

IN THE HIGH COURT OF JUSTICE

CLAIM NO: KB-2024-002361

KING'S BENCH DIVISION

BETWEEN:

DRAX POWER LIMITED

Claimant

and

PERSONS UNKNOWN

As more particularly described in the Claim Form

Defendant

CLAIMANT'S SKELETON ARGUMENT

For urgent interim injunction hearing: time estimate 2.5 hours

Suggested Pre-Reading (Time Estimate: 1.5 hours of judicial time)

- Draft Order
- Application Notice & Claim Form
- Particulars of Claim
- Witness Statement of Martin Sloan dated 23 July 2024
- Witness Statement of Nicholas McQueen dated 23 July 2024

INTRODUCTION

1. Drax Power Station in Selby, North Yorkshire (“the Power Station”) is part of the United Kingdom’s Critical National Infrastructure. It generates enough renewable energy each year to power the equivalent of 8 million homes, generating electricity through the burning of biomass. For some time, it has also been a target for environmental protest. In relation to the background / general risks which this creates, C’s security etc measures are (it assesses) sufficient.
2. However, there has been an escalation in the level of threat. C has been advised by North Yorkshire Police to apply for an injunction to protect the Power Station: Sloan ¶43 [61]. It has been advised by the British Transport Police to include the area along the railway line as it extends out of the Power Station: Sloan ¶43 [61].
3. In particular, the background level of threat has recently been superseded by a specific threat of imminent environmental protest aimed directly at the Power Station, including a threat of damage or disruption to the Power Station in

connection with a ‘protest camp’ being organised by Reclaim the Power, supported, or at least endorsed by, Axe Drax. The protest camp is currently publicised as being scheduled for the 8 – 13 August 2024 but it is unlikely that there will be a public announcement concerning the location, time and date of any intended or planned direct action, and there is a real risk that this could take place prior to the advertised dates: **Sloan ¶45.2 [62]**.

4. In the result, and as advised by the police, C needs to ask for the protection of the Court by way of an injunction, to restrain the apprehended trespass and other unlawful acts on or directly affecting the Power Station, and its associated infrastructure, in order to avoid the risks to safety of persons and property and disruption of its operations at the Power Station.
5. The Defendants are Persons Unknown who are “newcomers”. It is intrinsic to this jurisdiction that such defendants receive no notice in the usual sense: *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 WLR 45. In addition, however, this is also a case where publicity for the present application would create a “tipping off” risk, undermining the very purpose for which the injunction is sought, and potentially triggering the very actions which it is intended to restrain.

FEATURES OF THE LAND SUBJECT TO THE INJUNCTION

6. The PoC attempt to describe the various features but it will (probably) be best to explain them orally at the hearing.
7. C owns not only the Power Station itself but also a substantial part of the land which surrounds it: registered title NYK223464 at MS1/1.
8. The Power Station is enclosed by security fencing around its perimeter which is monitored by CCTV.
9. There are three entrances from the public highway into the Power Station:
 - (1) one from the A645, roughly to the south;
 - (2) two from New Road, roughly to the east.
10. There is also a private railway into the Power Station: trains (as well as road traffic) are used for delivery of biomass. There is private rail infrastructure within the south western quadrant of the Power Station, accessed via a spur from the main railway line as shown edged blue to the south of the A654 (which is also in the Claimant’s ownership).
11. A sub-station owned by National Grid Electricity Transmission Plc sits within the Power Station’s perimeter fence.

12. A public footpath and a permissive way come close to the Power Station. These will be shown on plans.
13. The Power Station is served by a Pumping Station which although remote from the Power Station is functionally critical and is situated on land owned by C: **Sloan ¶¶9 [49]**.

