



CLAIM Nos: PT-2020-000455 and PT-2020-000457

Neutral Citation Number: [2020] EWHC 2102 (Ch)

**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**PROPERTY, TRUSTS AND PROBATE LIST**

The Rolls Building  
7 Rolls Buildings  
Fetter Lane, London  
EC4A 1NL

Date of hearing: Friday, 26<sup>th</sup> June 2020

**Before:**

**THE HONOURABLE MR JUSTICE FANCOURT**

**Between:**

(1) THE MAYOR AND BURGESSES OF THE LONDON  
BOROUGH OF HACKNEY  
(2) BERKELEY HOMES (NORTH EAST LONDON)  
LIMITED

**Claimants**

**- and -**

(1) PAUL POWLESLAND  
(2) PETER BUCKINGHAM  
(3) LESLEY BENSON  
(4) ELAINE GOSNELL  
(5) LYDIA GOSNELL  
(6) PERSONS UNKNOWN // PERSONS UNKNOWN  
ENTERING OR REMAINING ON THE LAND OF THE  
MAYOR AND THE BURGESSES OF THE LONDON  
BOROUGH OF HACKNEY AT WOODBERRY GROVE FOR  
THE PURPOSES OF OCCUPATIONAL PROTEST ACTION  
WITHOUT THE CONSENT OF THE MAYOR AND THE  
BURGESSES OF THE LONDON BOROUGH OF  
HACKNEY OR BERKELEY HOMES (NORTH EAST  
LONDON) LIMITED AND/OR FOR THE PURPOSES OF  
IMPEDING BERKELEY HOMES (NORTH EAST  
LONDON) LIMITED REMOVING THE TREE ON  
WOODBERRY GROVE KNOWN AS THE "HAPPY MAN  
TREE"

**Defendants**

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**MR JAMES HANHAM** for the **Claimants**  
The **First Defendant** appeared in person  
**MR JAMES SANDHAM** for the **Second Defendant**  
**Defendants 3, 4 and 5** appeared in person

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**APPROVED JUDGMENT**  
**(Remote hearing)**

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## MR JUSTICE FANCOURT:

1. There are before me two separate claim forms issued by the Claimants, the London Borough of Hackney (“the Council”) and Berkeley Homes (North East London) Limited (“the Developer”). The first claim form is a possession claim and was issued on 17 June 2020, with particulars of claim annexed. The particulars of claim explain that part of the land of which possession is claimed is vested in the Council as highway authority and the remainder is vested in the Council under two different titles, one being a large housing estate. The Developer is a builder and a licensee of the relevant land for the purpose of a large-scale housing and urban regeneration project.
2. The plan annexed to the claim shows land at the intersection of Woodberry Grove, Hackney, and the Seven Sisters Road in North London. The land hatched yellow on that plan is highway, including its pavement verges on which a mature plane tree stands. The land hatched green on the land is an old public house with its curtilage, and the land hatched turquoise is a small strip which is part of the much larger registered title comprising the housing estate. The turquoise land lies in the main between the green land and the highway.
3. The Council and the Developer seek an order for possession against all Defendants, i.e. 5 named Defendants and the Sixth Defendant being Persons Unknown, all of whom are alleged to be trespassers in possession of part of the highway and the adjacent land. The order for possession is sought in respect of land that goes beyond what is occupied or possessed by the Defendants. The green and turquoise land are now separated from the highway by a hoarding, though otherwise the green and turquoise land are immediately adjacent to the highway land that the Defendants, or some of them, have occupied.
4. Also on 17 June 2020 the Claimants issued a Part 7 claim form with particulars of claim endorsed, claiming against the same Defendants injunctive relief, alleging that the Defendants and further persons unknown will continue to commit acts of trespass and other unlawful acts on the yellow, green and turquoise land, or in its vicinity, unless they are restrained from doing so. In the injunction claim the persons unknown are described as follows:

“Persons Unknown entering or remaining on the land of the Mayor and Burgesses of the London Borough of Hackney at or around Woodberry Grove for the purposes of protest action without the consent of the Mayor and Burgesses of the London Borough of Hackney or Berkeley Homes (North East London) Limited and/or for the purpose of impeding Berkeley Homes (North East London) Limited from removing the tree on Woodberry Grove known as the ‘Happy Man Tree.’”

