

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

**CLAIM NO: KB-2024-
002473**

BETWEEN

**(1) BIRMINGHAM AIRPORT LIMITED
(2) LIVERPOOL AIRPORT LIMITED
(3) PEEL L&P INVESTMENTS (NORTH) LIMITED
(4) BRISTOL AIRPORT LIMITED
(5) SOUTH WEST AIRPORTS LIMITED
(6) BRISTOL AIRPORT DEVELOPMENTS LIMITED**

Claimants

And

**PERSONS UNKNOWN
as more particularly described in the Amended Claim Form**

Defendants

**NOTE OF “WITHOUT NOTICE” HEARING
BEFORE MR JUSTICE JACOBS
LISTED FOR 6 AUGUST 2024 AT 10:30**

The hearing commenced at 10:30 on 6 August 2024. Appearing for the Claimant, Tim Morshead KC (“TM”) and Peter Sibley (“PS”) before Mr Justice Jacobs (“J”).

1. TM thanked J for taking the matter in the vacation, and referred to how Cs were among the last airports not to be protected by an injunction. He commented that the injunctions still seem to be effective, and confirmed that this was the reason these proceedings were suitable vacation business.
2. TM outlined his proposed course, namely addressing preliminary matters, outlining the relevant facts and matters concerning the airports and the title position, highlighting the evidence of the threat including sweeping up alternative remedies, then addressing the legal framework and finally by making submissions. Finally, TM proposed to take J through the draft orders.
3. J indicated that he had read the witness evidence, the skeleton, some plans, the Valero decision, the Wolverhampton decision (although some time ago), the Gatwick decision and various airport injunction cases on Westlaw.
4. J noted that the case was listed, and that there had therefore been some notice to some extent.

5. TM confirmed this but referred to the need to keep notice of the hearing to a minimum.

Preliminary matters

6. TM handed up the Heathrow airport order and hearing note, along with a short supplementary witness statement from Stuart Wortley dated 6 August 2024.
7. J took time to read the statement.
8. TM explained the 6 August 2024 Stuart Wortley statement concerned the 2012 Bristol Byelaws.
9. J confirmed that this was not central to the case, the point being that the fact that there are byelaws does not prevent an injunction from being ordered.
10. TM further explained that the 2012 byelaws leave open as a question of fact what constitutes the airport. Mr Gamble in his witness statement simply attaches a plan without expressing a view or making this clear.
11. TM also drew J's attention to Mr Wortley's first witness statement ("Wortley 1") at pg 215, where there are three mistaken names in paragraph 99.
12. TM then referred to paragraph 20 of the skeleton, and the fact that relief is sought without distinguishing between the areas Cs can directly claim trespass in relation to, and those let out or occupied by 3rd parties. TM referred to how in fact, in the City Airport injunction proceedings, this approach was not adopted and the third party areas were carved out. However, the City Airport approach has not been followed in other similar airport cases since.
13. J asked if the issue of third party areas arises in respect of all of the other injunctions.
14. TM confirmed that it did. He explained that an airport has a general power and responsibilities for the airport as a whole, but as a matter of commerciality it lets out large areas, where private organisations conduct their operations. There are lots of arrangements the details of which it is inappropriate to get involved with. The activity Cs are seeking to stop is of a character that if allowed to take place fluidly on third party areas it would undermine substantially the effectiveness of the relief in relation to the generality of the areas. Also, there is the threat of nuisance arising from protest on third party areas. There are accordingly, two proper jurisprudential bases to restrain protest on the third party areas.

Factual position and title

15. TM then made submissions on the airports and the factual position on the ground. He referred to Wortley 1 which describes the title position in detail at paragraphs 10 to 22, and appends the title documents at pages 219 to 528 of the hearing bundle. TM said it was appropriate to trust

the exercise done by the solicitors. He noted that the product for each airport is the “A” series of plans for each airport.