THE THREAT

14. Reclaim the Power is an environmental campaign which refers to itself as a “*UK based direct action network*”. In relation to its online communications in respect of the proposed protest camp, it has variously referred to inviting people to “*Join us this summer as we camp, learn and take mass direct action together against Drax*” and to raising funds to there being “*six days of workshops, communal living and direct action to crash Drax’s profits*”. Its members have form in that respect: in 2016, they “*actually halted mine operations*” at Ffos-y-fran open cast mine. In 2019, they occupied cranes and stopped construction work at SSE Thermal’s Keadby 2 power station (**Sloan ¶¶23-25 [52-53]**).
15. Axe Drax is an environmental campaign specifically focused on disrupting C’s activities. As it describes itself on its website, it is a “*network that opposes Drax in its operations. We believe that disruption of their activities and business as usual is crucial*”. Individuals associated with the campaign have previously targeted a train transporting materials to the Power Station (**Sloan ¶27 [53]**) and the Claimant’s annual general meeting (**Sloan ¶29 [54]**), as well as the Department for Business Energy and Industrial Strategy (**Sloan ¶28 [53]**) in protesting against C and its operations.
16. The Power Station has been subject to other direct action in the past, as detailed in **Sloan ¶¶18–20 [51-52]** and **¶¶21–22 [52]**. C is also aware, from conversations with the Police, that unauthorised drones are used by environmental activists in connection with their activities (**Sloan ¶39 [57]**). There have also been a number of unauthorised drones flying over the Power Station recently (**Sloan ¶40 [57]**).
17. The specific threat which has led to C seek injunctive relief is that of a ‘protest camp’ directed at the activities at the Power Station being organised by Reclaim the Power and currently scheduled – at least publicly – to be taking place between the 8 and 13 August 2024. In light of the stated objectives of Reclaim the Power and Axe Drax, and previous actions by persons associated with those and other similar campaigns (detailed in **Sloan ¶¶18-34 [51 – 55]**) there is a real and credible risk that persons associated with that protest campaign will engage in direct action at or otherwise affecting the Power Station aimed at disrupting C’s operations, in particular by persons associated with the camp or campaigns:

- (1) Trespassing within the Power Station itself (including the Sub Station within the same perimeter fence) or the Pumping Station;
 - (2) Climbing, cutting or ‘locking on’ to the perimeter fencing of the Power Station or Pumping Station;
 - (3) Climbing on or otherwise damaging equipment or structures within the Power Station;
 - (4) Congregating or assembling on areas close to the perimeter fencing, with the intention and/or effect of concealing or disguising such acts by others;
 - (5) Obstructing or otherwise interfering with persons and vehicles trying to access or to leave the Power Station, including trains bringing materials to the Power Station; and/or
 - (6) Flying drones over the Power Station with a view to monitoring activities on site and being able to direct disruptive action to the areas where the disruptive impacts could be maximised.
18. The risks and harms which could arise from such actions are set out in **Sloan ¶41 [57]**, and include:
- (1) the risk of harm to activists or staff as a result of unauthorised incursions into the Power Site (or areas of the same where particular hazards arise) (**Sloan ¶41.1 [57-59]**);
 - (2) damage to property (**Sloan ¶41.4.3 [60]**); and
 - (3) potential risks to the wider environment (if those activities were to give rise to emissions from hazardous materials on the property) (**Sloan ¶41.3 [59-60]**).
19. That is in addition to the risk of disruption to the operations at the Power Station itself for example, if generation had to be reduced or stopped as a result of unauthorised persons gaining access to certain areas (**Sloan ¶41.4.1 [60]**) or the Pumping Station having to be taken offline (**Sloan ¶9 [49]**) with potential impacts on the national electricity supply (**Sloan ¶41.2 [59]**), as well as the financial impacts for the Claimant which could be substantial (**Sloan ¶41.4 [60]**).

INJUNCTIONS AGAINST “PERSONS UNKNOWN”: THE LEGAL CONTEXT

20. The Defendants are “newcomers” of the sort discussed in *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 WLR 45: persons who are not identifiable at the date that proceedings are commenced, but who are intended to be bound by

the terms of the injunction sought.

21. Such injunctions are a “wholly new type of injunction with no very closely related ancestor from which it might be described as evolutionary offspring”: ¶144. They are likely only to be justified as a novel exercise of an equitable discretionary power if (¶¶165, 167, 235):

- (1) “There is a compelling need, sufficiently demonstrated by the evidence”, for the protection of civil rights (etc) which is “not adequately met by any other measures available to the applicant [...]”;
- (2) “There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it [...]; and the most generous provision for liberty (i e permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.”
- (3) Applicants can be trusted to make ‘full and frank disclosure’ of everything that might be said by such newcomers against the grant of an order;
- (4) The injunctions are constrained geographically and temporally so as to ensure, so far as practicable, that they do not “outflank” or “outlast” the compelling circumstances relied on;
- (5) “It is, on the particular facts, just and convenient that such an injunction be granted.”

22. The Supreme Court went on to consider the “practical application of the principles” affecting such applications in the context of injunctions against gypsies and travellers, and the procedural safeguards which should accompany such orders at ¶¶187-234. It emphasised that its discussion had been on injunctions against gypsies and travellers and that “*nothing we have said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protesters who engage in direct action by, for example, blocking motorways, occupying motorway gantries or occupying HS2’s land with the intention of disrupting construction. Each of these activities may, depending on all the circumstances, justify the grant of an injunction against persons unknown, including newcomers.*” (¶235).

