

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

LEEDS DISTRICT REGISTRY

BETWEEN:

SHEFFIELD CITY COUNCIL

Claimant

v.

(1) THE DEFENDANTS LISTED IN APPENDIX 1¹

**(2) PERSONS UNKNOWN BEING PERSONS INTENDING TO ENTER OR REMAIN IN SAFETY ZONES
ERECTED ON PUBLIC HIGHWAYS IN THE CITY OF SHEFFIELD FOR THE PURPOSES OF IMPEDING OR
PREVENTING THE REMOVAL OF TREES**

Defendants

Draft/ STATEMENT OF CASE

The Claim

1. This is a claim for:
 - a. an injunction to restrain the Defendants from continuing to take unlawful direct action (or to aid, counsel, encourage, direct or facilitate others to take direct action) whose intended and actual effect is to prevent the lawful felling of trees in highways belonging to Sheffield City Council ("the Council"); and
 - b. damages in respect of any losses caused to the Council by the unlawful direct action.

The Background

2. The Council is the highway authority (s.1(2) Highways Act 1980 – "the 1980 Act")) and the local authority for the area shown edged red on the plan at appendix 2². By virtue of s.263 of the 1980 Act it is vested with title to all the highways to which this claim relates ("the Highways") listed at appendix 3³. It has a statutory duty to maintain them under s.41 of the 1980 Act ("the S.41 maintenance duty") and to protect the rights of the public to the use and enjoyment of them under s.130 of the 1980 Act.
3. Trees within the Highways can: (1) pose a danger to users of the highway (dead, dying, decaying or dangerous trees); (2) damage the highway (damaging trees); and/or (3) affect the ability of some member of the public to use the highway (what are termed "discriminatory" trees).

¹ Who is ultimately named as a defendant will depend on the responses to the pre-action letter

² This will be a plan of Sheffield's area with boundary shown in red

³ This will be a list of all the public highways in Sheffield's area where trees remain to be felled.

4. As a matter of course, compliance with the S.41 maintenance duty therefore requires measures to identify trees within those categories (“the 6Ds categories”) and to manage and/or remove and replace them. Addressing the tree issue is also often a necessary first step in carrying out more general maintenance work.
5. For historic reasons, by 2009 the Council had accrued a significant backlog of highway maintenance work including works to manage highway trees within the categories above. On 31st July 2012, it entered into a 25 year private finance initiative contract (“the PFI Contract”) with Amey Hallam Highways Limited (“Amey”) under which the S.41 maintenance duty in respect of the Highways is exercised on the Council’s behalf (reg 3 of the Contracting Out (Highway Functions) Order 2009) by Amey. The Council has given Amey a licence to access and use the Highways for the purposes of delivery of the services under the PFI Contract.
6. As part of the PFI Contract, Amey was required to identify trees which fell within the 6Ds Categories and to propose the appropriate action to be taken in respect of them. Amey’s proposal in respect of each tree to be felled is subject to approval by the Council. Outside the PFI Contract, the Council has appointed an Independent Tree Panel (“ITP”) to advise it. All the trees currently proposed to be felled have been through that process. There is no outstanding challenge to any part of that process.
7. A challenge to the Council’s approach to tree removal failed in *R (Dillner) v. Sheffield City Council* [2016] EWHC 945 (Admin) and a renewal application to the Court of Appeal failed.
8. A total of around 6000 trees were programmed to be felled between 2012 and December 2017. At the date hereof the total number of trees remaining to be felled is around 1500. The unlawful direct action as explained below is preventing or impeding the felling of some of the remaining trees.

