

**B E T W E E N:**

- (1) LONDON SOUTHEND AIRPORT COMPANY LIMITED**
- (2) LONDON SOUTHEND SOLAR LIMITED**
- (3) THAMES GATEWAY AIRPORT LIMITED**

**Claimants**

**-and-**

**PERSONS UNKNOWN WHO (IN CONNECTION WITH JUST STOP OIL OR OTHER ENVIRONMENTAL CAMPAIGN) ENTER, OCCUPY OR REMAIN (WITHOUT THE CLAIMANTS' CONSENT) UPON 'LONDON SOUTHEND AIRPORT' AS IS SHOWN EDGED RED ON THE ATTACHED PLAN A TO THE AMENDED PARTICULARS OF CLAIM**

**Defendants**

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**NOTE OF "WITHOUT NOTICE" HEARING BEFORE  
& *EX TEMPORE* JUDGMENT OF MRS JUSTICE FARBEY  
ON 14 AUGUST 2024**

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The hearing commenced at 10:28 before Mrs Justice Farbey. Tom Roscoe ("TR") appearing for the Claimant.

**Opening**

1. TR expressed appreciation for the Court hearing the application on short notice during the vacation period. TR confirmed that J had sight of the hearing bundle ("HB"), authorities bundle ("AB") and the skeleton argument ("Sk."). A supplemental bundle ("SB") was handed up to J.
2. J confirmed she was aware this was a without notice application concerning an injunction against direct action by Just Stop Oil ("JSO") at London Southend Airport ("SEN"). TR confirmed yes and that, as emphasised in Sk., SEN is the only London, and one of the few national, airports without the benefit of such an injunction. Not to reduce the need to look at the facts, but this is relevant for 3 reasons:

- 2.1. First, SEN faces increased exposure as a result of its comparatively weaker protection and consequently, a higher risk of potential harm, which increases the appropriateness of an injunction;
  - 2.2. Second, this claim has similar facts as previous cases where other airports have recently gained injunctions. It would be anomalous if SEN was treated differently and left without this protection; and
  - 2.3. Third, the approach on the other airport injunctions, detailed in the SB, is informative of the appropriate procedure and practicalities.
3. TR proposed to make submissions in the following order:
    - 3.1. Threat posed by JSO and the risk of harm to SEN;
    - 3.2. Explanation for applying without notice;
    - 3.3. Discussion of the site and unique facts of SEN;
    - 3.4. Wording of the Draft Order;
    - 3.5. Submission of applicable legal principles (to the extent not previously covered); and
    - 3.6. Full and frank disclosure.

### **Threat and Risk of Harm**

4. J confirmed she had read the witness statements. TR commented that there was lots of detail on the threat and risk of harm in the Claimants' witness statements and so highlighted a few important points, submitting that:
  - 4.1. JSO is a spin-off group of Extinction Rebellion (“**XR**”) in that it shares a co-founder, Roger Hallam. Mr Hallam is currently imprisoned, and so not himself threatening direct action. HB p378, an article describing the creation of JSO. TR submitted that this article confirmed that JSO's foundational aims are stopping what they think ought not be done, going beyond expressing opinions about what should and should not be done;

- 4.2. HB p390, JSO website extracts about how it intends to operate and its “demands”; and
- 4.3. HP p396, JSO’s own statistics give a sense of the scale of their criminal or suspected criminal activities.
5. TR then took J to evidence of specific threats arising from JSO this summer. TR took J to a 16 July 2024 JSO press release/letter to the Prime Minister, threatening a campaign at airports (HB p409). On 22 July 2024, JSO stated it will undertake its threatened action. JSO released a statement referring to its previous ultimatum and stating that “no such assurances have been received, therefore JSO supporters will be taking action at airports this summer” (HB p414) . TR noted that JSO had indicated in this statement that it would carry out its actions in a non-violent and safe manner, and not carry out activities on active or unactive runways. It was also pointed out that JSO refers to itself as being an “A22 Network” member.
6. JSO has been raising funds – over £165,000 to finance its actions (HB p419). There is a Daily Mail report from March 2024 which detailed a JSO meeting infiltrated by an undercover reporter (HB p439). At HB p442, some of the techniques advocated for airport activists are detailed. These included: cutting through fences and gluing themselves to runway tarmac; cycling in circles on runways; climbing on to planes to prevent them from taking off.
7. J asked TR about JSO’s statement on 22 July 2024, suggesting they will not glue themselves to runways. TR responded that the later evidence would show that in practice this statement is not reliable.
8. TR directed J to the First Witness Statement of Marc Taylor (“**MT**”), at HB p37, setting out previous direction action at SEN from XR and JSO. He submitted that it would be wrong to think as a “more minor airport” (as some may describe it), SEN is not a target or any less at risk.
9. TR directed J to the First Witness Statement of Akhil Markanday (the “**BCLP WS**”) at HB p340, which describes and explains the actions recently perpetrated by JSO across other UK airports. TR submitted that the events demonstrate an intent to disrupt airport operations. At HB p487 the reaction of JSO to arrests for

