Neutral Citation Number: [2010] EWHC 1613

Case No: HQ10X01980/HQ19X01981

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/06/2010

Before :

MR JUSTICE GRIFFITH WILLIAMS

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Between :

THE MAYOR OF LONDON (on behalf of the Greater London Authority)	**Claimant**
- and -	
(1) REBECCA HALL **(2) BRIAN HAW** **(3) BARBARA TUCKER** **(4) CHARITY SWEET** **(5) LEW ALMOND** **(6)CHAN ANIKER** **(7) ANNA CHITHRAKLA** **(8) CHRIS COVERDALE** **(9) JOSHUA DUNN** **(10) DIRK DUPUTALL** **(11) FRIEND (ALSO KNOWN AS ROBERT HOBBS)** **(12) STUART HOLMES** **(13) RODGE KINNEY** **(14) PROFESSOR CHRIS KNIGHT** **(15) PEACE LITTLE** **(16) SIMON MOORE** **(17) ANITA OLIVACCE** **(18) PETER PHOENIX** **(19) RAGA WOODS** **(20) PERSONS UNKNOWN BEING PERSONS ENTERING OR REMAINING WITHOUT THE CONSENT OF THE GREATER LONDON AUTHORITY OR THE MAYOR OF LONDON AT LAND KNOWN AS PARLIAMENT SQUARE GARDENS IN CONNECTION WITH DEMOCRACY VILLAGE PROTEST**	**Defendant**

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Ashley Underwood QC and David Forsdick (instructed by Eversheds) for the Claimant.
Jan Luba QC (instructed by Bindmans LLP and (Birnberg Peirce & Partners) for the First, Second and Third Defendants on the first issue only.
Stephanie Harrison and John Beckley (instructed by Bindmans LLP) for the First Defendant
Paul Harris (instructed by Birnberg Peirce & Partners) for the Second Defendant and for the Third Defendant (until 23 June 2010)
The Third Defendant (after 23 June 2010) and the Fourth to Twentieth Defendants in person.

Hearing dates: 14th, 15th, 16th, 17th, 21st, 22nd, 23rd, 24th and 29th June 2010.

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Judgment Approved by the court for handing down (subject to editorial corrections)

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

Mr Justice Griffith Williams :

[All references in square brackets are to the page numbers in the Trial bundle. The legislation and other relevant provisions are in the Appendix to this judgment]

Introduction:

1. Parliament Square Gardens ["PSG"] comprises the central area of Parliament Square around which runs the public highway, including in places pavement. To the east is the Palace of Westminster, to the south Westminster Abbey, to the west the Supreme Court and to the north, Whitehall and various government buildings. It is a highly important open space and garden at the heart of London and our Parliamentary democracy; it is an area of significant historic and symbolic value worldwide.

2. PSG is part of the Westminster Abbey and Parliament Square conservation area and a UNESCO Designated World Heritage Site ("WHS"). It is classified as Grade II on English Heritages Register of parks and gardens with special historic interest. It provides world renowned views of both the Palace of Westminster and Westminster Abbey.

3. On 1 May 2010, four separate groups said to represent the Four Horsemen of the Apocalypse and which had formed up at different locations across London arrived and set up a camp which they named their 'Democracy Village', They then stated intention was to remain until 6 May 2010, the date of the General Election but they have continued to occupy PSG and (on the evidence of a number of the defendants – *post*) have every intention to do so for the foreseeable future.

4. Brian Haw (the 2nd defendant) has been camping lawfully since 2001 on a pavement on the eastern side of PSG - a part of the highway controlled by Westminster City Council. He was joined some years later by Barbara Tucker (the 3rd defendant). They have been conducting their own protest for Love, Peace, Justice for All. They and those associated with them are in no way a part of the Democracy Village.

5. The defendants who are a part of the Democracy Village are demonstrating variously in respect of a number of causes – these include the war in Afghanistan, the war in Iraq, genocide, war crimes and world wide environmental issues.

6. The care, control, management and regulations of PSG is the function of the Greater London Authority ["GLA"] which has a duty to keep PSG in good order and condition: section 384(3) of Greater London Authority Act 1999 ["GLAA"]. The functions and duties are exercised by the Mayor on behalf of the GLA which has powers to make such byelaws to be observed by persons

using PSG as the GLA considers necessary for securing the proper management of PSG, the preservation of order and the prevention abuses there: section 385(1) of GLAA. The byelaws (see Appendix) prohibit any person within PSG, unless acting in accordance with permission given by the Mayor from camping, taking part in any assembly, attaching any article to any tree or fence or other structure and going onto shrubbery or flower beds. Notwithstanding repeated requests to leave, those who are part of the Democracy Village have remained on PSG.

7. By claims issued and served on 26 May 2010, the Mayor of London on behalf of the GLA claimed an order for possession of PSG forthwith, as against the 1st and 20th (then the 4th) defendants in respect of the land shown edged with a blue line on the plan attached to the claim and as against the 2nd and 3rd defendants in respect of the land edged green on the attached plan, and for an injunction as against the 1st and 20th defendants requiring them (i) forthwith to dismantle and remove from the grassed area all tents and other similar structures on PSG and thereafter not to bring onto or erect on PSG any tent or any other similar structure except in accordance with any permission granted by the Mayor or on his behalf under Byelaw 5(9); (ii) forthwith to cease to organise or take part in the assembly known as Democracy Village and thereafter not to take part in any assembly which does not have permission under Byelaw 5 and Section 133 of the Serious Organised Crime Police Act 2005 ["SOPCA"] and (iii) forthwith to leave PSG in accordance with the lawful directions issued on behalf of the Mayor and as against the 2nd and 3rd defendants, an injunction requiring them to (i) forthwith dismantle and remove from the grassed area all tents and other structures and thereafter not to bring onto or erect on that grass area any tent or similar structure except in accordance with any permission granted by the Mayor or on his behalf under Byelaw 5 (9); (ii) forthwith the cease to organise or take part in any assembly on the grassed area which does not have permission under Byelaw 5 and/or Section 133 of the SOCPA and (iii) forthwith to leave the grassed area in accordance with the lawful directions issued on behalf of the Mayor.

8. The hearing date for the Part 55 claim and the first hearing for the Part 7 claim were set for 3 June 2010. At the hearing, Charity Sweet asked to be added as a defendant to that part of each of the two concurrent actions which relates to the claims against the 2nd and 3rd defendants and a number of persons asked to be joined as defendants on the basis that they are participating in and/or in occupation of Democracy Village; the claimant made it clear that he had no specific allegations against any of these persons other than their own admissions in seeking to be joined. Maddison J gave leave for Charity Sweet to be joined as the 4th defendant and for the others to be joined as defendants 5-19; the consequence was that the original 4th defendant became the 20th defendant. Maddison J ordered that the need for service in relation to all documents in the concurrent actions to 3 June on the additional defendants be dispensed with.

9. At an adjourned hearing on 7 June, Maddison J gave the claimant permission to amend the claim in both Claims to (i) add the defendants who had been joined at their requests and to make consequential amendments to the pleadings; (ii) to particularise as far as necessary the allegations made and (iii) to refine the terms of the injunction sought – the terms of the injunction sought particularised above are those in the amended particular of claim. Amongst various case management directions, Maddison J ordered that any party intending to rely on any evidence or expression of view should submit such evidence to the claimant's solicitor by 4pm on Wednesday 9 June.

10. The pleaded cases of the 1st, 2nd and 3rd defendants (and the defences of the unrepresented defendants amount to a denial of any breach of the byelaws and an assertion of their Article 10 & 11 ECHR rights; no further summary is necessary because counsel, at the outset of the hearing, helpfully agreed a List of Issues (see below). Other defences raised by some of the unrepresented defendants will be considered later in the judgment. A counterclaim on behalf of the 2nd and 3rd defendants for a declaration that their demonstration "within the area marked green on the plan and on the adjacent pavement" is a lawful exercise of their rights to free speech and assembly is a restatement of their defence and will be considered as such. A further claim, in a proposed re-amended Counterclaim for a declaration that byelaws 5(9) and (10) are unlawful was abandoned.

Article 6, European Convention on Human Rights

11. During the course of the hearing a number of Article 6 European Convention of Human Rights issues were raised by various defendants Article 6 provides:

> "1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of … public order".

At the start of the hearing, Brian Haw, (the 2nd defendant) submitted he had had insufficient time to prepare for trial and was disadvantaged in particular because he had insufficient time to investigate and to approach witnesses to events, particularly those in August and October 2007. Charity Sweet (the 4th defendant) said she was required by the order of Maddison J to read the claimant's case, prepare a skeleton argument, write a witness statement and pose "any response and counterclaim" in one day – in her evidence she said three days. Stuart Holmes (the 12th defendant) submitted there was insufficient time for solicitors whom he had approached to apply to the Legal Services Commission for legal assistance to address issues of law; he also claimed there was conflict of interest between his case and that of the other defendants and that as a litigant in person there was inequality of arms because the claimant is

represented by leading and junior counsel; at various times during the hearing, he repeated his complaint that he was disadvantaged by lack of legal representation and the time to prepare.

12. As to Brian Haw, although he was represented by counsel, his counsel (Mr Harris) made no application but said Mr Haw wanted to apply for an adjournment. Mr Haw's application was refused because the investigation of previous court proceedings and the circumstances of the removal of his tented area in August/October 2007 are irrelevant to these proceedings and the claimant agreed to a redacted version of the statement of Syed Shah, so that all contentious issues of fact to which Mr Haw may have wanted to call evidence, were removed; the documentary evidence in the form of emails between Mr Haw's solicitors and the GLA between June and October 2007 (relevant to the issues of his right to occupy the grassed area) was available and introduced in evidence; although he said he would not have time to call medical evidence, he did produce a medical report (see *post*). Importantly Mr Haw, throughout, had the services of counsel.

13. As to Mrs Sweet, she insisted on being joined as a defendant, it was for her to prepare her case in time for the hearing. The narrow issues she chose to defend were whether she had occupied the grassed area delineated in green (which she has admitted), whether she had a right to possession (which she does not assert), whether she has a defence to the possession claim and/or the claim for an injunction. That is a matter for her evidence. The three days available to her before the hearing and the first two days of the hearing which were taken up with legal argument, were, in my judgment, sufficient to prepare her case. I observe she had sufficient time to prepare skeleton arguments in support of an abuse of process application and four witness statements (see *post*).

14. As to Mr Holmes, he served no statement and at no time explained what conflict of interest there was – indeed when he gave his evidence, he clearly allied himself to the positions taken by those defendants from the Democracy Village who had given evidence before him. The absence of legal advice did not, in my judgment, prejudice his case. Another lawyer could not have added to the thorough and relevant submissions of Mr Luba. The factual issues in the case were uncomplicated and he was joined as a defendant at his own request. It would have been contrary to the summary nature of Part 55 proceedings against trespassers to have allowed him an adjournment when no other unrepresented defendant (Mrs Sweet excepted) made a similar application and he could not demonstrate an acceptable reason.

15. It is the Court's duty to keep under review a party's complaint that his or her Article 6 rights have been breached and I have done so – nothing occurred during the course of the hearing to cause me to revisit my decision to refuse the applications for an adjournment; I was, and remain satisfied that Mr Haw, Mrs Sweet and Mr Holmes were able to address the issues and defend the claims being made against them.

16. Barbara Grace Tucker (the 3rd defendant) complained in her written Final Submissions, provided to the Court on 24 June, that she had not been given a reasonable amount of time to prepare anything in the case, once she was representing herself following the withdrawal of her solicitors on 23 June. Those written submissions are detailed and address the issues which concern Ms Tucker. I am satisfied she has had every opportunity to advance her defence to the claims for possession and an injunction.

17. Charity Sweet made an abuse of process application on 15 June. The burden of her application was that the proceedings against the defendants associated with the Democracy Village (in the original claim, the first defendant only) have been prompted by an *agent provocateur* Maria Gallastegui and these proceedings are being used to evict Brian Haw from his established area on the pavement. Her application was made on three grounds – (i) as Ms Gallastegui is an *agent provocateur* she should be joined as a defendant; (ii) as Ms Gallastegui was acting at the behest of the state, an abuse of process application may be made: ***Teixeira de Castro –v- Portugal*** [1999] 28 EHRR 101**;** (iii) this court is corrupt – it seemed she was criticising the case management directions of Maddison J and my decision to refuse an adjournment to Mr Haw, although her subsequent unruly, disruptive and disobedient behaviour during the hearing suggest she is contemptuous of court proceedings in general. The application, on the grounds then advanced was patently hopeless; she adduced no evidence that Ms Gallestegue may have been an *agent provocateur* and it is for the claimant to decide who to sue. My subsequent reading of the documents she provided, did not cause me to revisit my decision. Her criticisms of the court call for no comment.

18. At the conclusion of her evidence Mrs Sweet complained that she was provided with consolidated bundles of authorities 3 days before trial. As she has no legal representation, and no legal experience, the authorities were unlikely to have been of any use to her but she had, in fact, already allied herself to the defences of Mr Haw and Mrs Tucker who were legally represented and she (and all the other defendants) were able to associate themselves (if they chose to do so) with the submissions of Mr Luba. Later, during her closing submissions, when asked to address the Injunction issue, she launched into a prepared statement of no relevance whatsoever, refused to stop and forced the Court to adjourn. When the court re-assembled, she was barred from the court without express permission to return.

19. During the course of the defendants' cases, attempts were made to call Chris Coverdale (who, as the 8th defendant, had already given evidence in his own defence) and Ian Anderson as expert witnesses. No application had been made to Maddison J when he gave case management directions of 7 June and no prior application was made to the court. No expert reports were served.

20. The evidence which it was sought to adduce related to the law of war but neither Mr Coverdale or Mr Anderson has a degree in law, is a solicitor of the

Supreme Court or a barrister. While it was clear, and I accept, that Mr Coverdale has spent much time researching the law of war – he provided me with copies of two papers he has written ('War law and Parliament' and Accounting for Genocide') which I have read, I am satisfied he and Mr Anderson do not have the required high degree of skill and knowledge, relevant and up to date expertise with regard to the case or sufficient education or communications skills to produce a clear written report: CPR 35.2.1. As expert evidence presented to the court should be and be seen to be, the independent product of the expert uninfluenced as to the form or content by the exigencies of litigation, the obvious association of Mr Coverdale and Mr Anderson with the Democracy Village is a relevant consideration.