The Direct Action

9. The Defendants oppose the removal of highway trees and have taken unlawful direct action (and/or have encouraged others to take unlawful direct action) to prevent the lawful removal of trees. There is also an unincorporated group called “Sheffield Trees Action Group” (“STAG”) which co-ordinates, encourages and facilitates the direct action. The Defendants (and STAG) are thus preventing the Council through Amey from undertaking the works which have been judged, through a lawful process, to be the appropriate means to secure compliance with the s.41 maintenance duty.
10. The usual form of the direct action is as follows:
 - a. when the staff instructed to remove the trees (“the Tree Surgeons”) arrive at a particular location, protestors who see them send out social media messages through for example the STAG Facebook group to encourage people to attend to take direct action;

- b. the Tree Surgeons erect (or try to erect) a barrier around the base of each tree to create a safe working zone in accordance with s.174 of the 1980 Act and s.14 of the Road Traffic Regulation Act 1984 (“the Safety Zone”);
 - c. a Notice is affixed to the Safety Zone (Appendix 4⁴) which gives warning that entry into or remaining in the Safety Zone is unlawful;
 - d. one or more of the protestors enter the Safety Zone with the sole purpose of preventing the Tree Surgeons from doing that which they have a legal right to do and refuse to leave (“the Direct Action”);
 - e. others encourage, aid, counsel or direct other people to attend to provide further support for the Direct Action and thereby extending it; and
 - f. as a result, the Tree Surgeons have to cease work for safety reasons.
11. The effect is that the lawful removal of trees belonging to the Council in pursuance of its statutory duties is prevented.
12. The aim of the Defendants is to force the Council not to remove the trees and to adopt other, much more expensive options, to secure highway maintenance whilst leaving the trees *in situ*. The Council has reached lawful decisions to reject those alternative options which, in any event, in many cases, are not practicable or possible and which in every case would involve considerable additional public expenditure which, the Council has determined, is not a priority.

Causes of Action

13. The Direct Action constitutes:
- a. a trespass to the area of the highway within the Safety Zone for two separate (but complementary) reasons:
 - i. the highway is vested in the Council: s.263 of the 1980 Act. The public have a limited licence to use the highway for all lawful purposes: see *DPP v. Jones* [1999] 2 AC 240. Provided that the activities are reasonable, do not involve the commission of a public or private nuisance and do not amount to an obstruction of the highway (p254H and p257D), there is no trespass. Thus, peaceful protest against the tree felling outside the Safety Zones would be lawful. However, there is a stark distinction between such peaceful protest and direct action to prevent the lawful exercise of statutory powers and duties. The latter is *unreasonable* (as well as a nuisance and an obstruction) and thus beyond the scope of the licence to use the highway and thus a trespass. It is unreasonable for at least the following reasons: (1) it is a criminal offence under s.241 TULRA 1992 and s.303 of the 1980 Act (see below); (2) it prevents, without lawful excuse, others from doing what they are lawfully entitled to do on the highway and what they have decided in the lawful exercise of their powers in a democracy is in the public interest; and (3) it is at least one other tort - unlawful interference with business; and

⁴ This will be a copy of the Notice affixed to each safety zone a copy of which is provided to protestors in the safety zone

- ii. the Council has made lawful orders under s.14 of the Road Traffic Regulation Act 1984 prohibiting the use of that area within the Safety Zones by anyone other than authorised persons (“the RTRO Orders”). The public licence to use these areas of highway at all have been lawfully removed. Any incursion into these Safety Zones is thus unlawful and a trespass.
- b. a nuisance - by virtue of s.263 of the Highways Act, the Council is the lawful owner of the Highways. Its lawful activities on its land in pursuance of its powers and duties is being unreasonably interfered with by the Direct Action;
 - c. the tort of unlawful interference with the business of the Council (and of Amey). The relevant “business” of the Council is the exercise of its highway functions (and this tort is sometimes referred to as the tort of unlawful interference with statutory powers). The Direct Action interferes with the Council’s lawful exercise of its s.41 (and s.130) duty and its highway maintenance powers. The Council will rely, amongst other authorities, on *Department of Transport v. Williams* 3rd December 1993 (The Times 7 December 1993) and *R (Chief Constable of Devon and Cornwall) ex parte Central Electricity Generating Board I* [1982] 1 QB 458; and
 - d. Unlawful obstruction of the highway – the right of Amey to go about its lawful business on the highway is impeded by the Direct Action. There is no right to unreasonably obstruct or prevent others from their lawful activities on the highway.
14. Persons aiding, counselling or directing and/or participating in the common design of preventing the tree felling by Direct Action – whether physically present or not – are also liable in the causes of action in a – c above.