these acts shows its members accept responsibility for legal consequences, but JSO express a defiant intention to continue its campaign.

10. J asked if, after their statement on 22 July 2024, JSO had evidenced any intention to attack or demonstrate on runways. TR confirmed it had, directing J by way of example to paragraph 39 of the BCLP WS, at HB p332, which details the arrest of four JSO individuals near Manchester Airport on 5 August, where they had been found with items which Police said would have been used to cause damage at airports. From this equipment, TR submitted an intention can be inferred to target runways (for example, fence cutting equipment and glue).
11. TR submitted that the potential consequences of these action are severe in the context of a complex operational environment with security and safety considerations. The consequences go beyond mere inconvenience or financial damage. At HB p39, MT describes the unique features of SEN which will be impacted, including at paragraphs 33(e) and (g).

### **Application Without Notice**

12. J asked TR to take her through the key principles. TR focused on *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 W.L.R. 45. TR explained that at paragraphs 139, 142 and 151 of *Wolverhampton*, the Supreme Court clarified that these type of injunctions are always in substance a type of without notice injunction, in that they will affect (or potentially affect) a wide class of persons who are not and may never become defendants to the proceedings. The focus is not on service *per se*, but rather on notification of the proceedings and the Order made. TR noted that the present application was, however, “without notice” in the fuller sense.
13. J asked TR about his Sk., at paragraph 22.3, where he had submitted that prior notice may be self-defeating and that other similar airport injunctions were therefore without notice too. TR confirmed that to be the Claimants’ position, explaining that at paragraph 174 of *Wolverhampton*, the Supreme Court observed that prior notice of the proceedings may often be appropriate to minimise the potential for procedural unfairness, but generous liberty to apply was a protection in cases such as these.

14. J stated that this approach, granting injunctions with no return date so long as it did not outlive the threat, has been taken on the basis of Lord Reed’s analysis in *Wolverhampton* and asked TR whether that was the Claimants request also. TR confirmed this request here, with a review date and generous liberty to apply.

### **The Site**

15. J asked TR to move discuss the land comprising SEN and the area sought to be injuncted (the “**Site**”). Before doing so, given the duty of full and frank disclosure, TR said he must highlight that JSO have announced a pause in disruption ‘whilst civil unrest is continuing to affect many towns and cities across the country’ (HB p465). J said she is familiar with this point.
16. TR introduced the discussion of the Site by highlighting one small defect in the plan exhibited at of the HB p16 (“**Plan A**”). Plan A, at the west of SEN, had a small area of blue hatching with white underneath. That blue area should be extracted and the red outline should track the south, not the north, of the blue area. J commented that this amendment will make the Plan simpler and gave leave to amend, if the order were granted.
17. J asked TR about the composition of Plan A and the colour key by which it depicts the title interests underlying the land. TR explained that the areas shaded yellow were areas where one or more of the Claimants had a leasehold or freehold interest which gave them an immediate right to possession. Where there was blue hatching, that was because a lease or licence had been granted to a third party which had the immediate right to possession, rather than the Claimants. J asked about the Claimants’ right to possession of the Terminal Building. TR confirmed that the whole Terminal Building is owned by the Claimants as freehold or leasehold. However, they do not have an immediate right to possession of all of it due to e.g. leases or licences to shops, restaurants etc, plus there are multiple floors making this hard to depict on a 2D map.
18. TR explained that the red outline shown in Plan A comes from the Airport Byelaws which, in conjunction with the Aerodrome Certificate awarded to SEN, exhibited HB p47, support the Claimants’ activities at SEN. HB p53 explains that the Byelaws were made pursuant to statutory powers authorising them and at HB

p76 there is a map reflecting the land to which the Byelaws apply. This outline of SEN shown by the map at HB p76 reflects the red outline shown in Plan A.