21. An issue arose when complaint was made that the unrepresented defendants were not permitted by the court to cross-examine the other defendants; it was submitted that that deprived them of a fair hearing. Each defendant, who gave evidence, explained why he or she claimed to have a right to possession of PSG and why there should be no injunction in his or her case; that was not evidence to which another defendant could properly cross-examine. Had any defendant given evidence which was potentially adverse to the case of any other defendant, that other defendant would have been allowed to cross-examine – the criticisms of those occupying the Democracy Village made by Mr Haw, Ms Tucker and Mr Sweet were of no relevance.

22. When Mr Holmes gave evidence on 21 June, he asserted that the tribunal is not independent and impartial by reason of the fact that I was a member of the Territorial Army between 1964 and 1971. He did not assert there is evidence of actual bias but asserted there is or maybe "apparent bias" and said I should consider whether I should recuse myself. In the appellate courts, the following test is applied: -

> "The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then asked whether those circumstances would lead a fair minded and informal observer to conclude that there was a real possibility or a real danger, the two being the same, that the tribunal was biased."

see ***Porter v. Magill*** [2001] UK HL 67 at paragraphs 102-103. The fair-minded and informal observer is not unduly sensitive or suspicious and there must be reasonable grounds on the part of Mr Holmes for apprehending that by reason of part-time military service nearly 40 years ago, I will not be impartial.

In Civil Procedure 2009, volume 2 at 9A-48, the editors state:

> "The reasonableness of the appreciation must be assessed in the light of the oath of office taken by judges to administer justice without fear or favour and their ability to carryout that oath by reason of their training and experience. It must

> be assumed that they can disabuse their minds of any irrelevant personal believes or previous position. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves."

It is important to bear in mind what the issues are in this case. They are whether the claimant has a right to a possession order in respect of PSG and whether there should be injunctions against those occupying PSG. What is not an issue – as I made clear at the start of proceedings and the claimant has since formally admitted, is that each of the defendants named in these proceedings is acting out of genuine conviction and that each believes that his or her occupation of PSG is justified by that conviction. My personal views, whatever they are, are wholly immaterial. I observe, that no other defendant, represented or unrepresented, associated themselves with the submissions of Mr Holmes.

I turn to consider the evidence.

EVIDENCE

23. Simon Grinter is employed by the GLA as Head of Facilities and Squares Management; he has overall responsibility for the care, control and management of PSG. His evidence is in 3 statements dated 26 May, 7 June and 9 June 2010.

24. The GLA has detailed arrangements for regular gardening to enhance the attractiveness of PSG, for restoration, conservation and day-to-day maintenance of the physical fabric including the historic and listed monuments; for cleaning and refuse collection. The GLA also employs (through a service contract) a team of heritage wardens who patrol PSG to assist the public, to ensure compliance with the byelaws and to monitor the condition of and activities upon PSG. If the wardens observe a breach of the byelaws, they inform the person involved; they may ask the person involved to leave PSG although that is rarely necessary; if a breach persists, then written formal warnings of the breach are issued and further action may be taken. The Mayor has, to date, taken no action in respect of mass breaches of the byelaws or occupations of PSG. The Metropolitan Police have brought no proceedings under sections 132(1) or 133(7) of SOPCA.

25. Mr Grinter said there is no policy to make 'blanket' refusals for the authority or permissions required by the byelaws. He said there is a significant number of demonstrations and public gatherings on PSG with organisers attracted by its proximity to Parliament and the Seat of Government. He described how public gatherings on PSG are authorised – a person wishing to hold such an event needs the permission of the Mayor; if PSG is available on the date required, the person must submit an application on the prescribed form; that form provides that not more than one public meeting will be allowed on the

same day, that banners may not be attached to any part of PSG, that no structures of any kind are permitted due to weight loading restrictions and that applications operate on a first come, first served basis; all applications are considered in line with the GLA's responsibility of protecting the PSG's fabric and assets as well as its heritage value and the Mayor's vision for PSG.

26. Provided the application form is properly completed and public liability insurance will be provided, there is no other authorised public gathering on the date requested and there is authorisation (if required) pursuant to SOCPA sections 132-134, the Mayor or his authorised officer determines whether permission for a demonstration or gathering should be granted.

27. In answer to Friend (Ian Robert Hobbs) Mr Grinter agreed that an application of his, a person of no fixed abode, without public liability insurance cover, would not be granted. There was introduced late in evidence, a further statement from David Oldfield, a paralegal at Bindmans LLP; he carried out a search on the internet for leading providers of public liability insurance and telephoned 8 providers for quotations in respect of a gathering of 10-50 people in Parliament Square to campaign against the war in Afghanistan; none would provide public liability insurance for a public demonstration. As the evidence is that demonstrations do take place with such insurance cover, this evidence is of little assistance.

28. In answer to Mr Beckley, Mr Grinter said that if there was an urgent need to protest by way of an immediate response to events, there is no reason why an application could not be considered quickly and permission granted within a day provided no other demonstration had been authorised for that day – although clearly there could not be such expedition at weekends.

29. He said the only request for permission to camp on PSG was made in 2005 when the Mayor gave permission for the demonstrators to place a maximum of 15 tents on a defined area in Trafalgar Square for 3 days. Mr Brian Haw's camp is on the pavement, which as part of the public highway is under the control of Westminster City Council.

30. Mr Grinter stated that there is a high level of public use of PSG. A study in 2008, as part of the Parliament Square Improvement Project, estimated that there were then about 470,000 people accessing PSG every year, equating to an average of about 1200 people a day. The heritage wardens estimate that prior to 1 May 2010 when the Democracy Village was set up the number of visitors to PSG was between 500 and 3000 daily with the higher number being associated with the summer tourist summer season. Mr Grinter said that peak numbers are generally experienced on sunny summer days when PSG can become crowded with visitors, office workers and tourists; the principle reasons for visiting PSG are to view and take photographs of the Palace of

Westminster and Westminster Abbey, to view the statues and to sit out in a pleasant garden area to enjoy the setting and the views.

31. There was some cross-examination as to this. Mr Grinter was referred to paragraph 21 of the judgment of Gray J in ***Westminster City Council –v- Haw*** [2002] EWHC 2073 (QB) where the learned judge said "The evidence of observations carried out by the street enforcement officers of the Council is that less than 30 pedestrians per hour use those inner pavements" and it was suggested by Mr Beckley that in the light of that, Mr Grinter's evidence was exaggerated. I observe that that evidence related to the use only of the inner pavements and the 2008 study post-dates the judgment by some 6 years. Mr Grinter said he does not know how the warden's made their estimates but they were the figures with which he was provided. Mr Grinter confirmed, in answer to a number of the defendants, that the public who access PSG have to cross very busy roads – although he said it is not easy to cross the road, it can be done when traffic lights are on red. The evidence of some of the defendants was to the effect that persons were deterred from accessing PSG because of the difficulties with access and so the estimates are wrong.

32. In my judgment the 2008 study provides reliable evidence of the then level of public use; on any view, there is a high level of such use with those members of the public (whether Londoners or visitors) not being deterred by the absence of any pedestrian crossing or provision for disabled access. I observe that those who drive around PSG will be all too familiar with the need to give way to pedestrians accessing PSG.

33. There is exhibited to the witness statement of Rebecca Hall photo-copied pages from a visitors' book for the period 13-30 May 2010. While there are many who support one or more of the campaigns or protests being furthered in the Democracy Village, the village has, I am satisfied, resulted in a significant fall in the number of people using PSG. While I accept the evidence that members of the public do access the non-tented 30% or so area of PSG, those members of the public and others are inevitably excluded from the tented area – the fact, as I accept, that there are defined walkways and the central area within the tented village does not, in my judgment, open up more of PSG to the general public, many of whom would not want to enter the tented area.

34. Mr Grinter said that since September 2009, there have been 5 authorised protests. These were (i) on 26 September 2009 by 'Step-Up' a rally to raise awareness of sexual abuse; (ii) on 3 September 2009 Object protest – to support clauses being discussed in the Policing and Crime Bill related to the sex industry; (iii) on 14 November 2009 Euro profile a prayer procession against abortion; (iv) 13 February 2010, Association of Anglo-Iranian Women in the UK – a rally to raise awareness of political prisoners under death sentence in Iraq; (v) 18 May 2010, British Tamil Forum – to mark the anniversary of the massacre of Tamil civilians by the Sri Lankan army and call for war crimes investigations.

35. In answer to Mr Beckley, Mr Grinter said the 18 May demonstration by the British Tamil Forum was authorised for 500 demonstrators who were to use the paved area on the north and west side of PSG but he agreed a considerably larger number attended; he said that if that larger number used the grassed area of PSG, it would have been the non-tented area. He agreed that on 22 May 2010, there was an unauthorised demonstration by the English Defence League – it was common ground that there were some 50 demonstrators and by reference to the witness statement of Alex Lee who gave evidence on behalf of the 1st defendant, although there were some angry exchanges at first between those demonstrators and those using the Democracy Village, matters were resolved amicably after "reasoned discussion".

36. When he made his first statement on 26 May 2010, Mr Grinter said that the village had grown since the afternoon of 1 May 2010 to its then size of about 40 tents, of which 4 were larger multi-occupancy tents; an increasing amount of equipment and infrastructure has also been brought onto PSG. A photograph [118] shows the appearance of the village or a part of it at 0844 hrs on 20 May. Mr Grinter said that by the morning of 4 June, when he visited the site, there were 38 tents including 2 storage tents, a straw bale toilet tent on the grassed area with a further 2 tents on the paved area on the west side of PSG. In addition there was a scaffolding structure some 4 metres long and 3 metres high and a platform made of 12 scaffolding poles supporting two car engines and 2 banners. In answer to Professor Knight (the 14th defendant), he agreed the engines were in place to stabilise the structure. Mr Grinter said that as of 17 June, the day he gave evidence, when he again visited PSG, about 70% of the grassed area was tented. He said that a large tepee which had been there on 6 June had been removed. It seems that there is a degree of "toing and froing" with persons joining and leaving the village. Mr Grinter accepted that some homeless may have joined the village.

37. Mr Grinter said those who arrived on 1 May, were told orally and given enforcement letters requiring them to leave – in answer to Mr Kinney (the 13th defendant) he said he had no copy of those letters but Mr Kinney said that he had been given a letter at 0530 hours on 2 May and so acknowledged there were such letters. On 11 May, about 24 letters [84] were handed to persons unknown or left at tents on PSG. On 24 May, letters [86] were delivered to about 36 persons unknown at 12 tents on PSG. Notwithstanding these requirements to leave and requests by wardens to leave, the occupiers have refused to leave. Mr Grinter's evidence is that on the information available to him, those occupying the village intend that it should continue indefinitely. I observe that there is nothing in the evidence of many of the defendants (*post*) to suggest otherwise – indeed some said in terms they intended to stay indefinitely.

38. Mr Grinter agreed that some tents were being moved so as to reduce the damage to the grass but he said the grassed area of PSG has been damaged; he said that flower beds had been trampled upon and damaged and that area of lawn had been dug up for the planting of an oak tree, flowers and vegetables;

there is a makeshift shower with no obvious drainage; there is a make shift urinal consisting of a bale of hay – he said that at least one bale saturated with urine, was discarded on one of the flower beds and there was a very strong smell of urine. While I accept that those occupying PSG make efforts to keep it tidy by removing litter, I accept the evidence of damage.

39. He said that the estimate of making good the damage to PSG is likely to be in excess of £50,000 – a figure which includes the cost of storing plants which it has not been possible to plant in the flower beds of PSG. He did not accept that that was an exaggeration. He agreed that earlier estimates from the GLA contractors, Veolia totalled some £14,640 but he said that they were based on the damage done before 26 May. He said Veolia had provided regular updates and he relies upon their expert advice for his evidence that the pH levels have been raised by reasons of contamination. I accept that evidence – a combination of contamination with urine, the occupation by a large number of people of carefully cultivated lawns and flowerbeds will, I am satisfied on the balance of probabilities, inevitably adversely affect pH levels.

40. David Oldfield, the paralegal at Bindmans LLP stated that when he researched the cost of re-turfing, by telephoning several turf suppliers and landscape gardeners for estimates to re-turf an area of 10 x 15 metres of damaged turf, (the area quoted for by Veolia), he obtained quotations of between £1,000 and £2,000. When he telephoned he described the job – none of the contractors visited PSG. I prefer the evidence of those who saw the condition of PSG and so accept the Claimant's evidence. I agree that some account must be taken of the damage to PSG caused inevitably by the presence of the Tamil demonstrators and without detailed evidence, I am prepared to accept that there should be set off against the cost to the GLA of making good the damage, their saving in the cost of upkeep during the period of occupation. Even so, I am satisfied on the balance of probabilities that the costs will be substantially more than £2,000 and much nearer the £50,000 estimate.

41. Mr Grinter said that a letter dated 20 May [89] from Bindmans LLP and written on behalf of Rebecca Hall (the 1st defendant) and others seeking permission under Byelaw 5(a) for "the organisers of and participants in the Democracy Village to carry on their discussion forum and associated activities within Parliament Square" and requesting permission "to undertake the activities provided for by Byelaw 5 (1), (3), (7) and (10) so that the Democracy Village may continue to operate" was received. It was treated as an application and refused by the Mayor by letter dated 24 May [93]. There will be reference to this letter later in the judgment (see paragraph 128).

42. Mr Grinter said that there was a meeting on 1 June attended by Christopher Harris, a member of his staff together with another member of his staff, Rebecca Hall and others from the Democracy Village and a representative from Bindmans at which an interim arrangement raised by Mr Harris, was discussed. That proposal was that the tents on the grassed area be removed,

the toilet bales be removed and only tea and coffee prepared on PSG; 15 tents would be placed on the paved area at the North West corner of PSG. Mr Grinter agreed that while Rebecca Hall and others associated with her were prepared to enter into that interim arrangement, others were not and he said that as there was no agreement to remove the tents from the grassed area, there could be no concluded interim agreement.

43. Mr Grinter was referred to a letter dated 2 June from Bindmans, who were by then acting only on behalf of Rebecca Hall. In that letter her interim proposal was that she would remov her tent from the grassed area, relocate it on the paved area, not light a fire or use any device with a naked flame, not use any part of PSG as a toilet facility and not carry out any act that constituted a public nuisance and/or criminal or other damage. That proposal was refused.

44. In answer to Mr Phoenix (the 18th defendant) Mr Grinter said the Mayor was aware that the meeting of 1 June was taking place and he (Mr Grinter) was happy with Mr Harris' proposal but Mr Grinter insisted that no final interim agreement was reached with Mr Phoenix or with anybody else. I accept that evidence, observing that by letter dated 3 June, Bindman's wrote to GLA to record their regret at the GLA's decision not to go ahead with an interim arrangement for the Democracy Village.