The planning permission for the development that has been granted involves the felling of that tree.

5. The tree is so-called because it stands directly outside what used to be the Happy Man Public House, now standing empty. The tree is not protected by a Tree

Preservation Order, nor is it in a conservation area. In May of this year it was established that no birds were nesting in it. There is therefore no legal restraint as such on the highway authority or its licensee felling that tree. The Developer is ready to implement Phase 3 of the redevelopment scheme which includes the area alongside Woodberry Grove.

6. The background history to the protest is that the area around Woodberry Grove has planning permission for a very large scale urban regeneration project, including the provision of thousands of new homes. Reserved Matters Approval for Phase 3 of the development, which includes the disputed area, was granted in December 2015. The proposed redevelopment (or at least this part of it) was controversial. One of the controversies was the intended felling of the Happy Man Tree (“the Tree”) which is said to be over 150 years old. The approved plans in December 2015 showed the removal of the Tree.
7. In July 2019 a new planning permission was applied for, to extend the amount of the development to include an extra 226 homes with a commensurate increase in the proportion of social rented homes. Following a debate about the fate of the Tree before a Council meeting in November 2019, the Woodberry Down Design Committee (which was made up of the Council and public housing bodies) agreed to look again at its plans to see whether it would be possible to redesign in order to save the Tree. It decided that it could not keep the Tree without the loss of 24 affordable homes unless there was a much more substantial and therefore much more expensive redesign of the scheme; but to compensate to some extent it agreed to include new landscaping plans, including 65 additional trees, 7 of which were mature trees, to be planted elsewhere.
8. The planning application went to the planning committee on 23 April 2020. At that meeting objections were heard, and a discussion about the Tree took place, but at the end the committee unanimously voted in favour of the planning application, which necessarily involved the felling of the Tree. The Council granted the Developer a licence on the same day, 23 April, to enter the development land and commence enabling and demolition works. A hoarding licence for the relevant stretch of Woodberry Grove was granted on 18 May 2020.
9. On 19 May 2020 of this year a contractor attended to install the hoarding and temporary fencing was placed around the tree to create a safe working zone. Some people present got behind the fencing and refused to move. A rumour then spread that the Tree was imminently to be cut down, which resulted in a protest camp by and in the Tree. At a meeting with the First and Second Defendants, Mr Powlesland and Mr Buckingham, on 22 May 2020, Mr Powlesland told Mr Massie, according to Mr Massie (Mr Massie being an employee of the Developer), that he would do everything he could within the law to protect the Tree.
10. Since then, at all times there have been protesters in and around the Tree. It has become a focus of environmental protest. On occasions, musical and other events have taken place there. Significantly, one or more protesters man the

protest overnight and even sleep on a platform erected in the Tree, or on the ground in one or more tents. The effect of the presence of the protest camp (when there are more than a few protesters there at least) is to obstruct the pavement that passes the Tree. The Tree lies between the pavement and the hoarding around the old public house. Those wishing to pass along the pavement on that side have to divert into the roadway to skirt the camp if they wish to comply with current social distancing practice, which many people still do. It is to be emphasised, however, that there is no suggestion of any aggressive or unpleasant behaviour having taken place at the camp, and the protest has, so far as I can see on the evidence (and the Claimants accept) been both genuinely intentioned on the part of those present and well-mannered and orderly. The object of the protest is, of course, to save the Tree, and were it felled the protest would probably soon die out, if not immediately then within a relatively short time.

11. The Claimants seek urgent relief from the court to enable work to begin, including the felling of the Tree. This had been scheduled for about 26 May 2020, but had to be delayed because of the protest.

12. So far as the possession claim is concerned, this was served on the individual Defendants pursuant to an order for substituted service made by Trower J on 18 June 2020. Service was then effected by email in the afternoon of 19 June, and therefore deemed served on either 19 June or at the latest on 22 June. Service on Persons Unknown was effected in accordance with the practice in Part 55.6 of the Civil Procedure Rules, and that was done on 19 June.

