

Case Commentaries

The Heathrow Airport injunction, misunderstood but successful

Heathrow Airport Ltd & Another v Joss Garman & Others
[2007] EWHC (QB)

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Introduction

On 6 August 2007, Swift J gave judgment in *Heathrow Airport Ltd & Another v Joss Garman & Others* [2007] EWHC (QB). This case is of significance because it represents the use of injunctive relief to control and curtail a campaign of direct action and civil disobedience by environmental activists. The hearing, which lasted from 1–3 August 2007 was conducted under an intense media spotlight. The order itself and the hearing which preceded it were the subject of a controversial and heated media debate.

The brief facts are as follows. In about May 2007 it became clear to Heathrow Airport (HA) that its activities were likely to be disrupted by activists who were planning to organise a Camp for Climate Action (CfCA) in the immediate vicinity of the airport. The camp was likely to attract thousands of activists and one of the principal aims of the camp was to disrupt and interfere with the operation of the airport.

By the end of May 2007 it was clear that the CfCA would take place between 14–21 August and that several thousand activists would attend. One of the principal groups organising the CfCA was a group called Plane Stupid (PS), a direct action group who are conducting a campaign against the power generating and aviation industries.

It was therefore necessary for HA to issue proceedings and bring an application before the court in advance of the CfCA and this it did by commencing proceedings on 20 July 2007 placing the defendants (ie those whom HA thought were the organisers of the CfCA) on notice and thereby ensuring they had a reasonable time within which to make representations at the return date on 1 August.

HA did not succeed in obtaining an order under the Protection from Harassment Act 1997. However, it did succeed in obtaining an order under the common law torts

of trespass and nuisance, and under the terms of its Byelaws (Heathrow Airport – London Byelaws 1996).

The purpose of this article is:

- 1) to set the hearing and the order obtained in the context of the actual threat faced by HA during the CfCA
- 2) to analyse the main actions conducted by activists in the period leading up to the CfCA
- 3) to explain the order sought
- 4) to explain the order obtained
- 5) to analyse the actions conducted by activists during the CfCA
- 6) to analyse the degree to which the order was successful in curtailing and controlling the activists
- 7) to assess whether the media reporting of the case was fair or whether it was tainted by prejudice.

1 The actual threat posed by the CfCA

On 24 May 2007, the Evening Standard carried an article entitled ‘Eco-warriors plan massive disruption at Heathrow’. The article was published on the front page and was clearly the lead story. On the following day all the broadsheet newspapers and many of the tabloids carried stories in a similar vein. By 25 May 2007 HA was on notice that it faced a significant threat to its operation of the airport. Because of its importance, this article is set out in full as Appendix 1. Of particular concern to HA was the threat to conduct a simultaneous blockade of the ‘... roads and railways into Heathrow’ which might have included the mainline Heathrow Express and the underground Piccadilly Line. In addition, attempts to invade the runway could not be discounted.

2 The main actions conducted between 29 November 2006 and 16 June 2007

An analysis of these actions is set out in Appendix 2. From this analysis it became clear that members of PS had previously conducted a number of smaller, yet effective direct actions and that they were capable of conducting simultaneous operations on a significant scale. Thus, on 24 September 2006, 25 members of PS occupied the taxiway of Nottingham East Midlands Airport (NEMA) disrupting flights for a significant period of time. On 6 November 2006, its first day of national direct action, members of PS occupied the inside and roof and blockaded the front entrance of Easyjet’s HQ in Camden, whilst simultaneously conducting lock-in blockades against 25 travel agents across

¹ Lawson-Cruttenden & Co <http://www.lawson-cruttenden.co.uk>. The author would like to acknowledge the assistance of Sehar Ali-Noor, law student at UCL.

the UK. Also on 6 November 30 activists holding themselves out as members of Greenpeace invaded Didcot Power Station, bringing it to a partial closure for 48 hours at an estimated cost to NPower of about £500,000.

It was feared that these actions might be a dress rehearsal for large scale direct actions and civil disobedience activities directed against HA. In 2006 a CfCA activity was directed against Drax Power Station in North Yorkshire and involved about 650 activists and a policing bill of about £4 million. HA was faced by activities on a multiplier of three or four times the scale of CfCA's activities in 2006 which in fact involved more than 2000 activists and a policing bill of approximately £7 million.