45. I am satisfied that those who are occupying the Democracy Village are in control of that part of PSG. There is the unchallenged evidence of the extent of the tented area, the use of reception desks, the planting of an oak tree and the making of a garden at the centre of the tented area, the patrolling of the tented area by the occupiers own "security guards" although Mr Grinter said that there is much less evidence of that since the State Opening of Parliament on 27 May. It is a reasonable inference from a report in the Evening Standard of 18 May [119] headed "Peace Camp will be evicted to save Queen blushes…" that these "guards" were there to prevent eviction rather than to control access to PSG by members of the public. Although one heritage warden complained [185] that on 22 May a protester asked her to leave because she was breaching the byelaws and trespassing and threatened to call the police, I am satisfied this was not Democracy Village policy – indeed another protester apologised to the warden straight away for the others behaviour. There is no evidence that those who occupy the Democracy Village are excluding visitors who want to access PSG but the use of "guards" establishes that others would, if necessary, be excluded.

46. The unchallenged evidence of Mr Grinter is that Power 2010 who were given permission to demonstrate, moved their demonstration elsewhere because of the presence of the village and the space it was taking up; two other organisations who investigated holding demonstrations at PSG withdrew, once they were aware of the presence of the village. The British Tamil Forums protest (see above) was authorised to take place mainly on the paved areas because of the presence of the village; Mr Grinter said that a Portuguese

film crew cancelled filming and a BBC documentary maker did not pursue an enquiry about using PSG once aware of the presence of the village.

47. Mr Grinter exhibited letters and emails of complaint [97-104] and said that the Speaker of the House of Commons wrote to the Mayor on 19 May setting out his concerns and Westminster City Council have raised issues relating to environmental health, public order and planning.

48. Mr Grinter said that he is unaware of any reason why permission would not be granted for a daytime protest by the defendants on or in the vicinity of PSG; they could, if they wished, apply for permission to demonstrate or protest on a number of days, and even on consecutive days, but he said, and I accept, that it is inconceivable permission would be granted whether under the 2000 Byelaws or under any other statutory controls, for the creation of a tented village. I am satisfied that PSG is wholly unsuited for camping; there is no sanitation – a claim made by Anna Chithrakla during the submissions of Mr Underwood that the GLA should provide toilet facilities can be dismissed; there is no running water; there are no public toilets open 24 hours daily in the immediate area; there are no safe means of cooking; a camp site is wholly incompatible with the location; it would deprive the public of the use of the total area of well-maintained lawn and gardens at the heart of British democracy and government and a world renowned WHS.

49. When he was cross-examined, Mr Grinter agreed there is no evidence that any of the name defendants had prevented or attempted to prevent access to PSG by others; he accepted there is no evidence (except in the case of Professor Knight and the scaffolding, (paragraph 21 above) that any defendant has caused any damage. While he said, of the graffiti, that it appeared about the same time as the village was formed I cannot rule out the possibility that others unrelated to the village caused some damage, but I am satisfied, on the balance of probabilities, that a significant amount of damage to the gardens has been caused by those who are or were in occupation as a part of the Democracy Village.

50. Mr Grinter, in answer to Mr Phoenix (the 18th defendant) said that he was aware that an offer had been made for a Health & Safety "walk-round" and risk assessment but he said that this was made not prior to the occupation but a month afterwards and once proceedings had been issued.

51. He said that despite the service of enforcement letters, the requests of wardens to leave, the display in locked cases on PSG of the byelaws, those occupying the tented village have remained. I observe that there is no issue that those occupying the village are in breach of a number of the byelaws. Mr Grinter says the village appears to be used for other unlawful activity – on 17 May, protestors climbed onto the roof of the old War Office in Whitehall; on 21 May, 3 protestors whom the Evening Standard reported [120] were

"connected with the Democracy Village" climbed up the scaffolding on the eastern side of Westminster Abbey to unfurl a banner. Mr Grinter said that pursuant to the provisions of section 17 of the Crime and Disorder Act 1998, the GLA must do all it reasonably can to prevent crime and disorder in Greater London.

52. Mr Grinter said that Brian Haw and Barbara Tucker (the 2nd and 3rd defendants) have consent under SOCPA 2005 to carry out a long-term demonstration on the pavement to the eastern side of the grassed area of PSG; this can be seen clearly in the photograph [170] taken on a date in 2005 or 2006. He said that since about September 2009, the 2nd and 3rd defendants have enlarged the area and there are now 2 tents permanently erected without permission on the grassed area of PSG abutting the edging or curb-stone shown in the photograph, which is part of PSG.

53. The unchallenged evidence of observations by wardens is that throughout October 2009 there was 1 tent upon the grassed area and since November 2009, there has been at least 1 tent there [159]. Enforcement letters were sent on 3, 4 & 24 November, 6 December, 20, 21, 22, & 25 January & 5 February 2010 [137-158]. The 2nd and 3rd defendants admit that they have pitched tents on the grassed area for sleeping purposes because the pavement is hard to sleep on and because they have been kicked by passing pedestrians. Their case is they have done so with the permission of the claimant.

54. The evidence of Mr Grinter is that Mr Haw and Ms Tucker only enlarged the area of their camp by encroaching on PSG from approximately September 2009 onwards as evidenced by the reports of the wardens who are required to report on a day-to-day basis on anything that happens on PSG. He said he had been told by Jon-Paul Graham, the Senior Executive Assistance to the Chief Executive & Director of Resources at GLA and who was directly involved in the action taken against the 2nd and 3rd defendants in August and September 2007 to remove them from GLA owned land on PSG, that at the end of July/early August 2007 as a short term compromise, the camp of the 2nd and 3rd defendants was moved to the east edge of the grassed area and fenced to enable the installation of the statue of Nelson Mandela. Once the statue was unveiled on 29 August 2007, Mr Haw and Ms Tuckers' camp was relocated on the pavement. The fencing which was removed was put back up so that other works could be carried and to prevent others (who had been camping without authority on the grassed area) re-occupying the grassed area. When Mr Haw and Ms Tucker made clear to Mr Graham that they did not like a fence immediately behind them, a compromise was reached by which the GLA agreed to remove the fencing so long as Mr Haw and Ms Tucker did not camp or store materials on GLA land.

55. Syed Shah was employed as a warden in August 2004; he was promoted to warden supervisor in August 2005 and then to warden manager in May 2006; he left that employment in April 2010. His witness statement, redacted to

exclude evidence of exchanges with Mr Haw and Ms Tucker which are challenged and have no relevance to the issues, was not challenged. He said supporters of Mr Haw started to use GLA land in September 2006 as storage place; when asked to remove their belongings they did so most of the time. When winter arrived in November 2006, Mr Haw and Ms Tucker (who had joined him in 2005) started to use the grass area for camping. Despite being served with copies of the byelaws and being asked to move, they did not move and so in or about September 2007, the GLA moved them to another part of PSG, to land owned by Westminster City Council. The grassed area they had been occupying was fenced off and repaired. On their return to the pavement area, their encroachment of the grassed area by leaving belongings such as folded tents, chairs, tables and ply-cards started again. Despite repeated requests, this continued. In late 2009, Mr Haw and Ms Tucker started to camp on the grassed area and continued to do so despite the services of notices and requirements from wardens who were on duty daily from 0700 to 2300 hrs.

56. Of the nineteen named defendants, nine made witness statements – Rebecca Hall, one on 2 June 2010; Brian Haw, four on 2, 10, 15 and 23 June 2010; Barbara Tucker, two on …. and 15 June; Charity Sweet, four all undated; Chris Coverdale, a skeleton argument dated 16 June, with supporting documents; Friend (Ian Robert Hobbs), an undated statement; Professor Knight, one dated 9 June; Peter Phoenix, one dated 3 June; Raga Woods, was made on 7 June 2010. They, and some of the other defendants who had not made statements gave evidence. The following defendants did not give evidence – Lew Almond and Dirk Duputali (because they did not attend court), Can Aniker who refused to stand up from his seated position on the floor, (almost out of sight towards the back of the court), and confirm his identity when asked if he wanted to give evidence and Peace Little because he persistently refused to say whether he wanted to give evidence, preferring to ask irrelevant questions instead.

57. The genuineness of the beliefs of the defendants was not in issue – many articulated their beliefs movingly. The Claimant made this Formal Admission – "For the purposes of these claims, the Mayor admits that each of the defendants named in the proceedings is acting out of a genuine conviction and that each believes that his or her occupation of PSG is justified by that conviction".

58. Rebecca Hall is a 21 year old student at London South Bank University. As the claimant did not want to cross-examine her, her statement was her evidence. She became a part of the Democracy Village on 1 May. The village is, she says, not a protest but an assembly of people "in which ideas are discussed" to raise awareness of matters; it is located on Parliament Square because that is the heart of British democracy, to heighten the meaning of the discussions and to attract others who wish to discuss key issues. It is an opportunity for anyone of any background and age to become involved. Relationships with the Metropolitan Police are good – she said everyone is keen to ensure the village functions well. She says meetings are held twice

daily and throughout the day there are various smaller discussions. There is a welcome desk, meals are communal and tasks such as litter collection, cooking and washing, are allocated. Peter Phoenix's evidence was to similar effect.

59. She believes much of Mr Grinter's concerns are exaggerated; she says she has not lit a fire, she has not defecated on PSG; she uses public toilets; she says that to her knowledge the on-site toilet is used only at night times; she moves her small tent every 3 days to keep the grass alive. She says she instructed Bindmans LLP on 19 May to try and "regularise the position" and she considers the GLA acted prematurely.

60. Alan Lee, Mark Rylance, Tony Benn, John McDonnell MP and Olcay Aniker made statements supportive of the Democracy Village as a forum for discussions and protests. Tony Benn said "the ability to gather on Parliament Square is a symbol of our right to live as free citizens and the current peace camp is part of that tradition". He said he regarded the Democracy Village as an imaginative idea and an integral part of the democratic process; he said those who are taking part are a part of the early stage of the democratic process and as such represent the future. He said all public events cause damage and disturbance and to prevent protest to avoid that is an untenable position; he said it is intimidating to require permission. He said on his visits there, he had no sense of hostility.

61. Olcay Aniker, who has visited PSG regularly to see her son (the 6th defendant), said there was no sense of hostility. I accept her evidence (and that of Dr Miller-Power) that persons who are part of the Democracy Village keep the place tidy, just as I accept the evidence that relations with the police have been friendly. Although she said she had not seen any significant damage to PSG, my conclusion on the evidence and on the balance of probability is that there has been significant damage – see paragraph 38. She said, and I accept, that visitors are welcomed at a reception desk and there is free access to the Peace garden, which has been created there. Dr Miller-Power, called to give evidence by Professor Knight said there were problems with the Tamil demonstrators who spread all over PSG, but they were welcomed and relations were very, very friendly. After they left, those occupying the village cleared up a considerable amount of litter.

62. Anna Chithrakala, Chris Coverdale, Joshua Dunn (and Louis Standen whom he called to give evidence), Friend (Ian Robert Hobbs) and Professor Knight all gave evidence to this effect – each has particular concerns (by way of example, Anna Chithrakia, Chris Coverdale and Joshua Dunn, genocide and Friend, the defence of God's creation); each claims the right to freedoms of expression and association. Anna Chithrakia, who said she joined Democracy Village on 15 May and has been there since, said she has sacrificed her career and prestige to join the Democracy Village and forms of protest have to change. Chris Coverdale said he is part of the Democracy Village because he

plans, organises and takes part in non-violent lawful actions to prevent war crimes. His claims that his presence in PSG are permitted by both domestic and international law and that an injunction should be refused for the reasons which will be considered later in the judgment.

63. Louis Standen said, of Joshua Dunn that his youthful exuberance and duty caused him to defend people against the unlawful acts of the state. Friend, otherwise known as Ian Robert Hobbs (the 11th defendant) says he has concerns about world-wide eco-systems and the environment; he says he has the right to protest to defend himself because his life and the life of others is endangered by the damage being done to the environment, which he says is a major crime; he says that if the conduct of the democracy is a minor crime, it is justified to prevent the major crime. He said he found it difficult to accept the authority of others.

64. Professor Chris Knight (the 14th defendant) says he helped to set up the Democracy Village in the hope of creating a space for a different kind of politics and above all to give voice to all those demanding an end to the war in Afghanistan. He said if the Democracy Village was denying the rights of others, that would not have the right to be there but their presence ensured that PSG could not be fenced off but he accepted the evidence of Mr Grinter was that if the Democracy Village is removed, PSG will have to be fenced off only for as long as it takes to make good the damage caused.

65. Stuart Holmes, who said he is ex-military said the Democracy Village had a good reputation with the police and that should be an end of it; everyone is welcome to join in this forum of ideas and it should be given a chance because real solutions may come up.

66. Rodge Kinney claims a legal right to occupy PSG as a homeless person. He was evicted from council owned accommodation, which he shared with his daughter (who is at university) for non-payment of rent. After he had been homeless for some six weeks, he was provided with bed & breakfast accommodation but when he was offered accommodation (an offer which did not include his daughter) he refused it. He happened to chance on PSG in the afternoon of 1 May and has stayed there since. When he was offered the opportunity to make final submissions, he said he has been excluded from hostel accommodation near Trafalgar square because he went away for the weekend without informing the hostel. He asserted his Article 8 rights.

67. Simon Moore said he has a right to possession of PSG because it is common land; he opposes the notion of ownership. He accepted that by the law of England & Wales, he is a trespasser but he said he is not by the law of the Universe. He accepted he had breached the byelaws by erecting his tent, taking part in an assembly and putting up signs and notices but he said he had a duty to act because the government was not acting in accordance with the

law of the Universe and it is his duty to take action by any peaceful means. His evidence was that if he is removed from PSG he will be coming back because that is his duty.

68. Anita Olivacce said she has a duty to serve God in promoting Love, Peace & Truth. She said PSG is common land and so should be accessible to all. She accepted she is a trespasser but she too said she would come back.