13. For reasons which will become clear, I will read Part 55.6 and one of its associated definitions at this point:

“Where, in a possession claim against trespassers, the claim has been issued against ‘persons unknown’, the claim form, particulars of claim and any witness statements must be served on those persons by –

(a) (i) attaching copies of the claim form, particulars of claim and any witness statements to the main door or some other part of the land so that they are clearly visible; and

(ii) if practicable, inserting copies of those documents in a sealed transparent envelope addressed to ‘the occupiers’ through the letter box; or

(b) placing stakes in the land in places where they are clearly visible and attaching to each stake copies of the claim form, particulars of claim and any witness statements in a sealed transparent envelope addressed to ‘the occupiers.’”

14. A possession claim against trespassers is defined in Rule 55.1(b) as follows:

“‘a possession claim against trespassers’ means a claim for the recovery of land which the claimant alleges is occupied only by a person or persons who entered or remained on the land without the consent of a person entitled to possession of that land but

does not include a claim against a tenant or sub-tenant whether his tenancy has been terminated or not.”

15. The persons unknown were served in accordance with those Rules. The possession claim, which relates to non-residential land, was therefore served at least two days before this hearing date, as the Rules require.
16. The injunction claim, unlike the possession claim, does in principle require an acknowledgement of service and defences to be filed if any defendant seeks to defend the claim. Time for those steps has not yet expired. So the Claimants issued an application notice on 17 June 2020 for an interim *quia timet* injunction on the basis that the Defendants were already trespassing and committing unlawful acts, including public nuisance, and that there was a substantial risk that further trespass or unlawful acts would be committed elsewhere on the property when the contractors took steps to remove the Tree if no injunction were granted. Accordingly, the Claimants seek an injunction restraining the Defendants until trial or further order from (a) entering or remaining on the land of which possession is claimed, including the Tree; (b) obstructing the Developer’s contractors from felling the Tree, including by obstructing passage along a marked section of Woodberry Grove or by attaching themselves to the contractor’s machinery; and (c) encouraging or supporting, etc, anyone else from doing any of those things. Service of the interim injunction application was effected in the same way and at the same time as the possession claim, and accordingly 3 clear days’ notice was given of the application.
17. A significant number of people attended the remote hearing that I held today on Skype for Business. Those who addressed me at the hearing were the First Defendant Mr Powlesland, the Second Defendant Mr Buckingham by his counsel, the Third Defendant Lesley Benson, who is a headmistress of a nursery school in North West London, the Fourth Defendant Elaine Gosnell, and the Fifth Defendant her daughter Lydia Gosnell, who is a professional musician.
18. The position reached at the start of the hearing was that Mr Buckingham through his lawyers had negotiated terms with the Claimants to resolve the claims brought against him, on the basis that he did not oppose the claim to possession and gave undertakings broadly in terms of the injunctive relief sought by the Claimants. At a late stage, the First Defendant Mr Powlesland associated himself with that agreement and has also offered similar undertakings.
19. The Third Defendant, Mrs Benson, the Fourth Defendant, Mrs Gosnell and the Fifth Defendant, Ms Gosnell, have each been at the protest site, but only on one or two occasions and no more, and on their accounts given in writing yesterday and in person today they were there not to protest as such but to take a local community interest in what was going on and to demonstrate some support for the environmental values that were being represented there, and in the case of Ms Gosnell, the Fifth Defendant, to perform at an impromptu concert that was held recently at the Tree.
20. It was clear that all three of these Defendants had been properly joined initially, in the sense that they were persons who had been present at the protest site

whom the Claimants were able to identify in accordance with the guidance recently given by the Court of Appeal in the case of *Canada Goose UK Retail v Persons Unknown* [2020] EWCA Civ 303. The reason why they were identifiable is because they or their families are well-known figures in the local community. I am satisfied, on the basis of what they have told me, that they are not protesters and were not involved in the protest as such and were only present on one or two occasions, each for discrete reasons. Those three Defendants do not oppose the claim for possession and never have done.

