Neutral Citation Number: [2012] EWHC 34 (QB)

Case No: HQ11X04327

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 January 2012

Before:

MR JUSTICE LINDBLOM

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Between:

THE MAYOR, COMMONALITY AND CITIZENS OF THE CITY OF LONDON	**Claimant**
- and -	
(1) TAMMY SAMEDE (a representative of those persons taking part in a protest camp at St Paul's Churchyard, London EC4) **(2) GEORGE BARDA** **(3) DANIEL ASHMAN** **(4) PERSONS UNKNOWN (being persons taking part in a protest camp at St Paul's Churchyard)**	**Defendants**

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David Forsdick and Zoe Leventhal (instructed by Andrew Colvin, the Comptroller and City Solicitor, City of London Corporation) for the Claimant
John Cooper QC and Michael Paget (instructed by Kaim Todner) for Tammy Samede
George Barda and Daniel Ashman in person

Hearing dates: 19, 20, 21, 22 and 23 December 2011

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Judgment Approved by the court for handing down

MR JUSTICE LINDBLOM:

Introduction

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?

2. Before the court are claims made by the City of London Corporation ("the City") for possession of highway and other open land in the churchyard of St Paul's Cathedral, which has been occupied by the defendants as a protest camp. The City also seeks injunctions to require the removal of the tents and other structures comprised in the camp. For all of the land to which the claim relates, and for the surrounding land, the City is both the planning authority under the Town and Country Planning Act 1990 ("the 1990 Act") and a local authority under the Local Government Act 1972 ("the 1972 Act") and the Local Government Act 2000 ("the 2000 Act"). For some of the land the City is also the highway authority under the Highways Act 1980 ("the 1980 Act"). The defendants belong to the unincorporated association that has organized the protest, which originally called itself "Occupy London Stock Exchange", or "Occupy London SX", names now shortened simply to "Occupy". This group professes a common purpose with protest movements active in several countries throughout the world, including occupations of land in North America and Europe, and the uprisings of the "Arab Spring". The first defendant, Ms Tammy Samede, effectively represents Occupy. She was appointed a representative defendant, under CPR rule 19.6, by the order of Wilkie J made at a hearing for directions on 25 November 2011. By the same order, and at their request, the second and third defendants, Mr George Barda and Mr Daniel Ashman, became parties to the proceedings as litigants in person. The claim is also pursued against persons unknown, "being persons taking part in a protest camp at St Paul's Churchyard, London EC4". This is to ensure that anybody occupying the camp but not covered, or arguably not covered, by the representative order is nonetheless bound by such orders as the court may make in the claim. Wilkie J's order precluded any other defendants being joined to the proceedings. The Chapter of St Paul's Cathedral, to which I shall refer either as "the Chapter" or "the Church" according to the context, is not a party, but provided evidence for the City.

3. The hearing lasted five days – 19, 20, 21, 22 and 23 December 2011. The City was represented by Mr David Forsdick and Ms Zoe Leventhal, Ms Samede by Mr John Cooper QC and Mr Michael Paget. Mr Barda and Mr Ashman were unrepresented. Evidence was given both in the form of witness statements and orally by a relatively small number of witnesses. Both at the beginning of the hearing and at its end submissions were made for the City, for Ms Samede, and by Mr Barda and Mr Ashman themselves. On the evening of the first day I visited the protest camp, accompanied by representatives of both sides.

Background

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.

5. When the protesters first arrived in the churchyard they had been trying to get into Paternoster Square, where the London Stock Exchange building stands. But Paternoster Square had been closed off by its owners, Paternoster Square Management Limited, who on 14 October 2011 had been granted an injunction by Peter Smith J, preventing "persons unknown" entering or remaining in or trespassing on the square. The same company issued a claim in the Chancery Division on 12 December 2011 (claim no. HC11CO4400), seeking an order preventing "persons unknown", without its consent, entering or remaining on Paternoster Square "for the purpose of any protest action". On 13 December 2011 Vos J granted a further injunction, effectively extending the prohibition contained in the order of Peter Smith J to adjoining land around Christchurch Court, "[until] trial or further order in the meantime or 13 December 2012 (whichever shall be the earliest)".

6. A short chronology of events following the defendants' occupation of the churchyard is this. On 15 October 2011 the crypt door of St Paul's Cathedral was closed by the Church, except for emergency use. On 21 October the cathedral was temporarily closed. On 25 October the City undertook a survey of pedestrian movements in the local area. On 28 October the cathedral was re-opened. On 4 November, on behalf of the City, the Comptroller and City Solicitor, Mr Andrew Colvin, sent by e-mail to the protestors' solicitors a "without prejudice" proposal for an agreed settlement. On 11 November that proposal was rejected. On 15 November the City's Planning and Transportation Committee resolved to take legal action against the protest camp. On 16 November the City served notice on the camp requiring the removal of all tents and other structures by 6 p.m. on 17 November. The camp was not removed. On 18 November proceedings were issued by the City and served, together with evidence and a document setting out a broad legal analysis. On 23 November the first directions hearing before Wilkie J took place. Wilkie J's order set a date for the trial and laid down the appropriate procedural steps. On 24 November the City told Ms Samede's solicitors that Mr Colvin was the person with whom to negotiate or discuss the claim. The second directions hearing, to which I have already referred, took place on 25 November. On 29 November the Church formally offered the protesters an alternative forum for their protest and repeated its request that the camp be removed. On 30 November an enforcement notice under the 1990 Act was served on the occupiers of the camp.

The scope of the claim

7. The protest camp occupies two distinct types of land: highway land, vested in the City by section 263(1) of the 1980 Act, and open land owned by the Church.

8. The highway land occupied by the camp comprises two separate areas within St Paul's Churchyard. These two areas are to the north of the cathedral at its western end and to the south and south-west of Paternoster Square. One is adjacent to the colonnade of Juxon House, the other to the front of the Chapter House. Separating them is an area of highway between the cathedral and Temple Bar, which is the main entrance to Paternoster Square at its south-western corner. These two areas have together been referred to in the proceedings as Area 1.

9. The open land owned by the Church on which part of the camp is sited is a relatively small piece of land, contiguous to the western portion of Area 1 and extending by a short distance towards the statue of Queen Anne in front of the main steps of the cathedral. This land has been referred to as Area 2.

10. The claim also relates to a larger area of land, which encircles St Paul's Cathedral save for a section of New Change adjacent to the St Paul's Cathedral Choir School behind the eastern end of the cathedral. This area includes the footway running alongside Paternoster House, the Chapter House and Temple Bar, and stretches into Cheapside to the north and north-east and the carriageway and footways in Cannon Street and Distaff Lane to the south and south-east. It also covers the public open space flanking Cannon Street – to the south of that street in Carter Lane Gardens, including the City of London Information Centre, and to the north of it in Festival Gardens, and the coach park adjacent to Festival Gardens to the west. All of this land is vested in the City. It has been referred to as Area 3. The City seeks an order for possession of it.

11. The public open space within the precincts of the cathedral, owned in part by the City and in part by the Church, is at present closed to the public. The proceedings do not embrace that land.

12. The principal objective of the City's claim is to gain possession of the highway land to which it relates, Areas 1 and 3. But the City also seeks injunctions for Areas 1 and 3 under section 130 of the 1980 Act, and, under section 187B of the 1990 Act, an injunction for Area 2 because, although the City does not own that land, it will have self-help remedies for breaches of planning control on it, under section 178(1) of the 1990 Act. The City also seeks a declaration that it may use its power at common law and, if necessary, its power under section 143 of the 1980 Act, to remove the tents from Area 1 and any tents erected in Area 3, and an injunction preventing the defendants from interfering in the removal of the tents from Areas 1 and 3.

The issues for the court

13. There are three main issues in the case: first, whether the City has established that it is entitled to possession of Areas 1 and 3, so that, subject to the court's consideration of the interference with the defendants' rights under Articles 10 and 11 of the Convention, an order for possession ought to be granted; second, whether, again subject to the court's consideration of the interference with the defendants' rights, the City should succeed in its claim for injunctive relief for Areas 1, 2 and 3 and declaratory relief for Areas 1 and 3; and third, whether the interference with the defendants' rights entailed in granting relief would be lawful, necessary and proportionate.

14. The City does not dispute that the defendants' rights under Articles 10 and 11 rights of the Convention are engaged. It does not seek to stop the defendants exercising those rights. However, it contends that the removal of the tents would amount to a justified interference with them. In a letter to Ms Samede's solicitors dated 14 December 2011 Mr Colvin indicated that the City accepts that:

> "
> (1) Those protesting consider that the form of protest is necessary to, and successful at, drawing attention to the issues about which they protest and has raised the profile of those issues in the national debate including by: (a) creating a space for the debate of those issues; (b) getting senior people from the City and the Church to engage in that debate;
> (2) Many of those protesting find participating in the protest to be inspiring and personally fulfilling;
> (3) The protestors consider that the "space" created by the camp is a necessary part of, and intrinsic to, the protest;
> (4) The removal of the tents including the main tents will impact on the nature and form of the protest by preventing a continued camped protest in this location and thus making the continuation of a camped "people's assembly" in this location no longer possible."

Mr Colvin's letter also confirmed that the City accepted that many protestors were making efforts to try to ensure "so far as possible in the circumstances of this camp" that it is kept clean, sanitary and hygienic and that incidents are resolved. The letter continued, however:

> "The City Corporation's case is that despite these efforts and by reason of the location and lack of facilities there and the nature of the protest, these efforts have not prevented the harm to the extent described by Mr Wilkinson [in his witness statements]."

During the hearing the City added a further admission:

> "The [City] admits that it has provided no evidence on the rights and wrongs of the matters with which the protest is concerned. It has deliberately not done so because it considers that such matters cannot be adjudicated on (and cannot be determined as a matter of fact one way or another) by [the court].
>
> The [City] admits that if the [court] is empowered to adjudicate on those matters, there is no factual evidence before the court to rebut the evidence put forward by Mr Barda and Mr Ashman and their witnesses."

15. The City pointed out that it did not rush into these proceedings as soon as the camp was set up. It sought to negotiate a peaceful resolution of the dispute, which would allow the camp to remain until the end of December 2011. However, that offer was rejected. The City fears that the camp will remain

indefinitely unless the court orders its removal. After careful consideration it decided it had no choice but to pursue the claim. This, it says, is necessary to protect the rights and freedoms of others and to prevent disorder and crime. Despite the efforts made by some of the protestors to avoid harm being caused to others, the camp has engendered serious harm, including impact upon the rights, under Article 9 of the Convention, of those who wish to worship in St Paul's Cathedral. The right to protest, said Mr Forsdick, does not trump the rights and freedoms of others. As he put it, the gist of the City's case is this: "Protest yes; (semi permanent) campsite no". The defendants resist that proposition. They say that questions of very great public importance arise in this case. Should citizens be denied the exercise of their rights of assembly and protest by the operation of the national law governing the use of the highway and the control of the development of land? And how should the court deal with the new phenomenon of the peaceful but "semi-permanent" occupation of civic spaces to highlight issues of political concern where the occupation is the very nature of the protest?

The evidence

Preamble

16. I do not propose to summarize every one of the many witness statements before the court. I have taken into account all of them, and their exhibits and the other supporting material that was submitted in evidence. A list of the witness statements is annexed to this judgment. Most of them were not specifically referred to at all in the course of the hearing. The content of many was similar. Some witnesses who gave oral evidence were cross-examined; others were not. During the hearing, with a view to saving time, it was agreed between counsel for the City and counsel for Ms Samede that the lack of cross-examination of any of Ms Samede's witnesses would not be the subject of adverse comment by her counsel. That agreement also relates to any appeal.

The evidence for the City

The evidence of Mr Douglas Wilkinson

17. Mr Wilkinson has been employed by the City since 24 January 2011. He is Assistant Director for Street Scene and Strategy in the City's Cleansing Services team, which is part of its Department of the Built Environment. The activities for which he is directly responsible include street and gully cleansing, waste management, the collection and disposal of general waste and recycling, the care of public conveniences, and the enforcement of control over litter, graffiti, fly-tipping, and obstructions of the highway. In his first witness statement, dated 18 November 2011, Mr Wilkinson drew on information from other officers of the City, namely Mr Philip Everett, Director of the Built Environment for the Corporation, who manages the Planning, Highways, Transportation, Building Control and Cleansing Services, and has had responsibility for the maintenance and repair of the City's highways since 2001 and for the cleansing of them since 2006, Temporary Police Inspector John Zuber of the City of London Police, Mr Anthony Macklin, an Assistant Director (Public Protection) in the Port Health and Public Protection Service Department of the City, who is the manager of the team of environmental health officers who visit the camp every day, Mr Jeremy Fern, Head of City Affairs in the City's Economic Development Office, and Ms Joy Hollister, the City's Director of Community and Children's Services. Mr Wilkinson had also had help from the City's Planning Service and other officers to whom he referred in his written evidence. He said he is familiar with the area around St Paul's Cathedral. Since the protest camp arrived, he had been there almost every day, sometimes several times a day. He was providing daily reports to Mr Everett and had received the daily reports of the visiting environmental health officer. He had also attended the daily meetings of the City's "steering group" on the protest camp, which is attended by senior officers from all relevant departments and is chaired by the Town Clerk and Chief Executive.

18. Mr Wilkinson gave undisputed evidence about the City's ownership and maintenance at public expense of the areas of highway land to which the claim relates. He said the protest camp had been erected on 16 October 2011. It rapidly grew from about 100 tents and now comprised between 170 and 200 tents and other structures. The police had said that "a significant number" of tents were unoccupied at night. A lot of "camping related … equipment and bedding" was there as well. "Portaloos" had been brought on to the land by the defendants. The camp was erected and remains in place without the licence or consent of the City. On 16 November 2011, under section 143 of the 1980 Act, written notice was given to the protestors, requiring the removal of the tents. That notice has not been complied with. Mr

Wilkinson said the tents now occupy "practically the whole of" the highway land in Area 1, "with only very narrow routes through". He and other officers have been able to move through small parts of Area 1 on which tents are not erected, but they are excluded from the "footprints" of the tents and "are unable to exercise any control over those areas". It was "not practically possible" for them to "access those areas for the purpose of carrying out their normal functions", including "street cleaning, inspection and maintenance". They have had to ask protestors to move tents so that they can clean drains and needed such consent if they were to carry out such work. It was plain to Mr Wilkinson that the defendants were exercising control over that area to the practical exclusion of the Corporation.

19. Mr Wilkinson said that the highway occupied by the camp is "important for pedestrians". A number of routes cross this area: for example, from Ludgate Hill in the west to St Paul's underground station and Cheapside in the east, from the south across the front of the cathedral to Paternoster Square and beyond, and to Cheapside, and from the north to the south and south-east, towards Cannon Street and elsewhere. This is a "major thoroughfare and intersection". Before the arrival of the protest camp the "whole of this area of highway across its whole width" was "used heavily throughout the day (extending into the evenings with peak flows in the [a.m.] and [p.m.] commuter peaks and at lunchtime)". Mr Wilkinson said he was not aware of this heavy use having ever resulted in significant congestion; this was because of the width of the highway. He added that this is a pedestrianized area "very popular for those visiting St Paul's and wishing to admire and take photographs of it". The limited pedestrian space now available is "taken up by necessity by people passing and re-passing with very limited space for people to pause, take photographs and view St Paul's". The physical extent of the obstruction of the highway caused by the camp is, he said, "significant", as shown on the plan. Up to 84% of the width of the highway was occupied at the time when he made his first witness statement.

20. Whilst it has been possible to pass and re-pass along the highway at this point, Mr Wilkinson said the obstruction has had several consequences, which have been going on for some time and "threaten to continue indefinitely": (1) people on many routes have had to divert around the camp; (2) the remaining width of highway has been heavily congested at times, as photographs show; and (3) significant numbers appear to have ceased to use the highway in this location and have found alternative routes. Survey data suggests that pedestrian traffic is being displaced from St Paul's Churchyard as a result of the presence of the protest camp. In February 2011, a count of pedestrian footfall in St Paul's Churchyard was made as part of a Pedestrian and Traffic Assessment of the Ludgate Hill crossing. This took place during the lunchtime peak (between 12.45 and 1.45 p.m.). The total number of pedestrians per hour ("pph") was 2,610 in the part of St Paul's Churchyard where the protest camp now is. A manual count of pedestrians undertaken on 25 October 2011 at the same time of day produced a result of 1,750 pph, a reduction of 860 pph. To assess the possible effects of seasonal variation, the same exercise was undertaken on the southern footway of Ludgate Hill in February 2011. The total was 2,034 pph. On 25 October 2011 the count was 2,242 pph, an increase of 208 pph. Acknowledging that this is "simply a snapshot" and that St Paul's Cathedral was closed on 25 October 2011, Mr Wilkinson said he was not aware of any explanation for there being greater flows to the south, other than that people trying to avoid the protest camp.

21. Mr Wilkinson also identified several further impacts on the public right to use the highway: (1) as a result of Paternoster Square being sealed off by its owner "in response to the presence of the [protest camp]", people who would be travelling north on foot across this area cannot now do so and have to divert on to other routes; (2) the gardens to the rear of the cathedral had been closed by the Church "to protect them from invasion", with consequent further disruption to pedestrian routes in the area, and preventing public use of that valuable open space, "including for viewing and taking photographs of [the cathedral]"; (3) people who wish to use the public highway in this location for admiring and taking photographs of St Paul's cannot now do so from Area 1, it having been heavily used for this purpose before the camp arrived; (4) according to the Chapter, schools intending to send parties to visit the cathedral have decided it is not appropriate to do so because of the difficulties with access in this area; and (5) the camp affected the use of the highway for the Lord Mayor's parade by requiring the procession to divert away from the area in front of the cathedral. Mr Wilkinson said that the "impact of the obstruction is that this area of highway has ceased to be available for highway use and has instead become a [camp-site]", with the consequences he had described. The "rights of users of the highway have been curtailed".

