

HILLINGDON LONDON BOROUGH COUNCIL v PERSONS UNKNOWN (2020)

QBD (Kerr J) 13/07/2020

CIVIL PROCEDURE - LOCAL GOVERNMENT - HUMAN RIGHTS

DEMONSTRATORS : FREEDOM OF ASSEMBLY AND ASSOCIATION : FREEDOM OF EXPRESSION : INTERIM INJUNCTIONS : LOCAL AUTHORITIES' POWERS AND DUTIES : NUISANCE : TRESPASS : UNKNOWN PERSONS : ECHR 1950 art.10, art.11

A local authority was granted an interim injunction prohibiting named defendants and unknown persons who had been protesting against the construction of the HS2 railway on its land from overnight sleeping and other specified conduct, such as attaching persons to other persons and objects, lying down in front of vehicles and banging on objects to make noise, which was disruptive for others enjoying the land and other activities on it. The injunction did not prevent the defendants and others protesting on the land provided that they complied with the law.

The applicant local authority applied for an interim injunction to prevent named defendants and persons unknown from trespassing and causing a nuisance on its land which adjoined the site of construction works for a high-speed railway (HS2).

The injunction was sought against (i) persons unknown remaining on or occupying the land without the local authority's consent; (ii) persons unknown entering the land for the purpose of taking part in protests against HS2 construction works. The injunction was to restrain them from (1) sleeping overnight in tents; (2) attaching persons to other persons or objects so as to create an obstruction; (3) attaching a person or persons to fences, gates and barriers; (4) banging objects so as to cause noise; (5) standing, sitting or lying down in front of vehicles.

The defendants argued that they were doing no more than exercising their right to protest against the HS2 project and that there was a strong public interest in their protest. They submitted that their use of the land was reasonable, and that a prohibition would be an unacceptable interference with their [ECHR art.10](#) and [art.11](#) rights.

The local authority submitted that it was responsible for ensuring the appropriate use of the land by walkers, anglers and other members of the public.

HELD: Where an injunction was sought at the interim stage the applicable test was the three-fold American Cyanamid test.

Serious issue to be tried - There were serious issues to be tried that the local authority had been wronged and continued to be wronged, and that acts of trespass had been committed by overnight sleeping and engaging in other conduct, such as attaching persons to other persons and objects, lying down in front of vehicles and banging on objects to make noise. That would continue if no injunction was granted.

Adequacy of damages - Damages would not be an adequate remedy for either side. The case was not about money.

Balance of convenience - The court had to ask whether it would be more just than unjust if the injunction was refused and it turned out at trial that it should have been granted on the merits. It was also necessary to take into account that the court, like the local authority, was obliged pursuant to the [Human Rights Act 1998 s.6](#), to act in a manner compatible with the defendants' ECHR rights, and was obliged under [s.12\(1\)](#) and [s.12\(4\)](#) of the 1998 Act to have particular regard to the importance of the right of freedom of expression under art.10. Protesting was not an activity intrinsically less legitimate than angling or building a railway. The court recognised that the anglers paid a subscription fee for their right to fish. The local authority had not withdrawn its consent for the protestors to enter on to the land at all but only for overnight sleeping and specific forms of protest. The court would not be prepared to grant an injunction that would prevent a protestor from walking on the land and carrying a protest banner or flags and singing anti-HS2 songs.

Interim injunction - It would be appropriate to grant an interim injunction pending a full trial later in the year or early the following year to prohibit the limited class of acts outlined by the local authority. An interim injunction should be granted to restrain overnight sleeping. In relation to the other four specified types of protest the court accepted that those acts, if committed, were disruptive for others enjoying the land and the activities on it. The protestors' ECHR rights were not absolute. The right to freedom of expression under art.10 carried with it duties and responsibilities, and the right to peaceful assembly and association under art.11 was also subject to restrictions. The modest restrictions on the protestors' rights to protest embodied in the prohibition of the four specific types of protest were justified. An interim injunction would be granted in those limited terms until trial or further order. The tents had to be removed by 5pm on Friday 17 July. The injunction did not prevent the defendants and others protesting on the land provided they complied with the law. They could protest without overnight sleeping. The injunction did not prevent reporting and distributing journalistic materials, handing out campaign literature and seeking to draw attention to the justice of the protestors' cause.

Application granted

Counsel:

For the applicant: Steven Woolf

For the respondents: In person

Solicitors:

For the applicant: In-house solicitor

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