21. They each submit that it is wrong and disproportionate and potentially harmful for them as upstanding and law-abiding members of the community to have been singled out for treatment as a named Defendant to these claims, and they seek an order that they be removed as named Defendants. I make it clear that I am satisfied on the evidence that each of them has acted perfectly properly and lawfully and that their presence as a named Defendant in this claim does not reflect badly on them in any way and should not be taken by anyone as reflecting badly on them, or as indicating any impropriety whatsoever.
22. I am quite satisfied that it is unnecessary to grant *quia timet* injunctive relief against Mrs Benson, Mrs Gosnell or Ms Gosnell. There is no probability, let alone a strong probability, of any of them acting unlawfully in future in connection with the Tree. On the contrary, I was impressed with their honesty and public-spirited natures. That does not however mean that the Claimants were wrong to join them as Defendants, as they have acted in purported compliance with the guidance given in the *Canada Goose* case. The decision in that case, designed to avoid claimants wrongly sheltering behind the use of “persons unknown” as recipients of a claim, can, as this case demonstrates, have the unfortunate consequence that it is, as it were, the wrong individuals who are singled out and named as defendants to a claim simply because for other reasons they are easily identified; whereas other protesters who have played a more substantial part in a protest are not able to be identified by claimants and so cannot be joined personally.
23. The Third, Fourth and Fifth Defendants do not oppose in any way the claim for possession. When I indicated to Mr Hanham, who appears on behalf of the Claimants, that I was not persuaded that any interim injunctive relief should be granted against the Third, Fourth and Fifth Defendants, he took instructions at my suggestion from his clients, and the Claimants make it clear that in view of that decision they have no intention to continue the claim for injunctive relief against the Third, Fourth and Fifth Defendants, and that in one way or another the claim against them individually will be brought to an end forthwith.
24. Turning then to the claim for possession, a number of issues, some more theoretical than real, arise and need to be considered, even though none of the Defendants in the event has sought to oppose the claim. The first is whether a highway authority has standing to claim possession of the highway without needing to suspend the use of the highway by the public. The second is whether the Developer, as a mere licensee, has a right to claim possession. The third is whether the Council has in any sense been dispossessed by the Defendants, or

any of them, so that it is entitled to claim possession of its own land, or whether, on the contrary, the Defendants are simply protesting on the highway.

25. The first of these points was decided by the Court of Appeal in the case of *Wiltshire County Council v Frazer* (1984) 47 P & CR 69. In that case May LJ said:

“So far as [counsel for the defendants’] main contention is concerned, ... namely that the extent of the occupation by each of the several defendants does not constitute ... any ouster of the first plaintiff’s possession of the whole or any part of the highway, effectively because the public still use it, in my judgment that matters not... [These] defendants are clearly trespassers on the highway, just as squatters are trespassers in derelict premises. That there has been no complete, or near complete blockage of the highway by the large number of caravans that there are, spread over the length of about a mile, is, I think, of no relevance.”

Griffiths LJ said that he similarly rejected the defendants’ main contention. He said:

“If the highway authority finds that some person has come upon their highway and set up house upon it, either in a caravan or in a tent, they are entitled to proceed against that person by writ of possession and furthermore they are entitled to use the procedure under Ord. 113 if they so choose. I regard that as decided, if a decision on such a point were necessary, by the decision of this court in *University of Essex v Djemal*, in which it was pointed out that where a part of the land is occupied, nevertheless Ord. 113 can be used to recover possession of the whole of the land.”

If the occupation is not merely temporary but ousts the highway authority to any degree, even though the highway is still passable, the highway authority (in this case the Council) is entitled to claim possession from those who will not otherwise move. An assembly on the highway is not necessarily unlawful, or such as to dispossess the highway authority, if it is reasonable in extent and duration and does not amount to a breach of the criminal law – see in that regard the case of *DPP v Jones*.

26. The second of the points I identified is decided by the Court of Appeal in *Manchester Airport v Dutton* [2000] QB 133. If the possession of others interferes with the activities that the licensee is permitted to carry out on land, the licensee is entitled to claim possession from those so interfering. It seems to me that such a claim must be a parallel claim with the claim of the paper title only, not a claim to the exclusion of the owner’s right also to claim possession.
27. The third of the questions raises a question of fact: has there been dispossession of the Council? In my judgment the encampment on the pavement and in the Tree is sufficiently substantial and of a semi-permanent nature, having been there since 19 May 2020 and showing no signs of leaving, so it is not a protest limited in time and extent but a quasi-permanent presence, and therefore it has



dispossessed the Council of the land to that extent, given the impact that it has on users of the highway who have to skirt round it, and the impact on the rights of the Developer, the Council's licensee, to carry out works and fell the Tree.