69. Peter Phoenix (the 18th defendant) opposes the war in Iraq and opposes the war in Afghanistan. He says that it is the duty of a person who discovers a crime is taking place to prevent the commission of that crime and that that justifies his participation in the Democracy Village. He says that his agreement to the interim proposal (see paragraph 42 above) makes a possession order and an injunction against him unjustified. He said he has a legal right at common law to occupy PSG, to discuss the future in the discussion forum. He said that international law supersedes the byelaws, he has a right and duty in law to disobey the government whose actions are unlawful and he claimed he was entitled to occupy PSG by reason of his Article 9 (freedom of thought, conscience and religion), 10, 11, 12 (right to marry) & 13 (right to an effective remedy) rights. He provided no explanation why his Article 9, 12 and 13 rights were engaged – there is nothing in the byelaws or any relevant SOCPA provision which would amount to any interference with those rights and so I shall not consider them further. He said that with Rebecca Hall he had negotiated a conditional licence to remain on PSG, that he was prepared to co-operate with the Mayor and had moved his tent from the grassed area to the paved area in the north-west corner. He claimed he has a right to grow potatoes, strawberries, lettuce and beans pursuant to the law of Till. He also asserted ancient rights which, while I am prepared to accept he genuinely believes them to be so, are in fact baseless. He said of the claim for an injunction that he was prepared to visit PSG some three times a week to take part in the talking circle, singing and poetry. He said an injunction against him will be unworkable because he has druidical immunity on the battlefield.

70. Raga Woods, the 19th defendant, founded the well-known charity "Gingerbread". She says she joined the Democracy Village because she has many misgivings about the state of British democracy and because of her support and for the world-wide longing for democracy. She stays at the village occasionally. She wants to question the law because there is a lack of consideration for children, the future generation and their rights to the planet. She said dialogue is more appropriate.

71. Mr Haw, who with Ms Tucker and Mrs Sweet was at pains to distance himself from the Democracy Village, said the GLA has turned a blind eye to the pitching of tents by others. The chronology as to the use of a tent or tents on the grassed area abutting his "camp" on the pavement as set out in Mr Brian Haw's statements has changed. He said first that when he set up his

demonstration in 2001, he slept on the pavement although he placed some items on the grassed area behind his tent; he said he started to sleep on the grass because he had been kicked deliberately by members of the public when he was sleeping on the pavement and because he was at risk of being injured should a vehicle mount the pavement or shed part of its load. He denied he has put a tent on the grass area only since September 2009; he says he has done so for many years. There is support for that in the evidence of Syed Shah (see paragraph 55 above). Mr Haw says that the GLA have allowed him to camp there and that his use of the grassed area to which the public have a right to access is lawful. He amended his witness statements to say he has always slept on the grass. He said he was told by the GLA in June 2007 that he could pitch his tent but nobody else could. He produced e-mails – on 18 June 2007, the GLA wrote to his then solicitor "to confirm that the GLA is happy to consider granting permission for Mr Brian Haw to pitch one single person tent on PSG for his own use … This would mean that all other tents should be removed" (emphasis added). That offer was refused by e-mail dated 17 August by his solicitor who wrote "the removal of tents belonging to people other than Mr Haw will not only limit Mr Haw's protest but will undermine the practical support given by others to Mr Haw, along with others' independent right to protest". There clearly was no concluded agreement; I shall return to this later in the judgment.

72. Asked by Mr Harris what the consequence of an order requiring him to give up possession of the grassed area would be, he said "Probably kill me"; he went on to say he is in great pain; he produced a medical report dated 4 February 2010 – it reports there is a partial compression fracture through T12 with loss of body height anteriorly; there is anterior spondylolisthesis of L4 on L5 and loss of intervertebral disc space between L3-L4 and L4-L5. He said he has been attacked many times even when on the grass but he said he can get no redress by the courts. He re-iterated his tent has been there all the time; it is his only home.

73. Barbara Grace Tucker said she has campaigned with Brian Haw since December 2005 and has been a permanent member of his Peace Campaign since May 2006. She said she needs and uses very simple shelter but it has not been her intention to occupy PSG. She challenged the evidence of Mr Grinter (paragraphs 52 and 54 above). No other detail from her witness statements or the evidence she gave was relevant to the issues – her persistent attempts to give evidence that certain named persons linked to the Democracy Village were *agents provocateur* were wholly irrelevant. In her Final Submission she stated that the proceedings against her in the past had not been brought expeditiously and so it is improper and disproportionate for GLA to bring these proceedings in reliance upon CPR 55.

74. Mrs Sweet said she has been loosely associated with Brian Haw since 2003 and a close member of his Peace Campaign since May 2006, sleeping occasionally with her 11 year old daughter. She said she was the first person to erect a tent on PSG in 2006. She said her application to the Commissioner

of the Metropolitan Police for SOCPA authorisation for a "Artists 4 Peace" demonstration and her daughter's application for authorisation for a "Children For Peace" demonstration, both in 2007 were refused and so she will not make any further application. She said PSG is consecrated land and so there is a right to freedom of assembly there. She said that the tents on the grassed area, associated with Mr Haw's campaign are causing no obstruction; he refused an offer to pitch one tent because the offer was not open to others.

The Issues

75. By agreement between counsel, the issues to be determined are as follows:-

A: The claim for possession

Issue 1: Is the claimant entitled to an order for possession of PSG? In determining this issue, it will be necessary to decide whether an estate in land is a pre-requisite for obtaining an order for possession and if not, whether the Mayor was in physical possession of PSG and if not whether on the authority of ***Manchester Airport PLC v. Dutton*** [2000] QB 133, the Mayor has sufficient rights to enter upon and occupy PSG to give him the right to obtain an order for possession.

Issue 2: Are the defendants in occupation of and trespassers on PSG?. Is PSG occupied in whole or in part by any of the defendants; is PSG occupied only by the defendants; if the defendants are in occupation of the land, are each and all of them occupying it without licence or consent?

Issue 3: Is there any public law defence to the decision of 24 May 2010 to seek possession? If so, can such a defence be raised against a claimant with a domestic law right to possession and if so, upon whom is the burden to establish the claimed public law illegality?

Issue 4: If the claimant is otherwise entitle to possession of PSG, do the provisions of Human Rights Act 1998 ["HRA"] section 6 and articles 10 and/or 11 European Convention on Human Rights ["ECHR"] provide a defence to the claim; if so, would the grant of an order for possession constitute an interference with rights under article 10 and/or 11 and would any such interference be in accordance with the law, necessary to meet a pressing social need and proportionate? Are the facts that there are a procedure for authorisation contained in the byelaws, that such authorisation has been sought and not granted, determinative of the defence to the claim for possession based on articles 10 and/or 11.

Issue 5: If an order for possession is to be made, should it cover the whole of PSG and should the order require possession to be given "forthwith"?

B: Injunction Claim

Issue 1: Have the defendants breached the criminal law in particular by indefinitely occupying parts of and camping on PSG and protesting there without consent? Is there a properly pleaded case and sufficient evidence against each of the named defendants that they are in breach of the criminal law, in particular, by virtue of camping and participating in a protest on PSG without consent and in breach of the Byelaws?

Issue 2: Is this an exceptional case where the claimant can bring proceedings for an injunction in support of the criminal law?

Issue 3: Should the court exercise its discretion to grant an injunction where there are specific measures contained in Greater London Authority Act 1999 ["GLAA"], section 385 (3) and/or Serious Organised Crime & Police Act 2005 ["SOCPA"], section 136, to deal with the alleged criminal conduct? Is the grant of injunctive relief compatible with articles 10 and 11 ECHR? Are the circumstances here the same or analogous to those in ***Westminster City Council v. Haw***[2002] EWHC 2071 QB.

Issue 4: If an injunction should be granted, in what terms compatible with articles 10 and 11 ECHR?

Separate issues raised by individual defendants during the course of their evidence will be considered in the course of the judgment.

76. While the Claimant's primary case is that the Claimant is entitled to possession against each defendant as of right, and further that the right is to possession forthwith: ***McPhail –v- Persons, names unknown*** [1973] 1 Ch 447 at 458E-G per Lord Denning MR, and that that right to recover possession is unqualified so that no challenge based only on a defendant's individual circumstances is permissible: ***Kay and others –v- Lambeth London Borough Council*** [2006] UKHL 10, it accepts for the purposes of purposes of proceedings in the High Court that the defendants may assert an Article 10 and/or Article 11 defence to the claim for possession. But for that concession, made pragmatically because the Supreme Court is soon to hear an appeal following the decision of the European Court of Human Rights in ***McCann –v- The United Kingdom*** (Application number 19009/04) when it will review the decision in Kay, Ms Harrison would have submitted that ***Kay*** and other decisions to the effect that Article 8 does not provide a defence to possession proceedings are not binding on this court and do not apply when Article 10 and/or Article 11 rights are engaged; Ms Harrison would have argued that the

minority opinion of Lord Bingham in ***Kay*** at paragraph 110, with Articles 10 & 11 substituted for Article 8 correctly states the principles to be applied:

> "But, in agreement with Lord Scott, Baroness Hale and Lord Brown, I would go further. Subject to what I say below, I would hold that a defence which does not challenge the law under which the possession order is sought as being incompatible with article 8 but is based only on the occupier's personal circumstances should be struck out. ***McPhail v. Persons, Names Unknown*** [1973] Ch 447 needs to be reconsidered in the light of Strasbourg case law. Where domestic law provides for personal circumstances to be taken into account, as in a case where the statutory test is whether it would be reasonable to make a possession order, then a fair opportunity must be given for the arguments in favour of the occupier to be presented. But if the requirements of the law have been established and the right to recover possession is unqualified, the only situation in which it would be open to the court to refrain from proceeding to summary judgments and making the possession order are these: (a) if a seriously arguable point is raised that the law which enables the court to make the possession order is incompatible with article 8, the county court in the exercise of its jurisdiction under the Human Rights Act 1998 should deal with the argument in one or other of two ways: (i) by giving effect to the law, so far as it is possible for it do so under section 3, in a way that is compatible with article 8, or (ii) by adjourning the proceedings to enable the compatibility issue to be dealt with in the High Court; (b) if the defendant wishes to challenge the decision of a public authority to recover possession as an improper exercise of its powers at common law on the ground that it was a decision that no reasonable person would consider justifiable, he should be permitted to do this provided again that the point is seriously arguable: ***Wandsworth London Borough Council v. Winder*** [1985 Appeal Cases 461]. The common law as explained in that case is, of course, compatible with article 8. It provides an additional safeguard."

77. In the light of that concession and the evidence, the issues may be distilled into these questions, although some overlapping is inevitable –

1.Can the Claimant establish a right to possession of PSG so as to bring these proceedings for possession of PSG [the jurisdiction issue]? If so,

2.Are the defendants, or any of them in occupation of and trespassers on PSG? If so,

3.Is the Article 10 and/or Article 11 right or any other convention right such as to provide a defence and disentitle the Claimant to possession of PSG?

4. Have the defendants or any of them breached the criminal law in the course of their occupation of PSG and if so, is this an exceptional case in which to grant an injunction in support of the criminal law and if so are injunctions a proportionate response to the aims of the Mayor to regain control of PSG for the benefit of others?

5.Should the Court grant an injunction in the exercise of its discretion against any of the defendants?

The Jurisdiction Issue

78. On behalf of the claimant, Mr Underwood QC cited a part of the judgment of Slade J in ***Powell v. McFarlane and Anr*** [1979] 38 P&CR 452 at 470-472 and submitted that this provides a statement of English and Welsh law relating to the concept of possession:

> "(1)In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the *prima facie* right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to the persons who can establish a title as claiming through the paper owner.
>
> (2(If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("*animus possidendi*").
>
> (3)Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitutes a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed … "What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources of status of the claimant's": ***West Bank Estates Ltd v. Arthur,*** per Lord Wilberforce.
>
> It is clearly settled that on acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether on that acts of possession done on parts of an area establish title to the whole area must however be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence of factual possession …
>
> Everything must depend on the particular circumstances but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupier owner might have

> been expected to deal with it and that no-one else has done so.
>
> (4) The *animus possidendi*, which is also necessary… involves the intention, in ones own name and on ones own behalf, to exclude the world at large including the owner with the paper title if he be not himself the possessor so far as is reasonably practicable and so far as the process of the law will allow…
>
> An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess unless the contrary is clearly proved."

79. This statement of the relevant principles was approved by the Court of Appeal in ***Buckinghamshire County Council v. Moran*** [1990] CH 623 at 646, 647 and by Lord Browne-Wilkinson in ***JA Pye (Oxford) Ltd & Anr v. Graham and Anr*** [2003] 1AC 419 at paragraph 31.

80. In ***The Secretary of State for the Environment, Food & Rural Affairs v. Meier and Ors*** [2009] UKSC 11, Lord Rodger of Earlsferry JSC said, at paragraph 6:

> "To use the old terminology, the defendant has ejected the claimant from the land; the claimant says that he has a better right to possess it, and he wants to recover possession. That is reflected in the form of the order which the court grants: "that the claimant do forthwith recover" the land – or, more fully, "that the said AB do recover against the said CD possession" of the land: see *Cole: The Law & Practice in Ejectment* [1857], page 787, Form 262. The fuller version has the advantage of showing that the court's order is not in *rem*; it is in personam directed against, and binding only, the defendant."

81. Baroness Hale of Richmond JSC said, at paragraphs 32,33,34 & 35:

> "32. As is obvious from the above, a great deal of confusion is caused by the different meanings of the word "possession" and its overlap with occupation. As Mark Wonnacott points out in his interesting monograph, *Possession of Land*, Cambridge University Press, 9200060 p r, the term "possession" is used in three quite distinct senses in English land law: "first, in its proper, technical sense, as a description of the relationship between a person and as estate in land; secondly, in the vulgar sense of physical occupation of tangible land" (the third sense need not concern us here). Possession, in its first sense, he divides into a relationship of right, the right to the legal estate in question, and a relationship of face, the actual enjoyment of the legal estate in question; a person might have one without the other. Possession of a legal sense in fact may often overlap with

actual occupation of tangible land, but they are conceptually distinct: a person may be in possession of the head lease if he collects rents from the subtenants, but he will not be in physical occupation of tangible land.

33. The modern action for the possession of land is the successor to the common law action of ejectment (and some statutory remedies developed for use in the county and magistrates' courts in the 19th century). The ejectment in question was not the ejectment sought by the action but the wrongful ejectment of the right holder. Its origins lay in the writ of trespass, an action for compensation damages rather than recovery of the estate. But the common law action to recover the estate was only available to freeholders and not to term-holders (tenants). So the judges decided that this form of trespass could be used by the tenants to recover their terms. Trespass was a more efficient form of action than the medieval real actions, such as novel disseisin, so this put tenants in a better position than freeholders. As is well known, the device of involving real people as a notional lessees and ejectors was used to enable freeholders to sue the real ejectors. These were then replaced by the fictional characters John Doe and Richard Roe. Eventually the medieval remedies were (mostly) abolished by the Real Property Limitation Act 1833; the fictional characters of John Doe and Richard Roe by the Common Law Procedure Act 1832; and the forms of action themselves by the Judicature Acts 1873-1875: see AWB Simpson, *A History of the Land Law,* Oxford, Clarendon, Press, 2nd ed (1986), ch VII).

