



Neutral Citation Number: [2018] EWHC 1793 (QB)

Case No: D92LS739

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
SHEFFIELD DISTRICT REGISTRY

The Law Courts
50 West Bar
Sheffield
S3 8PH

Date: 12 July 2018

Before:

HIS HONOUR JUDGE ROBINSON sitting as a Judge of the High Court

Between:

SHEFFIELD CITY COUNCIL

Claimant

- and -

**(1) ALICE FAIRHALL, (2) SIMON CRUMP,
(3) REBECCA HAMMOND, (4) ALISON TEAL,
(5) DAVID DILLNER, (6) CALVIN PAYNE,
(7) PAUL BROOKE, (8) GRAHAM TURNBULL,
(9) ROBIN RIDLEY (10) PERSONS UNKNOWN
BEING (I) PERSONS ENTERING ANY
SAFETY ZONE ERECTED AROUND A TREE
AND/OR (II) DELIBERATELY SEEKING TO
PREVENT THE ERECTION OF OR TO
INTERFERE PHYSICALLY WITH OR WITH
THE USE OF ANY SAFETY ZONE AROUND A
TREE AND/OR (III) REMAINING WITHIN
ANY SAFETY ZONE AFTER IT IS ERECTED
AND/OR (IV) KNOWINGLY LEAVING ANY
VEHICLE IN ANY SAFETY ZONE OR
INTENTIONALLY PLACING A VEHICLE IN
A POSITION SO AS TO PREVENT THE
ERECTION OF A SAFETY ZONE AND/OR (V)
PREVENTING DELAYING OR SLOWING
DOWN (FOR MORE THAN 20 MINUTES IN**

ANY 24 HOURS (WHETHER INDIVIDUALLY OR AS PART OF ANY GROUP)) ANY CONTRACTORS (ENGAGED IN ACCESSING, EGRESSING OR CREATING ANY SAFETY ZONE) IN THEIR USE OF ANY PUBLIC HIGHWAY WHICH IS THE SUBJECT OF A ROAD CLOSURE IN CONNECTION WITH TREE WORKS WITHIN THE ADMINISTRATIVE AREA OF THE CITY OF SHEFFIELD AND/OR (VI) ENCOURAGING AIDING COUNSELLING DIRECTING OR FACILITATING ANYBODY ELSE TO ANY OF THE MATTERS ABOVE INCLUDING BY POSTING SOCIAL MEDIA MESSAGES WITHIN THE ADMINISTRATIVE AREA OF THE CITY OF SHEFFIELD

Defendants

Katharine Holland QC and Yaaser Vanderman (instructed by **Sheffield City Council**) for the **Claimant**

Owen Greenhall (instructed by **Lloyds PR**) for the **4th, 5th and 7th Defendants**

Paul Powlesland (instructed by **Lloyds PR**) for the **6th Defendant**
Hearing dates: 11, 12 July 2018

Approved Judgment

His Honour Judge Robinson:

Introduction

1. On 15 August 2017 Males J handed down judgment following a trial. He determined that the Claimant was entitled to certain injunctive relief. The subject matter of the trial was the felling of trees in Sheffield. The application before me follows on from decisions made by Males J. His judgment can be found at *Sheffield City Council v Fairhall & Others* [2017] EWHC 2121 (QB) ("*Fairhall*")
2. By way of introduction to this application I can do no better than quote paragraph 1 of his Judgment:

“1. The felling of trees in Sheffield is highly controversial. The city council insists that it is entitled to fell trees, including in some cases healthy trees, in performance of its statutory powers and duties to maintain the highway. It says that objectors who take action which prevents such felling from going ahead are acting unlawfully and must be restrained by an injunction. The objectors maintain that they are exercising a right of peaceful protest intended to cause the council to think again. They want the council to find alternative ways of maintaining the highway which do not involve the felling of healthy trees which, they say, add significantly to the environment, wildlife, air quality and quality of life of the people of Sheffield.”
3. I also wish to associate myself with the observations of Males J concerning the neutrality of the Judiciary in matters such as these. I also express no view, one way or the other, as to the merits of the Claimant’s tree felling programme or the objectors’ campaign, for the reasons he gave at paragraph 7 of his Judgment.
4. The duration of the injunction granted by Males J was limited in time. It is due to expire at 23.59 hours on 25 July 2018.
5. The injunction granted by Males J was directed to what he described as “direct action” essentially in and around the “safety zone” as defined. The definition in the order is in these terms:

“a safety zone is that area delineated by barriers erected on the public highway around a tree to be felled.”

