

HIGH COURT HEARING – 5 FEBRUARY 2025 – 10:30 AM – COURT 13

1. ATTENDEES

1.1 The following were present:

- 1.1.1 Mr Justice Ritchie
- 1.1.2 Tim Morshead KC (Landmark)
- 1.1.3 Emma Pinkerton (CMS)
- 1.1.4 Aleksandra Rowe (CMS)
- 1.1.5 Oliver Le May (CMS)
- 1.1.6 Tom Howell (Client)

2. NOTES

- **TM:** *[Introducing]* To renew the protection the court has granted on previous occasions to protect against urban explorers. Your Lordship issued an order which expired this January. CMS made an application for the order to be extended via the papers. That application came before MJ Rice, who ordered that the Claimants bring the matter for an oral hearing and expressed concern that the Court would grant interim orders without bringing it to a litigation conclusion. She extended the injunction for long enough for us to do that, and we were directed to address three matters: the continuing necessity, how the matter comes to the court for an application for interim relief, and how we indicate to bring it to a litigation conclusion. This is the hearing as directed by MJ Rice. We are fortunate you have been able to take this on as it was your Lordship who granted the Judgment previously. I am, of course, open to deal with the matter in any order, but propose to take it in turn.
- **JR:** The issues you wanted to deal with before the Rice Order were dispensing with service, ex parte application, and to extend the injunction, were those the issues? And now they are necessity which comes within whether the injunction should be granted. A question is whether I ask you to provide your case at a later hearing, I have set out some letters in my Ex Tempore without exploring them. Proceed as you see fit. I note that it remains ex parte, but there have not been written notices?
- **TM:** Your Lordship is right, there have been no notifications around the site noting the new uploads. That is my misunderstanding.

- **JR:** The alternative service provision I noted was the usual one. Doesn't mean you can't put up a notice saying we have looked to apply. I have photos of the main notice in the bundle.
- **TM:** Contrary to what I understood was going to happen, there were no notices issued on the site.
- **JR:** Should we really go through the rest of it given it is not appropriate to ask for an injunction or continuation Ex Parte, as it doesn't seem to apply to these explorers?
- **TM:** If the steps that had been taken to notify are not effective, then matters do not get off the ground. The question is whether we have understood your judgment. One school of thought is that what is critical is the difference between an application on an emergency basis, where there is not enough time, and the court grants an interim order to allow time, or on the other hand if they are interim/final order whether there is sufficient evidence to convince the court and notice, rather than resurrecting the difference between interim and final relief.
- **JR:** Yes, as after Wolverhampton, PU Injunctions are quasi-final. An interim is by definition not final, but the old way is that it is interim pending final hearing. Wolverhampton identified this as a new field, but how we get to the result needs to be fair to the PUs and I don't believe the jurisdiction to be interim as it requires POC and requires proceedings to be brought to an end. However, I see that a rush to a final hearing is not helpful to a construction project where the completion may be delayed. You need to get over the interim stage, and no further change has been made save for some teenagers on 18 October, and it is whether criminal proceedings are sufficient instead. It is a matter for you at a substantive or interim hearing in the future. I can extend till a hearing, but it is up for you to determine.
- **TM:** *[missed section]*
- **JR:** If not proper notification, I don't see how you have made this out. You will only achieve a short extension.
- **TM:** If your Lordship will consider the draft order, I believe we are in the territory of the first of the bracketed options.
- **JR:** But after that, notwithstanding, you need my permission as they have not filed an AoS.
- **TM:** That is why I suggest the court should not obsess over whether the whole jurisdiction is equitable. It is equity stepping in. One of the issues with Wolverhampton is that it doesn't flow in sequence, so it is possible for nuances to be

lost. One is that the SC repudiated the analogy between this injunction and quia timet injunction, that is not part of the rationale at all. Minimum starting point is para 139, p.61 of authorities. This is where the SC sets out the start of its criticism of its tendency to silo injunctions into interim and final. At E, they note *[reads section]*.