19. TR explained the Northeast runway lights. The lease underlying these is at HB p621. The lease is actually only granted in respect of the narrow area around each light, shown as green circles on the lease plan. Those small green circles cannot practically be reduced on the plan, hence the cross outline is matched to the Byelaws plan consistent with the Claimants' primary point on this.
20. TR submitted that the significance of the Byelaws, as seen by Section 4 of the Byelaws, exhibited at HB p56, is that the Claimants are empowered by statute to control what can or cannot be done in the entirety of SEN. TR gave examples of the prohibitions set out in the following Byelaws: 4(10), 4(12), 4(13), 4(15), 4(16), 4(19) and 4(22).
21. TR submitted that the underlying points were, first, that the Claimants have wide control over the SEN Site as empowered by statute and, second, this control gives sufficient standing to seek an injunction restraining trespass. TR referred to *Mayor of London v Hall* [2011] 1 WLR 504 and *Manchester Airport Plc v Dutton & ors* [2000] 1 Q.B.133 as authority for this, also referred to the move in the modern authorities away from the old common law action of ejectment based on an immediate right to possession.
22. TR submitted that, barring London City Airport, every other injunction sought by UK airports in recent months have taken this approach based on *Dutton and Hall* as proposed by the Claimants. J commented that she was familiar with the approach taken by other airports and asked questions specifically about the approach taken at Heathrow Airport. TR took J through the plan to the Heathrow Airport injunction, showing the same approach to third party (blue hatched) areas.
23. TR submitted that there were two further routes to found an injunction over the area outlined in red by Plan A. First, activities by JSO on the blue hatched land where the Claimants don't have an immediate right of possession would prevent the Claimants from reasonable enjoyment of their land, founding an action for nuisance. Second, as clarified in *Wolverhampton and Cuadrilla Bowland Ltd and other Persons Unknown and others* [2020] EWCA Civ 9, the Court can grant an

injunction to prohibit otherwise lawful actions (or by logical extension, actions that a claimant wouldn't itself have standing to seek an injunction in respect of) if such a remedy is proportionate and necessary to protect the Claimants' rights. J asked if this same argument applied to the Public Highway included in the red outline on Plan A. TR confirmed that it did.

24. J asked about the approach of London City Airport in carving out third party interests from the area over which they sought an injunction. TR took J through the plan to that injunction, noting that the same approach had not been followed in the subsequent cases.

25. With regard to Public Highways, TR referred J to Plan A, highlighting that the proposed area covered by the injunction included roads, which for the purposes of the application he accepted should be treated as being subject to public rights of way. In seeking an injunction over these areas, the Claimants were aware that the Human Rights Act 1998 (“**HRA**”) was engaged to some extent. TR stated that though protest on the Public Highway is lawful to an extent, this should not be an impediment to gaining an injunction here for the following reasons:

25.1. The Byelaws do not differentiate between private land and that subject to public rights of way. SEN has the same degree of control and power over both types of land, as seen by the outline at HB p76. J asked whether TR was contending that the Byelaws found trespass even regarding a public right of way. TR affirmed this. J accepted that where there was an overlay of the Byelaws over the Public Highway, there was, to some extent, a qualified right of way in effect.

25.2. As an alternative argument, TR submitted that, as shown by *Wolverhampton*, the Court can restrict otherwise legal activity if it is proportionate to protecting to the Claimants' rights. TR contended that here, it would be very difficult and complex to carve out an exception from an otherwise clear injunction to provide for some limited right of protest on the roads. Consequently, the proportionate approach was that being sought.

26. J expressed concern about the injunction over the public access road prohibiting benign protestors, for example, simply holding placards over this land which is,

to an extent, their right. J asked TR where in *Wolverhampton* it was stated that it is within the power of the courts to restrict such rights if it is proportionate to do so. TR replied that *Wolverhampton*, drawing from *Cuadrilla*, states at paragraph 102 and (AB p299) if it is proportionate and there is no other way of protecting the Claimants' right, it is within the Court's power to do so.