6. By this application the Claimant seeks to extend the duration of the injunctive relief and also to adjust the terms of the injunction order in two principal respects. First to amend the definition of “safety zone”. Second to add additional restrictions to prevent what the Claimant says are actions which also interfere with tree felling activities.
7. Males J has released this application to me, sitting as a Judge of the High Court pursuant to Section 9(1) of the Senior Courts Act 1981. However, Males J remains in overall control of this litigation.
8. Four of the Defendants have been represented by Counsel. The other five Defendants are represented by Lloyds PR Solicitors. Two of those Defendants are out of the country. The remaining three named Defendants have attended court during some or all of these current proceedings.
9. In respect of the four Defendants who are represented by Counsel, the parties have come to terms. A form of order detailing injunctive relief has been prepared in draft. I am grateful to Counsel for the Claimant and for the four Counsel-represented Defendants for their efforts, which took all of yesterday and some of this morning. I commend their efforts. The result strikes a fair and proportionate balance between the competing interests of those parties. It will govern the relations between the parties for a period of about 18 months, until 25 January 2020. The form of order agreed, insofar as it deals with injunctive relief, is set out below:

The Defendants must not from 26 July 2018 until 23:59 on 25 January 2020:

- a. *Enter any safety zone erected around a tree; and/or*
- b. *Deliberately seek: (i) to prevent the erection of; or, (ii) to interfere physically with or with the use of any safety zone around a tree (which prohibition shall (without limitation) include the following acts:*
 - *Moving, lifting, pushing, pulling, damaging or destroying any features demarcating the safety zone or climbing upon such features;*

- *Placing or throwing items inside of the safety zone or attaching persons or property attached to persons to any part of the safety zone or features demarcating the safety zone);*
- c. *Remain within any safety zone after it is erected; and/or*
- d. *Knowingly leave any vehicle in any safety zone or intentionally place a vehicle in a position so as to prevent the erection of a safety zone; and/or*
- e. *Prevent, delay or slow down (for more than 20 minutes in any 24 hours (whether individually or as part of any group)) any contractors (engaged in accessing, egressing or creating any safety zone) in their use of any public highway which is the subject of a road closure in connection with tree works within the administrative area of the City of Sheffield;*

For the avoidance of any doubt, (i) no Defendant shall slow down vehicles within a single road closure in the administrative area of Sheffield City Council on more than one occasion in any 24-hour period and (ii) in relation to the actions of the Defendants (including Persons Unknown) as a whole or any combination thereof, there shall be no slowing down of any of the said contractors in a single road closure for more than 20 minutes in any 24-hour period; and/or

- f. *Encourage, aid, counsel, direct or facilitate anybody else to any of the matters in paragraphs a) to e) above including by posting social media messages. For the avoidance of doubt, this prohibition does not include any general words of support or approval for the tree campaign in the administrative area of the City of Sheffield;*

within the area shown edged red on the plan attached to this Order (being, for the avoidance of doubt, the administrative area of the city of Sheffield).

For the avoidance of doubt, a “safety zone” is any area which is demarcated as an area from which protestors and other members of the public are excluded whether by barriers alone or by a combination of barriers and/or natural and/or man-made features, and which is on the public highway, or on land held by Sheffield City Council adjacent to the public highway, around a tree sought to be felled.

For the avoidance of doubt, actions taking place on private land only are not within the scope of this injunction.

10. Of course, that form of injunction affects only the four Defendants represented by Counsel. It does not affect the remaining five named Defendants, nor does it affect any person within the category described as “persons unknown”. In respect of those two groups of persons, Miss Holland QC accepted that the Claimant had to prove its case. Her task was made easier by the fact that the

remaining five Defendants did not actively oppose the application, and of course there was no opposition from “persons unknown”.

11. The evidence in support of the application is contained within the third witness statement of Paul Billington dated 22 June 2018 and the witness statement of Darren Butt dated 28 June 2018. Mr Billington is the Claimant’s Director of Culture and Environment. Mr Butt is the Account Director of Amey LG Ltd responsible for the delivery of the Streets Ahead contract. For a full description of the Streets Ahead project and its connection with the tree felling programme, see the Judgment of Males J in *Fairhall*.

Extension of the Duration of the Injunction

12. All of the five non-Counsel represented Defendants are still passionately committed to opposing the Claimant’s tree felling programme. Dr Crump gave an undertaking before Males J when the original injunction order was made. His undertaking mirrored the terms of the injunction. Males J had determined that on two occasions Dr Crump has acted in breach of the terms of his undertaking. There is every reason to suppose that absent the restraining effect of an injunction, Dr Crump will seek to take what Males J has described as “direct action” against the tree felling programme.
13. The other four non-Counsel represented Defendants have not been found to be in contempt of court. However, all are described as having had significant involvement in direct action before Males J granted injunctive relief in 2017. In respect of all the non-Counsel represented Defendants Mr Butt says that he believes “there is a serious risk that she would resume carrying out direct action in the absence of an Injunction.” In my judgment, having regard to the history, and the continued opposition to the tree felling programme, I consider Mr Butt’s belief to be justified.
14. The evidence shows that the tree felling programme is continuing. Whatever might have been the hope or expectation when Males J granted injunctive relief for about a year, it is clear that with the period about to expire, a significant number of trees remain to be felled.