3 The order sought

HA applied for an order against four named defendants, having obtained on 20 July a without notice order that these named individuals represented the four main groups thought to be behind the CfCA. Those groups included PS.

The order sought to injunct 'protestors' as defined, these being the named defendants and 'all other persons ... acting in the name of Camp for Climate Action, or otherwise by harassment, trespass, obstruction and/or any other unlawful means in order to deter, obstruct or prevent the Claimants and/or the Protected Persons (as defined) from lawfully operating or developing Heathrow Airport or ... travelling to, from or at Heathrow Airport'.

Importantly, the order was sought under the Protection from Harassment Act 1997 in order to obtain a power of arrest against any unnamed protestor who breached its terms 'without reasonable excuse'. However, HA was unsuccessful in its application for an order under the Act and therefore the order obtained (see below) did not confer upon the police a summary power of arrest. This failure was disappointing. However, the judge considered that there was insufficient evidence of anxiety, alarm and distress, prospective or otherwise, to justify making an order under the Act.

4 The order obtained

The order was obtained under the common law torts of trespass and nuisance and to strengthen the existing byelaws.

The order defined the protestors as the named defendants and 'all persons who are and/or are acting as officers, activists and/or supporters of, and /or acting in the name of, the unincorporated association known as Plane Stupid; and all persons acting in concert with any of the above persons with the purpose of disrupting the operation of Heathrow Airport'.

The order stated that:

The Protestors shall not:

- (a) ... enter the airport without the prior consent of the Claimants ...
- (b) impede or prevent access to or egress from Heathrow Airport, or otherwise obstruct or interfere with the operation of Heathrow Airport or with any person acting in the execution of his/her duty in relation thereto; and/or
- (c) incite, aid and/or abet any person to enter the area of land specified in sub-paragraph (a) above for the purpose of disrupting the operation of Heathrow Airport and/or to act in any of the respects referred to in sub-paragraph (b) above.

The order thus constituted an attempt by the court to address the threat faced by HA by large numbers of unknown members of PS who sought to disrupt and impair the operation of the airport.

5 The action of the activists during 2007

An analysis of these actions is set out in Appendix 3. This shows that the initial four actions were directed away from HA and were respectively at Biggin Hill, Farnborough, Crawley and in central London. In fact, of the 16 actions conducted during 2007, only two could be said directly to involve HA and to constitute breaches of the order.

It seems clear from this analysis that the effect of the order was to displace the activities of the activists away from HA. This displacement represents a major victory and clearly forced the activists to redirect the entire focus of their operations during 2007.

HA could have sought to enforce the order in respect of the two breaches. Its reasons for not doing this appear to be connected with its operational strategy. The focus of the actions were directed against its headquarters building and it is clear that HA was content to allow this to continue because by doing so the activists were deflected from disrupting the airport itself which remained unaffected.

6 Was the order successful?

The police spent £7 million policing the CfCA. Despite this it is clear that the order was successful and that it deflected the main focus of the campaign away from the airport. However, HA did not obtain an order against the members of the CfCA through the representative proceedings which succeeded against PS.

7 Was the media reporting fair or prejudiced?

The liberal media led by *The Guardian* and *The Independent* sought to argue that HA was preventing lawful protest, curtailing freedom of speech and preventing up to 6 million

people from coming to the airport. This was a misrepresentation of HA's application and was, in my opinion, prejudiced, misguided and unfair.

At no time did HA seek to prevent lawful protest. In fact it offered three significantly sized 'Designated Protest Areas' (DPAs) on its land (contrary to the Byelaws) which, between them, were capable of accommodating up to 750 protestors. The media ignored this offer which was contained in the application notice. The judge also ignored this offer by including in her order a provision that protestors were not to come onto HA's land without its formal consent.

At no time did HA seek to curtail freedom of speech. Photographs of three of the four individuals apparently protesting against gagging orders were constantly published in the media. Yet freedom of expression was unaffected by the order which only sought to prevent publication of the names, addresses, photographs and vehicle registration numbers of protected persons in order to protect individual rights under Article 8 of the European Convention on Human Rights.

