

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

Claimants

- v -

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

Defendants

SKELETON ARGUMENT

HEARING DATE: 20 JUNE 2024

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REFERENCE TO "**FITZGERALD, §x [HB/y]**" IS A REFERENCE TO PARAGRAPH x OF ALISON FITZGERALD'S WITNESS STATEMENT, WHICH CAN BE FOUND AT PAGE y OF THE HEARING BUNDLE.

REFERENCE TO "**[AB/y]**" IS A REFERENCE TO PAGE y OF THE AUTHORITIES BUNDLE.

I. INTRODUCTION

1. The Defendants are organising and have widely publicised a nationwide campaign of direct action to disrupt airports during the summer of 2024 (the "**Airports Campaign**"). The hearing on 20 June 2024 is the hearing of the Claimants' application for injunctive relief to restrain such threatened acts of trespass and nuisance at London City Airport. The claim involves private land only.
2. Pre-reading of the following documents would be of assistance:
 - a. Witness Statement of Alison FitzGerald, dated 11 June 2024 [**HB/48**];
 - b. Witness Statement of Stuart Wortley, dated 11 June 2024 [**HB/96**];

- c. Particulars of Claim [HB/33]; and,
 - d. Draft Order [HB/2].
3. The Defendants are Persons Unknown who are newcomers and so, following *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 WLR 45 (“*Wolverhampton CC*”), notice of this application (in the usual sense) is not possible. But the Claimants have also deliberately not taken steps to *notify* Persons Unknown of this application, for fear of the consequences of doing so. This is considered in further detail below.

II. THE AIRPORTS CAMPAIGN

4. Details of the Airports Campaign can be found at Wortley, §§32-41 [HB/106]. In summary, Just Stop Oil has announced a nationwide summer campaign targeting airports in order to “*put the spotlight on the heaviest users of fossil fuels and call everyone into action with us*”. Their own published material states that:

- a. *“We need bold, un-ignorable action that confronts the fossil fuel elites. We refuse to comply with a system which is killing millions around the world, and that’s why we have declared airports a site of nonviolent civil resistance.”*
- b. *“We’ll work in teams of between 10-14 people willing to risk arrest from all over the UK. We need to be a minimum of 200 people to make this happen, but we’ll be prepared to scale in size as our numbers increase.*

Our plan can send shockwaves around the world and finish oil and gas. But we need each other to make it happen. Are you ready to join the team?”

[HB/272]

- c. *“We’re going so big that we can’t even tell you the full plan, but know this – Just Stop Oil will be taking our most radical action yet this summer. We’ll be taking action at sites of key importance to the fossil fuel industry; **super-polluting airports.**”*

[HB/274]

- d. *“This summer’s actions across multiple countries will go down in history.”*

5. In terms of the types of direct action likely to be committed, at a meeting in March 2024 a co-founder of Just Stop Oil is reported to have advocated the following **[HB/259]**:
 - a. Cutting through fences and gluing themselves to runway tarmac;
 - b. Cycling in circles on runways;
 - c. Climbing on to planes to prevent them from taking off;
 - d. Staging sit-ins at terminals 'day after day' to stop passengers getting inside airports.

6. Moreover, in 2019 Extinction Rebellion carried out similar direct action at London City Airport:
 - a. A large group of individuals blocked the main entrance to the Airport.
 - b. A large group of individuals occupied the DLR station adjoining the Airport.
 - c. One individual climbed onto the top of an aircraft and glued himself onto it.
 - d. One individual boarded a flight and refused to take his seat.

7. The Airports Campaign does not appear to have begun yet. But, on 2 June 2024, Extinction Rebellion environmental activists blocked access to Farnborough Airport **[HB/281]**. It was reported that more than 100 individuals took part and several were arrested.

8. This widely publicised campaign of nationwide direct action has echoes of the direct action taken against the energy sector in spring 2022, which resulted in substantial disruption and hundreds of arrests: Wortley, §§25-31 **[HB/103]**.

III. RISK OF HARM

9. The risks of harm posed by the Airports Campaign are significant and are set out at FitzGerald, §§27-32 and 36 [HB/54]. In particular, there are the health and safety risks of untrained and unsupervised trespassers carrying out direct action on a taxiway and runway. These risks affect not just the trespassers themselves, but also airport and airline staff as well as the emergency services.
10. The risks include catastrophic injury and death arising from:
 - a. Trespassers coming too close to a jet engine.
 - b. Trespassers being struck by landing, departing or other aircraft as well as those aircraft having to take evasive action in order to avoid injuring trespassers.
 - c. Being struck by other vehicles travelling between the terminal building and aircraft stands as well as those vehicles having to take evasive action to avoid injuring trespassers.
 - d. Falling from a height if trespassers climb on top of aircraft or onto the rooves of buildings.
11. There are also national security risks; trespassers at the Airport would distract the police and security team from their counter-terrorism work.
12. In terms of other harm, the Claimants are also concerned about:
 - a. The disruption to passengers trying to use the Airport; and,
 - b. The financial loss that would arise as a result of any direct action.