28. The next question is: of what land should an order for possession be granted? Should it be just the yellow land (the highway land), or should it also include the green and turquoise land? It is common ground that none of the Defendants has taken possession of the green or turquoise land, which is on the far side of the hoarding, though there was as recently as yesterday a threat by the actions of one protester to seek to enter upon that land. In my judgment, in view of the decision of the Supreme Court in *Secretary of State for the Environment v Meier* [2009] UKSC 11 and the decision of the Court of Appeal in *University of Essex v Djeval* [1980] 1 WLR 1301, if in order to give full effect to an order for possession it is necessary to order possession of adjoining land as well as the land of which possession has been taken by the Defendants, the court can in an appropriate case do so.
29. Here in this case the relief being granted relates to the Tree. The canopy of the Tree crosses over the boundary of the highway and overlays the green and turquoise land. To fell the Tree will involve the contractors having secure control of the green and turquoise land as well as the yellow land. There is a risk that protesters who are excluded only from the yellow land might occupy instead the green and turquoise land with a view to preventing the felling of the Tree. In those circumstances, it is appropriate to grant possession of all the land within the red line on the plan that I have been shown. That includes the green and turquoise land as well as the yellow land.
30. The next question is whether the Defendants have any defence, even though they have not sought to maintain one, by virtue of what is acknowledged to be their Article 10 and Article 11 rights of freedom of expression and the right to assemble. These rights have to be balanced, of course, against the rights of others, in this case the Council's property and public rights and the Developer's contractual rights. The Council is seeking possession so that the yellow land can be used as a highway and temporarily to cut down the Tree. There are both public and private elements at play here. I have to ask myself how extensive the interference with the Defendants' Convention rights is and whether any such interference is proportionate. In my judgment, the interference is not extensive, save that it may well result in the Tree being felled. However, the Defendants have no right to the Tree or to prevent the Tree being felled. They have rights to express their views forcibly but lawfully about whether the Tree should be removed or not.
31. In my judgment, it is important to bear in mind that there has been a democratic process in this case of deciding that the development, which includes the removal of the Tree, should proceed in the public interest. There is therefore a much wider public interest in the development proceeding in addition to the narrower rights of the Council itself. The Defendants' right to protest and assemble lawfully are substantially unaffected by the order for possession, save that they cannot assemble on this particular land. What is lost is the Tree, but the Defendants have no right to save the Tree from being cut down. In my

judgment, there is a legitimate aim here of the Council both seeking to ensure public safety and also promote new development for housing purposes. The interference is therefore proportionate on the facts of this case. It is established that no lesser degree of interference would suffice to allow the permitted development to proceed. I accept the countervailing point that the precise location of the Tree is of importance for the expression of the Defendants' protest, but nevertheless the protest has continued for some time. Their views have been strongly expressed and well publicised, and the protest can if desired continue elsewhere to the extent that it is lawful.

32. The final question on the order for possession is a short but important one. In a sense it is the first question that I might have addressed were it controversial between the parties. The question is whether the court is able to make an order, or indeed was it entitled to hear this claim, in view of the terms of Practice Direction 51Z of the Civil Procedure Rules. The Practice Direction reads as follows (so far as material):

“2. Subject to paragraph 2A, all proceedings for possession brought under CPR Part 55 and all proceedings seeking to enforce an order for possession by a warrant or writ of possession are stayed for a period of 90 days from the date this Direction comes into force.”

2A. Paragraph 2 does not apply to—

- (a) a claim against trespassers to which rule 55.6 applies;
- (b) an application for an interim possession order under Section III of Part 55, including the making of such an order, the hearing required by rule 55.25(4), and any application made under rule 55.28(1); or
- (c) an application for case management directions which are agreed by all the parties.

3. For the avoidance of doubt—

- (a) claims for injunctive relief are not subject to the stay in paragraph 2, and the fact that a claim to which paragraph 2 applies may be stayed does not preclude the issue of such a claim...”