27. J differentiated the present proceedings from *Canada Goose v Persons Unknown* [2022] EWCA Civ 13, on the basis the issue there was regarding newcomers and not the use of the public pavement.
28. J asked about the scope of the requested injunction and whether it caught too many potential protestors. J gave the example of a controversial political figure landing at SEN and protestors wanting to hold placards in response. TR responded that the injunction only applies to JSO and other environmental causes, and so would not apply in J's example. The Defendants are defined narrowly to reflect that.
29. Further, to the extent that there are peaceful protestors who wish to protest about environmental issues in a non-disruptive way, the Claimants could insert a recital setting out a procedure to gain SEN's consent to do so in a designated area. Such a recital was seen in the injunction order obtained by Gatwick Airport (SB p97), as well as Bristol Airport (SB p119) and Liverpool Airport (SB p130). TR took instructions confirming that SEN was amenable to including such a recital.
30. J asked for this recital to be made in any order so that the Court can ensure it is fulfilling its obligations under the HRA. That was in accordance with the necessity and proportionality analysis mandated by the HRA.

### **The Order**

31. J commented the draft was in fairly standard terms. TR agreed and would only draw attention to some specific points.
32. J commented on the wording from the outset, stating that there must be a burden on the Claimants' solicitors to fix a review date. The onus should not be on the Court to manage an injunction once granted. J suggested wording be inserted at



paragraph 3 of the Draft Order to effect that *‘the Injunction set out at paragraph 1 shall lapse at 4pm on the anniversary of the order or, as the case may be, the latest annual review, unless before then the Claimants have applied for a review to take place’*. J clarified that the burden on the Claimants is to apply for the review in a timely manner, noting it is not within their powers to ensure a listing within a specific time period.

33. J commented that the Claimants’ request that the Order be granted for five years, appeared to be a considerable period of time. TR confirmed that five years was consistent with several of the recent airport cases, and he understood that this was consistent with earlier injunctions in respect of oil refineries. In fact several airports had even been granted an open ended injunction subject to an annual review. TR noted that, in either case, it was the annual review that was the important provision – with the longstop date being less significant. J confirmed that, if granted, her preference was not for the injunction to be open ended, but should be for five years, with annual review.
34. TR highlighted the Claimants’ approach to defining the Defendants, explaining the decision to use “in connection” rather than “for the purpose of” so as to reduce the need for any investigation into any person’s subjective intentions. J said this may not make a big difference, but agreed “in connection” was preferable.
35. TR took J to the provisions in the draft order for service/notification, explaining that, following *Wolverhampton*, the focus is on notification as opposed to service. The notification of the Order and the Court papers is what is most important in engaging the Defendants in the proceedings, as opposed to service of a Claim Form. TR listed the means of notification proposed by the Defendant as stated in the Draft Order. J agreed that JSO would be cognisant of the Order and proceedings by way of the means of notification suggested by TR, also referring to the similar steps employed by other airports following the recent injunction cases. TR explained where notice would be posted by reference to Plan B (HB p30).
36. For completeness, TR asked that an order be made to regularise service. He noted that some of the earlier cases had not said anything about service, others had

dispensed with service and others had make orders for alternative service. TR explained that the Claimants were seeking an order for alternative service.

### **The Legal Principles**

37. TR noted the Sk. covered this in detail.
38. J asked TR to address the traditional *American Cyanamid* test and how that interacts with *Wolverhampton*, noting that *Wolverhampton* attempts to protect the potential defendants unable to defend themselves in Court. In *Wolverhampton* (AB p318, paragraph 167(1)), Lord Reed commented on the requirement for a ‘compelling need’.
39. TR replied by referring J to *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB) which pre-dates *Wolverhampton* but provides a helpful exposition of the principles applicable to injunctions of this sort, at AB p254. The principle listed at (4) appears to be an additional requirement for something more to the first three principles which are the *American Cyanamid* principles. Ultimately, there is a recognition, seen in *Wolverhampton* also, that we are not in final or interim relief territory, rather we are somewhere in the middle.
40. J discussed the interaction between the requirement stated by some cases of a ‘compelling need’ and the *American Cyanamid* test, asking whether it is right that if there is a compelling need, then one could only go down from there in seeking to meet the *American Cyanamid* test. TR agreed with that proposition.
41. TR further noted that in considering these principles, the existence of the Byelaws and the fact that the police may take an interest is relevant to the Court’s analysis.
42. J accepted that the possible breach of the Byelaws is relevant to the question of whether there is a ‘compelling need’ for the injunction but questioned whether this was determinative. TR submitted that a key considerations were whether the Claimants should be allowed to vindicate their civil rights, notwithstanding these rights overlay with criminal law, and whether there was utility to the injunction in addition to the criminal law/Byelaws.