15. Miss Holland began by providing examples of three cases where injunctions had been renewed in what she submitted were similar circumstances to those which exist in this case. The two cases are admirably summarized in paragraph 6 of her written skeleton argument, which I reproduce below:

“In *Harlow District Council v McGinley and Ors* [2017] EWHC 1851 a final injunction had been granted to restrain unauthorised encampments on various sites in Essex and had been granted against 35 defendants and ‘persons unknown’. The final order, granted by Mr James Goudie QC, sitting as a Deputy Judge, had been expressed to last for about 18 months and had been thought proportionate at the time. In fact, over the intervening months, the defendants had moved on to other sites and there had also been a change in strategy in relation to the actions of the defendants. Mr Justice Jay had to consider an application to renew the injunction. He considered the question of whether, if an injunction was not granted, the defendants would then resume their unlawful activities. He took account of “*overwhelming evidence of an inferential nature*”, widened the scope of the injunction and added a number of named defendants.”

“In *Waltham Forest London Borough Council v Persons Unknown* [2018] EWHC 240 (QB), Mrs Justice Lang considered whether an interim injunction ought to be continued by way of a final injunction to restrain unauthorised encampments. The period for which the new injunction was granted was 3 years. Mrs Justice Lang said:

“8 I am satisfied that unless the injunction continues in force, the unauthorised use of the green spaces will resume. All other measures have failed..... In my judgment, the continuation of the injunction is both just and proportionate...The proposed length of the injunction, three years, is similar to orders made on other cases, e.g. *Harlow D.C. v McGinley*. I consider this to be a just and proportionate period in all the circumstances, long enough to act as a real deterrent to the travellers and to protect local residents.”

“In *Harrods Ltd v McNally* [2018] EWHC 1437, Nicol J extended an injunction granted in 2013 for a further five years, The injunction in that case was directed at limiting the activities of the protestors objecting to Harrods’ policy of selling fur products.”

16. In this case I am satisfied that, by reference to those principles, an extension is required and is justified. The period of about 18 months agreed by the Counsel represented Defendants seems appropriate to the non-Counsel represented Defendants.

Definition of “Safety Zone”

17. From the point of view of the Claimant, a problem has arisen. To take an example. Say a tree which is due to be felled is located on a stretch of highway immediately adjacent to a public park. The park and the highway are separated by iron railings. Amey erect plastic barriers around the tree. Some of those barriers abut the railings. It is clear from photographs attached to the witness statement of Mr Butt that protestors have insinuated themselves between the railings and the plastic barriers. This does not amount to entering the safety zone as defined, but has the effect of preventing or obstructing the felling of that tree. This activity is apparently known as “geckoing”.
18. The Claimant seeks to revise the definition of “safety zone” to prevent this activity. Such a revised definition has been agreed between the Claimant and the four Counsel-represented Defendants.

Addition of Further Terms

19. It is clear from the evidence that additional forms of protest and obstruction of the tree felling programme have been devised by some protestors. The efficient movement of vehicles involved in tree felling activities has sought to be restricted. Private cars have been parked in close proximity to a tree about to be felled.

Legal Principles to be Applied

20. It is established law that the terms of an injunction can be varied to give effect to the intention of the original order. This was the conclusion of His Honour Judge Worster, sitting as a Judge of the High Court in *Birmingham City Council v Persons unknown* [2018] EWHC 1601 (QB). That case concerned “street cruising”. His Lordship first referred to *Harrods Ltd v McNally* [2013] EWHC 1479. In that case, fur trade protestors were excluded from protesting in certain areas around Harrods store. Owing to an alteration in the layout of some of the surrounding streets, the existing injunction, as Miss Holland submitted in her Skeleton Argument, no longer gave effect to the intention of the order. Globe J altered the injunction to extend the relevant area. HHJ

Worster then said this (I take this quotation from the skeleton argument of Miss Holland together with her emphasis):

“The case illustrates that injunctions can be varied to take account of changes of circumstance. So, for example, if the injunction obtained by Birmingham in 2016 had covered only a part of its area, and the granting of the order had simply displaced the street cruising into a neighbouring part of Birmingham’s area, Birmingham might apply to vary the injunction so as to include the newly affected area. A Court might well consider that all it was being asked to do was adjust the terms of the original order to meet the change in circumstances and give effect to the intention of the original order, The purpose of the order, whether it be for the benefit of the inhabitants of Birmingham’s area, or to prevent public nuisance on its highways, would be the same”

21. The purpose of the original order was to prevent unlawful interference with the tree felling programme. It seems to me that the re-definition of the term “safety zone” in the form of order agreed with the four Counsel-represented Defendants is a reasonable and proportionate means of dealing with the circumstances now known to exist and which appear not to have been foreseen at the time the original injunction was made. In my judgment, the case for re-defining that term to cover the five non-Counsel represented Defendants is made out.
22. Similarly, a variation of the original injunction to cover other forms of protest as defined in the order agreed with the four Counsel-represented Defendants seems to me to be a reasonable and proportionate response to these new forms of protest. It seems to me to balance the rights of the protestors with the legitimate aims of the Claimant. In my judgment, the case for applying those terms to the five non-Counsel represented Defendants is also made out.

Persons Unknown

23. For the reasons given in relation to the five non-Counsel represented Defendants, I am satisfied that the terms of the order agreed with the four Counsel-represented Defendants should also apply to persons at present unknown who may seek to protest in a manner prohibited by the terms of the order which will apply to all of the named Defendants. I expressly approve of the description of “Persons unknown” as it appears in the new order, and which also appears in the heading to this Judgment.