The original period of 90 days has now been extended and remains in force until 23 August 2020.

33. The current possession claim is a claim for possession against trespassers, but is it a claim to which Rule 55.6 applies? The only reason for any possible doubt is that Rule 55.6 is specifically concerned with the service of proceedings on persons unknown, whereas in this claim there are, as well as persons unknown, identified Defendants who will not be served in accordance with Rule 55.6. Mr Hanham submits that there are three possible interpretations of the relevant paragraph in Practice Direction 51Z:
- (1) Where there is a claim against a named defendant as a trespasser, the fact that there may be other defendants who are persons unknown is irrelevant and the exception to the stay cannot apply.
  - (2) The exception will apply where the possession claim against trespassers at least includes a claim against persons unknown, which is the position here.

(3) The reference to Part 55.6 in practice direction 51Z should be read as if it were intended to refer to a possession claim against trespassers as defined in Rule 55.1(b).

34. In my judgment, the first of those possible interpretations is clearly wrong. In view of the decision of the Court of Appeal in *Canada Goose UK Retail v Persons Unknown* it is necessary to name known trespassers as defendants, rather than simply relying on identifying the Defendants as “persons unknown”. It would be bizarre if, for that reason, the claim ceases to be a claim against trespassers for which the procedure in Part 55 for a possession claim against trespassers applies. The Part 55 procedure clearly does apply in such circumstances. Whether rule 55.6 could be said to apply to a claim where all defendants are named is more difficult. Practice direction 51Z could have said “a possession claim against trespassers within the meaning of Part 51.1(b)”, but it did not. I suspect that is what it means, however in this claim it is unnecessary to decide that issue, because there are persons unknown as defendants and therefore Part 55.6 does apply to this claim. For that reason, the claim for possession is not stayed and neither is the separate claim brought for injunctive relief, by reason of paragraph 3(a) of Practice Direction 51Z, to which I have just referred.
35. In those circumstances, there is no reason why the claim for possession, which is unopposed, should not be granted, and I will make an order for possession of the yellow land, the green land and the turquoise land.
36. I turn then to the claim for interim injunctive relief. As I said earlier, this has been agreed between the Claimants and the First Defendant and the Second Defendant, and I have decided that there should be no interim relief granted against the Third, Fourth and Fifth Defendants. That leaves the Claimants’ claim for injunctive relief against Persons Unknown, who will be identified as those otherwise likely to commit wrongs in connection with the proposed felling of the Tree on the yellow land. There is no doubt in the light of the decision in *Canada Goose* that in principle injunctive relief can be granted against persons unknown, provided that those likely to be caught by any injunction are sufficiently identified and that the relief sought in the application relates to the threatened wrongs.
37. The relief that is sought against Persons Unknown has undergone some reformulation in the course of argument today. It is accepted in principle that although the First and Second Defendants agreed their undertakings on the basis of the original wording of the injunction sought, that wording should be adjusted so that there is no disparity between any injunction granted against Persons Unknown and the terms of the undertakings given by the First and Second Defendants. The Claimants therefore seek interim relief against persons unknown until trial or further order in the following terms:
- “They shall not  
(a) enter, remain on or occupy the land edged red on plan 1 annexed hereto, which includes any structure or tree thereon (the Property) for the purpose of preventing, obstructing or hindering

at any point after 9 a.m on the second day after the form of notice annexed to this order (the Form of Notice) is deemed served on the defendants in accordance with paragraph 4 below;

(b) undertake any acts that would prevent, obstruct or hinder in any way the Second Claimant or its contractors undertaking works to remove or fell or works preparatory to the removing or felling of the tree known as ‘The Happy Man Tree’ located on Woodberry Grove, which includes deliberately obstructing free passage along the highway known as Woodberry Grove, or interfering with or attaching themselves to the machinery of the Second Defendant’s contractors.

(c) Encourage, help or direct anybody else to do any of the matters in paragraphs (a) and (b) above.”