34. The question for us is whether the remedy of a possession action should be limited to deciding about "possession" in the technical sense described by Wonnacott. The discussion in the *Cole on Ejectment* concentrates on disputes between two persons, both claiming the right to possession of the land, one in occupation and the other not. Often these are between landlords and tenants who have remained in possession when the landlord thinks that their time is up. But it is clear that in reality what was being protected by the action was the right to possession of a legal estate in land. The head lessee who was merely collecting the rents would not be able to bring an action which would result in his gaining physical occupation of the land unless he was entitled to it.

35. It seems clear that the modern possession action is there to protect the right to physical occupation of the land against those who are wrongfully interfering with it. The right protected, to the physical occupation of the land, and the remedy available, the removal of those who are wrongfully there, should match one another. The action for possession of land has evolved out of ejectment which itself evolved out of action for trespass. There is nothing in CPR pt 55 which is inconsistent with this view, far from it. The distinction is drawn between a "possession claim" which is a claim of

> *possession of land* (rule 55.I(a) and a "possession claim against trespassers" which is a claim for the *recovery of land* which the claimant alleges is "occupied only by a person or persons who entered or remained on the land without the consent of a person entitled to possession of that land…" (Rule 55.I (b)). The object is to distinguish between the procedures to be used where a tenant remains in occupation after the end of his tenancy and the procedures to be used where there are squatters or others who have never been given permission to enter or remain land. That is the reason for inserting "only": not to exclude the possibility that the person taking action to enforce his right to occupy is also in occupation of is then provision for taking action against "persons unknown". But the remedy in each case is the same: an order for physical removal from land".

82. Mr Underwood submitted that a person without any legal estate in land who is in possession can found an action in trespass against a person who has no better right to possession than he: see ***Megarry & Wade - the Law of Property,*** 7th edition at 4-010 and so, he submitted the issue is a straight forward one – on the facts of the case, did the Mayor of London on or before 1st May 2010 enjoy possession of PSG to exclude "the world at large" from it?

83. Mr Underwood submitted that he did, and so he is entitled to bring proceedings for possession so as to put him (the Mayor) and the defendants (the trespassers) back in the position they were in before 1st May 2010 – the Mayor with exclusive possession of PSG and the defendants with the right to visit PSG subject to the limitations on their use in the Byelaws.

84. Mr Underwood submitted that Her Majesty, pursuant to section 384(1) of GLAA has paper title only, she has no powers, duties or functions in respect of PSG; by reason of section 384 (3) it is the GLA which, to the exclusion of everyone including Her Majesty, has the control of PSG and that as the person in control, the Mayor on behalf of the authority, has power to exclude anyone from PSG. Mr Underwood provided as an example of the exercise of that power of exclusion the fencing off of PSG in 2007 and the exclusion of Londoners and tourists alike from PSG while a programme of maintenance was carried out.

85. While PSG is an open space to which the public at large have a general right of access, subject to the byelaws, he submitted it is not inconsistent with the claimant being in possession of the land – regard must be had to the particular circumstances and all that needs to be established is that the claimant "has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so": ***Powell v. McFarlane & Anr*** above, at page 471.

86. He submitted the claimants' assertion of his right to possession and to exclude the world at large is supported by the statutory scheme of GLAA, by the byelaws and by the evidence of his management, control and regulation of PSG for use as an open space for the benefit of the citizens of London and visitors to the city.

87. If, contrary to these submissions, the court was to conclude that the claimant did not on or before 1 May 2010 enjoy possession of PSG and have sufficient control of PSG to exclude, "the world at large", Mr Underwood submitted the Mayor had the right to possession of PSG and so may be regarded as a "statutory licencee" with the right implicit in section 384 (3), to enjoy rights of occupation; he submitted this would make the case indistinguishable on its facts to ***Manchester Airport PLC v. Dutton*** [2000] 1 QB 133, in which the Court of Appeal held that a licensee with a right to occupy land, whether or not he was in actual occupation, was entitled to bring an action for possession against a trespasser in order to give effect under the licence; that an estate in or a right to exclusive possession of the land was not required before an order under the summary procedure in RSC Ord 113 could be obtained.

88. On behalf of the first, second and third defendants, Mr Luba QC submitted that the claims for possession must be considered in the context of the pleaded case. By paragraph 11 of the Particulars of Claim, it is asserted that by reason of the provisions of section 384 (3) of GLAA, the complainant "was prior to the matters complained of in possession of PSG and in any event has a superior claim to possession of PSG to that of the Village Defendants". By paragraph 10 of the Amended Defence of the First Defendant, she denies that GLAA gives the claimant "any claim" to possession to PSG, asserts that it confers no interest on the claimant nor does it give the claimant any right to possession or any right to occupy PSG and so the claimant has no entitlement to bring proceedings against her for possession. It is denied that the claimant was in possession or occupation of PSG before the matters complained of. By paragraph 4 of the Amended Defence of the second and third defendants, it is denied that the management powers of the Mayor in relation to PSG are such that he can maintain an action in respect of the PSG and that the appropriate claimant is Her Majesty. It is denied in paragraph 5 that the Mayor may maintain an action for trespass in respect of PSG when the gardens are freely accessible to the public.

89. Mr Luba, while agreeing that the issue is whether the Mayor, prior to 1 May 2010, enjoyed possession of PSG and could exclude "the world at large" and accepting that degrees of control depending upon the property can vary, submitted that there is still a requirement for the nature of control to demonstrate exclusive possession and he cited the dictum of Lord Hoffmann in ***Hunter and Ors v. Canary Wharf Ltd*** [1997] A C 655 at 703F:

> "Exclusive possession de iure or de facto now or in the future is the bedrock of the English land law."

90. Mr Luba submitted that section 384 (3) and (7) of GLAA do not confer a right to exclusive occupation. He submitted that sub-section (7) is intended to ensure that the carrying out of the functions in sub-sections (3) and (4) can be done without transgressing some unidentified historic provisions relating to PSG. He submitted it is fundamental to recall that PSG is a piece of open land for public use and it is this which undermines the claimant's case because occupation which allows unfettered access by the public is inconsistent with the concept of exclusive possession. He submitted that the byelaws do not control access by the public to the land but their behaviour once on it and that this contrasts with the rights of a person who asserts ownership who can keep anyone out. He submitted that the claimant has no power and is given no power by statute to keep anyone out of the land and that this is inconsistent with the proposition that there is occupation by a person who is asserting the equivalent rights of an owner. He submitted it would be without the *vires* of the GLAA for the claimant to physically occupy PSG and to exclude all others.

91. He submitted that as section 385 (1) of GLAA provides the power to make and enforce byelaws to control the management, preservation of order and prevention of abuses there, those byelaws are to be observed by persons "using" PSG; further, section 385 (1) does not permit the making of byelaws to exclude persons from PSG – this, he submitted, provided further evidence that the claimant was not given exclusive possession of the land. Mr Luba submitted that the Act could have provided that exclusive possession was vested in the Assembly or the Mayor but did not do so.

92. On analysis of the functions, Mr Luba submitted they are not dissimilar to powers given by an owner of land to a property manager: the statutory scheme and the degree of control it provides, cannot support the claim to exclusive possession.

93. He submitted that ***Dutton*** is distinguishable on its facts; in particular the licencees in that case had a licence "to enter and to occupy", whereas in the present case no right of occupation was conferred on the claimant. If, contrary to that submission, the cases are not distinguishable on their facts, he submitted that ***Dutton*** was decided in *per incuriam* because the Court of Appeal was not referred to ***Hill v. Tupper*** [1863] 2H & C 121 and ***Hunter***, (see above).

94. The unrepresented defendants who were present in court were invited to make submissions on this jurisdiction issue. The relevant submissions amounted to an adoption of some or all of the submissions of Mr Luba and so they need not be particularised.

Discussion

95. While the presence of the Democracy Village is in breach of the byelaws and regarded by some as objectionable, it is important to bear in mind the dictum of Lord Neuberger in ***Meier*** above at paragraph 59:

> "… however desirable it is to fashion or develop a remedy to meet a particular problem, courts have to act within the law and their ability to control procedure and achieve justice is not unlimited."

And so I must be satisfied that the claimant has a right to exclusive possession of PSG; for the reasons which follow, I am so satisfied.

96. A claim for possession against trespassers (CPR Part 55 (1) (b)) "means a claim for the recovery of land which the claimant alleges is occupied only by a person or persons who entered on or remained on the land without the consent of a person entitled to possession of that land". This wording is important:

(1) A claimant seeking possession of land against trespassers does not have to have the legal estate or title to the land; it is sufficient if the claimant can assert a right to possession.

(2) A claim can be brought by any person entitled to possession and so by anyone who can assert a better right to possession than the trespassers.

97. The starting point must be the nature of the land. PSG is an open space to which members of the public have access to enjoy the gardens but they do so as visitors or licensees and not as occupiers. It follows that whoever has a legal title or the right to exclusive possession, that person cannot prevent the public having access to PSG as visitors but it does not follow from that, in my judgment, that the person with title or a person with the right to exclusive possession cannot exclude those who enter upon and then occupy land. By "occupy", I mean take possession of the land; that is what, on the evidence, those who have joined the Democracy Village by raising their own tents or joining others in their tents to stay within the village, have done (see *post*). In my judgment, the test to be applied to land, which like PSG (and other parks and gardens throughout England Wales which are open to the public to enjoy as visitors but not to occupy) should be that the person seeking possession against trespassers must be able to assert a right to exclusive possession against those who seek to occupy the land and that is sufficient.

98. That, in my judgment, is both compatible with CPR Part 55 and accords with the observations of Laws LJ in ***Dutton*** at page 150D:

> " In this whole debate, as regards to the law of remedies in the end I see no significance as a matter of principle in any distinction drawn between a plaintiff whose right to occupy the land in question arises from title and one whose right arises only from contract. In every case the question must be what is the reach of the right and whether it is shown that the defendant's acts violate its enjoyment. If they do, and (as here) an order for possession is the only practical remedy, the remedy should be granted. Otherwise the law is powerless to correct a proved or admitted wrong doing; that would be unjust and disreputable. The underlying principle is in the Latin maxim (for which I make no apology), "*ubi jus, ibi sit remedium*".

For my part I see no conflict between that approach and the observations of Lord Neuberger in ***Meier*** at paragraph 59 (above). This approach recognises both the importance of the right to exclusive possession and the need to qualify that right depending upon the use of the land – an approach which Slade J also recognised. (see ***Powell*** above).

99. Ms Harrison submitted, on behalf of Rebecca Hall that the claimant cannot show, for the purposes of CPR 55(1)(b) that PSG is occupied only by persons who have entered or remained without consent because PSG remains open to access by members of the public and members of the public are present at and occupy PSG for periods of time of varying length. She submitted it follows that no possession order may be granted if the effect of that order is to exclude third parties who have a right to be on the land in question. In support of this submission, she cited the dictum of Lord Neuberger in ***Meier*** above at paragraph 68:

> "The position is more problematical where a defendant trespasses on part of land, the rest of which is physically occupied by a third party, or even by a landowner. Particular difficulties in this connection are, to my mind, raised in relation to a wide order for possession in a claim within CPR r 55.1.(b). such "a claim" may be brought "for the recovery of land which the claimant alleges is occupied only by a person or persons who entered or remained on the land without … consent …" Given that such a claim is limited to "land … occupied only by" trespassers, it is not immediately easy to see how it could be brought, even in part, in relation to land occupied by persons who are not trespassers. And it is fundamental that the court cannot accord a claimant more relief than he seeks … "

100. I reject this submission because it overlooks that the Rule is directed at occupiers of land, not visitors to the land and I am not persuaded that the

above observations of Lord Neuberger can be applied to the facts of this case. The third parties in the present case are visitors or licensees and not occupiers. Of course, in the event that the court has to grant a writ of possession requiring the bailiffs to put the claimant into possession, the bailiffs would be required in principle to remove all persons on the land and that would include any who were lawful visitors. If that was to happen, any visitors would have the right to return immediately, as would the trespassers providing they did so only as visitors. I do not consider that this is a matter which prevents the making of orders for possession.

101. And so can the claimant assert a right on or before 1 May 2010 to exclusive possession of PSG as against those who are not lawful visitors? In my judgment he can, for the following reasons:

- The statutory scheme was intended to pass effective day-to-day control of PSG to the GLA and to the Mayor of London. Section 384 (3) provides that the "control, management and regulation" of PSG shall be functions of the GLA and I can see "no ground" for construing section 384(7) as Mr Luba contended (see paragraph 90 above). In my judgment, Section 384 (7) was intended to provide, subject to issues of reasonableness and ECHR compliance, that the exercise of those functions should be unfettered.

- It is instructive to consider the Report of Proceedings in the House of Lords on 25 October 1999; when Lord McIntosh of Harringey moved an amendment adding a new clause (section 383 of GLAA) he said:

> "These amendments make provision for the transfer of day-to-day responsibility for Trafalgar Square and Parliament Square from the Secretary of State for Culture Media and Sport of the GLA. Both Squares will remain Crown land. The Mayor will be responsible for the repair and maintenance of the fabric of the Squares – let us say, cleaning, lighting and structural repairs to statues – and for controlling and licensing use; for example giving permission for rallies and events, advertising and filming in Trafalgar Square. Trafalgar Square and Parliament Square are public places of great historical and cultural importance to London. They both have a role in the life of the whole nation. It is appropriate that the Mayor should have responsibility for them. The transfer of the Squares is considered essential to the implementation of the "World Squares for All" Masterplan Project on which the Mayor will take the lead. This is a flagship project which demonstrates how, through careful traffic management and some pedestrianisation, we can redress the balance between vehicles and pedestrians, improve the historic environment and give these great squares back to London and visitors to enjoy… Given management responsibility for Trafalgar Square and Parliament Square, together with the responsibility for strategic routes including Whitehall, the Mayor will be able

> to champion the World Squares Scheme and ensure that a consistent management regime can be established through the project area."

I do not accept, as Mr Luba submitted, that this demonstrates the intention of Parliament that the GLAA and/or the Mayor have no more than day-to-day management responsibilities and so are in the position of property agents. Such management responsibilities are not inconsistent with a right to exclusive possession – "giving permission for rallies and events, advertising and filming" may be regarded as concomitant with exclusive possession.