- **JR:** That is what I call a quasi-final.
- **TM:** The rationale for that, at para 143, where the SC draws attention to existing practice. At sub para 4 *[reads section ending emergency]*. That is why I noted the conceptual issue. *[reads further section]*, can I call the attention to para 144 as it is important conceptually *[reads section ending rights]*.
- **JR:** You can't go further than that, it is what we fear against all of these urban explorers.
- **TM:** It is a known risk.
- **JR:** So it is quasi-final and quia timet, but it is category rather than person. So where does that take us, I want your written submissions before I do an ex tempore injunction. You are asked on a building site injunction so put before me your submissions on how this should be proceeded. In a quasi-final ring, how should the injunction be continued until the end date, and what criteria should be applied. It could be following Wolverhampton. If people continue to do Urbex and your quia timet is still justified, then you should continue.
- **TM:** I agree, not necessary for the court to do a hearing which are procedurally different from hearings in the past. The controlling bit of the test is compelling need. Should instead be that in an emergency case, the Court may give emergency protection where the case is not made.
- **JR:** So do you bring this quasi-final quia timet injunctions to an end under the *[XXX]* CPR by a final injunction or do you continue to ask until the Court believes it is not necessary. I don't believe this is materially different save for the bundle as one is all the evidence, one is only the new evidence.
- **TM:** In practice, some may have only just updated the bundle. We have put in the earlier as well as updated bundle. If anything is missed out it is by mistake.
- **JR:** I will have to leave that to you. I would like you to get into the substance of more recent events, as if I am going to extend, and we will come back for a hearing on notice, you need to show me compelling need. All I see is that an urbex person fell off a bridge in Spain and some boys trying to climb into a yard.

- **TM:** At p.154 & 155, there are examples from London on Social Media accounts from people who have made their way up to tall buildings. 153 relates to incidents on the sites. 154 - 157 is evidence from within London from as recent as December.
- **JR:** So this is JP84 - 87. I couldn't determine if these are fully built or building sites. Although it looked like there were people swinging between the two. Moving to the next, this appears to be trainers on a fully made building, and the next is someone sitting on a building which is unclear if a building site or not, and the next is a fully made building *[missed section]* need to persuade me.
- **TM:** Submission made is based on this evidence, the risk of mishap is great. Risks are not only to those taking part but also to those on the ground, emergency centres and construction sites create a particular hazard from those running from security guards or falling into voids. There is something special not only because of the relative ease of climbing up, but also as the site itself has unfamiliar risks. Combining that with the seen evidence, that Urbex has an allure in London, it is a reasonable inference that construction presents a particular attraction to Urbex Explorers. Further evidence that this site is interesting has been provided, such as those scouting out the premises were doing so for Urbex. When you consider that evidence, and what is a proportionate response, and considering what a compelling need is, it is a dynamic question, the risk here is not one which materialises regularly, but if it does, it has very grave consequences. That is sufficient to compel the court there is a compelling need for an injunction.
- **JR:** And what do you propose as a way forward for procedure in light of the need for notice around the site with links to the website?
- **TM:** My suggestion is that method should be followed with a hearing to be heard potentially in 21 days, but after that method has been used to bring attention to the hearing at which they could make representations.
- **JR:** And you want to maintain within that the draft of your order?
- **TM:** Our draft indicates that in para 2 that we will give notice, as per p252 order, noting the standard requirements at para 4 - 10.
- **JR:** And do you want the either or permission?
- **TM:** It may be that what we do is file a protective part 24 application, but it may be that your Lordship does not need to specify that, as it won't derogate from your orders, it means that when the matter comes back, it gives two bases in which this proceeds.

- **JR:** Let's turn to CPR 24.
- **TM:** You are correct to pick me up on this, as permission is needed to bring summary judgment where no defence has been brought.
- **JR:** Yes, CPR 24.4.
- **TM:** Can I indicate where I think summary judgment is the appropriate point of law by turning to Wolverhampton, p.86 in the authorities bundle (238ii), *[reads section]*. This is a jurisdiction in which there are no defendants, this is an operation of equity unleashed. Against that backdrop, the procedure in the rules to deal with defendants who may or may not have filed an acknowledgment is a legal misconception. What is needed is notification in advance of an order, what matters is what the order contains in terms of protection, and the main one is review combined with the liberty to apply. That is why I believe that actually, one has to grapple with the new jurisdiction and one has to consider that the Court must not regard itself as constrained by what the rules say about the procedure may not be relevant. What is needed is a hearing at which the Court can be satisfied by the compelling need and that those criteria are satisfied. What is also relevant is the form of the order and the court is satisfied that does what equity can provide. I would therefore prefer not to make an application under Part 24, but I can see that for self-protective reasons that my client wants to make one.
- **JR:** I don't want to put forward the potential defences under Part 24. Alternatively, under Wolverhampton, you have a duty to put forward defences a Defendant may provide.
- **TM:** *[missed section]* which allows others to come back and challenge.
- **JR:** Why put it as final where the court can make provision for someone to then come and put it aside. The lack of notice is a problem. I won't put in a long extension until April 2026.
- **TM:** Would you allow the second option?
- **JR:** Yes, I have taken on board the submissions on interim and final, even if they are not your final submission. So you want to take a draft order and determine which parts will be used, an injunction will continue till the next hearing which will be required.
- **JR:** I have an application to continue an interim injunction which is still enforceable today. Before the hearing, I was under the impression there were three issues: Dispensing with service, whether it should be heard ex parte and whether it should be