For the purpose of identifying those to be caught by the terms of this injunction the Claimants propose the following description of Persons Unknown in the order granting relief:

“Persons unknown entering or remaining on the land of the Mayor and Burgesses of the London Borough of Hackney at Woodberry Grove, and seeking following service of the form of notice referred to in paragraph 1(a) in this Order to prevent, obstruct or hinder the removal by Berkeley Homes (North East London) Limited or its servants or agents of the tree on Woodberry Grove now known as the Happy Man Tree.”

Paragraph 4 of the draft order requires the form of notice referred to in paragraph 1(a) to be served on the defendants before 5 p.m on a given day by affixing the form of notice to the Happy Man Tree and to the adjacent hoarding and by sending it by email to the First Defendant and the Second Defendant. If it is served by either of those means after 5 p.m on the given day, it will be deemed only to have been served on the following day.

38. The principal requirement for the grant of *quia timet* injunctive relief of this kind is that there should be a substantial probability of unlawful acts being carried out. The principles are explained by Patten LJ in his judgment in *Islington London Borough Council v Elliott* [2012] EWCA (Civ) 56 as requiring, first, “a strong probability that, unless restrained by injunction, the defendant will act in breach of the claimant’s rights” and, second, that if the defendant did so act in contravention of those rights, the harm resulting would be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of the actual infringement) to restrain further occurrence, a remedy of damages would be inadequate. In the following paragraph, Patten LJ went on to explain how those requirements should be assessed on the facts of a given case, but it is unnecessary for me to deal with that in any detail.
39. That is because I am satisfied on the evidence, and by the nature of the protests that have already taken place by the Tree, that there is a strong probability that either before or after execution of any order for possession some persons

unknown will seek to prevent the contractors from felling the Tree, and in doing so are likely to do unlawful acts, whether by obstructing the highway or trespassing further on the Council's land, or by physically obstructing or confronting the contractors or their equipment. It is also clear to me that it will not be sufficient or adequate for the Claimants to wait until any such unlawful acts occur to make another application to the court, if and when it happens, as such unlawful acts are likely to happen on the very day on which the contractors are on site to start the works. Unless such acts are restrained in advance the unlawful behaviour will cause considerable inconvenience, delay and cost at public expense, as well as substantial inconvenience to the public and a risk of disturbance by reason of unlawful behaviour.

40. I am required to the extent that the relief sought inhibits publication of the views of the Persons Unknown to consider under section 12 of the Human Rights Act 1998 whether or not it is probable that any relief granted would be granted as final relief at a trial. Section 12 is only, in my judgment, of application here to the extent that it prevents the Persons Unknown from protesting where they wish to protest. The Order will not prevent them from protesting at all. But I am satisfied that if the matter were to proceed to a full trial (without matters being overtaken by events that would make the grant of final relief unnecessary) that the Claimants would probably, on a balance of probabilities, obtain the relief that they now seek to restrain unlawful protests. The Claimants therefore overcome that statutory threshold for the grant of interim relief to the extent that such relief inhibits publication of the views of Persons Unknown.
41. No-one in the hearing before me today has sought to oppose on behalf of Persons Unknown the grant of interim relief. I am satisfied that sufficient opportunity to do so was given to any protester at the site, because notice of this hearing was provided by publishing the fact of the hearing and the details at the Tree and on the hoarding a week ago. Therefore any protester attending the site in the course of the last week will have been put on notice of this hearing and will have been given the opportunity to make submissions. I am also satisfied that the First and Second Defendants will have informed others who share their genuinely held environmental opinions of the fact that the matter is to be heard in court.
42. The interim relief that I propose to grant will, of course, affect the Article 10 and Article 11 rights of Persons Unknown to a degree, but for the same reasons that I have already given in relation to the possession claim, those rights are not affected in a substantial and disproportionate way. The rights of the Persons Unknown to protest and assemble cannot and must be equated with a right to prevent the felling of the Tree, which the persons unknown do not have. In those circumstances, the protest is only interfered with to the minimum extent necessary to allow the development to proceed. The public and private interests of the Council in seeking to carry out the development in my judgment significantly outweigh the rights of Persons Unknown to protest in one precise location where the Tree is to be felled.

43. In those circumstances, I am satisfied that interim injunctive relief should be granted against Persons Unknown in the revised terms in which the Claimants seek such relief.

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**This judgment has been approved by the Judge.**

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