16. J asked if the plans were annexed to the Particulars of Claim.
17. TM confirmed this.
18. TM explained that the title number on the legend on the left hand side of the A series of plans corresponds to the areas indicated on the plan itself. The upshot is to show that C1, with reference to the plan on pg 61, is the owner and prima facie entitled to maintain an action in trespass in relation to the red line area, on plan 1, most conveniently found on the draft order at page 9 of the bundle. TM explained that one of the odd features is that none of the airports have simple arrangements for landing lights. It is a mixture of outright ownership, long occupation and sometimes on unregistered land. Even assuming no paper title in relation to this, nevertheless the areas are occupied by the equipment. Relief is needed for effective protection, and or to prevent nuisance.
19. TM referred to plan 2A on page 63 of the bundle for the position in relation to Liverpool, and to plan 3A at page 65 of the bundle for the position for Bristol.
20. TM then referred to the next stage of the exercise carried out with reference to the “B” series of plans. Wortley 1 at paragraphs 25 - 31 deals with this, and pg 62 of the bundle shows the plan for Birmingham. This plan shows the areas in some sense carved out as third party rights. The blue areas on the plan are where everything is let out to a third party. The green areas of the plan indicate areas, typically terminals, where things are more complicated; some of that area is still retained by Cs, other parts are let out.
21. TM referred to the Birmingham Air Rail link and platform and the fact that C1 has an agreement for lease in respect of this and C1 is in fact the occupier.
22. J commented that he could not see the landing lights on plan 1B.
23. TM responded that the northern lights are shown, and the southern lights are in the area shaded in brown. The Liverpool plan at pg 64 of the bundle adopted the same convention concerning blue and green land. Liverpool airport, unlike the other two, has within it public highways. Prima facie, the public has a right of protest on this. In respect of Bristol airport, the equivalent plan is on pg 66, where the same colouring convention is used.
24. TM noted that it has been possible for Bristol airport to drill down and provide more minute detail as to what is found at the green areas, at pages 67, 68, 69 of the hearing bundle. The parts outlined in blue are those bits within the green zones let out or licenced to third parties.

25. TM then addressed notification of intention to seek relief – he referred to Wortley 1 at paragraphs 32 to 37 – the major tenants were given notice. It is improbable that relief if granted would cause harm to anyone not notified but the liberty to apply provision can be relied on.

Airports

26. TM then referred to the sensitive features of airports – with reference to the witness statement of Mr Barton, at paragraphs 31 - 48, the witness statement of Mr Irving, at paragraphs 35 - 37, and the witness statement of Mr Gamble at paragraphs 36 - 38. The witnesses for Liverpool and Bristol, Gamble and Irving, follow the lead of the Birmingham witness, Barton.
27. TM summarised the evidence. He noted that it is clear from the evidence, that airports have a special sensitivity and vulnerability owing to the sheer volume of human and other traffic participating in airport activities. There is the movement of vast, delicate and dangerous machines, proximity to toxic and dangerous materials, and zones of interest for counter terrorism. It is a high stress high activity environment where there is a premium on normal behaviour and a strong interest in keeping unexpected behaviour to a minimum. There is a heightened risk as protest may be used as a mask for terrorism, with reference to pg 91 of the hearing bundle.
28. TM also noted another feature of airports, which has required other orders in airport injunction cases to have included reference to what amounts to intention or purpose in the definition of the defendants. A particular feature of airports makes this unavoidable, as one is not dealing with sealed sites, e.g. oil terminals, but sites where the public are allowed (some) access. There is no other practical way of dealing with this than by referring in some way to intention or purpose.
29. J asked what was done in previous cases in relation to the purpose point.
30. TM referred to how a distinctive feature of the draft orders in this case is that they follow the orders of Ritchie J, where he used the word purpose. The draft orders in this case respect this direction of travel from the judiciary but the wording in the Claim Form does not reflect this. The Claim Form is to be amended to ensure alignment between the descriptions in the orders and the pleadings.
31. TM also referred to another area of interest about airports, namely the economic and potential chaos factor and cascade impact of disruption and delays. Economic impacts are significant as the daily turnover is around £750,000. Airports are an integral part of life and when the wheels come off, the consequences are felt widely, as is well known.