- Whereas the By-law provisions in section 385 (1) restricts byelaws to control the activities of those using PSG, there is the general power of the Authority to do anything which it considers will further anyone or more of its principle purposes which include "promoting the improvement of the environment in Greater London" : see section 30 (2) (c) of GLAA. Section 34 of GLAA provides that the GLA acting by the Mayor may do anything (including the acquisition or disposal of any property or rights) which is calculated to facilitate or is conducive or incidental to the exercise of any functions of the authority exercisable by the Mayor. Contrary to the submissions of Mr Luba the provisions in section 34 are not ancillary to the provisions in section 384 (3); they are far more general in their effect. I observe that section 386 of GLAA, while providing that the Secretary of State may issue guidance to the Mayor concerning the exercise of any of his section 384 (3) functions, expressly provides that the Mayor should only have regard to such guidance, without constraining the Mayor's discretion in carrying out those responsibilities.

- In my judgment, these provisions, read as a whole, provide the Mayor and/or the GLA with the right to possession of PSG and, with that, the right to exclude people from PSG. The example advanced by Mr Underwood of PSG being closed for maintenance purposes, provides evidence of a general right to exclude; further, in my judgment, the Mayor can only exercise some of these statutory functions if he has the right to exclude persons from PSG; examples are provided in the control of demonstrations, which require his permission – as he can limit the numbers of persons at an assembly and can restrict demonstrations to defined areas of PSG, it follows he can exclude persons from all or a part of PSG.

102. The facts in ***Dutton*** are markedly different to the facts in the present case and so it is distinguishable on its facts and I accept it is arguable that the Court of Appeal's decision was reached without regard to binding authorities and that the court's approach to "the law of remedies", applied by Laws LJ in ***Dutton*** (see 149H-150E) conflicts with the opinion of Lord Neuberger in ***Meier*** above at paragraph 59. There is also authority – ***Countryside Residential (North Thames) Ltd –v- Tugwell and others*** [2003] 34 EG 87 – that ***Dutton***

should not be construed as going further than its particular facts allow. But in the light of my decision on the jurisdiction issue, it is unnecessary to consider the alternative submissions or to reach a concluded view.

Conclusion

103. The Claimant has established a right to exclusive possession as against persons who occupy PSG without authority and so can bring these proceedings for possession of PSG.

Are the defendants or any of them in occupation of and tresspassers on PSG?

104. The Claimant's case against all defendants is that the facts speak for themselves. Unless permission is granted, there can be no right to camp or to demonstrate or to do anything prohibited by byelaws 5(3)(7)(9)(10) and (13). Without such permission, there is no right to take possession or to make, what would otherwise be unreasonable or unlawful use of PSG and there is no right to impede the lawful use by members of the public who access PSG as visitors, of all the grassed area and paved areas of PSG. No Democracy Village defendant has asserted a right to possession to PSG and the right to access of PSG does not confer a right to occupy or to store items of property there. A person who abuses or exceeds his licence is a trespasser: ***Elvin& Karas***: Unlawful Interference with Land; 2nd edition at page 41.

105. The defendants do not assert any right to possession according to the law of England & Wales. It is common ground that none of the defendants who are a part of the Democracy Village has the required authority or permission to occupy PSG and so absent a legal right or defence those defendants are in breach of byelaws 5(7) and (10).

106. The case for the 1st defendant, Rebecca Hall is that as a member of the public, she is exercising her right to access PSG and her presence is not unlawful. Rebecca Hall accepts that she has "entered" and "remained on" PSG but she asserts her presence is entirely reasonable, that she has accommodated the reasonable requests of the claimant and the interests of other users, that the request for her to leave for the purposes of byelaw 3(6) were not reasonably made and that she has occupied only that part of PSG covered by the "footprint" of her tent (and see paragraph 99 above).

107. In my judgment, Rebecca Hall has not exercised her limited right as a member of the public to access PSG; those who formed the Democracy Village entered upon PSG not as visitors but intending to occupy it. She has by her own admission remained on the land. While by her solicitors she initiated discussions with the GLA, seeking a compromise, no agreement was reached and she remains a trespasser. Subject to my conclusions as to her Article 10 and 11 rights, I do not

accept that her presence on PSG is "entirely reasonable". I reject her case that the claimant is not entitled to possession as against her because she occupies only the "the footprint" of her own tent and/because the Democracy Village occupies only some 70% of PSG.

108. The case for Mr Haw and Ms Tucker and the allied case of Charity Sweet is that they have permission to occupy that part of PSG on which they pitch their tent to sleep. On behalf of the 2nd defendant, Mr Harris submitted Mr Haw has not breached any byelaw, his Article 10 & 11 rights providing a defence; he submitted the evidence demonstrates that Mr Haw's presence on the grassed area has long been tolerated as evidenced by the e-mail of 18 June 2007 and the words of the former Mayor of London as reported in the Evening Standard of 17 August 2007, "Brian's okay and I support him".

109. Without evidence that Mr Haw and Ms Tucker has expressed or implied permission to occupy the grass area, they are clearly trespassers. On the unchallenged evidence of Mr Grinter and of Mr Shah, and indeed, the evidence of Mr Haw himself , who produced the e-mails of 18 June and 17 August 2007, (see paragraph 71 above), there is overwhelming evidence that Mr Haw, Barbara Tucker and Charity Sweet do not have permission to occupy the delineated grassed area. I am satisfied the GLA would not have been prepared to agree to anything other than an authorisation limited to Mr Haw himself. Mr Haw's evidence of his infirmities is concerning but the law is clear – a defence which is based only on the occupier's personal circumstances should be struck out: see paragraph 76 above.

110. The claims of Mrs Sweet that PSG is consecrated land and so there is a right of assembly there and of some defendants to a right to possession because PSG is common land are clearly wrong: see section 384 (1) of the GLAA; similarly, any claim to possession in accordance with unspecified international law, the law of the universe or the law of Till must be rejected.

111. Chris Coverdale (the 8th defendant) submitted that he has the legal right and duty to occupy PSG and to breach the byelaws, court orders and police orders because: (i)he believes and suspects that persons involved in the government, members of parliament and "persons in this court" have committed offences contrary to sections 15 – 18 of the Terrorism Act 2000 and so he must disclose the information he has to a constable "as soon as reasonably practicable: see Section 19 (1) & (2) of the Act; that he has disclosed that information to police officers in PSG but they have taken no action; (ii)he has the legal duty under the laws of war to disobey the unlawful orders of the government and to occupy PSG to prevent and end serious war crimes taking place in Parliament and in Whitehall and to effect the lawful arrest of war criminals: see Manual of Military Law Part 1, Chapter VI Article 24 and the Nuremberg War Crimes Trial Judgment, cited in his skeleton argument; (iii)those who are breaking the laws of war are in Parliament, in the Treasury, in the Supreme Court and in Westminster Abbey and his presence, in PSG (where he has been for the last 6 years) is to attempt to effect citizens arrests.

Mr Coverdale relied also upon the provisions of Section 3 and 4 of the Criminal Law Act 1967:

> "Section 3: (1). A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large;
>
> (2)Sub section (1) shall replace the rules of common law on the question when force used for a purpose mentioned in the sub-section is justified by that purpose."
>
> Section 4: (1)Where a person has committed a relevant offence, any other person who, knowing or believing him to be guilty of the offence or of some other relevant offence does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution shall be guilty of an offence … ".

Mr Coverdale submitted that genocide, crime against humanity and war crimes, together with conduct ancillary to those offences committed outside the jurisdiction, are now offences against the law of England and Wales: sections 51 & 52 of the International Criminal Court Act 2001 and so the section applies to these offences also and he submitted that as genocide, crimes against humanity and war crimes are "relevant" offences, the Mayor by attempting to remove him and others from PSG is, contrary to Section 4 (1), impeding the arrest and prosecution of the suspected war criminals identified above. As I understand his evidence, he has not tried to arrest anyone.

112. If it is the case that there are those who have broken the laws of war are in Parliament or in the immediate vicinity of PSG, these sections would only be applicable if Mr Coverdale tried to arrest anyone for committing such crimes and he has not done so. I consider it is unlikely that anyone whom he suspects of such crimes will go to PSG – if they did, I do not understand that Mr Coverdale would in fact use force to arrest them because he was at pains to point out that he is a conscientious objector who does not believe in the use of force, thus revealing an apparent contradiction in his submissions. In any event, there are, as Lord Hoffmann pointed out in ***R. v. Jones*** [2006] UK HR16 at paragraphs 73 & 74, limits to self help. The provisions of Section 3 generally applied permit a defence to the commission of a criminal offence – usually an offence of violence committed in self-defence, defence of another or to effect n arrest – when what is in issue is whether on the facts as he honestly believed them to be, a defendants use of force was reasonable. In his opinion, Lord Hoffmann with whom all Lords of Appeal agreed, said:

> "78 … Ordinary citizens who apprehend breaches of the law, affecting themselves, third parties or the community as a whole, are normally expected to call in the police and not to take the law into their own hands…
>
> "83. The right of the citizen to use force on his own initiative is even more circumscribed when he is not defending his own person or property but simply wishes to see the law enforced for the interest of the community at large. The law will not tolerate vigilantes. If the citizen cannot get the courts to order

> the law enforcement authorities to act… then he must use democratic methods to persuade the government or legislature to intervene."

113. While I have no doubt that Mr Coverdale genuinely believes there is substance in these legal arguments, there is none and I reject his submissions that these are matters which, individually or collectively, give him a right in law to occupy PSG.

114. I am satisfied on the balance of probabilities that with the exception of the cases of Mrs Sweet and Ms Raga Woods, there is clear evidence that the defendants are occupying PSG as trespassers. In the case of Mrs Sweet, her evidence is that she is an occasional visitor to Mr Haw's campaign, staying overnight sometimes. That provides insufficient evidence of occupation or an intention to occupy. The evidence of the occupation of PSG by Ms Raga Woods is sketchy at best. She states "I have no intention of permanently remaining on PSG. I stay at times and leave at others". As I understood her evidence, she visits the Democracy Village because she approves of the dialogue that takes place there to highlight in particular her concerns for children worldwide. She merely wants the right to revisit. There is insufficient evidence of occupation in her case also.

Conclusion

115. Under domestic law, but subject to any defence based upon Convention rights, the Claimant is entitled to possession against each defendant other than the 4th and 19th defendants as of right. further; authority is clear, that right is to possession forthwith: see ***McPhail v Persons, names unknown*** [1973] 1Ch 447 at page 458 (E-G) per Lord Denning MR who said:-

> "R.S.C.,Ord.113 (now CPR55 (1) (B)) of the High Court and Ord.26 in the County Court are quite clear. A summons can be issued for possession against squatters even thought they cannot be identified by name and even though, as one squatter goes, another comes in. Judgment can be obtained summarily. It is an order that the plaintiffs do "recover" possession. That order can be enforced by a writ of possession immediate. It is an authority under which anyone who is squatting on the premises can be turned out at once. There is no provision for giving any time. The Court cannot give any time. It must, at the behest of the owner, make an order for recovery of possession. It is then for the owner to give such time as he thinks right to the squatters. They must make their appeal to his goodwill and consideration and not to the Courts ".

Is the Article 10 and/or Article 11 right or any other convention right such as to provide a defence and to disentitle the Claimant to possession of PSG?

116. Each of the defendants, with the exception of Rodge Kinney who is occupying PSG as a homeless person and so who asserts his article 8 rights, asserts his or her right to freedom of expression (Article 10) and freedom of assembly and association (Article 11). On the facts of this case, those two rights go together. While Chris Coverdale asserted his Article 2 right to life and Peter Phoenix

asserted his Article 9, 10 and 13 rights, neither explained the bases for these claims and so I reject them.

117. As to Mr Kinney, his occupation of PSG is coincidental. His evidence – see paragraph 66 – demonstrates that he occupies PSG because he is homeless but he must be regarded as intentionally homeless and so I am satisfied he cannot rely on his Article 8 right to respect for his private and family life and his home. Neither of the situations identified by Lord Bingham in ***Kay*** above (see paragraph 76) applies.

118. In the cases of the Democracy Village defendants, it is said that the matters of which they protest are so serious that there must be a continuing protest of which camping is a necessary component because they hold meetings twice daily, have discussions and give the public the opportunity to visit the village to be informed; their protest must be in such a prominent location because they need to bring their concerns to the attention of Parliament and Government (as well as the Church and the Supreme Court).

119. In the case of Mr Haw, the exercise of his Article 10 & 11 rights on the pavement area subject to the control of Westminster County Council is long-standing and acknowledged – as it is (albeit for a shorter time) by Ms Tucker - and so there is the narrow issue of whether their exercise of their rights requires them to occupy a small area of PSG or whether the Mayor is acting proportionately in seeking to exclude them from that part of PSG. In the case of Charity Sweet, the issue is whether her Article 10 & 11 rights are such as to allow her to occupy the delineated grassed area.

120. The issues are:

i) Whether any interference with the defendants Article 10 and 11 rights would be within the law as necessary to meet a pressing social need and proportionate and,

ii) whether the provision in the byelaws for a procedure for the authorisation of a demonstration, the application for permission on 20 May and the refusal on 26 May are determinative of the defendants' defence to the claim for possession?

121. Ms Harrison's overriding and core submission was that the Claimant's applications are fundamentally misconceived, that the byelaws and SOCPA provide a scheme to balance the right to freedoms of speech and association with other public interests; that breaches of the byelaws and the commission of the SOCPA offences are all arrestable and so that provides a measure of control; by fixing level 1 pecuniary penalties (and so restricted to a maximum of £200) for breaches of the byelaws and a maximum of 51 weeks custody for breaches of the relevant SOCPA provisions,

Parliament has clearly indicated how the balance is to be struck; the use of a possession order and an injunction, a breach of which is a contempt of court punishable with a maximum of 2 years custody is disproportionate. In support of this submission, she relied on the *dictum* of Lord Bingham in ***R (Laporte) –v- Chief Constable of Gloucestershire*** [2006] UKHL 55 at paragraph 46:

> "First, in the 1986 Act Parliament conferred carefully defined powers and imposed carefully defined duties on chief officers of police and the senior police officer. Offences were created and defences provided. Parliament plainly appreciated the need for appropriate police powers to control disorderly demonstrations but was also sensitive to the democratic values inherent in recognition of a right to demonstrate. It would, I think be surprising if, alongside these closely defined powers and duties, there existed a common law power and duty, exercisable and imposed not only by and on any constable but by and on every member of the public, bounded only by an uncertain and undefined condition of reasonableness."

In my judgment those observations have no relevance to the facts of this case

– in ***Laporte*** the issue was whether the Chief Constable's interference with the

claimant's right to demonstrate at a lawful assembly was prescribed by law;

Lord Bingham was not addressing the proportionality of remedies.