continued. I am aware that as a result of the Rice Order, there are three challenges for the Claimants, to show necessity, why interim, and the third to show how to conclude proceedings. As discussed with Counsel, I believe they match the issues I have identified and add an additional issue to the third, i.e. whether it should be an interim, final, or quasi-final. What is the Injunction? There was an initial application in 2020 that was granted on 30 July and lasted until 21 January 2021 to stop PUs climbing on high structures. After, the Wiltshire WS in January 2021 noted there was an intruder and general evidence about Urbex. Those orders were continued, and then a Wortley WS was put in 2022, noting there was Urbex in Blackfriars, notices had been put up, and a final injunction was sought. Further Orders were made and a WS from Wortley was put in 2023 noting there had been a further trespass, also referring to judgment in E&C and seeking a further injunction on the basis of Quia Timet or fear of Urbex causing danger. Further WS from Wortley put in noting concern. I put in further directions about notices and weblinks. As per an application in December 2024, the Claimants applied for further injunction which was requested on paper and did not serve it. I have seen the POC and do not object to it. The WS relied on come from EP dated December 2024 which set out the background, and reason not to serve based on understanding Wolverhampton. It is implicit in that WS that it is accepted it is an Ex Parte application, and there was no notice of that application given. She asserted that Urbex was still a concern as relying on the Godden WS. The Godden noted that Phase 2 was ongoing and the Crane would be up until April 2026 so the injunction would continue until then. Godden noted there have been Port Talbot Urbex incidents, and these were shared on Social Media. He stated that the Blackfriars site would be an attraction to explorers. He noted there had been an event in Spain and there had been one case of intrusion at their site. He set out the site security provisions at the site and noted the event on 18 October where two had climbed into the site. Examples given at 84-87 are unclear as to whether they are constructed buildings, so it is not clear whether this is supporting. Godden believes the Bankside Yards would be a continued risk until April 2026. Rice made an order refusing to deal with it in person, and noting there have been issues in approach which I have dealt with this morning. Two further WS from EP noting why it is an Ex Parte decision, noting further evidence on the website, but noting no further notices on the site. On the issues, I dispense with personal service of POC but require them to be uploaded onto the website and hence available through the link. As for Ex Parte, I am not prepared to deal with the

substance as the rules are clear, they are made in circumstances where people have been notified. I am aware that people have not turned up previously, but there may be a new urban explorer who has decided to climb before or after the injunction was made, and they need to be notified. All proper measures should be taken to notify PUs and that has not been done, and so it is inappropriate to deal with this today. I will adjourn to hearing this application for a minimum of 21 days for a time of 2.5 hours. In relation to extending the injunction, TMKC has dealt with the principles behind the current injunction, and whether the extension should be labelled as interim, final or quasi-final. It is not the labelling that is important, it is the substance of what is going on; as noted in *Wolverhampton*, this is a new form of protection for civil rights which sits in between interim and final, and hence the labelling needs to be amended. The substance of the new form is that civil rights of property owners and business owners and landowners and others can be protected by obtaining emergency or longer injunction by application but strict procedural requirements have been imposed by the SC governing PU Injunction. Those requirements I summarised in *Valero*, as well as more recent cases such as *Shell Oil*. It is not clear if there is a settled procedure for finalising such proceedings, and it was with that which *Rice* was dealing. I also signposted in my *Ex Tempore* judgment in January 2024 whether this was an interim injunction which is thought to be dealt with in April subject to any changes in timings, whether this persuades the claimants as to whether they need to extend their injunction. There may be difficulties in putting these applications into the interim injunction where one party seeks to show there is no valid response, whereas *Wolverhampton* notes there is a duty for an applicant to set out the potential responses which may be posed. As for whether there are sufficient grounds in this case, the substantive points it is trespass, it is *Quia Timet*, there has been full and frank disclosure, whether there is sufficient evidence, I roll into potential defence and risks, there is a considerable risk of any Urbex entering into this site based on what may be found at the site over which a PU may trip or fall, and there is also a danger to the security guards, and there is a risk to anyone else on site if they are fallen upon. While the likelihood is not as high as it used to be, it is probable the likelihood has gone down as a result of the injunctions, and I say that as Urbex is continuing elsewhere in London, and because two youths tried to enter the site in October despite the injunctions. As such, it is justified to note that *Quia Timet* are still targeting Bankside Yards, and hence an injunction should be continued for at least 21 days or until the

matter is heard properly. I don't consider that damages are an appropriate measure, as I doubt Urbex have insurance. I believe PUs are properly identified, and I think the Injunctions are tight and clear, as are the boundaries and temporary limits. I am going to note that the service of this order shall be in accordance with my January 2024, and I note that the final hearing is of this application. *[Missing section]* on an interim basis, and I have noted the growth of these PU injunctions. As for the order, I will reserve costs until the next hearing.

- **TM:** Agreed.
- **JR:** Anything else?
- **TM:** No, thank you.