43. J asked whether, on the facts, the injunction would be a deterrent. TR submitted it would, referring to the social media post by JSO, exhibited at HB p522, which shows evidence of JSO adapting their actions based off whether an airport has the protection of an injunction.

### **Full and Frank Disclosure**

44. TR recognised the importance of ensuring this duty was complied with. TR referred J to Sk. p15 and emphasised the following:

44.1. The Defendants may argue that the application should not have been without notice. TR repeated the Claimants' submission that it may be self-defeating if the application was made with notice;

44.2. The fact that JSO had stated a pause in action. TR submitted that there is still an imminent and serious risk of harm to SEN as who knows when they may decide any pause ends;

44.3. The availability of criminal remedies. In response, TR submitted that it is necessary for the Claimants to vindicate their civil rights and obtain an injunction, notwithstanding the potential action from JSO engaging the criminal law and jurisdiction of the police;

44.4. It appears that the injunctions may have been disobeyed at other airports. He submitted that this is not a relevant consideration, as the Court must proceed on the basis that its orders will be obeyed;

44.5. TR noted that the Defendants would no doubt wish to emphasise their important and genuinely held beliefs. Though JSO and similarly orientated groups have important beliefs, these beliefs are irrelevant to the relief sought, and the earlier authorities have emphasised that the Court should not be considering such matters in any detail;

44.6. TR repeated the risk that the injunction sought, in prohibiting any entry onto the Site in relation to JSO or other environmental campaigns, may, as relates to the Public Highway, prohibit an element of lawful action. However, recent caselaw has shown that in circumstances as arise in this

case, the Court has the power to prohibit such lawful action where, as here, it is proportionate to do so to vindicate the Claimants' rights; and

44.7. J agreed the Court should act on the basis that orders will be obeyed and stated that the procedural aspects of the injunction should give some relief to any human right concerns. J commented on importance of the right to protest under the HRA and the common law, highlighting that it was open to JSO to challenge the Order.

45. At 11:52, J stated that she would grant the Order subject to reviewing a clean copy of the Draft Order, after the requested amendments had been made. J also stated she wished to deliver a judgment. Court was adjourned until 14:00.

*Court resumed at 13:57, with J delivering an ex tempore judgment The following note of that judgment is not and does not purport to be an official or Court-approved transcript.*

### **Judgment of Farbey J**

- (1) By a Part 7 Claim Form issued on 12 August 2024, the Claimants seek an injunction to restrain the Defendants from acts of trespass or nuisance on the Claimants' land. By an Application Notice issued on the same day, the Claimants seek a without notice interim injunction, together with an order for alternative service of the claim documents and injunction order.
- (2) I have heard submissions today from Mr Roscoe on behalf of the Claimants. As this was a without notice application, no representative from the Defendants appeared.
- (3) The First Claimant is the operator of London Southend Airport, situated in Essex. The Second and Third Claimants are subsidiaries of the First Claimant. Together, the Claimants hold the underlying legal interests in the land comprising the Airport. I have been provided with a plan showing the location of the Airport.
- (4) The Defendants are properly described as Persons Unknown. Persons Unknown are adequately defined as those who, in connection with Just Stop Oil or other environmental campaign, enter, occupy or remain without the Claimants' consent

upon 'London Southend Airport' as is shown edged red on Plan A which is attached to the amended Particulars of Claim.