IV. WITHOUT NOTIFICATION

13. Ordinarily, the Claimants would be required to demonstrate that there were

“good”¹ or “compelling”² reasons for bringing an application without notice. Those requirements do not technically apply here as they only affect applications brought against parties to proceedings. In the present case, which relates only to Persons Unknown who are newcomers, there is no defendant: *Wolverhampton CC*, §§140-143 [AB/151].

14. Although the Claimants are still required to take reasonable steps to draw this application to the attention of persons likely to be affected by the injunction sought or with some other genuine and proper interest in the application, this is a requirement of the case law: see *Wolverhampton CC*, §§167(ii) and 230-231 [AB/159 and 173]. It is unclear what circumstances would justify dispensing with this requirement but, it is submitted, the threshold is likely to be lower than what would ordinarily be required.
15. In any event, there are good and compelling reasons for the application to have been made without notification.
16. In particular:
 - a. The Claimants are concerned about the severe harm that could result if Persons Unknown were to be notified about this application.

The Airports Campaign has made repeated serious threats about the scale and sort of direct action planned: see §§4-5 above. For example, they have talked about “*taking our most radical action yet*” and that “*This summer’s actions across multiple countries will go down in history*”. This sort of direct action poses significant health and safety risks – not just for those carrying out the direct action but also those working at the Airport and the emergency services – including catastrophic injury and death. The Claimants are concerned that if Persons Unknown were to find out about this application, they would trespass upon the Airport before the

¹ As required by CPR r.25.3(1).

² To the extent that s.12(2)(b) of the Human Rights Act 1998 applies, which the Claimants submit it does not for the reasons set out at §24(vi) below.

application was heard and carry out the threatened direct action, with all the attendant risks that poses.

- b. Notice of the application would enable Persons Unknown to take steps to defeat the purpose of the injunction by trespassing on the Airport. If they were to do so, the loss and harm feared by the Claimants (as set out at **§§8-11** above) would have eventuated as a result of notifying them. As against this, it could be argued that this is not a case, like blackmail or a freezing order, where there would be no way to reverse the position if the feared-of conduct eventuated. But the Claimants submit that the consequences of a serious accident, as well as the disruption to those seeking to use the Airport for legitimate purposes, may well be irreversible.
- c. Persons Unknown have no right to enter the Airport. Their only reason for doing so would be to engage in unlawful conduct as against the Claimants. As against this, in *Birmingham CC v Afsar* [2019] EWHC 1560 (KB), Warby J stated that “*You do not justify applying in secret by showing that your case has merit, or by saying that the relief sought is limited in scope and time, and will have only limited impact on the respondents. These are not relevant considerations, let alone compelling reasons for proceeding without notice.*”: §53 (emphasis added) [AB/22]. It is noted, however, that *Afsar* was a case where Article 10 and 11 ECHR rights were materially engaged as the relief was sought on the basis of harassment, anti-social behaviour and misuse of highways. In the present case, however, there is no question of the ECHR protecting the direct action contemplated by the Airports Campaign as it amounts to trespass on private land; as such, the relief sought will have no impact on the Defendants.

V. THE SITE

- 17. Plan A shows the land owned/leased by the Claimants [HB/24].

18. The First Claimant is the registered owner of the following registered titles: TGL469846 (freehold) [HB/209 and 218];³ EGL527797 (leasehold) [HB/181 and 186]; EGL527799 (leasehold) [HB/189 and 200]; TGL617976 (leasehold) [HB/221 and 227]; and, EGL555153 (leasehold) [HB/203 and 207]. In relation to certain further land at Albert Island, the First Claimant has a tenancy at will [HB/228].
19. The Second Claimant is the registered owner of the following registered titles: EGL519692 (freehold) [HB/139 and 143]; EGL552140 (freehold) [HB/145 and 149]; EGL518399 (freehold) [HB/133 and 137]; EGL530134 (freehold) [HB/161 and 165]; EGL338199 (leasehold) [HB/151 and 159]; EGL291578 (leasehold) [HB/167 and 172]; EGL465048 (leasehold) [HB/125 and 131]; and, EGL373364 (leasehold) [HB/115 and 122].
20. Plan 1 shows the extent of the land sought to be covered by the injunction [HB/25]. This does not include:
 - a. Those buildings shaded blue;
 - b. In those buildings shaded green, the areas edged blue on Plans 2-8 [HB/26-32].
 - c. In relation to the areas shaded purple, the viaduct suspended over the ground level and forming part of the Docklands Light Railway.
 - d. In relation to the areas shaded pink, those areas located below ground level forming (i) a rail tunnel (ii) a subway and (iii) a tunnel forming part of the Docklands Light Railway.