122. Mr Underwood submitted, and I agree, that Parliament has not struck a balance by imposing a scheme of fines for breaches of the byelaws and custodial sentences for the relevant SOCPA offences. There is nothing to suggest that Parliament had in mind any scheme. These are penalties in respect of the commission of offences; they do not address issues of possession and section 385(1) and (3) of the GLAA do not enable the Mayor to claim possession. Mr Underwood submitted, and I agree, the Mayor cannot rely on proceedings in the magistrates' courts to obtain possession of PSG; the magistrates can only impose fines for breaches of the byelaws; no application could be made for the making of Anti Social Behaviour Orders in the absence of any evidence of harassment; the bringing of charges for breaches of the relevant provisions of SOCPA is a matter for the Metropolitan Police who have chosen to do nothing in that regard.

123. Ms Harrison submitted that the use of a possession order and an injunction to end and to prohibit on an indefinite basis the 1st Defendant's ability to express her views and to participate in a peaceful assembly is a breach of her Article 10 & 11 rights because it is pursuant to civil proceedings procedure which is not sufficiently clear – in my judgment, CPR Parts 7 & 55 procedures are very clear.

124. She submitted the applications do not meet a pressing social need. She submitted that a possession order is a common law power which does not

"sufficiently address and tailor its terms to accommodate Articles 10 & 11 rights" – she did not explain how a possession order should accommodate those rights. She referred to ***Tabernacle –v- Secretary of State for Defence*** [2009] EWCA Civ 23 as authority to support the proposition that a prohibition on any protest lasting more than 3 hours or overnight and requiring that it should take place on consecutive days (see paragraph 48) is an unlawful fetter on the Mayor's discretion. I disagree; the facts of ***Tabernacle*** above and the facts of ***Westminster City Council –v- Haw*** above (to which reference was also made), both cases in which camping as part of the right of assembly was in issue, are substantially different; the camping in ***Haw*** was by one person on a small part of the public highway with no evidence of actual obstruction of the pavement and the camping in ***Tabernacle*** was on a piece of land adjoining the highway alongside Aldermaston, a camp which had taken place for some 23 years, was held on one weekend monthly, there was no evidence of obstruction or any significant obstruction of the highway and no attempt had been made on the part of the Secretary of State to enforce his right to possession for all that time.

125. Ms Harrison submitted that the arrangements for applying for authorisation presented difficulties when there is a need to protest as a matter of urgency, when protestors need to respond immediately to events; she submitted the prohibition on overnight camping, on indefinite protests and the requirements of public liability insurance are a fetter on the exercise of Article 10 & 11 rights. In support of this submission she cited ***Nurettin Aldemir and others –v- Turkey*** ECtHR 18 December 2007 and paragraph 46 of the judgment:

> "In the Court's view, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by article 11 of the Convention is not to be deprived of all substance"

Reference to this decision of the ECtHR provides a good example of how unhelpful it is to cite decisions of that court which turn on their particular facts. The balancing exercise in all Article 10 & 11 cases requires a certain degree of tolerance and those observations were prompted by the particular and very different facts of the case – demonstrators wanted to protest against proposed legislation which affected trade union rights; they organised meetings and a protest march in an area where demonstrations were not permitted; when they blocked a road and refused to disperse, police officers intervened and used violence to disperse them.

126. Mr Harris submitted that if Mr Haw is confined to the pavement area, he will not be able to continue his protest and so to require him to move would be an unnecessary and disproportionate interference with his Article 10 & 11 rights; he submitted there is no evidence that his tents obstruct anyone or cause any damage and the threshold for restricting his Article 10 & 11 rights has not been approached.

127. Mr Underwood submitted that no authority has been provided in support of a submission that the byelaws are not convention compliant; they do not contain blanket prohibitions and the unchallenged evidence is that every application is considered on its own particular facts. He submitted that in deciding whether the Mayor's response was proportionate, the starting point must be the observations of Lord Bingham in ***Kay*** above at paragraph 37:

> "Rarely, if ever, could this test be satisfied where squatters occupy the land of a public authority which they do not and (unlike ***Connors***) never have had any right to occupy, and the public authority acts timeously to evict them. The public look to public authorities to preserve their land for public purposes and to bring unlawful occupation to an end, with the environmental hazards it is likely to entail. Rules 55.5 (2) and 55.6 of the Civil Procedure Rules provide for the summary removal of squatters. The rule in ***McPhail v Persons, Names Unknown*** [1973] Ch 447 must, in my opinion, be relaxed in order to comply with article 8, but it is very hard to imagine circumstances in which a court could properly give squatters of the kind described above anything more than a very brief respite."

He posed the question – would it be disproportionate to give the relief we are asking for given the aim of re-establishing control? He submitted no defendant has suggested how the Mayor could achieve that aim by alternative methods, that either he does nothing or he obtains possession. The Mayor tried to negotiate (see paragraph 42 above) but that did not work. Mr Underwood submitted the Mayor's decision cannot be disproportionate because it just puts the defendants back in the position they were in before 1 May, with a right to apply for authorisation and those with personal grounds can rely on them.

Discussion

128. Articles 10 & 11 (see the Appendix) provide that everyone has the right to freedom of expression and of peaceful assembly and association with others but the exercise of those rights is not unfettered. Article 10 (2) and 11 (2) qualify the rights, providing that they may be interfered with if the rights are "prescribed by law" and it is "necessary in a democratic society in the interest of national security or public safety for the prevention of crime or disorder, for the protection of health or morals or for the protection of the rights and freedom of others".

129. There is no issue that the requirement for authorisation and the imposition of penalties for non-compliance are ECHR compliant: see ***Laporte*** above at paragraph 37, *per* Lord Bingham:

> "Thus the protection of the articles may be denied if the demonstration in unauthorised and unlawful as in (***Ziliberberg***) or if conduct is such as actually

to disturb public order (as in ***Chorberr v Austria*****)** (1993) 17 EHRR 358). But (***Ziliberberg,*** para 2)***:***

> "an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour".

Any prior restraint on freedom of expression calls for the most careful scrutiny: ***Sunday Times v United Kingdom (***No.2***)*** (1991) 14 EHRR 229 para 51; ***Hashman and Harrup v United Kingdom*** [1999] 30 EHRR 241. para 32.

The Strasbourg court will wish to be satisfied not merely that a state exercised its discretion reasonably, carefully and in good faith, but also that it applied standards in conformity with Convention standards and based its decisions on an acceptable assessment of the relevant facts: ***Christian Democratic People's Party v. Moldova***, para 70."

And see also ***Blum –v- Director of Public Prosecutions*** [2006] EWHC 3209 (Admin) at paragraph 19 *per* Waller LJ:

> "As noted above, the requirement to obtain authorisation for a demonstration is not incompatible with Article 11 of the Convention. The Court considers that since States have the right to acquire authorisation, they must be able to apply sanctions to those who participate in demonstrations that do not comply with the requirement. The impossibility to impose such sanctions would render illusory the power of the State to require authorisation. It appears that in the present case, the State imposed a sanction on the applicant strictly for his failure to comply with the prohibition on participation in unauthorised demonstrations."

130. In my judgment, the byelaws are clear in their effect – there is no prohibition on camping, making public speeches and organising or taking part in an assembly; all that is required in authority to do so. That there is no blanket ban is apparent – demonstrations have taken place regularly and the Mayor is prepared to consider a request for camping in appropriate cases (see paragraph 71 above); there is the evidence of Mr Grinter that an application in 2005 by "Stop the War" for permission to camp on PSG was refused but permission

was given for a maximum of 15 tents to be pitched in a defined area on Trafalgar Square for 3 days. If there should be a need for an urgent and immediate protest, the evidence (paragraph 28), which I accept, is that an application can be made and considered.

131. The letter dated 20 May 2010 (see paragraph 38) was treated as an application. The Mayor responded by letter dated 26 May in which he set out extensively his reasons for refusing authority to occupy PSG. He said:

"1. The Mayor recognises that, as explained in your application, the provision of an encampment and the indefinite nature of the "Democracy Village" and its location near to Parliament are considered by the protestors to be intrinsic features of the protest;

2..As experience has shown, the Mayor has regularly consented to protests and assemblies in Parliament Square Gardens ("PSG") in the past:

3. The Mayor will exercise the powers under Section 384 for the care control and management of Parliament Square Gardens and in deciding whether to grant permission under the byelaws to ensure that;

a)The public may use the area for all lawful and reasonable activities including demonstrations and assembly in accordance with the byelaws;

b)To ensure that where demonstrations and protests are held they are properly authorised and managed in a way which does not (a) exclude the wider public from use of a substantial proportion of PSG for a prolonged period;

c)Cause damage to PSG (and which secures the remedying of such unavoidable damage as may arise); and/or

d)Result in such a degree of interference with the lawful exercise of rights of other to use or enjoy PSG as to be unreasonable.

4.The Mayor is not prepared to authorise the establishment of a Democracy Village on PSG of the nature and the scale and duration of that which is proposed;

5.The Mayor notes that the Democracy Village covers a substantial proportion of PSG and almost all of the grassed area in the centre. The demonstrators claim to be in control of that area. Whether or not this is correct the effect of the Democracy Village is to prevent the public from exercising their rights over a very significant part of PSG for a prolonged and indefinite period. The Mayor does not consider that a protest involving long term camping, by significant numbers in this location is consistent with the proper care, management and control of PSG and with the rights of others. He notes that one impact of the Democracy Village has been to exclude others from exercising their right to protest

there. The extent and duration of the impact of the Democracy Village on the lawful, reasonable and ordinary activities on PSG is the primary reason for refusing consent;

6.The Mayor is seriously concerned about the substantial damage which is being caused by the Democracy Village to PSG. He considers it inappropriate to grant permission to activities which cause such a degree of damage and that to grant permission would be inconsistent with his duty in Section 384 (4). He considers that much of the damage is an inevitable consequence of prolonged camping by significant numbers in this location which is an unsuitable location for such activities;

7.In forming this view, the Mayor GLA has carefully considered the rights to protest and to assemble and has accorded those rights of central weight in accordance with the case law. The Mayor takes the view that those rights do not mean that any protest of any nature and duration is necessary permissible in any given location. Given the impacts on others principally arising from the combination of the scale of the encampment and its prolonged nature, and the damage caused by the PSG, the Mayor is not prepared to consent under the byelaws for the creation of a Democracy Village as described in your letter.

8.The cost of reparation to return the Square to its former condition is substantial. The Mayor considers that the costs arise from the way in which the Democracy Village has shown a disregard for PSG and for the byelaws and from the intrinsic nature of the Democracy Village.

9.Permissions for other peaceful protests and rallies on Parliament Square Garden are normally limited to a maximum of 3 hours, in order to allow for proper management, to ensure that the day-to-day business of the city is not impeded, and to allow the maximum number of groups or individuals to use the space to exercise their democratic right to peaceful protest. As this period will be extended in appropriate cases, the Mayor is not prepared to permit camping by significant numbers for a prolonged period.

10.Additionally, any organisers of any protest would normally for obvious reasons be required to obtain public liability insurance. No such insurance is in place here."

132. Was the Mayor's decision disproportionate? I consider it was not. He had to balance not only the defendants' Article 10 & 11 rights but also their claimed right to be allowed to camp indefinitely on PSG with his function to control and manage PSG for the benefit of others. In my judgment he directed himself correctly, considered all the relevant matters and reached a reasoned decision which cannot be criticised.

133. I am satisfied there is a pressing social need not to permit an indefinite camped protest on PSG for the protection of the rights and freedoms of others to access all of PSG and to demonstrate with authorisation but also importantly for the protection of health - the camp has no running water or toilet facilities - and the prevention of crime - there is evidence of criminal damage to the flower beds and/of graffiti, as well as other related unlawful activity (see paragraph 51 above). There is also evidence that the Democracy Village is acting as a magnet attracting

the homeless who are taking advantage of the lack of control and there is heavy drinking. Mr Underwood submitted, and I agree, that it is inconceivable that even a temporary planning permission for the village would given because of the difficulties with safe access, the lack of sanitation and the impact on the WHS – I reject the defendants' cases that as camping is a necessary component of their chosen form of protest, to interfere with that right is to infringe their Convention rights; just as the actions of those who seek to interfere with the exercise of a Convention right must be proportionate, so must the actions of those who exercise such rights. I am satisfied the GLA and the Mayor are being prevented from exercising their necessary powers of control management and care of PSG and the use of PSG by tourists and visitors, by local workers, by those who want to take advantage of its world renown setting and by others who want to protest lawfully, is being prevented. I would add the requirement for public liability insurance has not been previously questioned; while individual demonstrators such as Friend (Ian Robert Hobbs) may not be able to obtain such cover, it does not follow that a properly organised demonstration cannot – indeed, in practice it has not prevented the many and regular demonstrations which take place, as the evidence made clear.

Conclusion

134. While the removal of the defendants (the 4th and 19th excepted) and each of them would interfere with their Article 10 and Article 11 rights, that is a wholly proportionate response and so no defendant has a convention defence (and for the reasons given above) or any other defence to the claim for possession.

Have the defendants or any of them breached the criminal law in the course of their occupation of PSG and if so, is this an exceptional case in which to grant an injunction in support of the criminal law and if so are injunctions a proportionate response to the aims of the Mayor to regain control of PSG for the benefit of others?

135. The applicable principles are to be found in the speech of Lord Templeman in the ***Stoke-on-Trent Council –v- B & Q*** [1984] AC 754 at 776A-F and in the speech of Bingham LJ, as he then was, in ***City of London Corporation –v- Bovis Construction Ltd*** [1992] 3 All ER 697 at 714G-J. Lord Templeman said:

> "Where Parliament imposes a penalty for an offence, Parliament must consider the penalty is adequate and Parliament can increases the penalty if it proves to be inadequate. It follows that a local authority should be reluctant to seek and the court should be reluctant to grant an injunction which if disobeyed may involve the infringer in sanctions far more onerous than the penalty imposed for the offence … As a general rule a local authority should try the effect of criminal proceedings before seeking the assistance of the civil courts. But the council were entitled to take the view that the appellants would not be deterred by a maximum fine which was substantially less than the profits which could be made from illegal Sunday training."