22. Mr Wilkinson also considered the land use planning effects of the camp. He said he had been advised that the use of the area occupied by the camp as a camp is a material change of use and requires planning permission. Planning officers of the City had told him that it was inconceivable that planning permission would be granted, for the following main reasons: (1) the camp is inconsistent with the character, lawful use and function of these areas of land – as highway, as an area affording access to St Paul's Cathedral, and as part of the historic setting of the cathedral; (2) the facilities necessary for an acceptable camp are not present and cannot be provided here; (3) the camp has significant effects not only on the setting of the world famous St Paul's Cathedral, which is listed at grade I, but also on the setting of other listed buildings in the immediate locality; (4) the camp has a significant effect on the amenity of the area, for worshippers, tourists, workers and employees alike; (5) the camp has had a significant effect on retail and catering businesses in the area. Hence the "rights of others", which the planning system is designed to protect, have been "curtailed". On 15 November 2011, the City concluded that it was expedient to take action to prevent the continuing breach of planning control, and on 16 November 2011 resolved to seek an injunction under section 187B of the 1990 Act.

23. Mr Wilkinson also referred to various other impacts of the camp: (1) the effects on the cathedral, as described in a letter from its Registrar to the City's Town Clerk and Chief Executive, dated 11 November 2011, which the City considers relevant to the question whether there is a pressing social need to take action to protect the rights and freedoms of others, including worshippers at St Paul's exercising their rights under Articles 9, 10 and 11 of the Convention; (2) a significant increase in criminal and anti-social activity in the area since the creation of the camp, as explained by Inspector Zuber; (3) a significant effect on local businesses, as explained by Mr Fern; (4) as described by Ms Hollister and Mr Macklin, a deterioration in the cleanliness of the camp, which had given rise to complaints – litter accumulating between tents, bedding and clothing being hung out on the railings of the cathedral, the impossibility of cleansing the highway, "significant evidence of urination" – which is "far, far worse than normal" – both on the highway and on the cathedral itself, problems "with some drains and gullies", and "now a strong continuous unpleasant odour". So far as Mr Wilkinson knew, none of this had ever happened in the area around the cathedral before.

24. In deciding to take action for the possession and for injunctions, the City had, said Mr Wilkinson, given "the most anxious consideration as to whether there is a pressing social need (in the interests of the rights and freedoms of others, to prevent disorder or crime, and/or for the protection of health) to limit the right to protest by seeking the removal of the camped element of the protest". The City was "fully aware of the importance of and supportive of the right to protest" and had "made clear that it will not object to protest in this general location and that it has no desire to prevent such protest". It would "co-operate with protesters to ensure that a safe, peaceful and lawful protest can be carried out". However, it had "come to the clear view, after detailed internal discussion, including in two committee meetings, that it is necessary to take action against the camped element of the protest". Although there plainly was an unreasonable obstruction of the highway, and criminal offences were being committed under section 137 of the 1980 Act, the City had concluded that prosecutions would not achieve the removal of the protest camp, for several reasons: (1) there being up to 200 tents, the City had no way of identifying the individuals who had placed tents on the land or who occupied them; (2) the protesters appeared to come and go – new people arriving from time to time, others leaving – which made it impossible to identify who was responsible for what; and (3) prosecutions would not achieve the clearing of the tents, for the likely penalty on conviction would be only a fine.

25. It seemed clear that the defendants intended to occupy the protest camp indefinitely unless legal action was taken. The City had sought to negotiate with the defendants "on a pragmatic basis to seek to avoid litigation by agreeing controls on the [protest camp] so as to limit its impacts and to agree that it would vacate the area by a given date [31 December 2011]". But the City's proposed way forward had been rejected by the defendants, and no alternative had been suggested. Whilst the offer to negotiate remained open, the City had decided that "negotiations must run alongside the litigation and can no longer be an alternative to it".

26. In his second witness statement, dated 9 December 2011, Mr Wilkinson said the camp was still in an untidy condition. Areas that were inaccessible between tents had "a build-up of waste bags, clothing material, wood and other items". Food waste was being left in the open and this was attracting large numbers of pigeons. Abusive graffiti had appeared on the highway outside Juxon House. By the beginning of December some of the tents appeared to have gone, and the protesters seemed to have

tried to reduce the amount of highway they were obstructing. However, the highway was "still significantly obstructed" and congested. The gullies running across the site needed to be cleared of food and other solid waste, but the tents made it impossible to get to them for this work to be done. Urination on the site and defecation by dogs was still a problem. On 30 November 2011 the site had been "in a disgusting state with rubbish bags, debris, and other waste scattered across the pavement, the pavement itself significantly stained and dirty". There were "constant overpowering and unpleasant odours around the bins and toilet areas". The "general environment [was] plainly totally inappropriate for such an iconic location". The site's "current standard of cleanliness … [was] inconsistent even with the most basic standards and is not found or tolerated by the City anywhere else …". Sandbags being used to secure tents were beginning to decay and the contents are being deposited onto the highway. Graffiti was still appearing on the highway in front of Chapter House and Juxon House. Fly posters had been attached to Juxon House. On further visits to the site on 8 and 9 December 2011 Mr Wilkinson found "further evidence that food waste, cooking oil and other waste materials were being put down rainwater drains which are not designed to take such waste", and had blocked them. Close to where food was being prepared the drains were "emitting extremely unpleasant smells". On 8 December, Mr Wilkinson noted that a number of tents had "taken flight" in the high winds, and had been blown on to he churchyard garden railings. The tents were not designed to be used on hard surfaces, and seemed to be held in place by weighted black bags tied to each other and to gully grates. Mr Wilkinson said he was concerned that an airborne tent might injure somebody on the highway.

27. In his third witness statement, dated 15 December 2011, Mr Wilkinson said he had visited the camp again on the evening of 14 December 2011 and had found the number of people there had fallen to no more than 45. However, he explained that it was still difficult to get at, and clean, the drainage gullies. In the camp there was "not even hot and cold running water for washing of hands, food and utensils". The only available drainage was for rainwater run-off. There was no foul drainage. Photographs showed the "extreme problems being caused by the use of drains for the disposal of food and other waste and the obvious inappropriateness of a camp in this area". Accumulated food and other solid waste had "resulted in a major blockage of the infrastructure and … also … in extremely powerful and unpleasant smells", which were, said Mr Wilkinson, "a culmination of a number of inappropriate activities for this area: food and other solid waste being put down rainwater drains causing blockages and decomposing; other food waste and general waste containers located in the centre of the camp; significant street urination resulting in staining across many parts of the site and the adjacent buildings; a build-up of litter and detritus decomposing under and in between the tents and the location of portaloos and industrial waste containers resulting in unpleasant residue leaking onto the surrounding highway". None of this was acceptable. Mr Wilkinson said that, in his experience, there was "nowhere in the City of London that is or has been at all comparable to these conditions".

28. In his oral evidence-in-chief Mr Wilkinson said that on many occasions since the camp had been set up he had seen congestion of the highway, at peak times, outside the Chapter House. Another bottleneck was at the corner of Juxon House. Such congestion had not occurred before the camp arrived. The arrival of the camp had been responsible for the closure of Paternoster Square, which had reduced routes for pedestrians, forcing people to walk through the eastern part of St Paul's Churchyard. The churchyard gardens had been closed because it had been feared that the protestors' tents would spread into them. The closure of the gardens had diverted pedestrians on to other routes. Mr Wilkinson said that, overall, there was here a "significant environmental problem", in a place where people came to worship.

29. In cross-examination by Mr Cooper, Mr Wilkinson said that each of the problems to which he had referred was unacceptable. He confirmed that his main concern related to the tents, which, he said, had brought problems with them. He said that in his opinion there would still be a problem if the protestors brought their tents in every day and took them away again every night. He accepted that some of the problems, such as drunkenness, were normal incidents of urban life. But the City had never encountered problems of this degree in this part of its area. He denied that officers of the City were watching the area trying to find problems. They were recording what they saw during the jobs they were doing around the cathedral, rather than going out to collect evidence. He accepted, as Ms Naomi Colvin had said in her witness statement for Ms Samede, that some of the protestors had done what they could to maintain hygiene and reasonable standards of health and safety. He conceded that there might be a large number of people on the site who were not involved in the occupation. However, he did not agree that he was trying to exaggerate the problems he had described.

30. Mr Wilkinson was asked by Mr Cooper about the closure of Paternoster Square. He did not accept that the protestors' occupation of the churchyard had had nothing to do with the square being closed. He believed that the injunction had been sought and granted because of the threat of the protestors going there. One effect of that injunction, he agreed, would have been to cause congestion in the area. He did not agree that there would still be congestion if the protestors were evicted from the churchyard; he said he thought that if the camp were no longer there the injunction on Paternoster Square would be lifted. It was later suggested to him that the congestion in the churchyard might have been exacerbated by the roadworks that had been going on in Newgate Street in October and November 2011. He said he thought not. He believed the footways on Newgate Street had been kept open during the works, though the footway on the southern side had been narrowed. He was also asked about the closure of the churchyard gardens shortly after the occupation began. He said that although the gardens were not part of the highway they were normally used as a thoroughfare, and were heavily used. It was the Church, not the City, that had locked the gates to the gardens, but he presumed the decision was jointly taken. Mr Forsdick later clarified this. The gardens are public open space, the ownership of which is vested partly in the Church, partly in the City. The decision to close them was taken by the Church on 14 October 2011. The City was told of this decision, and acquiesced in it.

31. Mr Cooper asked Mr Wilkinson about some of the terms of the "without prejudice" offer the City had made to the protestors on 4 November 2011. He acknowledged that some of the City's stipulations had been complied with. In particular, suitable arrangements had been made for access to the cathedral by the London Fire Brigade, and the footprint of the camp had recently contracted, though in his opinion it still significantly restricted the full width of the highway. However, Mr Wilkinson did not agree that if the City were given a date for the removal of the camp, its concerns would be overcome. This would not address the issues about which the City was concerned.

32. Mr Wilkinson said that he could not say whether the City's claim was supported by the Church. He could not comment on the views of the Church. He confirmed, however, that the claim was aimed, in part, at protecting the rights of worshippers in St Paul's Cathedral. He thought the City had a duty to protect the rights of worshippers.

33. When cross-examined by Mr Barda, Mr Wilkinson emphasized that the public was entitled to have access to the full width of the highway. Here there was a significant obstruction of the highway, at a very important intersection and beside a world famous iconic building, which is both a place of worship and a tourist attraction. Mr Wilkinson acknowledged that pedestrians could pass the protest camp freely, but said the congestion shown in the photographs was significant. The City would, however, fully support the right of people to congregate to protest in that area, provided they did not obstruct the highway. The camp was on a site that had not been designed to accommodate it. Cross-examined by Mr Ashman, Mr Wilkinson said he was not seeking to question the reasons for the protest. His job was to keep the highway clear.

The evidence of Mr Nicholas Cottam

34. Mr Cottam is the Registrar of St Paul's Cathedral, a position he has held for about three years. Before taking up his post he had been a soldier for more than 35 years, rising to the rank of Major-General. The Chapter of the cathedral is responsible for the management of all property vested in it. In his first witness statement, dated 6 December 2011, Mr Cottam said the Chapter's evidence was intended to set out the effect of the protest "on daily worship, on [the cathedral's] ministry and on the fabric of the cathedral building and members of staff".

35. The cathedral is a holy building, and a major heritage landmark in London. It was built 300 years ago, to the design of Sir Christopher Wren. The Chapter House is a grade II* listed building, also designed by Wren. Since 15 October 2011, said Mr Cottam, there have been several incidents of desecration to these buildings, manifested mostly in vandalism or in graffiti such as protest slogans and "tags" – signatures or personal symbols left on buildings. There had been previous incidents of graffiti at the cathedral, "but not of the scale and frequency as that experienced since the camp began occupation". The worst incident of graffiti was the blasphemous sign "666", generally thought to be a sign of the Devil, which had been painted on the north-western pillars of the west front of the cathedral on 4 November 2011 and was "quite visible at long range". Three times the Chapter had reported incidents of vandalism of this type to the police. The Chapter House provides meeting rooms for the Chapter, offices for more

than 30 cathedral staff and access to the undercroft for other staff, volunteers and visitors. Its front door was painted with a "tag" on the night of 20 and 21 October 2011. The steps down to the security room were urinated on every night from 16 to 31 October 2011. Since then there has been urination over the north churchyard fence on to the roof of the undercroft workshops; this began around the night of 1 November 2011 and has gone on since. Human faeces were found in two separate places inside the cathedral on 3 November 2011, soon after it had opened for prayer; these had been defecated in the building, not carried in under foot. Urine was being found outside the cathedral, sometimes left in bottles, at other times on the building itself and on the ground. This had happened almost daily since 15 October 2011, increasing after 24 October 2011 as the camp grew in size. Waste put into the drains led to a "filter fly outbreak" below the west steps, which had to be dealt with in early November. There were a number of dogs in the camp, and cathedral staff had seen dog faeces in the camp area. All of this, said Mr Cottam, required the daily attention of cathedral staff.

36. Mr Cottam said that services at the cathedral had been interrupted by the loud noise emanating from the camp. The noise carries into the cathedral, mainly from the west steps and particularly after 5 p.m., which is the time at which the daily weekday evening service of Evensong starts, and then on Sundays where there is a service in the middle of the day and another beginning at 3.15 p.m.. Noisy meetings are held in the camp. A public address system was being used, with an amplified speaker facing the steps where protesters gathered to listen. These meetings were taking place at various times of the day and night, sometimes with music; they had been the main source of the interruptions. Sometimes it was possible to get quiet at the start of a service by speaking directly to the protesters, but noise would break out again long before the service had concluded. A portable loud-hailer was also being used in the camp from time to time and its sound carries clearly into the cathedral almost every day. The effect has been to disturb services, especially when there are pauses for prayer, and the time before a service begins, when worshippers come in to compose themselves and for contemplation. The Chapter had provided the camp's representatives with lists of all the services throughout the second half of October 2011 and all of November and December. The same lists are displayed on notices on the cathedral railings, and the standard service times are on two notice boards at either end of the west steps, where protesters gather for meetings. Mr Cottam was sure, therefore, that the protestors in the camp were aware of service times. He said the noise from the camp sometimes interrupted work in the Chapter House. Loud drumming for long periods close to the building and a generator being run directly above the undercroft made working in both of those places difficult. The effect of the noise, he said, had been "to undermine the ability of the clergy and of the congregation to concentrate on the principal mission of the Cathedral which in Christian terms is the provision of worship in accordance with the teachings of the Church". It had led to a reduction in numbers attending for worship, and it had reduced the ability of the Chapter staff to support the work and life of the cathedral. As well as Mr Cottam, the Clerk of Works, the Virgers and Canons had raised these problems with the protestors. But the problems – particularly the noise and vandalism – had continued. Requests to the drummers and musicians to stop playing either had only a temporary effect or had been ignored.

37. Mr Cottam said that the cathedral normally receives a large number of school parties visiting at this time of year, through its Schools and Families department programme. This work is conducted in liaison with the diocesan schools board, as well as directly with schools wishing to bring pupils on educational visits. This term 16 schools had cancelled their visits – for a total of more than 700 pupils. Fewer enquiries for school visits had been received since October 2011, a drop of at least 20%. The volunteers escorting and working with the children were experiencing the noise, drunkenness and other effects of the protest camp. The number of school visits expected in October and November 2011 was lower than in the previous two years. This reduction was expected to go on into December and 2012. The reasons given for cancellations or for a decision not to book included a wish to keep schoolchildren away from the unpleasantness of the camp and from the presence of the media. Many special services are held in the cathedral during the year, and there is a concentration of special services and concerts during Advent and at Christmas. The most notable cancellations so far had been the London Diocesan Board of Schools service at which 1,500 school children from London schools should have attended with their teachers and parents and the Italia Conti Academy centenary carol service.

38. Both visitor and worshipper numbers had fallen by 40% since 15 October 2011 (not including the period of complete closure from 21 to 28 October 2011). In reaching this conclusion, the Chapter had been able to make an accurate comparison with the same dates, particular services and events over at least the last four years. Ticketed visitors could be accurately counted. Worshippers were counted at

communion services. For the year until 15 October 2011 numbers of worshippers and visitors had been well above those for the last four years, so the fall of numbers was notable and, in Mr Cottam's view, had been caused by the presence and nature of the camp. For example, the 12.30 p.m. weekday communion services between 28 October and 24 November 2011 would usually attract a total of at least 1,400 people; this year the number was only 960. The Sunday communion service numbers on 30 October and 6 November 2011 were down from 372 and 327 on equivalent Sundays last year, to only 315 and 264 respectively. The day of the Lord Mayor's Show, 12 November 2011, when the cathedral was open without charge, saw a marked reduction in the number of children coming with their families: Mr Cottam estimated about 1,000 fewer. The United States Thanksgiving Day service on 24 November 2011, which normally attracts a congregation of over 2,200 members of the American community in London, had at least 600 fewer than that present.

39. The Chapter makes no charge to anyone coming to worship or to pray in the cathedral. A charge is made for tourist visitors and the receipts are all used to cover the cathedral's running costs. The cathedral receives no public funding and makes no profits for any third party. Costs include the provision of 29 services every week and many special services spread throughout the year, the St Paul's Institute, which fosters religious and ethical debate, and the Schools and Families department, as well as the day-to-day running of the building, which is normally open every day of the year. The cathedral shop and the crypt café and restaurant serve both visitors and worshippers. Corporate events are also permitted, usually in the crypt. All of these activities provide a vital surplus to help offset the costs of running the cathedral. Since 15 October 2011 they had all had their takings halved. Their net surplus would soon be nil. This, said Mr Cottam, was likely to affect the Chapter's ability to pay for its own upkeep and running costs.

40. The Chapter was concerned for the well-being of its staff and volunteers. Though there was much sympathy among the staff for some of the messages of the protest, there was also a concern that jobs at the cathedral, both paid and voluntary, might be at risk because of the reduction in the numbers of worshippers and visitors. There had been various instances of foul language and abuse being directed at cathedral staff and at worshippers. Many of the staff and volunteers who work at the cathedral found the camp intimidating. Staff whose job it is to welcome visitors to the cathedral had the stress of looking after people who found the noise and activity of the camp frightening. Amplified music playing not only during the day, but until late at night, and sometimes into the early morning, was heard throughout the surrounding area, and at times in the Cathedral School on New Change, which has a number of boarding pupils. The Chapter was also greatly concerned by the use of alcohol and of "other stimulants" by some of the occupiers of the camp.