VI. RELEVANT LEGAL PRINCIPLES

21. Following the Supreme Court judgment in *Wolverhampton CC*, the position in relation to Persons Unknown, who are newcomers, has evolved. *Wolverhampton CC* has now also been considered in detail in *Valero Energy Ltd v Persons Unknown* [2024]

³ Within each square bracket, the first of these bundle cross-references refers to the location of the official title and the second refers to the location of the title plan.

EWHC 134 (KB) (“*Valero*”) [AB/177],⁴ in which Ritchie J set out a list of factors to be satisfied in the protest context (albeit in the context of a summary judgment application). For a summary of the case law, see, generally, Y Vanderman, *Manual on Protest Injunctions* (v.2, 2024), §§5.1-5.9 [AB/277].

22. It is relevant to note that the present application involves injunctive relief against pure trespassers on private land. It is, therefore, in some important respects unlike:
 - a. *Wolverhampton CC*, which involved injunctive relief sought by local authorities against travellers (in respect of whom they have statutory duties) on local authority land; and,
 - b. *Valero*, which involved injunctive relief against protesters, on both private and public land, and which therefore materially engaged Article 10 and 11 ECHR rights.
23. Notwithstanding this, many of the *Valero* factors set down are still relevant to this application, which involves Persons Unknown who are newcomers. These factors are considered below in the next section and are not repeated here.

VII. SUBMISSIONS

24. The *Valero* tests, set out at §58 of Ritchie J’s judgment [AB/206], are satisfied here for the following reasons:⁵
 - i. There is a civil cause of action identified: trespass and nuisance.

In relation to trespass, Persons Unknown are threatening, by the Airports Campaign, to carry out the commission of intentional acts which result in the immediate and direct entry onto land in the possession of another without consent. All that needs to be shown is that the Claimants have a better right to possession than the Defendants: *HS2 Ltd v Persons*

⁴ And also in *HS2 v Persons Unknown* [2024] EWHC 1277 (KB).

⁵ See Y Vanderman, *Manual on Protest Injunctions* (v.2, 2024), §5.10.

Unknown [2022] EWHC 2360 (KB), §77 [AB/46]. That is plainly the case here.

In addition, Persons Unknown have no licence to enter the Land for the purpose of carrying out protest or direct action. To make this clear, the Claimants have published a notice on its website confirming this as well as formally prohibiting such conduct under Byelaw 3(12) of the London City Airport Byelaws 1988. This makes it a criminal offence “to enter or remain at London City Airport for the purpose of carrying out a protest or taking part in any demonstration, procession or public assembly”. The same notice has also been affixed at various locations around the Airport: FitzGerald, §17 [HB/51].

In relation to nuisance, Persons Unknown are also threatening undue and substantial interference with the Claimants’ enjoyment of their land, amounting to a private nuisance.

- ii. The Claimants have complied (and will continue to comply) with their duty of full and frank disclosure.
- iii. There is sufficient evidence to prove that the claim is likely to succeed: see **section II above** and the Witness Statements of Alison FitzGerald and Stuart Wortley.

The Claimants do not consider that s.12(3) of the Human Rights Act 1998 [AB/3] technically applies in this case as: (1) the claim is brought against Persons Unknown only and there is no “respondent”: (2) Articles 10 and 11 ECHR include no right to trespass on private property and thereby override the rights of private landowners: *HS2 Ltd v Persons Unknown* [2022] EWHC 2360 (KB), §§81 and 196 (Knowles J) [AB/47 and 90]; and, (3) in any event, there is no relevant “publication” in this case, as required by s.12(3) HRA 1998: see Y Vanderman, *Manual on Protest Injunctions* (v.2, 2024), §§6.19-6.23 [AB/300].

Nonetheless, the point is academic as the Claimants accept that an elevated threshold to the usual *American Cyanamid* test of “serious issue

to be tried” must be passed. Whatever that threshold, it is clearly satisfied in the present case.

In addition, there is a real and imminent⁶ risk of the tortious conduct occurring. In particular, the Claimants rely on: (1) the repeated threats of direct action at airports across the country in summer 2024 (together with the fact that previous threats by Just Stop Oil have been acted upon); (2) the unusual features of London City Airport which make it an obvious target for direct action: FitzGerald, §28 [HB/54]; and, (3) the fact that London City Airport has been targeted by environmental activists in the recent past.