Bingham LJ said:

> "The guiding principles must I think be: (1) that the jurisdiction is to be invoked and exercised exceptionally and with great caution … ; (2) that there must certainly be something more than mere infringement of the criminal law before the assistance of civil proceedings can be invoked and accorded for the protection or promotion of the interests of the (claimant) …"

136. While, as Sir Anthony Clarke MR, as he then was, observed in ***Birmingham City Council –v- Shafi and another*** [2008] EWCA Civ 1186 at paragraph 36, that subsequent decisions suggest a somewhat broader approach, the essential principles remain the same. And so, as the Claimant has not tried the effect of criminal proceedings, is the Mayor right to take the view that summary proceedings for breaches of the byelaws not deter the defendants and should this exceptional remedy be granted?

137. The cases of each defendant are that this is not such an exceptional case that injunctions are necessary.

138. The evidence that the Democracy Village defendants and each of them has breached byelaws 5(7) and (10) is overwhelming and not seriously disputed by any defendant. As to byelaws 5(1), (3), and (9), there is no evidence (see paragraph 49) of any breach by any named defendant but on the evidence and the balance of probabilities I am satisfied in the case of each defendant that he or she knew of such breaches by other others who were part of Democracy Village and for the purposes of the criminal law aided and abetted the commission of such breaches. For the avoidance of doubt, I make clear that I have reached that conclusion not simply on the ground of their admitted presence on PSG; there is also evidence of the knowledge of those participating in the occupation of PSG of the continuing nature of these breaches and what, I am satisfied on the evidence, must be the active encouragement of those taking part in the occupation. These conclusions do not apply to byelaw 5(13). In the case of the 1st Defendant, her attempts to reach a settlement or compromise with the GLA do not amount to a defence to any of the alleged breaches.

139. In the cases of the 2nd, 3rd and 4th defendants (Mr Haw, Ms Tucker and Mrs Sweet) there is the clearest evidence of breaches of byelaw 5(7).

140. Mr Underwood submitted that the defendants and those occupying the Democracy Village intend to continue their unauthorised occupation of PSG indefinitely and so they will continue to breach the byelaws; as they have failed to comply with lawful directions to leave and failed to comply with the requirements of Section 133 of SOCPA, there are grounds for believing none will be deterred by the threat of the criminal sanction of a level 1 fine, presently £200. Mr Underwood submitted also that offences of criminal

damage are continuing, with parts of PSG being turned into a vegetable garden.

141. Ms Harrison submitted that as breaches of the byelaws are arrestable offences (see section 24 of the Police & Criminal Evidence Act 1984 as amended), it cannot be said that the criminal law does not provide an effective remedy and it cannot be said that this is an exceptional case.

142. Mr Harris submitted there is no evidential basis for drawing the inference that each and every defendant would not have been deterred by prosecutions for byelaw or SOPCA offending.

Conclusions

143. Whereas the standard of proof required in civil proceedings is the balance of probabilities, I am, in fact, sure that these applications (subject to the exercise of the court's discretion) must succeed. I am satisfied, for the reasons which follow that this is an exceptional case:

- The identities of most of those taking part in the Democracy Village are unknown – but for their insistence in being joined as defendants to these proceedings, the identities of defendants 5 to 19 would not have been ascertained;

- It would impose an undue burden on the Claimant to institute proceedings against all the occupiers, with the complicating factor that some of those taking part move in and out of occupation; effecting service would not be straight forward;

- Proceedings in the magistrates' courts would have to be by way of summons, a sometimes prolonged procedure;

- The refusals, hitherto, of those taking part in the Democracy Village to obey lawful instructions gives no grounds for optimism that there will be future compliance; indeed a number of the defendants made it clear they have no intention of obeying a court order for possession;

- In ***Tabernacle*** above Laws LJ said, at paragraph 43:

  > "Rights worth having are unruly thing. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them. Sometimes, they are wrong-headed and misconceived. Sometimes they betray a kind of arrogance; an arrogance which assumes that spreading the word is always more important than the mass which often, literally, the exercise leaves behind".

Having witnessed the behaviour of some of the defendants and of their supporters in court, I am confident that none will be deterred by prosecutions for breaches of the byelaws.

144. While I am mindful that the effect of an injunction, if disobeyed, may subject the offender to a more onerous penalty, I am satisfied that would not breach any Convention right – for the reasons I have given, I am satisfied the Mayor's decision is a proportionate response. Those who chose to ignore the functions of the Mayor and the rights of others to access PSG freely or to protest there with authorisation can hardly complain if they make themselves liable to more serious punishment.

Should the Court grant an injunction in the exercise of its discretion against any of the defendants?

145. I have considered the cases of each of the named defendants separately. I am satisfied that each of the 3rd to 19th defendants inclusive has no intention of observing the byelaws and none will be deterred by the prospect of a level 1 fine. In the cases of the 3rd, 4th, 7th, 8th, 11th, 12th, 14th, 16th, 17th, and 18th defendants, I have reached my decision on the basis of their evidence; I am satisfied in each of their cases that they are so motivated by the genuineness of their individual beliefs and concerns that they are presently displaying "the kind of arrogance" which they believe puts them above the law.

146. In the cases of the 5th, 6th, 9th, 10th, and 15th defendants who asked to be joined as defendants and then either did not attend or took no constructive part in the proceedings, I am satisfied they have demonstrated an indifference to these proceedings such as to prove that they, and each of them, will not be deterred from further breaches of the byelaws by the prospect of summary proceedings in the magistrates' court.

147. In the case of the 1st defendant, I am not persuaded that an injunction is necessary in her case. She did not give evidence because the Claimant did not want to ask any questions of her and so there is no evidence of the intransigence demonstrated by other defendants. Indeed, her personal circumstances and her attempts to resolve matters both for the Democracy Village and for herself, in my judgment do not suggest that the exceptional measure is necessary in her case.

148. In the case of the 2nd defendant (Mr Haw) I have concluded that he has displayed such intransigence in the face of the clearest evidence that the Claimant has not agreed to his occupation of any part of the grassed area, that the injunction is necessary. The history of some of the proceedings taken against him over the years, lends support for that conclusion. But I have reached this conclusion, not without considerable hesitation, because I am concerned about the evidence of his health and I cannot ignore that he has

been allowed to demonstrate on the pavement area for so many years and so it may arguable that the use by him of a small part of the grassed area for a personal tent will not prejudice the rights of others. As the terms of the injunction make it clear that he can continue to use a tent or similar structure provided he has the permission of the Mayor, I would expect the Mayor not to enforce the injunction against him until his application for permission has been considered. Of course, if Mr Haw should chose not to make an application, the Mayor may consider he has no alternative but to enforce the injunction. As to the proposed injunctions, subject to submissions on behalf of the Claimant, I am not minded to agree to the inclusion of the second requirements in the cases of Mr Haw, Ms Tucker and Mrs Sweet because there is no evidence that they are taking part in any assembly on the grassed area – all the evidence is they are using it for tents to sleep in.

149. In the case of the 19th defendant, Ms Raga Woods, I am satisfied there is no need for an injunction. Her evidence was that she was an occasional visitor to the Democracy Village and that she would like the opportunity to revisit. In what I regard as a telling observation during her closing submissions, she said PSG is "perhaps not the most suitable place for the ongoing vigil".

DECISION

The Claimant is entitled to the order for possession of PSG as against all defendants except the 4th and 19th defendants and to injunctions against all the defendants except the 1st and 19th defendants.

APPENDIX

The Legislation and other relevant provisions

THE GREATER LONDON AUTHORITY ACT 1999 ["GLAA"]

Section 30. The general power of the Authority

(1) The Authority shall have power to do anything which it considers will further any one or more of its principal purposes.

(2) Any reference in this Act to the principal purposes of the Authority is a reference to the purposes of—

(a) promoting economic development and wealth creation in Greater London;

(b) promoting social development in Greater London; and

(c) promoting the improvement of the environment in Greater London.

Section 34. Subsidiary powers of the Authority

(1) The Authority, acting by the Mayor, by the Assembly, or by both jointly, may do anything (including the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the exercise of any functions of the Authority exercisable by the Mayor or, as the case may be, by the Assembly or by both acting jointly.

(2) The Authority shall not by virtue of this section raise money (whether by precepts, borrowing or otherwise) or lend money, except in accordance with the enactments relating to those matters.

Section 384. Parliament Square

(1) The land comprised in the site of the central garden of Parliament Square (which, at the passing of this Act, is vested in the Secretary of State for Culture, Media and Sport) is by this subsection transferred to and vested in Her Majesty as part of the hereditary possessions and revenues of Her Majesty.

(2) Nothing in subsection (1) above affects—

(a) any sewers, cables, mains, pipes or other apparatus under that site, or

(b) any interest which was, immediately before the passing of this Act, vested in London Regional Transport or any of its subsidiaries.

(3) The care, control, management and regulation of the central garden of Parliament Square shall be functions of the Authority.

(4) It shall be the duty of the Authority well and sufficiently to light, cleanse, water, pave, repair and keep in good order and condition the central garden of Parliament Square.

(5) The functions conferred or imposed on the Authority by this section are in addition to any other functions of the Authority.

(6) In consequence of the preceding provisions of this section, any functions of the Secretary of State under or by virtue of section 22 of the [1851 c. 42.] Crown Lands Act 1851 (duties and powers of management in relation to the royal parks, gardens and possessions there mentioned), so far as relating to the whole or any part of the central garden of Parliament Square, shall determine.

(7) Subsections (3) and (4) above shall have effect notwithstanding any law, statute, custom or usage to the contrary.

(8) Any functions conferred or imposed on the Authority by virtue of this section shall be functions of the Authority which are exercisable by the Mayor acting on behalf of the Authority.

(9) In this section "the central garden of Parliament Square" means the site in Parliament Square on which the Minister of Works was authorised by the [1949 c. lvi.] Parliament Square (Improvement) Act 1949 to lay out the garden referred to in that Act as "the new central garden".

Section 385. Byelaws

(1) The Authority may make such byelaws to be observed by persons using Trafalgar Square or Parliament Square Garden as the Authority considers necessary for securing the proper management of those Squares and the preservation of order and the prevention of abuses there.

(2) Byelaws under this section may designate specified provisions of the byelaws as trading byelaws.

(3) A person who contravenes or fails to comply with any byelaw under this section shall be guilty of an offence and liable on summary conviction—

(a) if the byelaw is a trading byelaw, to a fine not exceeding level 3 on the standard scale, or

(b) in any other case, to a fine not exceeding level 1 on the standard scale.

(4) The provision that may be made in byelaws under this section includes provision for or in connection with—

(a) the licensing of any trading; and

(b) the seizure, retention or disposal of any property in connection with any contravention of or failure to comply with a trading byelaw.

(5) The functions conferred or imposed on the Authority by this section are in addition to any other functions of the Authority.

(6) Any functions conferred or imposed on the Authority by virtue of this section shall be functions of the Authority which are exercisable by the Mayor acting on behalf of the Authority.

(7) In this section—

- "Trafalgar Square" has the same meaning as in the [1844 c. 60.] Trafalgar Square Act 1844;
- "Parliament Square Garden" means the central garden of Parliament Square, within the meaning of section 384 above.

Section 386. Guidance

(1) The Secretary of State may issue guidance to the Mayor concerning the exercise of any function under or by virtue of section 383(1), 384(3) or (4) or 385(1) above by him or any body or person authorised to exercise the function under section 380 above.

(2) In deciding whether or how to exercise that function, the Mayor, or body or person, shall have regard to any guidance issued under subsection (1) above.

THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005 ["SOCPA"]

Section 132 Demonstrating without authorisation in designated area

(1)Any person who—

(a)organises a demonstration in a public place in the designated area, or

(b)takes part in a demonstration in a public place in the designated area, or

(c)carries on a demonstration by himself in a public place in the designated area,

is guilty of an offence if, when the demonstration starts, authorisation for the demonstration has not been given under section 134(2).

(2) It is a defence for a person accused of an offence under subsections (1) to show that he reasonably believed that authorisation had been given.

Section 134. Authorisation of demonstrations in designated area

(2)The Commissioner must give authorisation for the demonstration to which the notice relates.

(3)In giving authorisation, the Commissioner may impose on the persons organising or taking part in the demonstration such conditions specified in the authorisation and relating to the demonstration as in the Commissioner's reasonable opinion are necessary for the purpose of preventing any of the following—

(a)hindrance to any person wishing to enter or leave the Palace of Westminster,

(b)hindrance to the proper operation of Parliament,

(c)serious public disorder,

(d)serious damage to property,

(e)disruption to the life of the community,

(f)a security risk in any part of the designated area,

(g)risk to the safety of members of the public (including any taking part in the demonstration).

(4)The conditions may, in particular, impose requirements as to—

(a)the place where the demonstration may, or may not, be carried on,

(b)the times at which it may be carried on,

(c)the period during which it may be carried on,

(d)the number of persons who may take part in it,

(e)the number and size of banners or placards used,

(f)maximum permissible noise levels

THE TRAFALGAR SQUARE AND PARLIAMENT SQUARE GARDENS

BYELAWS 2000

Acts prohibited within the Squares

3. No person shall within the Squares:-

(6) fail to comply with a reasonable direction given by an authorised person to leave the Squares;

Acts within the Squares for which written permission is required

5. Unless acting in accordance with permission given in writing by:-

(a) The Mayor …

No person shall within the Squares:-

(1) attach any article to any tree, plinth, plant box, seat, railing fence or other structure;

(2) interfere with any notice or sign;

(3) exhibit any notice, advertisement or any other written or pictorial matter;

(7) camp, or erect or cause to be erected any structure, tent or enclosure;

(9) make or give a public speech or address;

(10) organise or take part in any assembly, display, performance, representation, parade, procession, review or theatrical event;

(13) go on any shrubbery or flower bed;

THE HUMAN RIGHTS ACT 1998 ["HRA"]

3. Interpretation of legislation

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

6. Acts of public authorities

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if—

(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or

(b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.

(3) In this section "public authority" includes—

(a) a court or tribunal, and

(b) any person certain of whose functions are functions of a public nature,

but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

7. Proceedings

(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—

(a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or

(b) rely on the Convention right or rights concerned in any legal proceedings,

but only if he is (or would be) a victim of the unlawful act.

Freedom of Expression

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

(a) the extent to which—

(i) the material has, or is about to, become available to the public; or

(ii) it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code.

Schedule 1.

ARTICLE 10 FREEDOM OF EXPRESSION

1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11 FREEDOM OF ASSEMBLY AND ASSOCIATION

1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

THE CIVIL PROCEDURE RULES. PART 55. POSSESSION CLAIMS

Interpretation

55.1 In this Part—

(b) “a possession claim against trespassers” means a claim for the recovery of land which the claimant alleges is occupied only by a person or persons who entered or remained on the land without the consent of a person entitled to possession of that land but does not include a claim against a tenant or sub-tenant whether his tenancy has been terminated or not;