41. When the camp first arrived in St Paul's Churchyard the Chapter's Clerk of Works was anxious about the blocking of emergency evacuation and fire engine access routes in and out of the cathedral and the camp's generator being located above the cathedral's gas intake. The north-west crypt door had to be kept clear as an emergency exit. This door opened directly into the middle of the protest camp. At first, it was being blocked every night by the arrival of more tents, whose removal the Chapter had to negotiate with the protestors. The cathedral was closed for one week. The question concerning the Chapter was whether the safety of members of the public could be guaranteed if an emergency arose. The Chapter felt it had no option but to close the cathedral until this concern was overcome. On 26 October 2011 cathedral staff established a channel for the fire brigade to use. The crypt door has been closed since 15 October 2011, except as an emergency exit, and this has been partly responsible for the reduction in the Chapter's ability to look after visitors to the cathedral properly.

42. The protestors did not have the permission of the Chapter to remain on Church land. Though the Church has sympathy with the Christian messages and aims of the protestors and supports the right to peaceful protest, it does not think the cathedral is the right place for the protest camp. The conditions Mr Cottam had described could not, he said, be sustained by the cathedral without serious harm to its life and work. Although the Church decided not to take court action to prevent the continuing trespass on its land, it did not wish the camp to remain in the cathedral precincts, and had repeatedly asked the protestors to leave.

43. In his second witness statement, dated 15 December 2011, Mr Cottam said that incidents of urination and defecation on the land outside the cathedral had continued. This was harmful to the life of the cathedral. Employees were now often engaged in cleaning up after these incidents, which, said Mr

Cottam, are "detrimental to the operation of the cathedral as a place of worship …". Graffiti was still appearing on the cathedral. Disruption to services was also continuing. Mr Cottam said the noise "causes great anxiety and disturbance" to staff, to clergy and also to worshippers. He had kept a record of "all noise disturbances which we have considered to be disruptive", to which other members of staff had been able to add. He gave examples from his own experience. Contrary to what had been suggested by Ms Tanya Dempsey in her witness statement, he confirmed that he regularly attends services in the cathedral. The Chapter had, he said, tried to maintain a dialogue with the protestors. It still wanted the camp to go, so the cathedral might return to its ministry and usual activities. On 29 November 2011 the Chapter made an offer to the representatives of the camp. This included a proposal to allow the protestors to place a symbolic tent inside the cathedral, an invitation to them to work with the St Paul's Institute "to develop platforms upon which to conduct public debates …", and the suggestion that all the parties join the Bishop of London's Initiative, led by Mr Ken Costa, "to reconnect the financial institutions with ethical and moral principles", an initiative known as "London Connection". This offer had been put forward to encourage the protestors to remove the camp. It had not been responded to by the protestors. The Church had attempted in several other ways to engage with the protestors. But none of these efforts had served to improve conditions for worship in the cathedral or the daily lives of its staff.

44. When cross-examined by Mr Cooper, Mr Cottam said that as Registrar of the Chapter he is responsible for managing the cathedral as a place of worship. The Church had decided not to take legal action against the protestors itself. It had been looking for a peaceful outcome. But Mr Cottam said he had the authority of the Church to give the evidence he did. Some of the clergy and staff working at the cathedral had been inspired by the message of the protest, but only one or two had been inspired by the presence of the camp. The cathedral is, said Mr Cottam, a very important place of worship, a sacred space, not a building like a bank or the London Stock Exchange. It is a place one would expect people to treat with the utmost respect. In the course of a year it receives about a million worshippers and about a million visitors, many of whom came from abroad. Mr Cottam was asked by Mr Cooper about his evidence on the drop in the numbers of worshippers and visitors coming to the cathedral. He adhered to his estimate of a 40% fall in both. He was asked in particular about the cancellation of a number of school visits. Some schools, he said, had been put off by their concern about what their children would find if they came to the cathedral. A variety of reasons had been given for visits being cancelled. There were worries both about the camp itself and about the presence of people from the news media. Mr Cottam was asked by Mr Cooper about the temporary closure of the cathedral. The Chapter's main concern had been with the risk of fire. Mr Cottam acknowledged that in the week when the cathedral was closed the Chapter had opened the crypt for a wedding; a risk assessment had been done and it was decided that this event could go ahead. Mr Cottam was also asked about the locking of the gates to the churchyard gardens. He insisted that the gates could not easily have been opened and shut regularly while the camp had been present. He accepted that, as Ms Colvin said in her witness statement, several events had been arranged by the protestors on Remembrance Day, which had been respectful of the acts of commemoration taking place in the cathedral.

45. When cross-examined by Mr Barda, Mr Cottam said it was unfair to impugn the decision of the Church to support the City in its claim as having been taken on "diplomatic grounds". He again defended his statistical evidence on the "stark" 40% reduction in the number of worshippers and visitors, and on the cancellation of school trips; he said the reduction in numbers was a "direct consequence of the presence of the camp". He confirmed that services were still frequently being disturbed by noise coming from the camp, despite the requests the Church had made. He stressed that in all of the services regularly held in the cathedral, both on Sundays and during the week, the Church tried to make the experience special for those who came. For some, this experience of the cathedral might be "unique". In answer to questions put to him by Mr Ashman, Mr Cottam said that the Church had explored the possibility of taking legal action against the camp, but had decided not to do that. It was the Chapter's wish that the camp would go peacefully.

The evidence of Temporary Police Inspector Zuber

46. Inspector Zuber is a member of the Ward Policing team of the City of London Police, and one of the two officers responsible for liaising with the protestors in the camp, the other being Temporary Police Inspector Lee.

47. In his first witness statement, dated 17 November 2011, Inspector Zuber said that either he or Inspector Lee had visited the protest camp every day since it was set up. On some days both officers had been present. Other police officers had been there as well: a sergeant and six constables in two shifts, between 7 a.m. and 11 p.m., and a sergeant and three constables between 11 p.m. and 7 a.m. Inspector Zuber gave his evidence on the basis of his own recollection and the information given to him by other police officers. At first, there had been between 200 and 300 protestors in the camp. They had said they intended to stay until 12 December 2011. By 21 October 2011 the size of the camp had increased from about 120 tents to about 300. At a rough estimate, the number of protestors in the camp at that time was 400. The number would drop at night. The "footprint" of the camp expanded. Access for pedestrians through St Paul's Churchyard beside Juxon House was restricted. This part of the churchyard would be used by the fire brigade to get to a fire in the cathedral, or in Paternoster Square. Some of the tents therefore had to be moved. After the police had discussed this with the protestors a boundary for the camp was set and marked. The tents were rearranged. The protestors agreed that the camp had expanded too much and was "full". On 22 October 2011 a procession set off from the camp. Some of the protestors left St Paul's Churchyard and set up a new camp in Finsbury Square. By 23 October the number of tents in the churchyard had decreased to about 140. Since 23 October the number had risen to about 170, including "a number of large marquee structures that are being used as a canteen, information tent and "university"". By now the camp had expanded beyond the boundaries previously set. When asked to move the tents back to the agreed positions the protestors said they would, but they had not done so. On 14 November 2011 a large white circular tent was erected opposite the entrance to Paternoster Square. This was for women and children, "as a number of female protestors no longer felt safe within the camp". It was "causing a further restriction to pedestrian access".

48. Inspector Zuber said the camp had had "an impact on the surrounding businesses and communities". Companies had reported their takings being below what they normally were; this had "varied from a slight amount to 35%". Businesses outside Paternoster Square had expressed concerns about theft, graffiti, abuse and drunkenness. At least three offences of theft in the locality seemed to be "linked to" occupiers of the camp. Although protestors themselves had not reported any thefts to the police, some had told the police that a number of thefts had occurred and that laptops, mobile telephones and clothing had been stolen. There had been "a number of arrests linked to the camp", for various crimes, including public order offences. Graffiti had appeared on the cathedral, a restaurant and street furniture. Protestors had put up posters on one company's building. When the company's staff went to remove them, they were surrounded by protestors and felt intimidated by them; the company left the posters where they were. There had been reports of protestors urinating on buildings, trying to make use of lavatories in business premises, and being abusive when asked not to. Urination and defecation had been "a major issue linked to the camp" since the third week in October. Residents and businesses near Ludgate Circus had become concerned by protestors using the alleyway running from Ludgate Hill to Stationers Hall as a lavatory. Church staff had complained about protestors urinating beside the cathedral and the Chapter House. Inspector Zuber said that when he visited the camp on 16 November 2011 he could smell urine in those places. He had also seen dog faeces left on the pavement within the camp. Police had received a number of complaints about drunkenness in the camp. There appeared to be a group of hardened drinkers there, who would "drink into the night, abuse passing members of the public and create a noise nuisance"; children boarding in the choir school had been kept awake. Concern was growing about the use of drugs by some people in the camp. Just before the two minutes' silence on 11 November 2011, said Inspector Zuber, "there was a very strong smell of cannabis coming from the camp". When one occupier of the camp had been arrested he was found to have both Class B drugs and also, it seemed, a Class A drug. On 6 November someone handed the police "drug paraphernalia", including needles, which had been found in the camp. Those organizing the protest had asked for a container for needles to be put into. At first, protestors had tried to keep the camp clean, but now there were reports of the camp smelling and being dirty with litter lying around. All of this, said Inspector Zuber, had "given the impression the camp is not a safe place, especially after dark". The police were receiving reports from businesses that their staff felt intimidated walking through the camp. The choir school was now using a route avoiding the churchyard when taking its children past the cathedral. Protestors too had told the police that they did not feel safe. The establishment of a "woman's only area" was some evidence of this.

49. In his second witness statement, dated 6 December 2011, Inspector Zuber said that some of the tents had now been removed. It was not possible to ascertain how many people were staying in the camp

overnight. However, the camp was "now more unkempt and untidy with increased levels of anti-social behaviour". Between 15 October and 6 December 2011 there had been "74 reported crimes linked to the protest camp". There had been "22 crimes within the area of the protest camp that have not been directly attributed to the camp". Since 15 October 2011 there had been "63 arrests of persons connected with the protest camp". Inspector Zuber produced a breakdown for each of these figures. He said "the level of crime and anti-social behaviour [had] been greater than what would normally be experienced in this area". The police were still receiving complaints about urination and defecation, the state of the camp, noise, and the sense of intimidation felt by some when walking past the site. There were "regular incidents of urination and defecation" within the camp and around it. Chalk graffiti has been drawn on the pavement of the churchyard, some of it including abusive language. "Footpath obstruction" was "an ongoing problem in St Paul's Churchyard, between New Change and Ludgate Hill". The "women and children's tent" had caused congestion in the area of Temple Bar, standing about two metres further out from the other tents and causing "a bottleneck for pedestrians". Despite a number of requests, this tent had not been repositioned until 2 December 2011. But congestion "still persists in the area of Juxon House". Tents had narrowed the footway, and the problem had been made worse by the creation of seating areas outside the tents, the setting up of tables next to the pillars and members of the camp sitting against the pillars and shop fronts. All of this had been recorded by the Liaison Officers in a Community Impact Assessment, a standard document summarizing, every day, the effects of the presence of the camp; Inspector Zuber produced the Community Impact Assessment as an exhibit to his witness statement. The presence of the protest camp had had its impact on the resources of the City of London Police. Between 15 October and 10 November 2011 the costs incurred in policing the camp had been more than £475,000**.**

50. In his third witness statement, dated 14 December 2011, Inspector Zuber said that since October 2011 the levels of crime and anti-social behaviour had "steadily increased in the area of the campsite". This has had, he said, "a dramatic effect on crime and anti-social behaviour figures compared to previous years". The police had received from people in the camp a number of allegations of criminal offences. These allegations had been fully investigated. After an incident (mentioned in the witness statement of Mr Stephen Moore), in which two people had been "having sex" in the tent designated for women and children, two arrests had been made. Inspector Zuber said there had been tensions and disputes between different groups in the camp. These were recorded in the Community Impact Assessment. Some of the disputes had resulted in assaults. Arrests had been made. On other occasions victims had not wanted to support prosecutions. Having reviewed the arrest figures he had previously given, Inspector Zuber had discovered that three of the arrests he had mentioned were nothing to do with the camp. More crimes "linked to the camp" had been committed since 6 December 2011; he produced a summary of them.

51. In cross-examination Inspector Zuber was asked by Mr Paget about the protestors being – as Mr Paget put it – "kettled" by the police when they arrived in St Paul's Churchyard. He said that in the first week of the camp's presence in the churchyard the police had been concerned about the width of highway available to the public being cut down. Moving the tents back had seemed, he said, a "sensible compromise between the camp's interests and the interests of the public". He confirmed that the level of police presence at the camp had now gone down, to one sergeant and four constables during the day and one sergeant and two constables at night. He acknowledged that the protestors' "Tranquillity" team were doing a "remarkable job", and also that recently in the Community Impact Assessment factors relating to the risk of crime had all been marked as "low". He accepted that it was possible that some of the incidents to which he had referred might have happened anyway, and that he did not have the crime figures in the relevant four wards for 2008 and 2009 to compare with those for 2010 and 2011. Nevertheless, he said the police were concerned about crime and disorder associated with the camp. In his cross-examination by Mr Barda Inspector Zuber said the police had generally had a "positive response" from protestors for their handling of the protest. When cross-examined by Mr Ashman he said he did not know whether any complaint had been made about the policing of the protest on 15 October 2011.

The evidence of Mr Andrew Colvin

52. Mr Colvin was tendered for cross-examination by Mr Ashman. He was asked about the "without prejudice" offer sent by the City to the protestors on 4 November 2011. He said he was responsible for preparing the terms of that offer, having agreed them with the City's Town Clerk and having discussed

them with counsel. The offer included terms stating "Agreed all tents structures and equipment shall be removed voluntarily and peaceably on or before 31st December 2011." and "The protestors agree they will not erect any other tents etc or camp elsewhere in the area of the COL.". The City, said Mr Colvin, had been concerned about the "longevity" of the protest camp. The City's proposed settlement was rejected by the protestors in their solicitors' e-mail of 11 November 2011, which said that the City's terms were unreasonable and served only to lay the ground for proceedings, that the City was an "undemocratic authority which is more accountable to corporations than the public", and that Occupy could not negotiate with such an institution "without undermining our sister occupations across the globe, who are being violently oppressed by authorities with the same interests as the City …". The protestors' solicitors said that if three terms were met Occupy would wish to "continue dialogue". The three terms were, first, that the City was to "[publish] full year-by-year breakdowns of the City Cash account, future and historic", second, that the City "[make] the entirety of its activities subject to the Freedom of Information Act; and third, that the City "[detail] all advocacy undertaken on behalf of the banking and finance industries, since the 2008 crash". Those terms were not acceptable to the City. Though he conceded that the City had never replied directly on the protestors' three specific conditions, Mr Colvin said he had responded to their counter-proposal. He did so on 15 November 2011, saying that the City supported the right to protest but had "obligations to the public in respect of the continuing obstruction of the highway by the large number of tents placed there and the associated problems being caused to the public generally and to local businesses", that the protestors' response did not address these fundamental issues, and that the City's Planning and Transportation Committee had decided to begin legal action. Finally, however, Mr Colvin had said this:

> "We still hope that it may be possible to reach an agreement so as to avoid court proceedings and enforcement of any order granted. We remain willing to discuss a peaceable outcome to secure removal of the encampment in a timely manner."

There was no more negotiation after that. On 24 November 2011, the day after counsel for Ms Samede had said at the first directions hearing that the protestors would like to continue discussions with the City, Mr Colvin sent an e-mail to the protestors' solicitors saying he was available to have those discussions. This e-mail had been acknowledged by the protestors' solicitors on the same day, but nothing more had happened. Mr Colvin denied that the City had closed the door to negotiations once the proceedings were begun.

The evidence of Mr Peter Wynne Rees

53. Mr Wynne Rees, the City Planning Officer, made a statement, which was exhibited to Mr Wilkinson's third witness statement. He did not give oral evidence. In his statement he said he had held his present post since 1985. He is responsible for directing the preparation of planning policies and the control of development requiring planning permission within the City of London. He endorsed the contents of the advice note on planning exhibited to Mr Wilkinson's first witness statement. The most material planning matters in this case, he said, were the impact on St Paul's Cathedral as a grade I listed building and on the "public amenity of the City's premier tourist attraction". The most important local view of the cathedral is appreciated from the western approach up Ludgate Hill; the west front of the cathedral was designed to be its principal elevation and entrance. This view is enjoyed by thousands of passers-by and photographed by hundreds of visitors every day. Mr Wynne Rees said he considers this "the most important view of the most important listed building in the City [of London]". The City had never granted temporary planning permission for activity or structures on the land occupied by the camp. Mr Wynne Rees said his approach to controlling development around St Paul's Cathedral over the past 26 years had been directed to preserving and enhancing the setting of the cathedral. Granting permission for temporary activities and structures close to the cathedral would, he said "be detrimental to its setting and runs contrary to that which [the City has] achieved over recent years to enhance the setting". Mr Wynne Rees said he would "not be prepared to recommend the grant of planning permission for the tents and other structures comprising the encampment". And he added that he did not believe such an application would be likely to succeed on appeal before a planning inspector or the Secretary of State.

The evidence of Mr Jeremy Fern

54. Mr Fern made a witness statement, dated 17 November 2011. He did not give oral evidence. In his witness statement he said that one of the roles of the City's Economic Development Office is to protect

and promote the interests of businesses in the City of London. He said there are many restaurants, cafes and shops in Paternoster Square. It had became clear that these small businesses were losing trade as a result of the closure of the square. On 25 October 2011 Mr Fern and other officers of the City conducted a survey of businesses in the area surrounding St Paul's Cathedral, to find out what effects the protest camp was having on their trade. In summary, Mr Fern said the survey showed that businesses within the part of Paternoster Square which was cordoned off were experiencing heavy losses, "with their customer base reducing by up to 90%", and that the businesses with premises facing the protest camp in St Paul's Churchyard saw their trade adversely affected, partly as a result of the cathedral being closed to the public and partly "because of a public perception that the area had become unsafe and unwelcoming". Another survey was undertaken after the cathedral had been opened again. At bars and takeaway outlets in Paternoster Square reductions in takings ranging between 50% and 35% had been reported. Outside Paternoster Square, businesses were also reporting reduced trade. Staff in several businesses reported "a general feeling of unease, citing litter, urination in doorways and visible alcohol consumption in the mornings".