**Nature and terms of the proposed injunction**

- (5) I was provided with a supplemental bundle containing previous airport injunctions. This is the 13th set of proceedings since June 2024 appearing before the Court where airports have sought, in similar terms, injunctions against anti-fossil fuel campaigners. In each case, the Claimants have relied upon principles handed down in *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 W.L.R. 45.
- (6) A key part of the proposed injunction is that the Defendants must not remain, enter or occupy London Southend Airport in connection with JSO or other environmental campaign.
- (7) The terms of the draft injunction provide that it shall expire in five years, on the long stop date of 14 August 2029. The injunction may be discharged before then by further order of the Court. There is a provision in any event for annual review of the terms of the injunction in this Court.
- (8) Although the application is without notice, the proposed order provides that anyone served with or notified of the proceedings and the Order, may apply to the Court at any time to vary or discharge the Order, giving the Claimants' solicitors 72 hours' notice. The service and notification provisions of the Order broadly reflect those given to other airports in recent months.
- (9) The Application is supported by witness evidence from the Claimants' acting CEO and a partner in the firm of the Claimants' solicitors.
- (10) That the Application is to be made without notice is at tension with the Human Rights Act 1998. However, I am content that there is a compelling reason for the Application to be made without notice.
- (11) In proceedings such as this, the Claimants are under a duty of full and frank disclosure to the Court. I am satisfied this duty has been discharged. Mr Roscoe

has raised points the Defendants were likely to have raised, covering both procedural and substantive issues.

- (12) I have kept at the forefront of my mind duty as a public authority under the Human Rights Act 1998, and the Defendants' rights of freedom of expression (Art. 10) and freedom of assembly (Art.11), enshrined under the Human Rights Act 1998 and European Convention on Human Rights. However, these are not absolute rights and are qualified by reference to a range of public interests.

### **The Evidence**

- (13) The evidence before me indicates JSO and other environmental groups have targeted London Southend Airport on numerous occasions in the past. For example, on 23 November 2021, 12 JSO activists entered the terminal with three large oil drums. JSO activists challenged passengers and the police were called. Some JSO individuals exploited the distraction in the terminal to conduct an airside breach.
- (14) The Claimants have provided evidence of the threatened unlawful activities at airports by environmental campaigners, including JSO, as part of a co-ordinated campaign against airports this summer. It is sufficient to give two examples. First, a Daily Mail article dated 9 March 2024, details a meeting where JSO co-founder Indigo Rumbelow advocated causing disruption at airports, including cutting fences, activists gluing themselves onto runways, cycling in circles on runways, climbing onto aircraft and staging multi-day sit in protests in the airport's buildings. Second, a press release by JSO dated 22 July 2024 stated that JSO will undertake all steps to ensure safety is not compromised and avoid active or inactive runways. However, since the, JSO activists have been apprehended on the perimeter of Heathrow Airport and found with equipment consistent with an intention to glue to runways.
- (15) I note too that JSO may find it difficult to accurately assess the risks to airport users as they may be ignorant of the complexities of the health and safety risks arising at an airport, especially with regard to passenger and cargo operations.

- (16) On 5 August 2024, JSO activists were arrested near Manchester Airport for conspiring to cause public nuisance. These activists were found equipped with items demonstrating an intention to damage and disrupt an airport.
- (17) On 7 August 2024, JSO released a press statement claiming a pause in their campaign of disruption at airports. I accept that by definition the pause will be a temporary state of affairs.

### **Risk of Harm**

- (18) London Southend Airport estimates it will serve 33-37,000 passengers every month in the remainder of the summer. I accept the Claimants' evidence regarding the severe risk of physical and financial harm posed by JSO. The evidence shows that this severe risk is exacerbated by unique features of London Southend Airport. Specifically, the direct walk passengers undertake from the terminal building to board the plane, as opposed to using a bus or jet bridge. Other impacts of the actions threatened by JSO include significant disruption to travel plans, financial losses, significant disruption to business and perishable cargo.

### **Causes of Action**

- (19) The principle cause of action relied upon is trespass. Mr Roscoe has shown me a plan reflecting the land that is under the Claimants' control as operator of London Southend Airport. The Claimants have the immediate right of possession to most of this by reason of their freehold or leasehold ownership. Some parcels of land, such as the terminal building, are leased or licenced to third parties but still remain under the control of the Claimant by virtue of the statutory Byelaws. The NE approach lights are on third party land not part of the airport. Within the areas of the land sought to be covered by the injunction, there is included some roads which are public in that public has some rights of access over this land.
- (20) The approach to the land covered by the injunction is intended to be practical and effective. To the extent that it includes land over which the Claimant holds the unencumbered freehold and leasehold, the cause of action is uncontroversially trespass. In relation to the land that is sublet, I accept the control given to the

Claimants by the Byelaws is sufficient to found trespass (*Mayor of London v Hall* [2011] 1 WLR 504).