23. At ¶236, it provided the following guidance with respect to ‘newcomer’ injunctions against protestors:

“Counsel for the Secretary of State for Transport has submitted and we accept that each of these cases has called for a full and careful assessment of the justification for the order sought, the rights which are or may be interfered with by the grant of the order, and the proportionality of that interference. Again, in so far as the applicant seeks an injunction against newcomers, the judge must be satisfied there is a compelling need for the order. Often the circumstances of these cases vary significantly one from another in terms of the range and number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected; the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained.”

24. Two further points emerge from *Wolverhampton*:

(1) This is an emerging jurisdiction, equitable and discretionary, still in its early stages, with a dynamic role for the Courts to play in working out the ‘rules’ or practices which should apply as experience of such cases accumulates (¶185). For that reason, it would be wrong to treat authorities articulating, or purporting to articulate, a series of principles or ‘tests’ as decisive or prescriptive at this point in time.

(2) The overarching questions are those identified in *Wolverhampton* at ¶167, specifically: (i) is there a compelling need sufficiently demonstrated by the evidence that justifies the exercise of the court’s jurisdiction to give effective protection to the claimant’s rights; (ii) have adequate procedural safeguards been provided to protect the affected newcomers; and (iii), overall, is it just and convenient for an injunction to be granted on the facts of the case.

25. Subject to that, the principles outlined by the Supreme Court in *Wolverhampton* were helpfully drawn together and synthesised with established practice, by Ritchie J in *Valero Energy Ltd v Person Unknown* [2024] EWHC 134 (KB) at ¶¶57–58:

Substantive requirements

- (1) A civil cause of action identified in the claim form and particulars of claim;
- (2) There must be full and frank disclosure by the claimant;
- (3) Sufficient evidence to demonstrate that there is a compelling need for the order;
- (4) No realistic defence;
- (5) Balance of convenience - compelling justification for the order .

- (6) The Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UKSC 23 if the defendants' rights under ECHR Articles 10 and/or 11 are engaged. The injunction must be necessary and proportionate to the need to protect the claimant's rights;
- (7) Damages would not be an adequate remedy for the claimant.

Procedural requirements

- (8) Identification of the defendants: persons unknown shown be identified as clearly and precisely as possible and by reference to the conduct sought to be restrained;
- (9) The terms of the injunction should be set out in clear words and not framed in legal technical terms;
- (10) The prohibitions should correspond to the threatened torts and should only conduct that would otherwise be lawful if there is no other proportionate means of protecting the claimant's rights;
- (11) The injunction should have clear temporal and geographic limits;
- (12) The defendants should be given the right to set aside or vary, and provision should be made for reviewing the order in the future.

SUBMISSIONS

The substantive case for the injunction

26. There is a clear and compelling need for the injunction, sufficiently demonstrated by the evidence, to justify the exercise of the Court's jurisdiction to grant the injunction sought, which is necessary to protect C's rights effectively.
27. The causes of action on which C relies are detailed at ¶¶14—21 of the PoC [34-37]. It seeks to restrain acts of trespass and of nuisance.
28. Trespass: C owns (and entitled to immediate possession) of all the land shown shaded blue on Plan 1 to the PoC (see MS1/1 [79]), including the railway spur/infrastructure — save for the Sub-Station area shown edged green. Any person entering onto that land without its permission or consent is a trespasser. The same applies to the Pumping Station, shown shaded blue on Plan 2. Similarly, any person climbing, cutting, or 'locking on' to the perimeter fence of either facility would also be committing trespass.
29. Nuisance: private nuisance is where acts of a defendant have wrongfully interfered with the claimant's use and/or enjoyment of its property. It is also now well established that acts of a defendant on a public highway which interfere with a

claimant’s right to take access from that highway to their property can found a claim in nuisance which can be restrained by injunction: see, inter alia, *High Speed Two (HS2) Limited v Four Categories of Persons Unknown* [2022] EWHC 2360 (KB) at ¶¶86–7, and granting an injunction to restrain such acts at ¶¶188 and 217.¹ Actions interfering with the trains to and from the Power Station via the spur to the main railway line would be a nuisance, if not also a trespass. The same is true of the Sub-Station.