The evidence of Ms Joy Hollister

55. Ms Hollister made three witness statements, dated respectively 17 November, 6 December, and 14 December 2011. She did not give oral evidence. She described her role as including the "statutory responsibility for safeguarding of both children and adults" and "responsibility for homeless people and housing needs". In her third witness statement she said she remained "convinced that the protest camp acts as a magnet for vulnerable people … and that the environment is not conducive to the welfare of those vulnerable adults attracted there".

The evidence for Ms Tammy Samede

The evidence of Ms Tammy Samede

56. In her witness statement, dated 21 December 2011, Ms Samede said she had heard of "the Occupy movement" through some other groups with which she was involved. When she arrived "at Occupy LSX" she had found herself "in a frightening police kettle". The mother of four children, she said she had "stayed on the camp every night and popped home at regular intervals during the day". She had rarely missed a meeting of the protestors' General Assembly, had been involved in a number of their working groups, and was now mainly working "in church liaison, interfaith and kitchen". In the Process Group, she said, the agenda is set for the meetings of the General Assembly, at which proposals are discussed "which need to be made to the entire group for a consensus to be reached/rejected". Ms Samede said she had spent a few nights in the camp's Tranquillity team, making sure the camp was safe. She had given this up, she said, because she "became very tired of the abuse she received from intoxicated city workers" passing through St Paul's Churchyard. She said she was very frustrated by the police refusing to assist and "also inflaming situations at times". She said she felt that on a number of occasions the police had "behaved badly refusing to fulfil their duties and having a bad derogatory mocking attitude to the protest", though the City of London Police had "during the day been friendly and helpful". Ms Samede said the camp's Church Liaison working group regularly met "the Chapter Members of the Cathedral, Canon Michael, Canon Mark and Bishop Michael [Colclough]". It had "worked very hard to make sure that relations between the Cathedral and the protest are positive and that we are able to work together". The protestors had "discussed health, safety and fire issues and had complied with all that was asked of them at a protest". They had also "worked with the St Paul's Institute to facilitate debates and discussions with key people in the banking world". Ms Samede said she believed that her being in the camp "was so important in that being a part of this protest I hope to ensure a better situation for my children's future". She said that without her tent she would not be able to continue her protest in London. She was "greatly upset at being labelled a terrorist/extremist". She said she loved her country, but this did not mean she agreed with everything the Government might do.

57. When she gave her oral evidence-in-chief Ms Samede was asked whether the protestors had any "plan or strategy" for ending the occupation of the churchyard. She said they were well aware that they could not stay forever. Discussions were taking place about how they would go. The Church Liaison Working Group had discussed this question with the Chapter. The protestors knew that the Chapter would like them to leave. The terms they would take as their starting-point for negotiation were those posted on

the Occupy web-site on 8 December 2011. They reflect the Initial Statement passed by Occupy's Economic Working Group, which

> "outlines … some of the major issues in the current economic system that need to be addressed including:
>
> 1. Banks and financial institutions need to be accountable to society
> 2. Current austerity measures are making a bad situation worse
> 3. The current economic system is unsustainable
> 4. Tackle systemic economic inequality
> 5. Clamp down on tax avoidance
> 6. Independent and effective regulation …".

But, said Ms Samede, Occupy accepts "give and take".

58. In cross-examination Ms Samede accepted that after the City's statutory notices requiring the removal of the tents and other structures from the land had been served on the protestors on 16 November 2011 they had deliberately decided not to co-operate. No agreement to comply with those notices had been reached between the protestors. Mr Forsdick asked Ms Samede whether, without orders of the court, there was any guarantee of the camp being removed. Ms Samede said she did not think she could honestly say "Yes" to that question. Ms Samede said many protestors probably would go, but many would want to continue whether or not there was an eviction order. She said she "could not give an end-date as such". She accepted that the closure of the churchyard gardens had been "occasioned by the perceived threat from the protest group". But she thought the gardens could have been re-opened. The barricades in Paternoster Square had, she said, been put in place before the protestors arrived "to protect against occupation". She was not sure if the barricades were necessary now. She agreed that once the protest group had gone there would be no need for the barricades if the owner of Paternoster Square so decided. Mr Forsdick asked Ms Samede whether, despite the strenuous efforts of many protestors, there had been "many issues" about the cleanliness of the camp. Ms Samede said that there were issues "wherever we go". Some of them had been caused by people who were not part of the Occupy movement. On many occasions, she said, those in charge of the protest had impressed on occupiers of the camp the need to "tidy up", and this had been done.

The evidence of Ms Naomi Colvin

59. Ms Colvin made a witness statement, dated 12 December 2011. She said she was "not a regular resident of any of the Occupy London sites", but "a full-time participant in Occupy London" and a member of what is now called the Occupy London Press Team. She said she had joined "the first incarnation of the Occupy London Stock Exchange Media Team" on 3 October 2011. She described the origins and progress of Occupy. Occupy London Stock Exchange was, she said "part of [the] third wave of grass-roots democratic movements, many of which bear the name "Occupy"". All of these movements are committed to "the democratic process", and are deeply disenchanted with governments, whether ostensibly representative or not. Their second common feature is the occupation of physical space, the marking out of "common ground" where democratic debate might take place. The continuous occupation of this common ground is "a symbolic act that reflects the importance with which the democratic process is regarded and the seriousness of intent of those involved". Occupation, said Ms Colvin, is "such a marked feature of this worldwide movement that, by the time it had reached its third wave, of which London is a part, it had in fact become known as "Occupy"". The moral lead shown by Occupy London Stock Exchange had, she said, "noticeably increased the scope of political debate in this country".

60. Ms Colvin said she had arrived in St Paul's Churchyard on 15 October 2011. She described the closure of Paternoster Square, and the actions of the police on that day. By the morning of the following day "the Occupy London Stock Exchange encampment was well established" in St Paul's Churchyard. Ms Colvin then described the history of the camp thus far. Ms Colvin described the decision-making structure of the protest group, and how it had evolved. The General Assembly is "the sovereign decision-making body of the occupation, made up of whoever decides that they would like to attend". It meets daily. All of its decisions "are reached by consensus". In practice, "much of the detailed deliberative work of the occupation is done by working groups mandated by the [General Assembly] to tackle a particular task or subject area". Proposals are then brought to the General Assembly by working

groups for "ratification by the occupation as a whole". An initial statement, passed by the General Assembly on 16 October, was "collectively agreed by over 500 people on the steps of St Paul's on 26 October 2011". Like "all forms of direct democracy", the statement would always be a work in progress; it was used as a basis for further discussion and debate. But from the very start Occupy London Stock Exchange identified specific political objectives that it wanted to see implemented. Its initial statement has been followed up by three statements made by the policy working groups. On 8 November 2011, the Initial Statement of the City of London Policy Group was published. This included three specific demands addressed to the City of London Corporation. The Initial Statement of the Economics working group (part of which I have quoted above) was passed by the General Assembly, and published on 8 December 2011. The three working groups were now developing more specific proposals.

61. Ms Colvin described the formation, remit and activities of the numerous working groups that have had their genesis in the camp, including Outreach, Shelter, Waste and Recycling, Legal, Kitchen, Medical, Sanitation, Tech, Info, Process, Finance, Cathedral Liaison, Direct Action, Welfare (including Tranquillity, Tea and Empathy, Safer Space Policy and Women's Space), Events (including Remembrance Day, and Not the Lord Mayor's Show), Policy (including Energy, Equity and Environment, the City of London Policy Group, the Corporations Policy Group, Economics, and Democracy and People's Assemblies), and Coordination (including Health and Safety, Internal Communications, and Strategy). She also explained the role of Indymedia (Occupied Times and Livestream), the Tent City University, the Starbooks Library and the International Commission.

62. Tranquillity, said Ms Colvin, "monitor[s] the safety of the camp overnight and either sort[s] out situations themselves or bring[s] in the police where necessary", working closely with other working groups, for example the Cathedral Liaison group, "to seek to ensure that Occupy London Stock Exchange remains the good neighbour it aspires to be." Where issues such as noise have arisen Tranquillity reports to the General Assembly "in order to encourage collective responsibility" for the behaviour of those on the site. It has, said Ms Colvin, a "positive working relationship with the City of London Police", and performs "a vital and sometimes thankless job", and it had been recognized that they "require support to carry out their activities".

63. Ms Colvin said that supporters of Occupy London Stock Exchange had discussed "the duration of the Occupation on a number of occasions". On 29 November 2011 a General Assembly meeting had been dedicated to this very issue. There was also, said Ms Colvin, "direct dialogue with St Paul's Cathedral about what the long-term future for the Occupy London site at St Paul's Churchyard might look like". The "current state of these discussions [included] a proposal for a "limited" continuing physical presence in St Paul's Churchyard that would have the blessing of the Cathedral itself". Supporters of the protest "remain committed to dialogue".

64. In cross-examination Ms Colvin acknowledged that St Paul's Cathedral was a place of major national importance, a "world famous and highly important listed building", whose environment the City had endeavoured to keep "in pristine condition". It was also a place, she said, where "historically" people had gathered – at St Paul's Cross, for sermons, proclamations and folkmoots. She said the protest was a wholly legitimate one, being carried out in a camp-site. She said that her journeys on foot had not been impeded, and people had never come up to her saying they could not find a way through. There were defined walkways through the camp itself, between the tents, though not one running from east to west.

The evidence of Michael Hayton

65. In his witness statement of 9 December 2011 Mr Hayton said he had arrived at the protest camp on 16 October 2011, was a permanent resident of the camp until 17 November 2011, and intended to return to the camp on or around 11 December 2011. He had been involved in the Kitchen, Process, Strategy and Tranquillity groups. He said that Tranquillity had been set up "in direct response to many of the issues and aggressive and anti-social behaviour that have occurred" at the protest camp, "partly from a small element within the came and to a greater extent from the general public passing through the site of occupation". With the benefit of his experience in the "security industry", he stressed that this working group "is in no way a security force and has no powers of eviction or the ability to impede the access of the general public". It was set up "as a dispute resolution and negotiation team to mediate in any disputes and to reinforce the ethic of "social respect" to curtail any anti-social behaviour and

circumvent any possible aggressive situations". Mr Hayton described the camp's policy for "alcohol and drugs", which, he said, had been "implemented to try and discourage vulnerable people from seeing the camp as a viable place to continue their addictions with access to shelter, food and social interaction". It fell to the Tranquillity working group to implement this policy. Mr Hayton said that it had generally been "a success with the vast majority of those resident at the camp but there has been a small minority, mainly homeless or vulnerable adults, that have proved to be resistant" to it. He said that most of the "anti-social behaviour" at the camp "comes from external situations that have arisen from members of the general public coming into the camp". In almost all of these instances Tranquillity had "stepped in and [had] been able to either resolve the situation or to make the individual or group known to the Police" at the camp. Though there been some incidents that had "resulted in criminal actions and subsequent arrests", Mr Hayton said he did not feel that they represented a significant increase in crime and disorder in this area. As to "public urination and graffiti", he said it had been possible "to stop many of these incidents, but, once again, as the camp is based in a metropolitan area, these are always problems that can and do arise". The "issue of urination", he said, had "largely been resolved since the introduction of the portable toilets on the site and it is impossible to distinguish whether it is someone from the camp or a passing member of the public who is responsible". The graffiti "though reprehensible" was not something new "as there are various instances of graffiti on the cathedral dating from as early at 1705 and once again there is no evidence to indicate it was a member of the camp who was responsible". Although the number of people present in the camp during the night had fallen, a "significant proportion of tents" were still occupied every night. He believed the number of people in the camp at any one time never dropped below 100.

66. In his oral evidence-in-chief Mr Hayton said that during the first month of the protest there had been only minor disturbances. Some incidents had involved local workers, who were drunk, or who had preconceived views about the protest. There had been incidents of "verbal and physical abuse". Occupy's protest, however, was "non-violent", and Tranquillity's approach was inspired by the "ethic of mutual co-operation and respect". A very small minority of the people on the site had repeatedly caused offence. Mr Hayton praised the police for their handling of the protest, but agreed that it might have been better had they taken a firmer approach. He was not cross-examined.

The evidence of Ms Tanya Dempsey

67. In her witness statement of 9 December 2011 Ms Dempsey said she had belonged to the "Occupy London Stock Exchange (OLSX) movement" since 15 October 2011. She said she had never before taken part in any protest or been an activist. She described her experience of events on that day, including, she said, the police "kettling" people in the area outside St Paul's Cathedral.

68. Ms Dempsey said that on 19 October 2011 the Chapter's Clerk of Works told her and others "that the Fire Authority had some concerns about the camp and were threatening to close the cathedral". Later that day, however, the Clerk of Works had "said that the Fire Authority had decided that they were not going to close the cathedral". Ms Dempsey said she met two fire officers at the Information Tent in the camp, and discussed their concerns with them. They gave her a list of things they would like the protestors to do to ensure the safety of the camp, including "no open fires …, getting more fire breaks between the tents [which, said Ms Dempsey was achieved straight away by "a rearranging of the tents"], providing fire blankets in the kitchen, as well as fire extinguishers and … [establishing] a fire evacuation point on site". Two fire evacuation points were established, one in front of the cathedral and the other on its north-west side. There was already a "no smoking enforcement inside the working tents (e.g. Kitchen, Info, Tent City etc)". The fire officers said they were "happy with the kitchen generally, and that the fire exit from the cathedral North side fire exit access door was already clear and thus a good firebreak". Ms Dempsey said that on the morning of 20 October 2011, the cathedral's Clerk of Works told her that their insurers were "putting pressure on the cathedral and threatening them if certain requirements were not met". The cathedral's doors were closed on 21 October 2011, the Chapter "stating health and safety and fire concerns". Ms Dempsey said she "spoke to the Fire Authority and asked them if anything had changed and they stated that as long as we followed the original remit nothing had changed as far as they were concerned"; they had "not been in contact again with the cathedral regarding the reasons the cathedral had stated for closing". In her oral evidence-in-chief Ms Dempsey confirmed that the protestors had done everything they had been asked to do by the fire brigade.

69. Ms Dempsey said in her witness statement that the protestors were "a peaceful grassroots protest that only came about asserting their protest actively by having the tents and bedding in a semi-permanent structure at St Paul's campsite". Had their occupation not taken the form of "a campsite", she said, "the political advances in raising awareness about social and economic injustice would never have taken place". Therefore, "the campsite is a vital part of our right to protest …". As a practising Christian, she had attended "a few services inside the cathedral". She said no noise from outside could be heard at all, largely because of noise inside the cathedral – "mostly from tourists". She said that "[none] of the services that the cathedral holds have been interrupted or prevented through the camp being there …".

70. In cross-examination Ms Dempsey said the protestors had not discussed with the fire brigade or with the Chapter's insurers the question of the safety of the cathedral. She said the Chapter had not been forced to close the cathedral. She thought it unchristian for a church to close its doors. Asked about acts desecration of a sacred place, urination in the churchyard, and the inscribing of graffiti such as "666" on the walls of the building, Ms Dempsey said that there was not an inner-city church that had not had to deal with all of the issues faced by St Paul's Cathedral. But she agreed that such things would be deeply offensive in all inner-city churches. She did not believe that the Article 9 rights of intending worshippers were being affected by the protest camp. In re-examination she said those people had 450 other churches in the diocese to which they could go.

The evidence of Ms Jenny Jones

71. Ms Jones is a Green Party member of the London Assembly. In her witness statement of 21 December 2011 she said she had visited the protest camp several times. She had stayed the night in the camp on 22 November 2011, in a vacant tent, which, she said, "certainly had a lived in aroma". She said "[the] camp welcomes the homeless and gives them food and drink and society", but the presence of homeless people "did not appear to destabilise the camp". She said – and this she confirmed in her oral evidence-in-chief – that she had "slept very well, without disturbance". Though "packed together tightly", the tents were "orderly, in fairly straight lines, with clear pathways around the edges and one pathway through the middle". There was "no litter and no mess". On none of her visits to the site had she seen any evidence of drug use. She said she understood "the concern at having a semi-permanent protest camp within the centre of London, but the tents are fundamental to the protest – without tents there would be no protected space for the teach ins, the talks and the exchange of information". Occupy London had done two things of supreme importance. First, it had "raised the issue of society's iniquities and the problems of the banking sector's greed, and secondly, it has kept the issue in the media spotlight". Their protest had "resonated with many Londoners". The camp was "democracy in action".

The evidence of Saskia Kent

72. In her witness statement, which is undated, Ms Kent said she had arrived in the protest camp on 18 October 2011, and had stayed on site "periodically since that date … both as a day visitor and an overnight camper". She said that at a General Assembly meeting on 19 October a police officer referred to concerns that had been raised about "public urination in the neighbouring area". He had "made it clear that this was not necessarily about Occupy people but wanted them all to be aware that on the spot fines would be enforced should anyone be found urinating in public". According to Ms Kent, the officer had said that this "was not an unusual event in his experience as late night revellers and other people often did this and he was informing them so that they could distance themselves from such behaviour". Ms Kent said his remarks "were met with general approval".

The evidence of Mr Benedict Cavanna

73. Mr Cavanna said in his witness statement, dated 12 December 2011, that he had on four occasions done a "Night Watch" shift at the camp, from 10 p.m. until 3 a.m.. The camp had been "generally fairly tranquil". Incidents during the night had been of two main kinds: people "with mental health issues[,] being noisy or abusive and disruptive", or people with "alcohol issues being noisy, confrontational and disruptive". He had "witnessed many occasions, especially during the night when the Tranquillity Team had intervened in situation[s] when people were drinking, or appeared intoxicated, to remind them of the policy, and to calm down problem behaviour from intoxicated people". Most often these problems had been caused by people who were "from outside the Occupy movement".

The evidence of Mr John Corcoran

74. Mr Corcoran is employed by Ms Samede's solicitors. In his witness statement dated 21 December 2011 he said the roadworks in Newgate Street had gone on from the beginning to the end of November 2011. During this period, he said, the footpath on the south side of Newgate Street "was reduced to less than 50% of usual capacity"; the protective barriers encroached considerably on the footpath.