- (21) In relation to the public access roads, the Byelaws ensure that the rights of the public on this land are qualified and do not exist to the actions which the injunction prevents.
- (22) In short, I am satisfied that the Claimants have a cause of action in trespass and the terms of the injunction are proportionate. This mirrors the approach at Heathrow Airport and the injunctions granted to other airports.
- (23) In any event, I accept the Claimants' submission that the anticipated activity of the activists would amount to actionable nuisance which would give rise to an injunction.
- (24) For these reasons, I am satisfied the Claimants have at least one cause of action.

### **The Legal Test**

- (25) Mr Roscoe's oral submissions considered the *American Cyanamid* test and the heightened scrutiny suggested by *Wolverhampton* where the Defendants are not present and as a matter of realism, may not seek liberty to apply to challenge the Order before the annual review (*Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB))
- (26) I am in no doubt that there is a serious question to be tried. Mr Roscoe submits that damages would not be an adequate remedy for the Claimants, relying on evidence from the Claimants by way of the First Witness Statement of Marc Taylor that the potential economic damage to London Southend Airport would be severe. There is no reason to think any of the Defendants could award such an award of damages. This is separate to the other harms which may arise which are not readily quantifiable in damages. Mr Roscoe has pointed out that the Claimants have offered a cross-undertaking in damages. Those concerned about the aviation industry are free to articulate their concerns in a lawful manner.
- (27) The balance of convenience consideration does not strictly arise here. In any case, this falls strongly in favour of granting the relief sought by the Claimants. The



threats faced by London Southend Airport are real and serious, the potential consequences of such threats being actioned would be financial, health and safety and wider disruption.

- (28) The First Witness Statement of Marc Taylor states that London Southend is a prime target for disruptive direct action, given the campaign intends to disrupt airports and given London Southend's size and geographical location, it is especially vulnerable. This is exacerbated by the fact that all other major airports in the UK have the protection of an injunction. On the basis of this evidence, I accept Mr Roscoe's submissions and conclude the balance of convenience falls strongly in favour of granting the relief sought.
- (29) To the extent that some higher threshold might apply to injunctions of this sort, I accept that there is both a significantly real risk of imminent damage to justify the grant of the injunction (*Shell* at 23 (4)) and a compelling need sufficiently demonstrated by evidence for the protection of civil rights (*Wolverhampton* 1671).
- (30) I accept that the Byelaws would be a slow and unwieldy mechanism to stop the disruption.
- (31) Statements by JSO social media accounts encouraging prospective JSO supporters to check whether an airport is protected by an injunction before protesting, emphasise that the Byelaws by themselves are not seen as a sufficient deterrent.
- (32) Finally, coming onto the Article 10 and 11 rights of the Defendants. As already said, these are qualified rights. My attention has been drawn to Leggat's LJ's dicta in *Cuadrilla* at paragraph 94 where he said that: "*the disruption caused was not a side-effect of a protest held in a public place but was an intended aim of the protest. As foreshadowed earlier, this is an important distinction. It was recently underlined by a Divisional Court (Singh LJ and Farbey J) in Director of Public Prosecutions v Ziegler [2019] EWHC 71 (Admin); [2019] 2 WLR 1451, a case – like the Kudrevičius case – involving deliberate obstruction of a highway. After quoting the statement that intentional disruption of activities of others is not "at the core" of the freedom protected by article 11 of the Convention (see paragraph*

*44 above), the Divisional Court identified one reason for this as being that the essence of the rights of peaceful assembly and freedom of expression is the opportunity to persuade others (see para 53 of the judgment). The court pointed out that persuasion is very different from attempting (through physical obstruction or similar conduct) to compel others to act in a way you desire”*

- (33) Recent caselaw has also confirmed that Art 10 and 11 do not justify trespass in relation to privately owned land (*DPP v Cuciuraan* [2022] 3 WLR 446 at paragraphs 42-50).
- (34) Applying these principles and taking into consideration all that I’ve read and heard, I take the view that the injunction is no more than a necessary and proportionate qualification of the Defendants' Art 10 and 11 rights.
- (35) For these reasons, I allow the injunction and grant:
- (a) permission to serve the proceedings as per the draft Order; and
  - (b) permission to amend the claim documents to amend minor errors and certain other technical changes.
- (36) I will make the order in terms now sought which differ from some degree to the draft filed to the Court. I have been provided with both a tracked changes and clean copy of the amended Order and claim documents. On the basis of the clean copy, I make the order in terms now sought.