30. Effective remedy: as well as having the identifiable causes of action mentioned above, in relation to the Sub-Station and the “buffer zones”, C also relies on the principle explained in *Wolverhampton* [222] and *Cuadrilla Bowland Ltd v. Persons Unknown* [2020] 4 WLR 29 at [50]. In order for relief in relation to C’s Power Station to be fully effective, it is necessary and proportionate to intervene to the extent indicated by the draft — even if this would otherwise be lawful as between C and Ds.
31. There is sufficient evidence of the need for the injunction by reason of a real and imminent threat to the Power Station: **Sloan ¶¶30–36 [54-56] and 39–40 [57]**. C has been advised by North Yorkshire Police to apply for an injunction to protect the Power Station: **Sloan ¶43 [61]**. It has been advised by the British Transport Police to include the area along the railway line as it extends out of the Power Station: **Sloan ¶43 [61]**. By reference to the specific action which is directed at the Power Station, and the acts previously committed by those connected with Reclaim the Power, Axe Drax and other such groups, the risk is clear, real and imminent.
32. There is no realistic defence which could successfully be advanced by the defendants.
33. Private land: with regards to Articles 10 and/or 11, the majority of the land included within the injunction is private land: the Power Station (including the Sub Station), the railway spur, the Pumping Station, and parts of the land shown shaded red. Articles 10 and/or 11 do not confer a right to protest by means of trespass on private land. The Claimant relies, in that regard, on:
 - (1) *DPP v Cuciurean* [2022] 3 WLR 446 at ¶¶40–50, in particular ¶43 where the Divisional Court “conclude[d] that there is no basis in the Strasbourg jurisprudence to support the defendant's proposition that the freedom of expression linked to the freedom of assembly and association includes a right to protest on privately owned land or upon publicly owned land from

¹ That injunction was continued on review in May 2024 by Ritchie J, removing the parts of the HS2 route which are no longer needed for that project: [2024] EWHC 1277 (KB))

which the public are generally excluded”;

(2) *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 in which Longmore L.J. stated, at ¶36, that “The right to freedom of peaceful assembly is guaranteed by both the common law and article 11 of the ECHR. It is against that background that the injunctions have to be assessed. But this right, important as it is, does not include any right to trespass on private property”; and

(3) *HS2* at ¶¶79–47 which considered the previous authorities on the point, with Mr Justice Julian Knowles stating at ¶¶80–81:

“80. In relation to defences to trespass, genuine and bona fide concerns on the part of the protestors about HS2 or the proposed HS2 Scheme works do not amount to a defence, and the Court should be slow to spend significant time entertaining these: *Samede*, [63].

81. A protestor's rights under Articles 10 and 11 of the ECHR, even if engaged in a case like this, will not justify continued trespass onto private land or public land to which the public generally does not have a right of access: see the passage from Warby L.J.'s judgment in *Cuciurean I* quoted earlier, *Harvil Road*, [136]; and *DPP v Cuciurean* at [45]-[49] and [73]-[77]. There is no right to undertake direct action protest on private land: *Crackley and Cubbington*, [35], [42]”.

34. Highway: the use of public highway for the purpose of assembly and congregation in connection with protest may, in some cases, constitute a lawful use of the highway (*DPP v Jones* [1999] 2 AC 240). This falls to be balanced against C's rights which it seeks to protect. C has given careful thought to the least interference that will (it hopes) provide adequate protection. C has limited the relief it seeks, to such as will restrain the defendants from assembling or congregating in areas where the public highway is close to the perimeter fence of the facility and where there is a particular concern that such congregation or assembly would or could be used to mask the acts of trespass onto and/or other acts of nuisance affecting the Power Station. Further, C has agreed with the Police to make an area of land within its ownership and adjoining the A645 available for those wishing to protest between 6 and 15 August 2024 in order to ensure that individuals wishing to exercise their rights under Article 10 and/or 11 on that public highway can do so safely (**Sloan ¶47.1.2 [63]**). In the result, the order sought by C in relation to the highway interferes to the least extent possible with the public's rights of protest: and, in particular, to no larger extent than is necessary and proportionate to protect the claimant's rights: *Shell UK Oil Products Limited v Persons Unknown* [2022] EWHC 1215 QC at ¶56.

35. Conducting the balancing exercise outlined in *Ziegler* (as discussed and applied in *Shell Oil* at ¶¶57–62):

(1) The aim of any interference with the Defendants' Article 10 and/or 11 rights

is to protect the safe operation of the Power Station, and, indeed, C's rights as protected under Article 1 of the 1st Protocol. As in *Shell Oil*, the Court may properly be satisfied that the aim is sufficiently important to justify interference with the Defendants' Article 10 and/or 11 rights;