The evidence of the Reverend Dr William Campbell-Taylor

75. Dr William Campbell-Taylor is a parish priest who works in Hackney. He had twice served as a Common Councilman of the City, between 2001 and 2003 and between 2005 and 2008, sitting on various committees. In his witness statement of 10 December 2011 he said he had thus come to see how the Corporation "uses its powers to promote its interests". He had visited and spoken at the protest camp. He said Occupy had drawn attention to "some fundamental misalignments in our national life", stimulating debate on several issues. The tents outside the cathedral were "not only in themselves a means of temporary abode" but "provide the canopies (literal and metaphorical) under which [the] debates may be pursued". The "symbolic meaning of the tents has its roots in the Biblical *mishkan* or "Tent of Meeting"". It has "scriptural resonances of hospitality (cf Genesis 18) and divine presence (cf Exodus 50) and suggests the fragility and inter-dependence of our relationships (the big society tent) which can so easily be swept away by the power of the Market … or by the State (or, indeed, the established church, the Church of England)".

The evidence for Mr George Barda

The evidence of Mr George Barda

76. In his first witness statement, which is undated, Mr Barda said that for the last seven years he has worked as a street campaigner for various non-governmental organisations, first "for organisations focused on poverty reduction in the developing world", and then for both Friends of the Earth and Greenpeace. He said he had been a "social justice campaigner" for about 10 years, "involved in various protests trying to tackle poverty, climate change, the excesses of corporate power, etc." He had "campaigned to stop this country's illegal military activities … despite the retrospective rubber stamping of the invasion of Iraq by the UN which bestowed on this neo-imperial endeavour a thin layer of legal legitimacy". He said he was a "deeply religious person … committed to the compassionate revolution", which would ultimately be judged by history for its success "in helping to avert global catastrophe". He said his roles in the protest camp had been "various and fluid", including involvement in several of the working groups and in drafting policy statements to be brought before the General Assembly. He had taken part in discussions with the Church "and also with many inspiring Christians and others that stand forthrightly against the complicit history of the established church, and for the compassionate revolutionary and redistributive message of Jesus". He had also, he said, been "very strongly committed to the general assembly process, which is integral to this new democracy movement …". He said the tents "are manifestly iconic". St Paul himself was a tent-maker. The establishment of "the micro-democratic community that the tents have enabled" is what had inspired people so much. But, said Mr Barda, the tents also "perform another function, that by virtue of their being situated in a location that at once makes a powerful statement against the iniquities of the city, (and sits on a site used for at least 800 years for gatherings of the people …), there is less need or and incentive to engage in the kind of protest that can more easily lead to tension and aggression". In additional written evidence submitted to the court on 22 December 2011 Mr Barda said the form of protest one sees in the occupation of St Paul's Churchyard is itself "a rational response to the repeated failure of temporary and occasional protest to bring about much needed change". He also expanded on the following assertions:

> "… The relevance of the *objective* claim we can make to be fulfilling a *pressing social need*, demands necessarily and axiomatically that the court assess the scale of this pressing social need to which we are concretely responding, on the balance of probabilities against any competing pressing social need that the inconveniences of our presence at St Paul's Churchyard may seem to constitute. As the wording of the Convention clearly refers to a national democratic interest, a heavy burden would seem to be on the court to justify why it would prioritise the micro-harms alleged by the [City], over the egregious

national (and inextricably linked global) harms that we seek to mitigate*, and which we can claim objectively already to be in the process of doing.* …".

Mr Barda added to his evidence a large number of academic papers, reviews and other materials, including several papers and texts on various issues – social, financial, fiscal, economic and environmental (principally climate change) – commentary on the attitudes and behaviour of the news media, and articles on judicial deference under the Human Rights Act by Richard Clayton QC and by Ms Francesca Klug, a Professorial Research Fellow in the Centre for the Study of Human Rights at the London School of Economics. At the end of the hearing he presented the court with a copy of a book by Mr Nicholas Shaxon, entitled "Treasure Islands: Tax Havens and the Men Who Stole the World". He also produced a transcript of the speech made by the Reverend Mr Jesse Jackson at the protest camp on 15 December 2011. I do not propose to attempt a summary of any of those documents. I have had regard to them all.

77. In his oral evidence-in-chief Mr Barda developed the thesis apparent in his written evidence. He said that a phenomenon of considerable significance was under way. Left "unmolested" by the court a principled protest could flourish. The court ought to ascertain to the best of its ability whether the curtailing of basic democratic freedoms was likely to help the health of the nation. The case before the court was little different from that of "the Greenpeace Five" at Kingsnorth. In its assessment of pressing social need the court should not give priority to the harms prayed in aid by the City. The City was facilitating corruption. International financial institutions were behaving in an "incredibly undemocratic" way. "Wolf-pack" markets were sucking wealth away from the majority. Occupy's protest had been crucial in maintaining the right to speak freely, providing an "alternative democratic forum". It was necessary for the "escalating protest to be sufficiently disruptive to the status quo". Otherwise, Protest NIMBYism ("PNIMBYism") would prevent "vital protest". The chosen means of protest was important. Encampment was integral to the "Occupy Movement". On their own, marches were ineffective. That the City was now experiencing "social problems" was "instructive poetic justice". The persistence of the protest camp was also working against "the short attention span of the media". Two months' occupation of St Paul's Churchyard was not enough. It was through divine intervention that the camp was there. Mr Barda could not think of anywhere in London more suitable for this from of protest; this was the perfect location.

78. Mr Barda was not cross-examined.

The evidence of Professor Richard Wilkinson

79. Professor Richard Wilkinson is the Emeritus Professor of Epidemiology at the University of Nottingham, and holds honorary professorships at University College, and the University of York. With Professor Kate Pickett he produced a witness statement, dated 11 December 2011, in which he said that the "Occupy Movement" has, "almost on its own, brought [inequality] back to centre stage" – thus performing "a crucial service to the democratic process". Income differences between rich and poor in Britain had risen to levels not seen since the 1920s, and were now twice as large as in some other rich market democracies. Increasingly, said Professor Wilkinson the problems caused by the repercussions of the financial crash were being paid for by the least well-off – through rising unemployment, cuts in real incomes and in public services. The "Occupy Movement" was a small but essential reminder of these issues and the need to keep them at the forefront of the democratic process. Professor Wilkinson elaborated on these themes in his oral evidence-in-chief. He said he had given a lecture at the Tent City University in the protest camp. He was not cross-examined.

The evidence of the Reverend Prebendary Mr Alan Green

80. Mr Green is Rector of the Church of England Parish of St John on Bethnal Green and Area Dean of Tower Hamlets, and a member of the College of Canons of St Paul's Cathedral. In his witness statement, which is undated, he said the borough of Tower Hamlets, in which he lives and ministers, continues to face huge problems of deprivation. The gap between wealthy and poor had grown ever wider. He said the cathedral was well placed to engage with the leaders of society, and had done so without shirking its responsibility to question the values demonstrated by society. However, the "Occupy Movement" had moved such discussion "from the polite environment within the Cathedral to the apparent anarchy of the pavement outside". Mr Green had visited the protest camp regularly. There

was support for it from the clergy and laity within the Church, who recognized that it "may well be the beginning of a new compassion, a new politics, and a renewed commitment to a society that embodies the Christian values of justice, equality and care for neighbour". The continued presence of the camp did not diminish, but enhanced, the work of the cathedral. Mr Green expanded on those themes in his oral evidence-in-chief. When asked what other opportunities there were for those who might have been reluctant to worship in the cathedral while the protest camp had been in the churchyard, he said the Diocese of London had about 450 churches, many of them in the City of London. He was not cross-examined.

The evidence of Mr John Christensen

81. Mr John Christensen is a professional economist and a Director of the Tax Justice Network, specializing in "global financial architecture issues". In his statement, dated 10 December 2012, he said he was "widely regarded as a world expert on the role of tax havens in the global financial markets". He is a member of the Organisation for Economic Cooperation and Development's Task Force on Tax and Development, and serves on the Coordinating Committee of the inter-governmental Task Force on Financial Integrity and Economic Development. He referred to the public debate on tax havens that had taken place "at various sites occupied by the Occupy London movement". He had taken part in some of these debates, both in the protest camp in St Paul's Churchyard and at Finsbury Square. They had been described by prominent newspaper columnist, Mr George Monbiot, as having "something of the flavour of the Putney debates of 1647". They were very important. In focusing on tax havens Occupy had "drawn public attention to a matter of global importance; namely that Britain, and especially the City of London, has been a lead player in promoting and defending tax havens across the globe". With "extraordinary imagination and good planning, the Tent City University and the Bank of Ideas created by Occupy London have provided space for genuine public discussion and engagement on important matters of public interest". Given that nobody else had ever attempted to conduct a sustained debate on the issue of tax havens, said Mr Christensen, Occupy were "providing a public service of over-riding importance". He expanded on this theme in his oral evidence-in-chief. He was not cross-examined.

The evidence of Mr John Lanchester

82. Mr John Lanchester made a statement, which is undated. He did not give oral evidence. He is a professional writer, the author of several novels and a book about the financial crisis entitled "Whoops! Why Everybody Owes Everybody and Nobody Can Pay". He said he strongly believed Occupy was "making an argument of the highest public importance", and he supported the occupation of St Paul's Churchyard by the protest camp, for three main reasons: first, because the issues raised were "of central importance to our democracy and yet have until now largely gone unvoiced in the course of democratic debate", second, because the "Occupy London movement, by emphasising the imbalance between the financial sector and the rest of the British polity, performs a vital [democratic] role in foregrounding the risks raised by the size and power of that sector"; and third, because the "juxtaposition of the most beautiful religious building in England, the contemporary buildings which express the modern power and wealth of the City of London, and the protestors' tents, is the living embodiment of an argument that is central to democratic debate in our society".

The evidence of Mr David Mead

83. Mr Mead is a senior lecturer in law at the University of East Anglia Law School. He made a statement, dated 21 December 2011. He did not give oral evidence. He described himself in his statement as "a specialist on the law of public order and peaceful protest". He is the author of a book entitled "The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era", published in April 2010, and a number of articles on this topic. In his statement he said there could, in his view, "never be any doubt about the political legitimacy of engaging in protest activities that are peaceful (i.e. non-violent)". He also said this:

> "… Unless a compelling case can be made on the evidence, then the right to protest – in whatever form the protestors have chosen – must trump. I talk in my book about PNIMBYism – the tendency to favour protest but not in my backyard. There is I believe a pressing case for what Professor David Feldman has called "enforced tolerance": that we

simply accept that the price we pay for living in an advanced democracy is that we will every now and then be subject to or exposed to things we'd prefer not to encounter or think about. It is trite but the words in *Handyside* ring as true today as anyday – that free speech to be worth anything includes the offensive and the objectionable."

The evidence for Mr Daniel Ashman

The evidence of Mr Daniel Ashman

84. Mr Ashman made a witness statement, which is undated. In it he described himself as residing at "Occupy LSX, St Paul's Churchyard …". He said he had stayed at "Occupy LSX social movement camp" since 18 October 2011. He said he had been unable to remain silent and complicit in "practices that result in the violation of the human experience", practices in which the Government, "parts of the financial sector" and "some corporations" based in the centre of London, including the City of London, were involved. The Occupy movement, said Mr Ashman, stood for "the three R's [:] "Remedy, Reparation and Reconciliation"". Nowhere else in the United Kingdom but at the camp in St Paul's Churchyard would it be possible to meet "such a large concentration of people of passion, imagination, experience and enthusiasm who are willing to put their whole being into wrestling with issues that many have had to face throughout history". The camp had, he said, been unfairly blamed for the losses that local businesses had experienced. He questioned the wisdom of putting barriers around Paternoster Square, but doubted that the City could prove the losses were not connected to the current recession. In his oral evidence-in-chief Mr Ashman amplified some of those themes. Posing the rhetorical question "Are we acting justly?", he said the occupation of St Paul's Churchyard was justified by the lawful excuse of "attempting to prevent much greater crimes …, in which we are all somehow complicit". He also referred to the "Occupy LSX St Paul's Camp Eco-audit Report", prepared by Acorns Eco-audits in December 2011. The steps recommended in that report would, he said, probably take a few weeks to implement. However, the "weekly camp on-site carbon footprint" was low. 167 sleeping tents had produced a carbon footprint equivalent to that of two average households. In support of his evidence Mr Ashman produced a large collection of documents relating to various topics, including the Joseph Rowntree Foundation report "Monitoring poverty and social exclusion 2011", a Tax Research LLP report on tax havens, and various pieces of work on corporate responsibility, arms trading, the use of depleted uranium, the Gulf War and the recent and continuing conflicts in Iraq, Afghanistan, Egypt and Libya. Again, I do not attempt a summary, but I have had regard to all of this material.

85. Mr Ashman was not cross-examined.

The evidence of the Reverend Mr Paul Randle-Joliffe

86. In his witness statement, dated 8 December 2011, Mr Randle-Joliffe described himself as "a Commissioned Christian Minister of Religion since 2010 by National leadership of the Pioneer Network of Churches, with an Itinerant "market place ministry"". He referred to "a great meeting of significance" that he said had taken place at St Paul's Cross in 1213. Angered by the "misgovernment and illegal acts" of King John, a group of rebellious barons came together with like-minded bishops and abbots to consider what they should do. All present took an oath, vowing to die, if they had to, in the struggle for their liberties. Two years later King John attached his Great Seal to Magna Carta. Mr Randle-Joliffe discerned a precedent here. Our common law system, he said, requires the fairness founded in Magna Carta. But the medieval precedent went further still. On St Paul's Feast Day in 1236, the first folkmoot – a meeting of the people – took place at St Paul's Cross. A king's justice, John Mansell, announced the wish of King Henry III that the City of London was to be well governed and its liberties guarded. In his oral evidence-in-chief Mr Randle-Joliffe described himself as "not your natural protestor". But he had a son who was 11 years old and the country must be fit for him to live in. To replicate a folkmoot at St Paul's Cross more exactly, the protestors would, he said, have had to gather in the modern churchyard gardens. But this they could not do. So, by default, the camp had been set up in the space available for it. In cross-examination Mr Randle-Joliffe accepted that folkmoots had generally been assemblies held during the day, but, he said, "structures" would have had to be put up for them.

The evidence of Mr Matthew Horne

87. Mr Matthew Horne served in the 1st Battalion of the Scots Guards for four years, and had been on a tour to Iraq. In his witness statement he said he worked in the Tech Group at the protest camp, and in the Tranquillity team. He was active in promoting peace through no-violent action. He had co-founded Veterans for Peace. He said that the camp had provided a platform on which "to speak out about the wars and how the financial system backed by governments and corporations have taken us down the path to war several times in pursuit of profit". He said the movement of which this occupation was a part was "a symbol of freedom, justice, community and humanity". The removal of the tents from St Paul's Churchyard would not make the world's problems go away. It would leave him homeless. In his oral evidence-in-chief he said that conventional forms of protest did not work. Occupy showed that "true power lies with the people". It had allowed him and others to engage in the political process, giving them a voice and a community. It was "the last remaining form of protest we have". The site of the protest camp was, he said, "symbolic". He was not cross-examined.

Findings of fact

88. I can now set out some findings of fact that seem relevant to the issues I have to decide. These are not intended to cover every factual dispute in the case. They do, however, relate to the principal areas of contest between the two sides. I should record at this stage that all of the witnesses who gave oral evidence impressed me with his or her sincerity. Each of them, I believe, was doing his or her honest best to tell the truth. Between some there were, inevitably, divergences of view. There were also differences on the facts. Not all the facts in dispute were the subject of cross-examination, or rebuttal in evidence. Where objective evidence was produced on behalf of the City – such as the measurement of particular areas, pedestrian survey data, the numbers of people visiting or worshipping in the cathedral in a particular period, crime statistics compiled by the police, and information on the takings of some local businesses – I have accepted the facts and figures provided. Interpreting those facts is, of course, not the same thing. Where the effects of the presence of the camp are concerned, I have favoured the evidence of those who have been familiar with the area, including St Paul's Cathedral and its daily work, both before and after the protestors arrived, and, in particular, the evidence of those with professional responsibility for the amenity and safety of the area and the work of the cathedral. Given the choice between anecdote on the one hand and hard fact on the other, I have preferred the latter. Another general observation I would make here is that the voluminous evidence submitted for the defendants attests to the breadth and strength of support both for Occupy's protest and for the retention of the protest camp, and to the commitment and enthusiasm of the protestors themselves. Of that there can be no doubt.

89. Many of the basic facts are not in dispute.

90. It is agreed at least between the City and Ms Samede, and has not been contested by the other defendants, that the land in Areas 1 and 3 which the City asserts is highway land, maintainable at public expense, does have such status. The highway has been cleaned to its full extent several times a day by staff employed by the City since at least 1977. At least for the same period the City has maintained it. Extra arrangements for its cleaning and maintenance by contractors have been in place since 1989, and these continue. It has been lit by the City since at least 1977. Therefore, under section 263(1) of the 1980 Act, the freehold of Area 1 – and of those parts of Area 3 which the City says are highway – vests in the City. It is admitted that the City owns the open space within Area 3, namely Festival Gardens and Carter Lane Gardens, and the coach park. It is admitted that none of the defendants has had any licence or consent to occupy any of the land to which the claim relates.

91. It is admitted that the defendants have turned Areas 1 and 2 into a tented camp. It is admitted, at least on behalf of Ms Samede, that the camp causes an obstruction on the highway, which is not de minimis, but not such as to prevent the passage of pedestrians through the northern part of St Paul's Churchyard. According to a schedule presented to the court during the hearing, the extent of highway in Area 1 that is obstructed measures, in total, 2,890.5 square metres of the total of 3,688.5 square metres, which equates to 79%. This is made up of 1,279 square metres of the total of 1,665 square metres of highway in the western portion (Area 1A), which equates to 77%, and 1,611.5 metres of the total of 2,003.5 square metres of highway in the eastern portion (Area 1B), which equates to 80%. Area 1B includes the fenced part of the highway land between Temple Bar and the door to the crypt of the cathedral. The width of the highway is reduced by between about 65 and 80% in the western portion of Area 1 (Area 1A), leaving an unobstructed strip between the edge of the camp-site and the colonnaded

walkway of Juxon House of between about 12 metres at its western end, and about five metres at its eastern. The colonnade, which is not highway but a permissive walkway owned by the freeholder of Juxon House, is 3.5 metres wide at its western end, and 2.5 metres wide at its eastern. The unobstructed walkway in the part of St Paul's Churchyard next to Paternoster House is about six metres across, and had been reduced in width by the tables and chairs placed outside the "Tea" café by its staff. Area 2 comprises 60 square metres of land, owned by the Church, all of which is occupied by protestors' tents. Area 3 includes about 21,000 square metres of land (about five acres), of which, within the blue line on the plan attached to the claim form, 16,282 square metres (about four acres) is highway land and 4,319 square metres (about an acre) is public open space.