Offences

15. The Direct Action also constitutes at least the following criminal offences (whether or not the police decide to prosecute for these offences):
- a. a criminal offence under s.241 Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) - the Direct Action hinders, and is intended to hinder, the Tree Surgeons in the use of their tools and property with a view to compelling them to abstain from doing that which they have a legal right and duty to do. It is wrongful (for all the reasons given under paragraph 13 above) and without legal authority; and
 - b. a criminal offence under s.303 of the 1980 Act. The Tree Surgeons are lawfully acting in execution of s.41 of the Highways Act 1980 and the Direct Action is a wilful obstruction of the Tree Surgeons in the execution of the S.41 Maintenance Duty.
16. It is also unlawful to encourage others to commit criminal offences.
17. The Council is empowered by s.222 of the Local Government Act 1972 (“the 1972 Act”) to seek injunctions to restrain unlawful conduct whether criminal or not: *Stoke on Trent City Council v.*

B&Q (Retail) Ltd [1984] Ch 1 and [1984] AC 754. Through a report dated 26 June 2017 the Council has concluded that it should do so.

18. The Direct Action will continue unless restrained by the Court.

The Effect of the Direct Action

19. The core effect of the Direct Action is that it prevents the Council from securing, and Amey from carrying out, works judged to be appropriate means to secure compliance with the S.41 maintenance duty and thus prevents compliance with that duty in the way the Council has decided to comply with it. Through the Direct Action, the Defendants seek to dictate to the Council how it should exercise its statutory powers and duties and the public spending priority to be accorded to highway trees.

20. Further, the Direct Action has the effect of:

- a. preventing removal of the trees required to be felled to avoid further damage to the highway and as part of the compliance with the statutory duty to maintain the highway;
- b. causing direct loss through abortive trips and work by the Tree Surgeons;
- c. seriously impeding and delaying the carrying out of scheduled road maintenance operations across the Council's area with significant consequential implications for the cost, phasing and delivery of those necessary works – if the trees cannot be removed as the first stage of the highway maintenance works then the remainder of the works cannot be carried out; and
- d. seriously complicating the provision of maintenance pursuant to the S.41 maintenance duty under the PFI Contract. Whilst the Council will resist any attempt by Amey to pass losses caused by the Direct Action to the Council, the Direct Action has the potential to cause unpredictable but serious implications for the operation of the PFI Contract with potentially significant implications for the cost to the public purse.

The Right to Protest

21. The right of peaceful protest is protected by the common law and Articles 10 and 11 of the European Convention of Human Rights ("A10" and "A11"). Subject to limitations, the public highway may lawfully be used for such protests (*DPP v. Jones* [1999] 2 AC 240). Consistent with basic principle and subject to lawful passage along the Highways not being impeded, there can be no objection to the Defendants congregating on the Highways outside the Safety Zones with the purpose of protesting against - but not physically preventing – the felling.

22. However, the right to peaceful protest does not extend to taking unlawful Direct Action (or encouraging others to do so) to prevent the Council from carrying out their lawful business pursuant to their statutory duties in the public interest: see *G v. Germany (Application No. 13079/87)* referred to with approval by the Court of Appeal in *City of London v. Samede* [2012] EWCA Civ 160; [2012] 2 All ER 1039 at [47]. There is a right to protest; there is not a right to commit criminal and civil wrongs in the course of the protest.