Threat and compelling need

32. TM then turned to the next section of his submissions, namely the threat posed and the compelling need for the injunction – addressed at paragraphs 38 – 85 of Wortley 1. This sets out the history of JSO and provides a summary from 2022 onwards. The focus was on oil terminals, noting a shift in emphasis towards airports. TM quoted from an extract starting at pg 580 of the hearing bundle; a JSO post from 13 September 2023. TM noted that this was the start of a shift away from a focus on the oil industry and an admission that an injunction is an effective instrument. TM then referred to an article on pg 590 and 591 of the bundle being an article from the Mail Online relating to an undercover journalist from the Mail Online discovering JSO’s airport plans. TM then referred to JSO coming clean about their airport plans following the Mail Online article at pg 604 of the bundle.
33. J commented that this was really as a result of the Mail Online exposure of their plans.
34. TM then referred to paragraphs 71 – 80 of Wortley 1 which describes, to the extent to which he is aware, that JSO’s plan has materialised. TM referred to incidents on 2 June at Farnborough, 20 June at Stansted, 25 June at Gatwick, 27 June, 24 July at Heathrow, 29 July at Gatwick, and 30 July at Heathrow. This shows the threat specifically and on a sustained basis by campaigners. Wortley 1 describes other injunctions obtained by airports at paragraph 89.
35. J asked how similar the draft orders in this case were to the injunction order in Gatwick.
36. TM responded that Cs have laboured to align the relief sought in this case with what was granted by Ritchie J in Gatwick, which is the most refined order made in relation to airport protest injunctions.
37. One nuance noted by Ritchie J was in respect of the Gatwick railway station. Ritchie J was alive to people arriving at the rail station and not realising they were affected by the injunction, and so carved out the railway station. This had not been done here as C1 is in occupation of the whole of the railway station. TM noted that J might decide in this case that he should apply the injunction only outside of the precincts of the railway.
38. J asked why. He asked if this would be because would be protestors might not know of the injunction when stepping off a train.
39. TM responded that Ritchie J’s nervousness was as a result of people getting off the train who might not have seen the notice. Ritchie J wanted to be clear of the moment beyond which someone cannot plausibly say they did not understand what they were told not to do.
40. TM commented that Wortley 1 explains injunctions granted previously appear to have been effective. This was evidenced by the September 23 admission by JSO and, as noted in Wortley

1, a protest scheduled for City airport on 27 July shifted to central London following the obtaining of an injunction.

Effectiveness of injunctions

41. J asked why injunctions are more effective than the general law.
42. TM ventured a guess, that some are willing to take their chances in front of a magistrate or jury, but are not willing to take their chances in front of a judge.
43. TM referred to the photo evidence at page 650 of the hearing bundle. He explained that this was the law working as it should. The general law may in these cases be treated without respect by the protestors that one would wish for. But at the moment, the principle that the courts are authoritative is as it should be, and is recognised as a sign that the activity which is enjoined must not happen. There cannot be a guarantee that there will be no breaches, but perfection must not be the enemy of the good.

Alternative remedies

44. TM noted that Cs are required by the Supreme Court in the Wolverhampton decision to have regard to alternative remedies, including Byelaws and the general law. The story is that the general law is not enough. It is part of the program of the protestors to risk arrest. Cs armed with an injunction have more control over the process than when enforcement is left to public authorities. The potential for delay is reduced with breach of injunctions. With Byelaws, the available sentences are generally modest with a maximum fine of £2500.
45. New offences are now on the statute book. Mr Hallam has now been sentenced to 5 years in prison. Once that sinks in the general law may have a greater deterrent effect.
46. J asked what Mr Hallam had been sentenced for, i.e. under what statute.
47. TM replied that it was a public order offence.
48. TM further commented that 5 years is a very long sentence, and it is possible that it will have a deterrent effect in the future, but that is not felt yet. Ritchie J in the Gatwick case noted that this was something to be assessed when the injunction is on for review. At the moment, there is no evidence that the general law is causing protests to abate. The answer to the requirement to consider alternative remedies, is that as matters stand, the evidence suggests that injunctions are doing what the general law cannot do. It is hoped that it will change but at the moment that is the position.