92. In addition to the matters of fact accepted by the City in the admissions to which I have referred, which I also accept, I find on the evidence before me, inter alia: (1) that the tents and other structures that have been placed on Area 1 are a substantial obstruction of the highway, effectively preventing any use of the occupied area for the exercise of the primary right to pass and re-pass, and compromising other lawful use of the highway by the public; (2) that the obstruction of the highway is wilful; (3) that such obstruction is sufficient to constitute a criminal offence under section 137 of the 1980 Act; (4) that the presence of the tents pitched on Area 1 has denied the City the control, occupation and possession of this part of the highway within its ownership and responsibility as highway authority; (5) that despite being required to remove the tents, the defendants have no present intention of doing so; (6) that, in various ways, during the presence of the protest camp and as a consequence of its presence, both public and private nuisances have been caused, including nuisance by noise, the frequent disturbance and interruption of services in St Paul's Cathedral, the generation of foul odour, the inscribing of graffiti on the surface of the highway and on buildings, the fixing of posters to buildings, urination on the highway and on buildings, and defecation on the highway; (7) that, as a consequence of the presence of the camp, the local surface water drainage system has been materially overloaded; (8) that the City's cleansing staff or contractors have, at times, been unable to gain access to blocked drains and gullies because of the presence of protestors' tents; (9) that the presence of the camp has, at times, caused congestion on the highway in the vicinity of the cathedral; (10) that such congestion has been exacerbated by the closure of pedestrian routes through Paternoster Square and St Paul's Churchyard gardens, which would not have occurred but for the Occupy protest; (11) that, during the presence of the protest camp and as a consequence of its presence, the numbers of both visitors to and worshippers in the cathedral have been lower by approximately 40% than would have been so had the camp not been present; (12) that during the presence of the protest camp and as a consequence of its presence, there has been an increase in crime and disorder in the area immediately adjacent to the cathedral; (13) that the presence of the protest camp has caused a material reduction in the levels of trade in some local businesses; (14) that effective arrangements for access by the fire brigade to the cathedral and to Paternoster Square – including fire lanes within the camp – have been put in place by the protestors and maintained; (15) that the protest camp constitutes a material change of use of the land which it occupies, including a material change in the use of highway land from use as a highway to use as a camp-site; and (16) that planning permission for such change of use is required and has not been granted.

The law

The relevant statutory powers governing possession and injunctive relief

93. The relevant statutory powers are well known. A highway authority has the duty to assert and protect the rights of the public to the use and enjoyment of the highway (section 130 of the 1980 Act). To discharge that duty it may institute legal proceedings under section 130(5) of the 1980 Act, and under section 222 of the 1972 Act. Under section 137 of the 1980 Act, it is an offence for any person, without lawful authority or excuse, wilfully to obstruct "the free passage along a highway". As well as its powers at common law, a highway authority has power under section 143 of the 1980 Act to require a person to remove any structure "erected or set up on" the highway. Under section 263 of the 1980 Act every highway maintainable at public expense vests in the highway authority. Where it considers it necessary or expedient to do so, a local planning authority has the power under section 187B of the 1990 Act to issue proceedings for an injunction to prevent or restrain any actual or apprehended breach of planning control. Under section 269 of the Public Health Act 1936 a local authority has the power to grant licences for moveable dwellings, attaching conditions for various defined purposes, which include securing sanitary conditions. Under section 2 of the 2000 Act a local authority has power to do anything

which it considers is likely to achieve the promotion or improvement of the economic or social or environmental well-being of its area.

Human Rights

94. Article 9 of the European Convention on Human Rights protects the right to freedom of thought, conscience and religion:

> "1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

95. Section 13 of the Human Rights Act 1998, under the heading "Freedom of thought, conscience and religion", provides:

> "(1) If a court's determination of any question arising under this Act might affect the exercise by a religious organisation, (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.
>
> (2) In this section "court" includes a tribunal".

96. Article 10 of the Convention, the right of "Freedom of expression", embraces not only the right to express ideas but also the means of transmitting them. It is, however, a qualified right. Article 10(1) encapsulates the right, and Article 10(2) the circumstances in which an interference with it may permitted:

> "(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."

97. The scope of Article 11, the right to freedom of assembly and association, is similarly wide. And it too is also a qualified right:

> "(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."

98. The European Court of Human Rights has repeatedly stressed the importance to be attached to freedom of speech. This is a liberty that will be jealously guarded. Any restrictions upon it must be closely scrutinized (see *R (Laporte) v Gloucestershire County Council* [2007] 2 AC 105, at paras 36 and 37). The same applies to the expression of opinion in conjunction with others, which is protected under Article 11. In *Handyside v United Kingdom* [1976] 1 EHRR 737 the European Court of Human Rights said this (at para 49):

> "… The Court's supervisory functions oblige it to pay the utmost attention to the principles characterising a 'democratic society'. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to Article 10(2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness, without which there is no 'democratic society'. …".

Domestic jurisprudence has been no less robust. In *R v Secretary of State for the Home Department, ex p Simms* [2000] 2 AC 115 Lord Steyn said this (at p 126 E-G):

> "Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self fulfilment of individuals in society. Secondly, in the famous words of Holmes J. (echoing John Stuart Mill), "the best test of truth is the power of the thought to get itself accepted in the competition of the market:" *Abrams v. United States* (1919) 250 U.S. 616, 630, *per* Holmes J. (dissenting). Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country: see *Stone, Seidman, Sunstein and Tushnett, Constitutional Law*, 3rd ed., (1996), 1078-1086. …".

99. For an interference to be justified, it must be rationally connected to one of the legitimate aims specified in Articles 10(2) and 11(2). It must be convincingly demonstrated that the interference meets a pressing social need and is proportionate (see *Handyside*, at paras 48 and 49). Action will not be proportionate unless it is the least intrusive means necessary to achieve the aim. Even if it is the least intrusive means necessary to meet the aim, it must also strike a fair balance between the needs of the community and the individual so as not to impose an excessive burden on the individual. To apply a blanket policy will not normally be proportionate. Nor may criteria be set whose effect would be prevent the competing interests to be properly balanced (see *Dickson v United Kingdom* (2008) 46 EHRR 41, at para 82). Whether or not an interference is proportionate must be decided by the court (see, for example, *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100). This must be determined on the facts of the individual case. The court will focus very sharply and critically on the reasons relied on by the initial decision-maker for curtailing the right or rights engaged (see, for example, *Zana v Turkey* (1997) 27 EHRR 667, (at para 51).

100. The rights protected under the Convention extend to the nature, form and manner of protest. In *Tabernacle v The Secretary of State for Defence* [2009] EWCA Civ 23 Laws LJ said (at para 37):

> "…[This] "manner and form" may constitute the actual nature and quality of the protest; it may have acquired a symbolic force inseparable from the protestors' message; it may be the very witness of their beliefs. …".

Later in his judgment in that case (at para 43) Laws LJ said this:

> "Rights worth having are unruly things. 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 mess which, often literally, the exercise leaves behind. In that case, firm but balanced regulation may well be justified. …".

In *Mayor of London (on behalf of the Greater London Authority) v Hall and others* [2011] 1 WLR 504 Lord Neuberger of Abbotsbury MR said (at para 37):

> "The right to express views publicly, particularly on the important issues about which the defendants feel so strongly, and the right of the defendants to assemble for the purposes of expressing and discussing those views, extends to the manner in which the defendants wish to express their views and to the location where they wish to express their views. If it were otherwise, these fundamental human rights would be at risk of emasculation. Accordingly, the defendants' desire to express their views in Parliament Square, the open space opposite the main entrance to the Houses of Parliament, and to do so in the form of the Democracy Village, on the basis of relatively long-term occupation with tents and placards, are all, in my opinion, within the scope of articles 10 and 11."

However, Lord Neuberger went on (in para 38) to observe that the greater the extent of the right claimed under Article 10(1) or Article 11(1), the greater the potential for the exercise of the right to interfere with the rights of others, and for its having to be curtailed or rejected under Article 10(2) or Article 11(2). In *Director of Public Prosecutions v Jones* [1999] 2 A.C. 240 the defendants had been prosecuted for offences following peaceful demonstrations on a public highway. Lord Irvine made it plain that that the starting point, under Article 11, was that individuals have the right to assemble on the highway. On that question he said this (at p 259 E-G):

> "… Unless the common law recognises that assembly on the public highway *may* be lawful, the right contained in article 11(1) of the Convention is denied. Of course the right may be subject to restrictions (for example, the requirements that user of the highway for purposes of assembly must be reasonable and non-obstructive, and must not contravene the criminal law of wilful obstruction of the highway). But in my judgment our law will not comply with the Convention unless its *starting-point* is that assembly on the highway will not necessarily be unlawful. I reject an approach which entails that such an assembly will always be tortious and therefore unlawful. The fact that the letter of the law may not in practice always be invoked is irrelevant: mere toleration does not secure a fundamental right. …".

Submissions

Submissions for the City

Possession

101. Mr Forsdick submitted, as a basic proposition, that there is no arguable right to occupy, control or take possession of highway land from the highway authority. The statutory framework in the 1980 Act is a carefully framed scheme under which control and possession is vested in the highway authority – here the City – to ensure the protection of highway rights. That statutory scheme, and the highway rights it protects, are wholly inconsistent with third parties occupying, controlling and taking possession of the highway. Far from there being any common law right to do that, the decision of the House of Lords in *DPP v. Jones* confirms that there is not. The logic of that decision, Mr Forsdick submitted, is inconsistent with there being any right at common law to occupy, control and take possession of the highway. But this is clearly what the defendants have done in the present case. Therefore, subject to the proper consideration of the defendants' rights under Articles 10 and 11 of the Convention, the City is entitled to a possession order under CPR part 55. The City would be entitled to an order for possession of Area 1 even if there were no unreasonable obstruction of the highway. And the same principles apply to the highway land in Area 3. Mr Forsdick said that the City considers that there is a real threat that if the possession order is limited to Area 1, the result will be that upon eviction, the camp will simply be moved somewhere else, either on the highway or on to open space close to St Paul's Cathedral.

Injunctive relief

102. Mr Forsdick submitted that a possession order for Areas 1 and 3 will address the City's concerns about those areas. However, to ensure that the protest camp is removed from the highway without unnecessary further delay and that it is not then set up again on adjacent land, the City also asks for injunctions under the 1980 Act for Areas 1 and 3. The only appropriate remedy available to the City for Area 2 is an injunction under section 187B of the 1990 Act, which may have to be followed by self-help under the enforcement notice. The whole statutory scheme for the protection of the public's right to the use of the highway is, said Mr Forsdick, inconsistent with the establishment of a camp-site upon it. Mr Forsdick said he had been unable to find any case in either domestic or Strasbourg jurisprudence where a substantial, long-term obstruction of the highway had been held lawful. The protest camp created by the defendants is a substantial obstruction, and not reasonably transitional. It is, in fact, far removed from the sort of protest to which *DPP v Jones* was referring, and constitutes a public and private nuisance. As Mr Wilkinson had said in his evidence, criminal sanctions are no substitute for an injunction in this case. The imposition of fines would not result in the removal of the tents. The City is therefore entitled to the injunctive relief it seeks, as was the Mayor of London in *Hall*.

Human Rights

103. Mr Forsdick submitted that the City's approach had been impeccable. Whilst the question whether an interference is necessary and proportionate is a matter for the court to assess, the court ought to give due weight to the balance struck in the original decision. The court would not be bound by the view of the public authority concerned, and would consider the reasons put forward sharply and critically. But in this case the conclusions reached by the City, the authority vested with the relevant statutory powers, are highly material. As its committee reports showed, the City gave the defendants' Convention rights great weight, delayed taking action while a negotiated settlement was sought, and, only when a reasonable offer was rejected, concluded that it was necessary to interfere with the defendants' rights to the extent of the orders sought. The City does not seek to prevent protest in this general area. If the orders sought are granted, a peaceful protest which does not obstruct the highway, does not take possession of it from the City and which is in other respects reasonable will be lawful. However, the situation here, said Mr Forsdick, is of the kind contemplated by Lord Neuberger in paragraph 38 of his judgment in *Hall*. In this case the defendants' contend for very substantial rights under Articles 10(1) and 11(1): to assemble and carry on a protest by camping for a indefinite period on highway land in a very important place, with very significant implications for third parties. It is hardly surprising that there is thus a direct conflict with the rights and freedoms of others. In the first place, there is no arguable right to establish a camped protest on the highway, or on Area 2, and no legal basis for its retention. Secondly, while domestic law recognizes the importance of the right to protest including on the highway, the decision in *DPP v. Jones* acknowledged the potential limits of that right. Thirdly, the statutory schemes in play here are an embodiment of Parliament's will, and an essential part of the consideration of necessity and proportionality in this case.

104. On the facts, the proposed interference with the defendants' Article 10 and 11 rights is both entirely necessary and proportionate. In the first place, the obstruction of the highway is substantial and is itself a public nuisance, and thus clearly on the wrong side of the line drawn in *DPP v Jones*. Secondly, despite the efforts made by the working groups and by individual protestors, the camp has significant continuing implications for the rights and freedom of others. These will continue unless the camp is removed. Mr Cottam's evidence on the impact of the camp on worshippers, visitors, clergy and staff at the cathedral and on the conduct of services there is cogent. Attempts by the protestors to control these impacts have not been effective. With its duty under section 13 of the Human Rights Act 1998 in mind, the court should not tolerate a position in which the Article 9 rights of worshippers at St Paul's Cathedral are being harmed in the way that they are**.** As in *Hall* the impact on the Convention rights of others deserves great weight. The evidence shows that the protest camp is an actionable nuisance against the cathedral. Thirdly, it is inconceivable that planning permission would be granted for the material change of use which the camp has introduced. Fourthly, some local businesses have suffered substantial harm to their trade as a result of the camp's presence. Fifthly, again despite the efforts of some protestors, the protest camp has drawn in people who have caused disorder and an increase in crime in the area. Sixthly, the camp has imposed pressures on local infrastructure for drainage, sanitation, and the disposal of waste, pressures with which that infrastructure has not been able to cope.

Many of the protestors have tried to maintain good hygiene in the camp. But urination and defecation in public areas have been persistent problems. Odour has been caused as a result of foul water and other debris being disposed of in surface water drains. Together these considerations amount to a very strong case for granting relief.

Submissions for Ms Samede

Possession

105. Mr Cooper submitted that no right to possession under the 1980 Act had been made out for Area 1. He argued that he protest camp is a reasonable use of the land for the following reasons. Whilst the physical extent of the obstruction on the highway is not de minimis, there is ample room for members of the public to pass and re-pass. The camp is only "transitional". It has been present on the land for only two months, and there is no intention for it to be indefinite. The night-time protest in Area 1, by way of occupation, is transitory and, therefore, a reasonable use of the highway. And the City has not actually lost control, occupation or possession of Area 1. The defendants have taken steps to ensure that the impact on the highway is mitigated including, by, for example, clearing fire lanes between tents, allowing the City access to the drains, making arrangements for sanitation and refuse collection. In any event the public right to use the highway is subject to the defendants' right to assemble peacefully and protest. The defendants are lawfully exercising their rights under Articles 10 and 11 of the Human Rights Convention.

Injunctive relief

106. Mr Cooper submitted that injunctive relief ought not to be granted under the provisions of the 1980 Act. There has been no breach of section 137. There is a lawful excuse for the presence and retention of the tents on the highway, because the defendants are exercising their right at common law right to assemble peacefully and protest on the highway, which is a reasonable way of using the land. Mr Cooper relied on the decision of the Divisional Court in *Scott v Mid-South Essex Justices* [2004] EWHC 1001 (Admin), in which it was held that the question whether a particular use of the highway is reasonable is essentially a matter of fact and degree for the court. This, said Mr Cooper, is not so exceptional a case as to warrant the granting of an injunction. There is no evidence that criminal proceedings would be ineffective. And an injunction would interfere disproportionately with the defendants' Article 10 and Article 11 rights. Nor should an injunction be granted under section 187B of the 1990 Act, as there has been no material change of use of the land. The land is still a highway. In any event a peaceful protest camp "of undefined duration" is not unacceptable in planning terms. The City had put forward no evidence to show which tents were occupied overnight. If, however, there has been a breach of planning control an injunction should not be granted, for the same reasons as weigh against such relief under the 1980 Act.

Human Rights

107. Mr Cooper submitted that the exercise of rights in the manner contended for by the defendants in the present case would always interfere with those who held a different view. As Laws LJ had said in *Tabernacle*, "[rights] worth having are unruly things". Occupations of land such as this one, said Mr Cooper, represent an "altogether new form of protest". The court should not, therefore, slavishly adhere to the approach taken in cases such as *Hall*. The demonstration in Parliament Square was not the sort of "culturally, socially developed event" that Occupy's protest in St Paul's Churchyard is. This is something wholly unprecedented. Any requirement to remove the tents would constitute a substantial interference with the defendants' Article 10 and 11 rights. None of the legitimate aims in Article 10(2) or 11(2) is satisfied. There is no pressing social need. The proposed interference would be disproportionate. The relief sought is too broad, and misdirected.

108. As to legitimate aims, Mr Cooper submitted, first, that the protest camp does not have any significant implications for the rights and freedoms of others, does not prevent or restrict worship at St Paul's Cathedral and does not, therefore, impact on other people's rights under Articles 9, 10 and 11, does not have a significant impact on the rights and freedoms of those visiting, walking through or working in the vicinity; and has not, in fact, prevented anybody else assembling in Area 1. Secondly, the protest camp has not significantly affected the normal activities of the cathedral, or of local businesses. Thirdly,

satisfactory arrangements have been made for sanitation, the disposal of waste and cleaning, and this location is suitable for a "semi-permanent expression" of Article 10 and Article 11 rights. Fourthly, the level of criminal activity in the City of London has not increased as a result of the occupation of Area 1 and 2 by the protest camp. Fifthly, the camp is being properly managed. And sixthly, the land occupied by the camp is an important public place.