Neither did HA seek to prevent members of the National Trust or the RSPB from travelling to or from the airport. The persons it sought to injunct were the four named individuals and '... all other persons ... acting in the name of Camp for Climate Action or otherwise by

harassment, trespass, obstruction and/or any other unlawful means ...'.

The way in which the media misrepresented this application and the misconceptions that arose appears to be the result of a fundamental misunderstanding of the nature of the representative proceedings in fact and in accordance with CPR 19.6.

8 Conclusion

HA sought to build upon the successful injunction obtained by NPower against environmental activists contesting its lawful development of Radley Lakes (2007) 4 Env. Liability 194. Its application was ambitious because it sought to protect up to three million passengers against activists who were numbered in their thousands. Had its application succeeded in full, it would have represented the most significant injunction ever awarded by an English court. The order obtained was the minimum necessary to protect the operation of the airport from the threats posed by the activists. The order succeeded in deflecting away from HA the worst excesses of the campaign. As a responsible organisation, HA had no alternative but to invoke the jurisdiction of the court against the actions threatened against it. The order made by the court was careful, conservative and far more successful than the media has given it credit for.

Appendix 1

Eco-warriors plan massive disruption at Heathrow²

Eco-warriors hope to disrupt departures from Heathrow airport this summer

Thousands of green campaigners are planning to cause massive disruption at Heathrow airport.

'Eco-warriors' say they will set up a Greenham Common-style protest camp near the perimeter fence.

They intend to use it as a base to disrupt flights at the peak of the tourist season in an attempt to focus attention on climate change and global warming.

At a secret meeting in London at the weekend, protesters said they would occupy land around Heathrow between 14 to 21 August. From there they will threaten the boundary and attempt to cause havoc inside the airport - or at least tie up hundreds of police.

Protesters at the Camp for Climate Action say they are planning:

- To infiltrate the terminal buildings by posing as passengers and then cause chaos once inside.
- Blockade roads and railways into Heathrow.
- Occupy airline offices and take 'direct action' against freight companies and firms that supply food for passengers.

Up to three million passengers could be affected. One anarchist said: 'There will be thousands of us there and they will need thousands of police to stop us. The police will be in a no-win situation. If they allow us to reach our targets at the airport there will be massive disruption and if they try to stop us, there will also be massive disruption'.

² This is London from the Evening Standard. <http://www.thisislondon.co.uk/news/article-23397881-details/Eco->

The activists, who include veterans of May Day riots and the Reclaim the Streets campaign, were behind a 'climate camp' at the Drax power station in North Yorkshire last summer.

More than 650 people took part in that protest, leading to 41 arrests and an estimated policing bill of £4 million.

Details of the Heathrow action will be circulated to anarchist groups at next month's G8 meeting in Germany.

Campaign organisers are understood to be trying to rent land near the airport for the camp from residents who are opposed to the Heathrow expansion plans.

Appendix 2

Analysis of main actions conducted by environmental activists from 29/11/2005 until 16/6/2007 (see key below)