Legal Framework

49. TM then addressed the legal framework. As indicated in the Valero decision, Ritchie J's judgment is written on the basis that this is an emerging jurisdiction. No decision has a concrete description or prescribed set of questions. The court still has a part to play in working out the right response.
50. TM referred to the Wolverhampton decision at paragraph 167 where the court sets out the conclusions at that stage about the nature of the jurisdiction. TM submitted that the key controlling characteristic is compelling need. This is the key thing that attracts the eye of equity.
51. TM noted that the Supreme Court emphasised that this jurisdiction is at an early stage at para 185. He referred to paragraphs 222 and 224 of Wolverhampton where the Supreme Court dealt with the principle of the court enjoining lawful activity.
52. Then TM referred to paragraphs 225 - 226 where the Supreme Court dealt with the fact that the Supreme Court was dealing with traveller rather than protest cases.
53. TM then referred to the decision in Cuadrilla at paragraph 50.
54. TM then referred to the synthesis of the principles in Valero at paragraphs 57 to 58, a synthesis between the principles in Wolverhampton and established practice. He referred to the checklist but confirming that this is not the be all and end all.
55. TM also referred to paragraph 66 of Valero in relation to Articles 10 and 11. He submitted that Cs say the balancing exercise does not really fall to be applied in respect of the public highways in Liverpool, the only airport with public highway. TM invited the judge, if inclined to conduct the balancing exercise, to adopt Ritchie J's approach at paragraph 66 of Valero.
56. J asked if the highway point had arisen in other Airport cases.
57. TM responded that Leeds airport was an example.

Submissions

58. TM submitted that the court has the material before it from which to make an order.
59. TM referred to how if the protestors were present, they would likely invoke their strongly held beliefs, and an argument based on the convention.
60. TM referred in this regard to Ritchie J in Valero at para 66. Furthermore, he referred to the principle that the public has no right to be on private land except for purpose of the land owner's consent.

Note of judgment

61. J held that he was prepared to grant an injunction. This case is materially the same as other airport injunction cases and even if he is not strictly bound by those other cases, he ought to afford respect to those other cases and other decisions as a matter of precedent, unless there is some material point of distinction. J was of the view that the reasoning of Ritchie J is sufficient to persuade him to grant an injunction. J held that he did not need to find anything more. He noted that he has been taken through the law and tests and is satisfied on the main points of ownership, features of airports, the compelling need and that there is no substantial defence to be advanced. Ultimately following what has been said by Ritchie J, after giving careful consideration J considered it appropriate to grant an injunction.
62. TM commended this approach, and noted the danger of reinventing the wheel.

Order

63. J reviewed the draft orders against the order from the Gatwick decision at pg 728 of the hearing bundle.
64. TM commented that the descriptions of the defendants should be the same as in Gatwick with suitable amendments.
65. J considered that the shorter definition of “Warning Notice” in the Gatwick order should be used.
66. J queried whether there needed to be any carve out for the train station at Birmingham airport.
67. TM proposed inserting a new plan to the Birmingham airport order to address this point.
68. TM noted that paragraph 2 of the draft order should be amended in line with the Drax injunction order to include procedural machinery for the review hearing.
69. J noted that the draft order by paragraph 3 dispensed with service but referred to service in subsequent paragraphs.
70. TM referred to the nuance following Wolverhampton about how in these sui generis types of injunction cases, there is “notification” rather than service.
71. J proposed changing the “service and notification” wording in the draft order to “service or notification” to deal with this issue.
72. J proposed in respect of paragraph 11 of the draft order that reference to email service on Mr Hallam should be removed as he has been sentenced to 5 years in prison.

73. TM noted that although the points discussed were discussed in respect of Birmingham airport, save for the rail way station point, the same issues would apply to the other draft orders.

74. TM noted an issue common to all, namely that undertaking 1 in schedule 2 was duplicated in the body of the order and should be removed.

There was then a 15 minute adjournment between 12:15 and 12:30.

75. TM showed the judge an amended plan for Birmingham airport adjusting the red line boundary of the injunction around the railway station.

76. J approved this.

77. J asked for draft orders to be emailed to his clerk in red line and in final “clean” form.

The hearing concluded at 12:40.