- iv. There is no realistic defence. It is difficult to see what potential defence could be put forward.
- v. There is a compelling justification for the interim injunction. This is due to the significant health and safety risks posed by trespassing on the Sites as well as the substantial disruption and financial loss that could be suffered by the Claimants. This is in contrast to the lack of any possible justification for the apprehended unlawful conduct.
- vi. No ECHR balancing exercise is required as Articles 10 and 11 include no right to trespass on private property and thereby override the rights of private landowners: *HS2 Ltd v Persons Unknown* [2022] EWHC 2360 (KB), §§81 and 196 (Knowles J) [AB/47 and 90]; and, Y Vanderman, *Manual on Protest Injunctions* (v.2, 2024), §8.9 [AB/313].
- vii. Damages would not be an adequate remedy in light of the health and safety risks, the amount of disruption likely to be caused and the fact that there are no named defendants to seek damages from: *Valero*, §70 [AB/212]. The threatened harm would also be “grave and irreparable” for these reasons.

⁶ “Imminent” here means that the circumstances must be such that the remedy sought is not premature: *HS2 Ltd v Persons Unknown* [2022] EWHC 2360 (KB), §§100 and 176 (Knowles J) [AB/53 and 81].

- viii. The Persons Unknown are clearly and plainly identified by reference to the tortious conduct prohibited (trespass) and clearly defined geographical boundaries. It is not possible to identify the Persons Unknown as they have not yet carried out the threatened trespass, it is not known who may attempt to do so in the future and the Claimants may well not know (all of) their names if they did.
- ix. The prohibition in the draft Order is set out in clear words. It does not prohibit any conduct which would be lawful on its own.
- x. The prohibition in the draft Order mirrors the torts claimed.
- xi. The prohibition in the draft Order is defined by clear geographic boundaries.
- xii. The Claimants seek a 3-year order, which would effectively amount to final relief. As the claim is being brought against Persons Unknown only, no return date hearing or final hearing is required. Rather, any interested individual would have liberty to apply at any time to set aside the injunction: *HS2 v Persons Unknown* [2024] EWHC 1277 (KB), §§58-59 (Ritchie J) [AB/240].
- xiii. This application has been made without notice to the Defendants. Therefore, no notification whatsoever has taken place to date.⁷ The proposed steps for notification going forward are set out in the draft Order. It is submitted that these amount to reasonable steps to draw the relevant documents to the attention of Persons Unknown.
- xiv. The draft Order includes provision for any person to apply to set aside or vary the injunction on short notice.
- xv. The Claimants propose a review each year the injunction is in force.

⁷ NB Ritchie J in *Valero* was incorrect to say that applications must be served on newcomers by alternative means sanctioned by the Court: §58(13) [AB/208]. Rather, in *Wolverhampton CC*, the Supreme Court found that claimants “*must take reasonable steps to draw the application to the attention of persons likely to be affected by the injunction sought or with some other genuine and proper interest in the application*”: §226 [AB/151]. This was because applications against newcomers would always be without notice: see *Wolverhampton CC*, §§139, 142-143, 151, 167(ii), 173-174, 177-178 and 238(i) and (iv).

VIII. CROSS-UNDERTAKING IN DAMAGES

25. The Claimants are willing and able to provide the necessary cross-undertaking in damages: FitzGerald, §38 [HB/58].

IX. FULL AND FRANK DISCLOSURE

26. In order to support compliance with its duty of full and frank disclosure, in this section the Claimants set out some arguments that could be made against their application for an injunction.
27. **First**, it could be argued that there is no justification for this application to have been made without notifying Persons Unknown. In response, the Claimants accept that there is a high threshold and their position on why it is satisfied is set out at §§13-16 above.
28. **Secondly**, it could be argued that there has been no direct threat against London City Airport in particular such that a precautionary injunction ought not to be granted. In response, the Claimants rely on the arguments made as to “real and imminent risk” at §24(iii) above. The case law does not require the threatened direct action to have already occurred on a particular site before injunctive relief may be granted: see *HS2 Ltd v Persons Unknown* [2022] EWHC 2360 (KB), §§111-113 and 180 (Knowles J) [AB/58 and 84]; and, Y Vanderman, *Manual on Protest Injunctions* (v.2, 2024), §§6.34-6.37 [AB/303].

X. CONCLUSION

29. For the reasons set out above, the Court is respectfully requested to grant an Order in the terms of the draft Order.

YAASER VANDERMAN

Landmark Chambers

19 June 2024