109. As to necessity and proportionality, Mr Cooper submitted that the City's own conclusion must not dictate the court's on the questions of necessity and proportionality. The removal of the tents would remove the essential means by which the defendants had chosen to protest. The purpose of the defendant's protest is so important that it should be accorded great weight in striking the balance. Ms Samede and other protestors do not intend to maintain the protest indefinitely. The camp is causing "minimal disruption". The closure of Paternoster Square and the roadworks in Newgate Street must have been partly responsible for congestion on the highway. As to the alleged effects on St Paul's Cathedral, it is telling that the Church had not seen fit to become a party in the proceedings. Despite Mr Cottam's evidence, had the complaints made about the desecration of the cathedral been substantial one would have expected the Church to be at the hearing arguing for the protestors' eviction. But it was not. Mr Cottam had exaggerated the effects of the camp, for example in his evidence on noise. As to freedom of worship, there are more than 450 other churches within the Diocese of London; "disappointed worshippers" could go to one of those. Appalling as the incident of defecation in the cathedral undoubtedly was, there is no evidence that a protestor was responsible for it. Occupy is itself policing the camp to prevent criminal activity. The evidence on the asserted rise in crime is inconclusive. There has been no proof that protestors had themselves been "involved in criminality". No serious public order issues have arisen in the camp. Occupy has co-operated with the police. It has ensured that the camp is clean. It has kept noise down at night. It was – and still is – willing to discuss with the City the modification of the size of the camp. The terms offered by the City in negotiation in early November 2011 have now been substantially complied with**.** The presence of the camp is not inconsistent with the function, lawful use and character of the land. The City is able to carry out its statutory functions. Members of the public are free to enter and remain on the land if they wish. The removal of the tents would not address the City's primary concern, namely the protestors' use of Areas 1 and 2 during the day.

110. Mr Cooper submitted that a pressing social need to remove the tents from the land "overnight" has not been convincingly established. The type of interference the City is proposing is, said Mr Cooper, both unnecessary and disproportionate, and is not the least intrusive way to address any pressing social need. Were the court to find a pressing social need arising from the tents being kept on the land at night, this could be met by granting an injunction which required that none of the tents be occupied overnight. This would overcome all of the main concerns the City had raised. Possession of Area 1 is unnecessary as the City had accepted that the defendants could return to protest each day. Possession of Area 3 is unnecessary for the same reasons. An injunction is unnecessary, again for the same reasons.

111. It follows, submitted Mr Cooper, that a possession order should not be made and an injunctive and declaratory relief should not be granted.

Mr Barda's submissions

112. Mr Barda's submissions closely resembled his evidence. He submitted that this case involves the exercise of fundamental freedoms. It is, indeed, a case without precedent; the issues before the court were unique. In considering proportionality the court should weigh the unequivocal evidence it had received on the democratic needs manifest in Occupy's protest. On the issues raised by the protest the evidence provided to the court by himself and Mr Ashman was, submitted Mr Barda, "preponderant". An evidential burden rested on the City to disprove the truth of that evidence. But, said Mr Barda, the City had ignored the nature of his defence. The protest was directed, in part, at the power of the City of London, which had played its own part in undermining democracy. Mr Shaxson's "Treasure Islands", said Mr Barda, shows that the contentions he was making were "less unreliable than they seem". Discovering the means of holding the broad democratic conversation was important. Mr Barda underscored the relevance of Mr Ashman's submissions on lawful excuse. He recalled a saying of Mahatma Ghandi: "First they ignore you, then they ridicule you, then they fight you, then you win." He submitted that far from there being a pressing social need justifying the removal of the protest camp, there was, in fact, a pressing social need to allow the camp to continue in its present form. As to the

City's argument on Article 9 of the Convention, the right to worship did not have to be exercised inside the cathedral; it could be exercised outside. There was, Mr Barda said, no evidence that the protest camp itself – as opposed to the media's reporting of it – had caused anyone not to come to the cathedral. As to the concern about congestion, this was capricious. If the bottlenecks complained of had been a real problem, the churchyard gardens would not have been closed. The suggestion that the camp had caused the closure of the gardens was tenuous at best. But, in any case, people can still pass and re-pass beside the camp. As to anti-social behaviour, most of this had happened at night. As to the loss of income to local businesses, it would be wrong to take these too seriously. In short, there was no proven harm to the public that could be blamed on the protest camp. Mr Barda said the camp was the "most sacred religious duty" to which he had ever been committed.

Mr Ashman's submissions

113. With the assistance of Mr Steven Rushton, Mr Ashman submitted that the City had intended to take legal action against the protest camp from the outset. He submitted, in effect, that the protestors had done what they had a lawful excuse to do. Such lawful excuse lay in the need "to protect life, person and property in many areas where there have been no satisfactory remedies available". The law recognized that there may be "situations of such overwhelming urgency that a person must be allowed to respond by breaking the law". Mr Ashman invoked Magna Carta and relied on several cases, including *Southwark London Borough Council v Williams* (1971) 2 All ER 175. He said that what was "taking place now through a network of institutions culminates in genocide". Institutions close to the site of the protest camp "have continued with the theft of land, theft of resources and murder". Mr Ashman referred to several cases in which prosecutions against protestors for criminal damage had failed, including the Kingsnorth trial in 2008. He referred also to the Scottish High Court case, *Lord Advocate's Reference No. 1 of 2000 (Zelter and others)*, 30 March 2001. He submitted that "other avenues for recourse, reparation, reconciliation and remedy" had failed. He said that Occupy "is [an] opportunity to discuss the many critical problems of the world", including "the annihilation of indigenous peoples", "the destruction of the commons and the global environments", "the injustices of the world, such as war and slavery", and "the severe inequalities of the Neo-liberal world". "Occupy and the tents", he said, allowed him to join a global inclusive dialogue to engender a just, universally sustainable and equitable coherent alternative to the current system". He implored the court not to end the "most important possible human conversation", which had been enabled by the protest camp. He said he intended to go to the camp's General Assembly with a list of "acts of reparation", and to propose that the tents be removed one at a time as each of those acts was performed.

Discussion

Possession

114. In *Secretary of State for the Environment, Food and Rural Affairs v Meier and others* [2009] UKSC 11 Lord Rodger of Earlsferry JSC acknowledged (in para 8 of his judgment) the purpose of proceedings for possession brought under CPR rule 55:

> "The intention behind the relevant provisions of rule 55 remains the same as with Order 113: to provide a special fast procedure in cases which only involve trespassers and to allow the use of that procedure even when some or all of the trespassers cannot be identified. These important, but limited, changes in the rules cannot have been intended, however, to go further and alter the essential nature of the action itself: it remains an action for recovery of possession of land from people who are in wrongful possession of it. …".

Baroness Hale of Richmond JSC (in paras 32 to 35 of her judgment) described the provenance of the modern action for possession in English law. In paragraph 35 of her judgment she said this:

> "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. …".

115. On the facts before me in evidence I am satisfied, as Mr Forsdick has submitted, that all the necessary ingredients of a sound claim for possession are present in this case.

116. Both Area 1 and most of Area 3 are highway, vested in the City and maintainable at public expense. It is not necessary to expand here on the history of the highway, which has been explained in detail in the City's evidence. That evidence has not been disputed or challenged, and I accept it. The City does not contend, and does not need to contend, that there are vehicular rights along the highway in Area 1. It is enough that there are public rights over it, limited though these are to its use by those travelling on foot. Again, there is no dispute about that, and I accept it.

117. That the defendants are in actual possession of Area 1 is, in my view, incontestable. It is simply a matter of fact. They have entered and remained on the land without the permission of the City, which is lawfully entitled to possession of it. The fact of such occupation of the land is plain and cannot be disputed. At the time of the hearing there were between 100 and 150 "sleeping" tents pitched within Area 1, and several other larger tents in which various facilities were accommodated and various services for the protesters and their visitors provided, including a tent in which meetings are held, the "Tent City University", a kitchen, a library, a first-aid tent, a tent for women and children, and a welfare tent.

118. The City has granted the defendants no licence or consent to occupy the land. On 16 November 2011 it gave them formal notice to vacate by 6 p.m. on 17 November 2011, which they did not do. When the claim was heard, more than five weeks after that deadline had passed, the protest camp was still in place.

119. Such occupation of the highway may be compared with, for example, the unlicensed occupation of highway land by a large number of people living there in tents, caravans and various structures, as occurred in *Wiltshire CC v. Frazer* (1984) 47 P&CR 69. In that case the Court of Appeal upheld an order for possession made under RSC Order 113. May LJ said this (at p 74):

> "… It seems to me clear beyond a peradventure that no other interpretation of the facts is possible than that these defendants and the other persons unknown are wrongly in occupation of the highway. I think it matters not that each several caravan is at a separate point on the highway. …".

120. The basic principles relating to the concept of possession of land were identified by Slade J in *Powell v McFarlane* (1979) 38 P&CR 452 (at pp 470 and 471, in a passage of his judgment later approved by the Court of Appeal in *Buckinghamshire County Council v Moran* [1990] Ch 623, at pp 646 and 647, and by Lord Browne-Wilkinson in *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419, at para 31). The third principle referred to by Slade J seems pertinent here:

> "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 cannot both be in possession of the land at the same time. The question what acts constitute 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. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. …".

In this case, as Mr Forsdick submitted, the facts speak for themselves, as they did in *Mayor of London v. Hall* [2010] EWHC 1613 (see paras 104 and 105 in the judgment of Griffith Williams J). A large number of people are encamped on the highway. There has been no indication that they are likely to leave in the foreseeable future unless required to do so by the court. From the outset, in mid-October 2011, those who have participated in the protest have exercised physical control over the land, and they show no sign of relinquishing it. Not only has Area 1 been transformed into a protest camp, those who have gained responsibility for organizing the occupation of the land have allocated spaces for tents, set rules

for the conduct of the protest community, policed behaviour through the Tranquillity working group, and reached decisions on the day-to-day running of the camp. The City has had to ask for permission to move tents to clean drains and to get fire lanes clear. It has, in reality, been ousted from possession of Area 1. Control of the land has been taken from it. The situation here, therefore, is not materially different from that in *Meier*, where Lord Rodger of Earlsferry JSC said this (in para 8 of his judgment):

> "… [The] defendants do not dispute that they are – or, at least, were at the relevant time – in possession rather than mere occupation of the Commission's land at Hethfelton. *Wonnacott, Possession of Land* (2006), p 27, points out that defendants rarely dispute this. But here, in any event, the defendants' possession is borne out by their offer to co-operate to allow the Commission's ordinary activities on the land not to be disrupted. This is inconsistent with the Commission being in possession. So the preconditions for an action for recovery of land are satisfied."

121. I therefore accept Mr Forsdick's submission that, apart from their rights under Articles 10 and 11 of the Convention, the defendants have no arguable right to occupy, control or take possession of highway land from the City as highway authority.

122. As Mr Forsdick rightly emphasized, the correctness of that submission does not depend on the City being able to prove an unreasonable obstruction of the highway by the defendants' occupation of Area 1. Although this is a relevant consideration in the proceedings for injunctive relief under section 130 of the 1980 Act, it is not a prerequisite of the claim for possession. As May LJ said in *Wiltshire County Council v Frazer* (at p 74):

> "So far as [counsel for the defendants'] main contention is concerned, … namely that the extent of the occupation by each of the several defendants does not constitute … any ouster of the first plaintiff's possession of the whole or any part of the highway, effectively because the public still use it, in my judgment that matters not. … [These] defendants are clearly trespassers on the highway, just as squatters are trespassers in derelict premises. That there has been no complete, or near complete blockage of the highway by the large number of caravans that there are, spread over the length of about a mile, is, I think, of no relevance."

Griffiths LJ, in his judgment (at p 76), expressed the same principle in this way:

> "… [As] I understand the submission that has been made, it is that because the caravans, tents, structures and so forth are pitched on, and adjacent to, the highway but do not at any point completely obstruct it, neither a writ of possession nor a summons under Ord. 113 will lie against those trespassers who have encamped on the highway.
>
> For my part I entirely reject that submission. If the highway authority finds that some person has come upon their highway and set up house upon it, either in a caravan or in a tent, they are entitled to proceed against that person by writ of possession and furthermore they are entitled to use the procedure under Ord. 113 if they so choose. I regard that as decided, if a decision on such a point were necessary, by the decision of this court in *University of Essex v Djemal*, in which it was pointed out that where a part of the land is occupied, nevertheless Ord. 113 can be used to recover possession of the whole of the land."

(see also the judgment of Stephenson LJ, at p 77).

123. Neither under the statutory regime in the Highways Acts nor at common law has there ever been a right to occupy, control or take possession of highway land from the highway authority. *DPP v Jones* is not authority for the proposition that such a right exists. On the contrary, the basis of the decision in that case is inconsistent with the existence of any such right. The common law, in its post-Convention evolution, has gone no further than to recognize a limited right to protest on the highway, provided that the activity involved in such protest does not amount to a nuisance and provided also that it does not unreasonably impede the right of the public to pass and re-pass. And in my judgment the statutory scheme provided in the 1980 Act cannot be reconciled with the concept of third parties occupying,

controlling and taking possession of the highway. To impose on the highway a substantial encampment of tents is, I believe, inimical to the statutory scheme.

124. Thus 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. As Lord Denning MR observed in *McPhail v Persons Unknown* [1973] 1 Ch 447 (at p 458 E-F):

> "… A summons can be issued for possession against squatters even though 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 immediately. It is an authority under which any one who is squatting on the premises can be turned out at once. There is no provision for giving 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. …".

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 Mr Forsdick's 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. Mr Forsdick said the present case is analogous to the decision of the Supreme Court in *Meier*, where trespassers were encamped in part of a wood and it was held that a possession order for the whole of the wood could be made. In that case both Lord Neuberger (at para 69) and Lord Collins of Mapesbury JSC (at para 97) found the decision in *Djemal*, granting an order for possession of the whole of the university's campus against trespassers squatting in only a small part of it, a pragmatic solution to the problem faced by the university, namely student sit-ins. Lord Neuberger said (at para 69) that in *Djemal* there was "an obvious fear that, if an order for possession was limited to the rooms occupied by the student trespassers, they would simply move to another part of the campus". Mr Forsdick was, I believe, right to submit that Area 3 equates in principle to the wood in *Meier*. Area 3 is a ring of land surrounding St Paul's Cathedral. Its boundaries have been drawn tightly to extend no further than the immediate environs of the cathedral, leaving out the gardens within the churchyard, which are partly owned by the Church, partly by the City, and which have been secured against occupation by the protestors by the locking of the gates. The land in Area 3 is all indisputably owned by the City. Area 1 lies wholly within it. No intervening, separately owned land divides it from the land occupied by the defendants. By its nature the protest camp in St Paul's Churchyard is not fixed, but fluid in size and extent. Since it was set up the number of tents has increased, then gradually reduced, but a large number of them are still there. Participation in the protest has risen and fallen and perhaps risen again. Many protestors have been present throughout. Some are there every day, others only from time to time. Some sleep overnight in the camp; others do not. But the evident commitment of the protestors, both to the causes they want to promote and to the means they have adopted for doing so, reinforces the conclusion that, if they are ordered to leave Area 1, many of them will try to occupy other land nearby.

126. I am therefore unable to accept the defendants' arguments resisting, in principle, the City's claim for possession. Whether, if possession is ordered, there should be a single order relating to the whole of Area 3 (including Area 1) or two orders, one for Area 1 and another for Area 3, is a question I shall leave unanswered at this stage.

Injunctive and declaratory relief

The availability of relief

127. Mr Forsdick submitted that it is normal for the court to combine orders for possession with corresponding injunctive relief. For example, this was done in *Hall*, and was not disapproved by the Court of Appeal. In his judgment in that case Lord Neuberger said (at paras 53 and 54) that if the mayor was entitled, as he was, to maintain a claim for possession, then, if the facts justified it, he was

also entitled to an injunction in support of that claim. This view, Lord Neuberger noted (ibid.), was consistent with the thrust of the reasoning in *Meier*. Injunctive relief is discretionary. But Mr Forsdick was, in my view, correct in his submission that in a case such as this the court should not generally be reluctant to grant such a remedy as a means of protecting a landowner's rights. As Baroness Hale observed in *Meier* (at para 39), "the main purpose of an injunction would be to support a very speedy possession order, with severely abridged time limits, if it is broken." In my judgment, Mr Forsdick was right to submit that, in principle, and subject of course to the consideration of necessity and proportionality, the granting of injunctive relief would be appropriate on the facts of this case.

Criminal sanction

128. The fact that criminal charges could be brought against any of the defendants who had committed an offence under section 137 of the 1980 Act does not make it inappropriate to grant an injunction. In *Hall* the Mayor of London was entitled, in his capacity as the person in possession of Parliament Square Gardens, to an injunction to remove those in unlawful occupation (see the judgment of Lord Neuberger at paras 52 to 57). The judge at first instance had concluded not only that the need to ensure that the defendants removed their tents and placards and did not come back was plainly established on the evidence, but also that most of the defendants would not be deterred by the threat of criminal proceedings in the magistrates' court from continuing to breach the byelaws. To institute proceedings against all the occupiers, the names of many of whom were unknown, and with the added complication that some of those taking part moved in and out of occupation, would have been unduly burdensome and protracted (see the judgment of Griffith Williams J, at para 143). From the evidence in this case the same principal considerations stand out. In the first place, I see no reason to think that, for many of the protestors now occupying the land, their exposure to criminal sanction under section 137 would serve as a deterrent to further offending. Secondly, Mr Wilkinson was right to say that in many instances the City would be unable to identify the individuals who have put up tents on the land. As he said, protestors come and go. Some have been there from the beginning; some have left; some have returned; some are there all the time, others only from time to time. To link a particular person to every particular criminal act would generally be difficult, if not impossible. And thirdly, even if a prosecution succeeded the penalty imposed would normally be a fine, and the offender's tent might very well stay. Reliance on the criminal law would not, therefore, achieve the removal of the protest camp.