23. Even if the right to protest extends to taking Direct Action (which is denied and inconsistent with the rule of law in a democracy), the circumstances here are such that there is a pressing social need to limit the right to protest by prevention of the Direct Action and any consequent “interference” with the right to protest is justified. The continuation of the protest will breach domestic law, is likely to be indefinite and widespread, will have the effect of preventing lawful business indefinitely and therefore seriously impedes the rights of the Council and Amey in seeking to comply with the S.41 maintenance duty in the public interest (see *Samede* at [37], [39] and [49]).
24. The Direct Action is also designed to have the effect of: (1) preventing necessary highway maintenance to the benefit of the public; and (2) to force the Council to adopt measures for tree protection which will result in very significant additional public expenditure. The Council has taken the decision, which is a matter for it, that it will not devote additional expenditure to this issue because to do so would result in it having to implement additional cuts to essential public services. The intent of the protestors to force the Council to do something it has lawfully decided it is not in the public interest to do is a further reason why an injunction is required here.
25. Reference will be made to *Kuznetsov v. Russia* [2008] ECHR 1170 to show the degree to which a public authority should tolerate disruption from protests. That degree of toleration does not extend to a situation where the Direct Action is designed to and has the effect of preventing THE Council from carrying out activities it has judged appropriate in pursuance of its statutory duties.

The Defendants

26. A number of individuals have been identified who have been involved in Direct Action and/or have encouraged others to participate in the Direct Action.
27. Letters have been sent to individuals identified requiring them to undertake to desist from taking Direct Action in future or otherwise impeding the lawful removal of trees on the highway. Those people who have provided the Undertaking are not named as Defendants in these proceedings (although if they breach the terms of the Undertaking proceedings will be pursued against them).
28. Those who have been identified but who have not provided undertakings are named as Defendants.
29. The nature of their known involvement in Direct Action is set out in the first schedule attached hereto [at the time of this draft that schedule is being prepared]. In the case of each Defendant, they have:
 - a. entered a Safety Zone with the intent of preventing the tree felling work and have not left when required to do so and in many cases have repeated the Direct Action on a number of occasions; and/or

- b. aided, counselled or directed (or engaged in a common design with) others to take Direct Action.
30. They have been given the opportunity to confirm that they will not take further Direct Action or encourage others to do so but have declined to provide the undertaking.
31. For each of them, the history of Direct Action (and/or aiding counselling or directing others) and their refusal to provide the requisite Undertaking justifies a *quia timet* prohibitory injunction in the terms below.
32. There are additional persons unknown who unless restrained by injunction threaten to carry out Direct Action or otherwise impede lawful operations to remove the trees and/or to encourage, facilitate and organise such activities. An injunction should be granted against persons unknown being persons entering or remaining in Safety Zones without the permission of the Council or encouraging, facilitating or organising others to enter to remain in the Safety Zones. They will have notice of the Injunction against them by notice of it and its terms being provided on the Safety Zones.
33. As in *Samede* the Council will ask the Court to appoint a representative Defendant under CPR19.6 and to make directions for service.

Conclusion

34. By reason of the matters aforesaid, the Council seeks an injunction in the terms set out below to restrain the Defendants from entering the Safety Zones, or from encouraging others to do so, on the following individual or and cumulative grounds:
 - a. trespass;
 - b. nuisance;
 - c. the tort of unlawful interference with business (and statutory powers);
 - d. obstruction of the highway; and
 - e. in support of the criminal law in at least s.241 of the TULRA 1992 and s.303 of the Highways Act 1980.

Extent of the Injunction

35. In accordance with the approach of the Supreme Court in *Secretary of State for Environment, Food and Rural Affairs v. Meier* [2009] UKSC 11 [2009] 1 WLR 2780, the injunction should cover all Safety Zones erected anywhere in the Council's area.

Damages Claim

36. The Council claims against each Defendant damages to be assessed covering all losses suffered by it as a result of Direct Action carried out by them.

AND THE CLAIMANT'S CLAIM

1. An injunction restraining the Defendants and each of them from:

- a. entering in or remaining in any Safety Zone established on the Highways to which a notice of this Injunction is attached;
 - b. encouraging, facilitating or organising others to enter or remain in any Safety Zone established or to be established by Amey or the Council for the purpose of felling trees.
2. Damages
3. Costs
4. Further or other Relief.

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