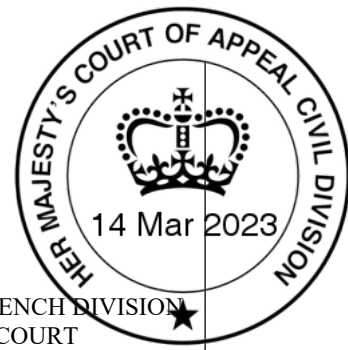




TUESDAY 14 MARCH 2023



IN THE COURT OF APPEAL

ON APPEAL FROM KING'S BENCH DIVISION
QB-2021-003576

BEFORE DAME VICTORIA SHARP PRESIDENT OF THE KING'S BENCH DIVISION
SIR JULIAN FLAUX, THE CHANCELLOR OF THE HIGH COURT
LORD JUSTICE LEWISON

CA-2022-001066

B E T W E E N

NATIONAL HIGHWAYS LIMITED

CLAIMANT /
APPELLANT

ON PAPER

Application No.

CA-2022-001066

- and -

1. PERSONS UNKNOWN CAUSING THE BLOCKING OF, ENDANGERING, OR PREVENTING THE FREE FLOW OF TRAFFIC ON THE M25 MOTORWAY, A2, A20 AND A2070 TRUNK ROADS AND M2 AND M20 MOTORWAY, A1(M), A3, A12, A13, A21, A23, A30, A414 AND A3113 TRUNK ROADS AND THE M1, M3, M4, M4 SPUR, M11, M26, M23 AND M40 MOTORWAYS FOR THE PURPOSE OF PROTESTING
2. MR ALEXANDER RODGER AND 132 OTHERS

DEFENDANTS/
RESPONDENTS

UPON the Appellant's application for summary judgment and appeal against the Orders of the Mr Justice Bennathan dated respectively 9 May 2022 ("**the Injunction Order**") and 12 May 2022 ("**the Judgment Order**") which dismissed the Appellant's application for summary judgment against the First Respondents and 109 of the Second Respondents

AND UPON this Court having varied the Order of Bennathan J dated 9 May 2022 (the "**Injunction Order**") as set out in paragraph 2 of this Order and set aside the Order of Bennathan J dated 12 May 2022 (the "**Judgment Order**")

AND UPON the Appellant confirming that this Order is not intended to prohibit lawful protest which does not block or endanger, or prevent the free flow of traffic on the Roads defined in paragraph 5 of this Order

AND UPON hearing Leading and Junior Counsel for the Appellant and Mr Crawford and Mr Tulley, two of the named Respondents, in person

IT IS ORDERED THAT:-

1. The appeal is allowed.
2. Excepting paragraphs 5 to 8 and 17 thereof, the Injunction Order is set aside.
3. The “Named Defendants” are those Defendants with their numerical designations (e.g. D1, D2 etc.) whose names appear in the revised and re-numbered Schedule 1 annexed to this Order to reflect the Order made at paragraph 7.
4. The term “Defendants” refers to both “persons unknown” as defined as First Defendant in paragraph 6 of the Injunction Order and to the Named Defendants.
5. For the purposes of this Order, “the Roads” shall mean all of the following:
 - 5.1. The M25, meaning the London Orbital Motorway and shown in red on the plans at Appendix 1 annexed to this Order.
 - 5.2. The A2, A20, A2070, M2 and M20, meaning the roads shown in blue and green on the plans at Appendix 2 annexed to this Order.
 - 5.3. The A1(M) (Junction 1 to Junction 6), A1 (from A1M to Rowley Lane and from Fiveways Corner roundabout to Hilltop Gardens), M11 (Junction 4 to Junction 7), A12 (M25 Junction 28 to A12 Junction 12), A1023 (Brook Street) (from M25 Junction 28 roundabout to Brook Street Shell Petrol Station access), A13 (M25 Junction 30 to A1089), A13 (from junction with A1306 for Wennington to M25 Junction 30), A1089 (from junction with A13 to Port of Tilbury entrance), M26 (whole motorway from M25 to M20), A21 (M25 to B2042), A23 (M23 to Star Shaw), M23 (Junction 7 to Junction 10 (including M23 Gatwick Spur)), A23 (between North and South Terminal Roundabouts), A3 (A309 to B2039 Ripley Junction), M3 (Junction 1 to Junction 4), A316 (from M3 Junction 1 to Felthamhill Brook), A30 (M25 Junction 13 to Harrow Road, Stanwell, Feltham), A3113 (M25 Junction 14 to A3044), M4 (Junction 1 to Junction 7), M4 Spur (whole of spur from M4 Junction 4 to M4 Junction 4a), M40 (Junction 7 to A40 at Fray’s River Bridge), M1 (Junction 1 to Junction 8), A405 (from M25 Junction 21A to M1 Junction 6), A1 (from Fiveways Corner roundabout to Hilltop Gardens), and A414 (M1 Junction 8 to A405),

meaning the roads shown in red on the plan at Appendix 3 annexed to this Order;

