

Britain: Injunction granted against environmental protest at Heathrow Airport

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The granting of only a limited injunction to the British Airports Authority (BAA) on Monday banning named individuals from Heathrow Airport has been hailed as a victory for free speech. But whilst BAA failed in its original and far more sweeping objectives, its legal action and injunction that was agreed on is still in line with ongoing efforts to criminalise extra-parliamentary protest.

The target of BAA's legal action was the Camp for Climate Action scheduled for August 14 to August 21, billed as eight days of education and protest against the causes of environmental degradation. A similar camp was held last year near to the Drax power station in Yorkshire. Organisers complain that Heathrow Airport—one of the busiest in the world—is responsible for the equivalent of 31 million tonnes of CO2 emissions annually.

BAA's application was draconian in the extreme. It had sought to ban protestors from using parts of the London Underground network, large segments of the motorway, service stations and land surrounding Heathrow Airport, and the airport itself. Those traveling to the camp would not be able to carry banners, whistles and a range of other specified materials.

The airport operator sought its legal challenge under the Protection from Harassment Act 1997. Originally introduced to protect individuals from stalkers, it has been used on several occasions against protests—including women outside a US service base displaying anti-Bush placards and environmental campaigners.

BAA's order would have significantly extended its remit to cover protest organisations. The airport operator had named four individuals—Joss Garman, Leo Murray, John Stewart and Geraldine Nicholson—whom it argued should be taken to represent their organisations and supporters. This covered the environmental groups Plane Stupid, Heathrow Association for the Control of Aircraft Noise, Airportwatch and the No Third Runway Action Group.

Heathrow had also sought and been granted an order that it could represent all the airport users and service providers, including Transport for London and the London Underground.

Under the powers sought, potential demonstrators could face arrest if they failed to give BAA notice of their presence not only at Heathrow, but at Paddington station, the Piccadilly line of the London Underground and parts of the M25 and M4 motorways.

Heathrow's legal action had been met with criticism from a multitude of organisations, including Transport for London and the London Underground, which were not consulted with by BAA before seeking the injunction.

London Mayor Ken Livingstone complained that BAA was “out of their skull” in taking the legal proceedings, as it had ensured even greater publicity for the protest. Transport for London and London Underground had intervened in the application, which they said would be virtually impossible to police. In court, their counsel, Martin Chamberlain QC, argued that the injunction was “an attempt to bind five million people.” The ban, which would include all members of the defendant's organisations, was “unjustifiable and disproportionate,” he said.

The four defendants had been backed by a range of groups. Their organisations are part of AirportWatch—a coalition of groups as diverse as the Royal Society for the Protection of Birds, the Woodland Trust, the National Trust, Greenpeace, and numerous local and national campaign organisations. All had argued that they were affected by BAA's injunction.

At the High Court, BAA claimed it was not seeking to outlaw protests but was concerned to protect the safety of its employees and passengers. It also argued that the camp could be used as a cover by terrorists seeking to attack the airport.

Acting for several of the defendants, Nicholas Blake QC

queried the need for an injunction, as his clients had already offered to provide undertakings as to trespass and nuisance.

Pointing out that the Harassment Act covered persistent conduct aimed at an individual, he argued that it “was never designed as a way of policing demonstrations or holding the balance between free speech, free assembly and the right to protest, and the rights of individuals on the other hand.” The police already had “vast” powers to deal with anyone intent on disruption, he said.

In her ruling, Mrs. Justice Swift agreed that the proposed injunction was too large to define. Pointing out that she was herself a member of several of the organisations concerned (the RSPB and the National Trust), she struck out the application for injunctions against AirportWatch, Hacan and the No Third Runway Action Group and ordered BAA to pay their legal costs.

Instead, she imposed a more limited injunction against three of those named, members of Plane Stupid, covering trespass and nuisance, and ruled this should apply only up to the airport’s perimeter fence and Heathrow property.

The ruling has been hailed as a victory by environmentalists, civil liberty campaigners and the media in general. AirportWatch spokesman Peter Lockley said, “It’s a good day for the freedom to protest,” and defendant John Stewart, from Hacan, said, “BAA had asked for the mother of all injunctions. They have received the mother of all setbacks.”

Plane Stupid also welcomed the ruling, with Joss Garman stating, “BAA have lost and lost badly. The Camp for Climate Action’s going ahead.”

Nevertheless, the fact that BAA felt emboldened to attempt such a sweeping injunction is due to the wholesale assault that has been mounted by the Labour government on democratic rights over the last decade, which Justice Swift’s ruling does nothing to mitigate.

Under the Serious Crime Bill published in January of this year, the government set out measures to further erode the presumption of innocence under the guise of tackling “serious and organised crime.”

It proposed restricting the movement of people who have not been charged—let alone convicted of a criminal offence—through the extension of Anti-Social Behaviour Orders (Asbos). Issued by magistrates, these have been used to prevent “nuisance” behavior. The bill proposed that these should now be applied into areas recognised as criminal, thereby bypassing the right to a fair trial.

More fundamentally, a range of legislation introduced as part of the so-called “war on terror” has drastically

curtailed civil liberties—including overturning the right to habeas corpus. The police have also acquired shoot-to-kill powers, used to deadly effect against the innocent Brazilian worker, Jean Charles de Menezes, who was gunned down in 2005 by armed plainclothes officers.

It is in this climate that BAA felt it would be able to legally intimidate and curtail the rights of potential demonstrators. Significantly, Justice Swift agreed with BAA that there was a risk that “a terrorist group may use the disruption caused by the protesters to perpetrate a terrorist act.” This seems to have been a factor in her agreeing to a more limited injunction.

Plane Stupid was singled out because it advocates “direct action.” Thus, while none of the defendants are charged with any crime, they are barred for a specified period from entering Heathrow Airport without the prior consent of the airport authority, on the grounds that they may commit one.

They have also had to agree not to “impede or prevent access to or egress from Heathrow Airport, or otherwise obstruct or interfere with the operation of Heathrow Airport or with any person acting in the execution of his/her duty in relation thereto...” and not to “incite aid and/or abet” any other person seeking to do the same.

In a step that will no doubt be taken up by other corporate and government bodies, therefore, BAA has been given the right to proscribe named individuals from participating in protests and other forms of action against them.



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