

SUMMARY OF JUDGMENT

Introduction

1. [Para 1] What are the limits to the right of lawful assembly and protest on the highway? In a democratic society that is a question of fundamental importance. It arises in this case, in this way. Do those limits extend to the indefinite occupation of highway land by an encampment of protestors who say this form of protest is essential to the exercise of their rights under Articles 10 and 11 of the European Convention on Human Rights, when the land they have chosen to occupy is in a prominent place in the heart of the metropolis, beside a cathedral of national and international importance, which is visited each year by many thousands of people and where many thousands more come to exercise their right, under Article 9 of the Convention, to worship as they choose?

Background

2. [Para 4] The defendants' protest camp was set up in St Paul's Churchyard on 15 and 16 October 2011. It consists of a large number of tents, between 150 and 200 at the time of the hearing, many of them used by protestors, either regularly or from time to time, as overnight accommodation, and several larger tents used for other activities and services including the holding of meetings and the provision of a "university" (called "Tent City University"), a library, a first aid facility, a place for women and children, a place where food and drink are served, and a "welfare" facility. The size and extent of the camp has varied over time. Shortly before the hearing its footprint receded in some places. At an earlier stage some adjustments had been made to it in an effort to keep fire lanes open. The highway land in the City's ownership that is occupied by the camp has been referred to in the proceedings as Area 1; it is divided into two sections a short distance apart. Adjoining that land is a smaller area, which has been referred to as Area 2 and is owned by the Church. Area 1 is part of a much larger area of highway and open land around the cathedral, which has been referred to as Area 3. The City has given no licence or consent for the protest camp, which, by the time of the hearing, had been in place for more than two months. Attempts by the City to agree with the protestors a time for its removal have failed. Several witnesses for the defendants have made it clear that they intend it to stay for some time: how long is not clear.

Possession

3. [Para 124] I accept that the City has established that it is entitled to possession of Area 1, and must therefore succeed in its claim for an immediate order for possession of this land unless to grant such an order would unacceptably affect the defendants' exercise of their rights under Articles 10 and 11 of the Convention. Subject to that crucial question being resolved, the City is entitled to an order for possession. The court has no discretion to defer possession.
4. [Para 125] I also accept, again subject to the consideration of the defendants' rights under Articles 10 and 11, that the City is entitled to an order for possession of the whole of Area 3, of which Area 1 is a part. I see force in [the] submission that the inclusion of Area 3 in the order for possession, if one is made, is a prudent and, indeed, necessary precaution against the defendants moving off Areas 1 and 2 on to adjacent highway land and open space.

Injunctive and declaratory relief

5. [Para 138] In summary, having regard to the facts I have found and subject to the tests of necessity and proportionality being satisfied, I believe the City is entitled to the injunctions it seeks under section 130 of the 1980 Act. I also accept that, subject to the same tests being satisfied, the City is entitled to a declaration that, under its powers at common law, it may enter Area 1 and remove any tents not removed in accordance with an order made under section 130.

6. [Para 143] The City, as local planning authority, believes it to be expedient and necessary in the public interest to act against the camp by using its powers of enforcement in the 1990 Act. Unusual though the particular circumstances here may be, I believe that this is plainly the kind of situation for which an injunction under section 187B is suitable. Subject again to the tests of necessity and proportionality being met, the City is in my view entitled to an injunction to require the removal of the tents located in Areas 1 and 2, and to prevent the further pitching of tents within Areas 1, 2 and 3.

Human Rights

7. [Para 155] No one has doubted, or could, the significance of the causes the defendants promote, or the sincerity and passion with which they are doing this. Views will divide on the thoughts and sentiments expressed. Some might gain a wide consensus; others might not. However, ... this is not for the court to judge. ... [It] is not for the court to venture views of its own on the substance of the protest itself, or to gauge how effective it has been in bringing the protestors' views to the fore. The Convention rights in play are neither strengthened nor weakened by a subjective response to the aims of the protest itself or by the level of support it seems to command. Mr Forsdick submitted, and I agree, that the court cannot – indeed, must not – attempt to adjudicate on the merits of the protest. To do that would go against the very spirit of Articles 10 and 11 of the Convention. As counsel for the City put it, the right to protest is the right to protest right or wrong, misguidedly or obviously correctly, for morally dubious aims or for aims that are wholly virtuous. Mr Forsdick submitted – and this is surely a constitutional truism – that it is for Parliament and not the courts to decide what laws ought to be enacted, what taxes should be raised, how public money should best be spent, how the governance of the City of London should be arranged, how banks should be regulated, and so forth. Citizens are free to voice their disagreement with legislation passed by Parliament, to dissent from policies on which a government bases its agenda, to criticize the actions of an industry or of a privileged few. But the High Court is the place for litigation, not a forum for the debate of matters such as those. It is a court of law, not of policy, opinion or politics. Nevertheless, I give due weight not only to the defendants' conviction that their protest is profoundly important but also to their belief that it is essential to the protest and to its success that it is conducted in the manner and form they have chosen for it – by a protest camp on the land they have occupied in St Paul's Churchyard.
8. [Para 165] There are ... a number of powerful considerations pointing to the outcome for which the City contends. And in my judgment, when the balance is struck, the factors for granting relief in this case easily outweigh the factors against. The extent and duration of the obstruction of the highway, and the public nuisance inherent in that obstruction, would itself warrant making an order for possession and granting injunctive and declaratory relief. So too would the effect of the camp on the Article 9 rights of worshippers in the cathedral. So would the effect on visits to the cathedral. So would the other private nuisance caused to the Church. So would the planning harm to which I have referred. Adding all of these things together, one has, I think, an unusually persuasive case on the positive side of the balance. ... I conclude that [the] argument [of counsel for the City] on the Convention issues, and his submissions specifically on the questions of need and proportionality, must be accepted, and the submissions made for the defendants rejected.
9. [Para 166] Has the City convincingly established a pressing social need not to permit the defendants' protest camp to remain in St Paul's Churchyard, and to prevent it being located elsewhere on any of the land to which these proceedings relate? Undoubtedly, in my view, it has. Would it be disproportionate to grant the relief the City has claimed? Undoubtedly, in my view, it would not. The proposed interference with the defendants' rights under Articles 10 and 11 is, I accept, the least intrusive way in which to meet the pressing social need, and strikes a fair balance between the needs of the community and the individuals concerned so as not to impose an excessive burden on them. Withholding relief at this stage would plainly be wrong. The freedoms and rights of others, the interests of public health and public safety and the prevention of disorder and crime, and the need to protect the environment of this part of the City of London all demand

the remedy which the court's orders will bring. To interfere in this way with the defendants' Convention rights under Articles 10 and 11 is, in my view, entirely lawful and justified, both at common law and within the statutory regimes Parliament has enacted for the purposes of safeguarding the public right to use the highway and for the effective enforcement of planning control. It is necessary. And it is proportionate. ... The decision to seek the relief I am going to grant was neither precipitate nor ill-considered. I am satisfied that the City had no sensible choice but to do what it has. Conscious of its duties under statute, it gave the defendants an ample opportunity to remove the protest camp without the need for time and money to be spent in legal proceedings. It has, I believe, behaved both responsibly and fairly throughout.

Overall conclusion

10. [Para 167] For the reasons I have given the City's claim succeeds. I shall hear submissions from the parties on the appropriate form of relief.
11. [Para 168] Finally, whilst I recognize that this outcome will be disappointing to the defendants, I wish to pay tribute to all who participated in the hearing for the courteous and helpful way in which they conducted themselves, and to thank counsel for the assistance they gave me.