* denotes actions carried out in the name of Camp for Climate Action

Date	Target	Description
29/11/2005	Aviation industry conference	2 EF and PS activists trespass and disrupt an aviation industry conference
29/11/2005	Aviation industry, Tower Bridge	Members of HACAN, AW and EF conduct activities at Tower Bridge, London
Feb 2006	Aviation industry conference	Activists disrupt speech of Douglas Alexander (then Transport Secretary) at an aviation industry conference
?	Department for Transport	London residents halt traffic outside HQ of DfT
3/4/2006	BAA HQ, HPW	Activists blockade BAA's HQ and are not removed for 2.5 hours. Includes D-locking etc
*18/7/06	Didcot A Power Station	3 Reclaim Power activists occupy a lighting tower at Didcot
*22/8/06	Hartlepool Nuclear Power Station	6 activists blockade the main entrance of the power station
*26/8-4/9/06	Drax Power Station	CfCA 2006. Estimated police bill: £4 million
*31/8/06	Drax Power Station	Day of Action. 7 activists occupy a lighting tower, 38 activists are arrested, attempts made to breach perimeter fence. Activists succeed in locking themselves to a coal conveyor belt for 4 hours
20/9/06		Court of Appeal quashes ASBOs given to activists at CfCA 2006
*24/9/06	NEMA	25 PS activists occupy taxiway at NEMA
*3/11/06	Didcot Power Station	30 Greenpeace activists invade power station. Power station closes down for 48 hours. Estimated cost of closure: £500k
6/11/06	EasyJet, and 25 travel agents	12 PS activists occupy the inside, roof and front entrance of EasyJet's HQ in Camden; simultaneously lock-on blockades are carried out against 25 travel agents across the UK
4/12/06	North Somerset Env't & Planning Office	South West Climate Action activists conduct activities to challenge plans to expand Bristol Airport
2006	Southend by-pass	'Camp Bling' – protest against building of road
28/12/2006	NPower	Activists occupy house belonging to NP in a 'legal squat' to prevent infilling of Radley Lakes with PFA
3/2/07	Esso petrol station, Manchester	30 activists shut down a petrol station for 2 hours
*10/4/07	Ratcliffe-on-Soar power station	11 activists lock on to conveyor belts supplying the power station for 'several hours'
26/4/07	Rolls Royce Raynesway, nr. Derby	Activists disrupt work at plant which supplies equipment to Trident nuclear submarines
2/5/07	BAA HQ, HPW	PS activists blockade HQ of BAA at HPW. 4 activists are arrested for aggravated trespass
23/5/07	BAA/HAL	CfCA 2007 announces that it will target HAL and plans to expand the airport in the future

8/6/07	Lastminute.com	1 activist superglues herself to the offices of lastminute.com in Victoria, London
*16/6/07	NEMA	2 PS activists superglue themselves to passenger entrances of NEMA
16/6/07	BA	Activists disguise themselves as stewards and offer passengers for domestic flights free train tickets

Key:

EF – EarthFirst	CfCA – Camp for Climate Action
PS – Plane Stupid	NEMA – Nottingham East Midlands Airport
HACAN – Heathrow Association for the Control of Aircraft Noise	HPW – Heathrow Point West (BAA's HQ)
AW – AirportWatch	HAL – Heathrow Airport Limited
DfT – Department for Transport	BA – British Airways
BAA – British Airport Authority	

Appendix 3

Analysis of main actions conducted by environmental activists during the Camp for Climate Action 2007 (14/8/2007–21/8/2007)

Date	Target	Description
16/8/2007	Biggin Hill Airport	Activists D-lock themselves to gates
16/8/2007	Farnborough Airport	9 activists D-lock themselves onto access road
17/8/2007	XL Airways, Crawley	Activists occupy the airline's offices
17/8/2007	DfT HQ, London	Activists chain doors and superglue themselves to entrance of office
18/8/2007	World Freight Centre, Heathrow	Activists blockade an access road
18/8/2007	Nippon Express depot, Heathrow	Activists conduct activities at Sipson High Street
18/8/2007	Carmel Agrexco	40 activists occupy offices
18/8/2007	Bristol Airport	Activists blockade entrance of airport and distribute climate chaos flyers
19/8/2007	BA World Cargo Depot	8 protestors form a circle using lock-in tubes outside the depot in Hatton Cross
19/8/2007	Heathrow Business Academy	1 activist superglues himself to a security vehicle
19/8/2007	Heathrow Business Academy and BAA HQ, HPW	3 activists occupy the roof of the Business Academy and display a large banner
19-20/8/2007	BAA HQ, HPW	300 activists blockade the car park and entrance to BAA HQ, HPW.
20/8/2007	Sizewell Nuclear Power Station, Suffolk	Activists blockade entrance to two nuclear power stations
20/8/2007	BP HQ, St James Sq, London	Activists superglue themselves to head office of BP in central London and blockade entrance
20/8/2007	Climate Care, Oxford	Activists blockade offices of a carbon offsetting company
20/8/2007	Trafalgar Square, London	Activists conduct activities at Trafalgar Square, London to publicise climate change