- (2) There is a rational connection between the means chosen and the aim in view. The 'buffer zones' which include/comprise public highway have been tightly drawn to provide effective protection to the Power Station by ensuring that individuals are not able to congregate or assemble in such areas as might disguise or conceal the other tortious acts which would be restrained by this injunction;
- (3) There is no less intrusive means that could achieve that aim. C already has in place stringent security measures. The 'buffer zone' which would be provided by the injunction (including on that land including or comprising public highway) is necessary to ensure that those measures are not themselves compromised (**Sloan ¶35(c) [56]**);
- (4) The injunction would strike a fair balance between the rights of the defendant and the general interest of the community, including the rights of others. As above, C seeks an injunction over discrete areas of land which include or comprise public highway in order to provide effective protection for the Power Station and to ensure that the injunctive relief restraining trespass to the Power Station would be an effective. It notably would not preclude protest on other parts of the public highway in the vicinity of the Powe Station and, indeed, C has agreed with the Police to make an area of land within its ownership and adjoining the A645 available for those wishing to protest between [6 and 15 August 2024] in order to ensure that individuals wishing to exercise their rights under Article 10 and/or 11 on that public highway can do so safely (**Sloan ¶47.1.2 [63]**).

36. Damages would not be an adequate remedy for the Claimant: **Sloan ¶ 45.5 [62]**.

37. There is a sufficiently real and imminent risk of damage so as to justify the grant of a precautionary injunction which has been substantiated by the Claimant's evidence. There is a compelling need for the Order;

The procedural requirements

38. The identity of the defendants: these have been identified by reference to the acts sought to be restrained, and by reference to the areas shown shaded red and blue on the Order Plans (Plans 1 and 2).

39. The draft Order has clear temporal and geographical limits. The land is shown by

reference to the Order Plans, and with a suggested requirement for an annual review.

40. The draft Order contains the usual provisions for review, and for persons affected to apply to vary or discharge the same.
41. As to service/notification, in the present case, C does not know the precise identity of any of the individuals who might fall within the description of the Defendants and/or be intending to undertake the acts which the injunction would restrain (**Sloan ¶37 [56]**). Accordingly, there is no identifiable person on whom the proceedings could be served (cf *Wolverhampton* ¶221). On the other hand, C is aware of a number of individuals who are particularly associated with Axe Drax, at least one of whom has engaged in direct action against the Power Station operations in the past. C therefore intends to notify those persons of the proceedings/injunction (although not currently naming them as defendants) by way of email to info@axe.drax.uk, (**McQueen ¶36 [359]** **Sloan ¶37-38 [56-57]**).
42. Therefore, and in accordance with the approach set out in *Wolverhampton* (which distinguishes between ‘notification’ of the application/order to ‘Persons Unknown’ and ‘service’ on identifiable persons’: ¶¶221, 226, 230-231) C seeks an order dispensing with service of the claim form, application notice, supporting documents and any Order made by this Court. C has set out in the draft Order and in **McQueen ¶42 [362-363]** the steps it intends to take to notify persons potentially affected by the proceedings of the application / injunction (if made). **McQueen ¶44 [364]** confirms that these are considered to be reasonable steps to take in the circumstances of this case to draw the application / Order to the attention of persons likely to be affected thereby. They follow the notification procedures recently approved by this Court in respect of similar injunctions at London City Airport, Heathrow Airport, and Gatwick Airport.
43. Tipping off: C submits that this would, in any event, be an appropriate case for the application to be made ‘without notice’ to the Defendants. As recognised in *Wolverhampton* at ¶174, there are some cases where even the most informal notice of an application would be self-defeating, such as in the case of a freezing injunction “where the notice may provoke the respondent into doing exactly that which the injunction is designed to prohibit”. That concern applies equally here: see **McQueen ¶37 [359-360]**.
44. In relation to the requirement of s.12(2) of the Human Rights Act 1998, there is clearly a compelling reason why the Defendant should not be notified of the present application prior to its consideration by this Court, for the reasons set out above (and see also *Wolverhampton* at ¶167).

Full and frank disclosure

45. In order to support compliance with its duty of full and frank disclosure, C addresses three arguments which might be advanced against its application for the injunction.
46. First, it could be argued that there is no justification for the application having been made without notice. C accepts that this is a high threshold, but has set out above why it considers it to be justified in the present case.
47. Secondly, the acts complained of could be restrained by other means. The reason why other controls, such as reliance on existing offences under the Public Order Act 2023 are not considered to be sufficient are addressed in **McQueen ¶39 [360-362]** and **Sloan 45 [61-62]**. Further, the current proceedings result from discussions with the police themselves: a compelling indication that the general law does not sufficiently vindicate C's rights.
48. Thirdly, the Defendants are seeking to exercise rights protected under Articles 10 and/or 11 ECHR. This has been addressed above.

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25th July 2024

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