- 5.4. In the case of each of the Roads, the reference to the Roads shall include all carriageways, hard shoulders, central reservations, motorway (including the A1(M)) verges, slip roads, roundabouts (including those at junctions providing access to and from the Roads), gantries, traffic tunnels, traffic bridges including in the case of the M25 the Dartford Crossing and Queen Elizabeth II Bridge and other highway structures whether over, under or adjacent to the motorway/trunk road, together with all supporting infrastructure including all fences and barriers, road traffic signs, road traffic signals, road lighting, communications installations, technology systems, lay-bys, police observation points/park up points, and emergency refuge areas.
6. From 10 June 2022 until 23.59 hrs on 9 May 2023 the Respondents and each of them are forbidden from:
 - 6.1. Blocking or endangering, or preventing the free flow of traffic on the Roads for the purposes of protesting by any means including their presence on the Roads, or affixing themselves to the Roads or any object or person, abandoning any object, erecting any structure on the Roads or otherwise causing, assisting, facilitating or encouraging any of those matters.
 - 6.2. Causing damage to the surface of or to any apparatus on or around the Roads including by painting, damaging by fire, or affixing any structure thereto.
 - 6.3. Entering on foot those parts of the Roads which are not authorised for access on foot, other than in cases of emergency.

Alternative service

7. The Appellant is permitted in addition to personal service to serve this Order on the Second Respondents and any other named defendants by the following methods together:
 - 7.1. service of the sealed Order on Insulate Britain by email to their known email addresses insulatebritainlegal@protonmail.com and ring2021@protonmail.com; and

- 7.2. posting a copy of this Order through the letterbox of each named defendant (or leaving it in a separate mailbox) with a notice affixed to the front door if necessary, drawing the recipient's attention to the fact the package contains a Court Order. If the premises do not have a letterbox, or mailbox, a package containing this Order may be affixed to the front door marked with a notice drawing the recipient's attention to the fact that the package contains a court order and should be read urgently. The Notices shall be given in prominent lettering in the form set out in Appendix 4.
8. The Appellant is directed to take the following steps to publicise the existence of this Order:
 - 8.1. Placing copies of the Order on the National Highways website;
 - 8.2. Advertising the existence of this Order in the London Gazette;
 - 8.3. Sending a copy of this Order to Insulate Britain's known email addresses: ring2021@protonmail.com and insulatebritainlegal@protonmail.com.
9. For the avoidance of doubt, persons who have not been served with this Order by an acceptable method are not bound by its terms. Compliance with paragraphs 7.1 and 8.1 – 8.3 above **does not constitute service** on any Defendant, nor does a failure to comply with paragraph 11 above constitute a failure of service.

Third-Party Disclosure

10. Pursuant to CPR 31.17, the Chief Constables for those forces listed in Schedule 3 to this Order shall procure that the officers within their forces disclose to the Appellant:
 - 10.1. all of the names and addresses of any person who has been arrested by one of their officers in the course of, or as a result of, protests on the Roads referred to in these proceedings; and
 - 10.2. all arrest notes, body camera footage and/or all other photographic material relating to possible breaches of this Order.

11. Without the permission of the Court, the Appellant shall not make use of any document disclosed by virtue of paragraph 10 of this Order, other than for one or more of the following uses:
 - 11.1. applying to name and join any person as a named defendant to these proceedings and to serve the said person with any document in these proceedings;
 - 11.2. investigating, formulating, pleading and prosecuting any claim within these proceedings arising out of any alleged breach of this Order;
 - 11.3. use for purposes of formulating, pleading and prosecuting any application for committal for contempt of court against any person for breach of any Order made within these proceedings.
12. Until further Order, the postal address and/or address for service of any person who is added as a defendant to these proceedings shall be redacted in any copy of any document which is served other than by means of it being sent directly to that person or their legal representative.
13. The Appellant is to serve this order on the Police Representative Assistant Chief Constable Owen Weatherill (owen.weatherill@npocc.police.uk), by email only.

Further directions

14. The Respondents or any other person affected by this Order may apply to the Court at any time to vary or discharge it but if they wish to do so they must inform the Appellant's solicitors by email to the addresses specified at paragraph 21 below 48 hours before making such application of the nature of such application and the basis for it.
15. Any person applying to vary or discharge this Order must provide their full name and address, and address for service to the Claimant and to the Court, and must also apply to be joined as a named defendant to these proceedings at the same time.

16. The Appellant has liberty to apply to extend, vary or discharge this Order, or for further directions.

COSTS

17. There will be no variation of the costs Order dated 16 January 2023 of Bennathan J and no order as to costs of the appeal.

REASONS

1. The appeal was pursued by the Appellant essentially as being in the public interest. The Second Respondents did not formally oppose the appeal and although two of the 109 named defendants addressed the Court at the hearing, very little time was taken up by that presentation and it cannot have increased the Appellant's costs to any appreciable extent. The Court considers it would be unreasonable and disproportionate to order the Second Respondents to pay any of the costs of the appeal.
2. The Court sees no reason to vary the costs Order made by the judge. It will be for the High Court at any review hearing to determine what if any costs Order to make in the case.

COMMUNICATIONS WITH THE CLAIMANT

18. The Appellant's solicitors and their contact details are:

DLA Piper UK LLP

Attention: Petra Billing and Rob Shaw

1 St. Paul's Place

Sheffield S1 2JX

E: petra.billing@dlapiper.com and rob.shaw@dlapiper.com

T: 0207 796 6047 / 0114 283 3312

(The Court sat on 16th February 2023 from 10.34 to 14.46)

BY THE COURT

* This order was drawn by Ann Marie Smith (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to The Associate, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44456 Strand) and quote the Court of Appeal reference number. The Associate's telephone number is 0207 947 7183 and 0207 947 7856.