protest act are justified and fall within the scope of justified restrictions defined in the manner I have just quoted. I will therefore grant an interim injunction in those limited terms, until trial or further order.
120. The tents must be gone by 5pm this Friday. The injunction does not prevent the defendants and others protesting on the land. Provided they comply with the general law, they can do so. That includes carrying protest banners and flags, provided they are taken away at the end of the visit.
121. The injunction does not prevent the making of sound, photographic and video recordings on the land. during the day and at night, though without overnight sleeping.
122. The injunction does not prevent reporting and disseminating those journalistic materials, handing out campaign literature and seeking to draw attention to the justice of the protesters’ cause – but politely, please, and avoiding offensive language.

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**\*\*This transcript has been approved by the Judge\*\***