Obstruction of the highway

129. It is necessary to keep in mind the relevant statutory context. Parliament has legislated against the obstruction of the highway. It has done so to preserve and defend the rights of those who make lawful use the highway. These are public rights. The statutory scheme in the 1980 Act is designed to protect them. It spans a wide range of duties and powers, not confined to the duty to assert and protect public rights (in section 130) and the provision for criminal penalties for wilful obstruction of the highway (in section 137), but extending also to the power to remove structures (in section 143), the restriction on depositing things on the highway (in section 148(c)), and control on specified building activities alongside it (in sections 169 to 172). The three essentials of an offence of wilful obstruction under the provision which is now section 137 of the 1980 Act are these: first, that there is in fact an obstruction of free passage along the highway; secondly, that the obstruction is wilful; and thirdly, that there is no lawful authority or excuse for the obstruction (see *Hirst and Agu v Chief Constable of West Yorkshire* (1987) 84 Cr. App. Rep. 143). Whether a particular use of the highway is reasonable is for the court to determine on the particular facts before it.

Public access over the whole of the highway

130. As Mr Forsdick submitted, the right of the public to pass and re-pass on the highway applies to the whole width and every part of the highway. It is no defence to an action against unlawful encroachment on the highway that one can use another part of the highway to exercise that right. In *Wolverton UDC v. Willis* (1961) 60 LGR 135 (at p 137) Slade J cited an observation made by Lord Parker of Waddington CJ in *Seekings v Clarke* 59 LGR 268 (at p 269):

> "It is perfectly clear that anything which substantially prevents the public from having free access over the whole of the highway which is not purely temporary in nature is an unlawful obstruction."

Slade J then went on to say this:

> "In the opinion of this Court that case decides: (1) That every member of the public is entitled to unrestricted access to the whole of a footway, save in so far as he may be prevented by obstructions lawfully authorised[;] (2) That subject to the *de minimis* principle any encroachment upon the footway which restricts him in the full exercise of that right and which is not authorised by law, is an unlawful obstruction; and (3) that every member of the public so restricted in the use of the footway is necessarily obstructed in that, to the extent of the obstruction, he is denied access to the whole of the footway; that is, he is obstructed in his legal right to use the whole of the footway."

Assembly on the highway

131. An assembly on the highway is not necessarily unlawful, provided it is reasonable and non-obstructive and does not contravene the criminal law of wilful obstruction of the highway (see the passage in the speech of Lord Irvine in *DPP v Jones*, at p 259 E-G, which I have quoted above). Whether an assembly on the highway is reasonable and non-obstructive is to be ascertained objectively, having regard to how large an assembly it is, how long it lasts, and on what kind of highway it takes place. The majority in *DPP v Jones*, whilst acknowledging that the primary purpose of a highway is to allow people to pass and re-pass along it, held that if an activity on the highway does not unreasonably obstruct the public right of passage it is within the scope of those activities for which the public may lawfully use the highway. A limited right to public assembly on the highway falls within the ambit of that principle. Lord Irvine said (at p 256B-C):

> "Nor do I accept that the broader modern test which I favour materially realigns the interests of the general public and landowners. It is no more than an exposition of the test Lord Esher M.R. proposed in 1892 [in *Harrison v Duke of Rutland* [1893] 1 Q.B. 142]. It would not permit unreasonable use of the highway, nor use which was obstructive. It would not, therefore, afford carte blanche to squatters or other invited visitors. Their activities would almost certainly be unreasonable or obstructive or both. …";

and (at p 257 D-G):

> "I conclude therefore the law to be that the public highway is a public place which the public may enjoy for any reasonable purpose, provided the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary right of the public to pass and repass: within these qualifications there is a public right of peaceful assembly on the highway.
>
> Since the law confers this public right, I deprecate any attempt artificially to restrict its scope. … [There] can be no principled basis for limiting the scope of the right by reference to the subjective intentions of the persons assembling. Once the right to assemble within the limitations I have defined is accepted, it is self-evident that it cannot be excluded by an intention to exercise it. Provided an assembly is reasonable and non-obstructive, taking into account its size, duration and the nature of the highway on which it takes place, it is irrelevant whether it is premeditated or spontaneous: what matters is its objective nature. … [To] stipulate in the abstract any maximum size or duration for a lawful assembly would be an unwarranted restriction on the right defined. These judgments are ever ones of fact and degree for the court of trial."

As to the right of the public to pass and re-pass on the highway Lord Clyde observed (at p 280C-281F):

> "… [The] public have no jus manendi on a highway, so that any stopping and standing must be reasonably limited in time. While the right may extend to a picnic on the verge, it would not extend to camping there.
>
> So far as the manner of the exercise of the right is concerned, any use of the highway must not be so conducted as to interfere unreasonably with the lawful use by other

> members of the public for passage along it. The fundamental element in the right is the use of the highway for undisturbed travel. …
>
> In the generality there is no doubt but that there is a public right of assembly. But there are restrictions on the exercise of that right in the public interest. There are limitations at common law and there are express limitations laid down in article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. I would not be prepared to affirm as a matter of generality that there is a right of assembly at any place on a highway at any time and in any event I am not persuaded that the present case has to be decided by reference to public rights of assembly. …"

and (at p 281D-F):

> "I am not persuaded that in any case where there is a peaceful non-obstructive assembly it will necessarily exceed the public's rights of access to the highway. The question then is, as in this kind of case it may often turn out to be, whether on the facts here the limit was passed and the exceeding of it established. The test then is not one which can be defined in general terms but has to depend upon the circumstances as a matter of degree. It requires a careful assessment of the nature and extent of the activity in question. If the purpose of the activity becomes the predominant purpose of the occupation of the highway, or if the occupation becomes more than reasonably transitional in terms of either time or space, then it may come to exceed the right to use the highway."

Lord Hutton said (at p 288E-F):

> "If, as in my opinion it does, the common law recognises the right of public assembly, I consider that the common law should also recognise that in some circumstances this right can be exercised on the highway, provided that it does not obstruct the passage of other citizens, because otherwise the value of the right is greatly diminished. …".

Injunctive relief for obstruction of the highway

132. Do the facts of this case demonstrate an unreasonable obstruction of the highway? In my judgment they undoubtedly do.

133. The defendants maintained that the tents are intrinsic to the protest, which is self-evidently so. Mr Cooper submitted that the retention of the tents overnight, as a means of occupying Area 1, is a reasonable use of the highway, does not unreasonably impede the right of the public to pass and re-pass, and does not amount to a nuisance, public or private. Even the traditional use of the highway by vehicular traffic might otherwise have amounted to a private nuisance – for example, by the emission of exhaust fumes which caused decay to the fabric of the cathedral – but this, said Mr Cooper, did not make it unlawful. No permanent harm of that kind was being caused by the protest camp. According to the "Occupy London LSX Eco-audit Report" produced for Mr Ashman, the weekly "on-site energy carbon footprint" of the camp is only twice that of the "average UK home". But such submissions, in my view, do not overcome the fact that the defendants' protest camp occupies and obstructs a substantial portion of the highway, thus depriving the public of its use. Mr Cooper also argued that the form of obstruction constituted by the protest camp was transitory, rather than "semi-permanent" as the City had argued. I disagree. I would prefer the adjective "indefinite" to "semi-permanent". However, I accept Mr Forsdick's submission that an encampment of between 100 and 200 tents, which accommodates a large community of protestors and which seems likely to remain until and unless the court intervenes, cannot sensibly be regarded as "reasonably transitional" (the expression used by Lord Clyde in his speech in *DPP v Jones*). This, it seems to me, is very far from being the kind of assembly to which the majority was referring in *DPP v Jones*.

134. The House of Lords' decision in *DPP v Jones* reflects a post-Convention jurisprudence. In subsequent domestic authority there is no decision in which a substantial and long-term obstruction of the highway comparable to the camp in St Paul's Churchyard has been held lawful. Mr Cooper referred to the decision of the Divisional Court in *Scott v Mid-South Essex Justices and another*. But I do not think that the

defendants' argument is assisted by that. The facts were very different from those of the present case. There, the interested party, Mr Keskin, had parked a trailer on the side of the road in an industrial estate and, every night, sold kebabs from it. A private prosecution, brought against him for unlawful obstruction of the highway, failed. When his acquittal was challenged the Divisional Court held that the magistrates had been entitled to find, on the facts, that his trailer had not unreasonably obstructed the highway. Goldring J acknowledged (at para 40 of his judgment) that the decision of the majority in the House of Lords in *DPP v Jones* did amount to a change in the law, and that what might previously have amounted to an offence under section 137 might not now. But he emphasized that the question whether in any given case a use of the highway is reasonable was "essentially a matter of fact and degree for the Court". As *Scott* serves to show, the facts can vary greatly.

135. The facts of this case are clear, and largely uncontentious.

136. It is plain that the highway where the protest camp has been created has been significantly obstructed. As a broad percentage figure, though this has fluctuated in the time since Occupy arrived, some 80% of the highway has been denied to the public for the purposes of passing to and from along it, approaching and gaining views of St Paul's Cathedral, taking photographs of the front of the building out of the way of passing vehicular traffic, and doing anything else one may lawfully do on the highway. Congestion has been caused at times. The City has never said that people cannot get past the camp on what is left of the highway for them to walk on. But, as I have said, that is not the test by which the lawfulness of an obstruction of the highway is judged.

137. The protest camp has reduced the effective width of the highway outside Juxon House and Chapter House to a minimum of between five and six metres. I consider this a material reduction, even allowing for the fact that the public enjoys permissive access to the pavement within the colonnade in Juxon House, which is not part of the highway. The camp occupies a substantial part of a heavily used pedestrian route at an intersection with the route normally available through Temple Bar into and from Paternoster Square. Whilst the walkway in the part of St Paul's Churchyard next to Paternoster House is itself only some six metres across, this is but one of several routes connecting into the north-western part of the churchyard, where the camp is situated. Occupy's protest has led to the network of pedestrian routes in this part of the City of London being reduced. Paternoster Square and the churchyard gardens have both been closed – Paternoster Square as a result of the injunctions its owners have been granted to stop the protestors coming in, the gardens because the Church has wanted to prevent them camping there. Apart from the route directly affected by the presence of the camp there are at least three others that come together here and, but for the protest, would be in use today: the route traversing Paternoster Square from the north-east, where St Paul's Underground station is located, towards the south-west, leading into St Paul's Churchyard either via Canon Alley or through Temple Bar; the north-south route from the direction of Newgate Street and the London Stock Exchange and towards the churchyard though Temple Bar; and the east-west route on the winding pavement through St Paul's Churchyard Gardens. These routes converge outside the cathedral, in Area 1. Because Paternoster Square and the churchyard gardens have been closed the flows of pedestrians normally using them are, at least in part, funnelled into the part of the highway occupied by the camp. From the evidence Mr Wilkinson gave on the basis of unchallenged survey data, it seems clear that the effect of the camp – both direct and indirect – on pedestrian movement through and around St Paul's Churchyard has been significant, even assuming that large numbers of pedestrians found using Newgate Street awkward while the roadworks were going on. While the camp has been present many people seem to have chosen to use other routes altogether. How much personal inconvenience this has caused has not been the subject of evidence. I do not speculate about that. In my view, the empirical evidence in the pedestrian surveys provides an entirely reliable picture of what has happened. As Mr Forsdick submitted, the contrast with the facts of Mr Haw's case in Parliament Square (*Westminster City Council v Brian Haw* [2002] EWHC 2073) is striking. There, as the judge accepted (in para 21 of his judgment), the pavement on which Mr Haw was conducting his protest was used by "relatively few pedestrians" – fewer than 30 an hour – and there was "no evidence of any actual obstruction of any pedestrian seeking to walk along the pavement".

138. I therefore reject the submissions made for and by the defendants on this aspect of the case. 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 that are not removed in accordance with an order made under section 130.

Planning

139. I turn now to the injunction sought by the City under section 187B of the 1990 Act for Areas 1 and 2. Enforcement action has been begun by the City by its service of an enforcement notice on 30 November 2011, against which no appeal could be made by a trespasser and which, in the absence of any valid appeal, took effect on 31 December 2011. However, the statutory remedy of an injunction granted under section 187B does not depend on the existence of an effective enforcement notice. It is a recourse open to a local planning authority whenever it considers an order of the court to be necessary or expedient as a means of restraining any actual or apprehended breach of planning control. The court may grant such an injunction as it thinks appropriate for the purpose of restraining the breach.

140. Mr Cooper conceded that the retention of any occupied tents in Areas 1 and 2 would amount to a breach of planning control, which could properly be enforced again by injunction. He was right to do so. But he also suggested that tents left unoccupied overnight would not be a material change of use of the land on which they were pitched. That, in my view, is wrong. As a matter of fact and degree, I am in no doubt that the presence of the tents themselves, occupied or not, is all that is necessary to bring about a material change of use of the land in Areas 1 and 2. Section 55 of the 1990 Act requires planning permission to be granted for such development. It has not been granted. No temporary permitted development rights are available. The protest camp has not been – and was never intended to be – in place for the limited period of 28 days. The provisions of Article 3 of, and Part 4 of Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995 do not apply.

141. Mr Forsdick submitted that a grant of planning permission for the protest camp could not reasonably be hoped for. That is plainly right. The evidence provided by the City Planning Officer, Mr Wynne Rees, was in my view compelling – as was the note of advice on planning matters exhibited to Mr Wilkinson's first witness statement. Neither was seriously challenged. Relying on the advice note on planning and also on the evidence of Mr Fern (to which there was no real challenge from the defendants), Mr Wilkinson mentioned five reasons why such an approval would be inconceivable: first, that the protest camp is inconsistent with the character, lawful use and function of this land and its surroundings; second, that the camp harms the setting of the St Paul's Cathedral as a listed building; third, that it spoils the amenity of the area – for people who work or shop there, for those who pass through it, for tourists, and for worshippers in and visitors to the cathedral; fourth, that it has had deleterious effects on local businesses; and fifth, that the basic facilities to serve a camp-site – for waste, sanitation and drainage – are lacking. In short, the protest camp is not a sustainable form of development in this location. I agree; it is not.

142. St Paul's Cathedral and its surroundings are an important element of London's historic environment, meriting active protection by the City in its role as local planning authority**.** The building is, said Mr Wynne Rees, "the City's premier tourist attraction". It is listed at grade I. So too is Temple Bar. The Chapter House is listed at grade II*. The statue of Queen Anne in front of the main steps of the cathedral is listed at grade II. There is other listed fabric nearby, including the granite bollards enclosing the parvis (listed at grade II) and the churchyard railings (listed at grade I). Together these buildings and structures form a nationally significant group of heritage assets within the St Paul's Conservation Area. The west front of the cathedral was designed by Wren as its principal elevation and entrance. Views of it are exceptionally important. Mr Wynne Rees, who has been in his present post for 26 years, made clear that he would not be prepared to recommend the grant of planning permission for the tents and other structures of the protest camp, nor would he expect an inspector or the Secretary of State to allow an appeal against the City's refusal. In his professional judgment, not contradicted by any expert witness on the other side, if temporary activities and structures were approved close to the cathedral their presence would mar its setting. As the advice note explains, to permit such development would contravene a number of policies of the development plan (the London Plan (2011) and the City's Core Strategy, adopted on 8 September 2011 and the surviving provisions of the Unitary Development Plan (2002)). Nobody has countered that evidence, and I accept it.

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

The relevant principles

144. Would the granting of the orders sought by the City constitute an unwarrantable interference with the defendants' rights under Articles 10 and 11 of the Human Rights Convention?

145. The relevant legal principles are plain. I have already referred to them. They were recently applied – in not wholly dissimilar circumstances – by the Court of Appeal in *Hall*. Freedom of speech – including political speech – is an indispensable, indeed defining freedom in a democracy. Nobody could say it was not. In both Strasbourg and domestic authority the reminders of this have been constant and clear. However, counsel have not been able to point to any case decided either in the domestic context or by the Strasbourg court in which a large protest camp on the public highway has been included within the legitimate extent of the rights in Article 10 and 11. To camp on the highway as a means of protest was not held lawful in *DPP v Jones*. Limitations on the public right of assembly on the highway were noticed, both at common law and under Article 11 of the Convention (see Lord Irvine at p 259A-G, Lord Slynn at p 265C-G, Lord Hope of Craighead at p 277D-p 278D, and Lord Clyde at p 280F). In a passage of his speech that I have quoted above Lord Clyde expressed his view that the public's right did not extend to camping. In the Strasbourg jurisprudence complaints brought against evictions in cases where a protest on a far smaller scale than Occupy's at St Paul's Churchyard has blocked a public road or occupied a public space have been held inadmissible (see, for example, *G v Germany* (Application no. 13079/87) *G and E v Norway* (Application nos. 9278/81 and 9415/81) (1984) 6 EHRR 357). I was told that in France similar occupations of land have been removed without an order of the court. Procedure elsewhere in the world will vary from one jurisdiction to another. On 6 December 2011 the Court of Queen's Bench of Alberta held lawful, under the Canadian Charter of Rights and Freedoms, the eviction of "Occupy Calgary", which had begun a protest by setting up a camp of tents in Olympic Plaza in Calgary.

146. Mr Cooper sought support for his argument in the decision of the Court of Appeal in *Tabernacle*. But the circumstances there were very different from those the court has to deal with here. For about 23 years the Aldermaston Women's Peace Camp ("AWPC") had conducted a protest against nuclear weapons by assembling for the second weekend of every month on land adjoining the highway near the Atomic Weapons Establishment at Aldermaston, to hold vigils, meetings and demonstrations. Byelaws had been in force since 2007. They contained no blanket ban on AWPC's rights to protest, but forbade camping in certain controlled areas. The appellant challenged this provision as being an unlawful interference with her rights under Articles 10 and 11. Laws LJ (at para 10 of his judgment) characterized this as being "on the facts not so much … an autonomous claim, but rather as underlining the mode of free expression relied on: a communal protest in a camp established for the purpose". He went on (in para 35) to remark that the supposed distinction between the essence of a protest and the manner and form of its exercise had to be treated with considerable care; in some cases that distinction would be real, in others substantial. All would depend on the circumstances. I have quoted the passage in Laws LJ's judgment (at para 37) in which he accepted, as a general proposition, that the manner and form of the exercise of the Convention rights may constitute the actual nature and quality of the protest and may have acquired a symbolic value inseparable from the protestors' message, becoming, for them "the very witness of their beliefs". Laws LJ went on to say this (ibid.):

> "… Some of those involved may have been steadfast participants the whole time. Others will have come and gone. But the camp has borne consistent, long-standing, and peaceful witness to the convictions of the women who have belonged to it. To them, and (it may be fairly assumed) to many who support them, and indeed to others who disapprove and oppose them, the "manner and form" *is* the protest itself."

But the outcome of the case emerged through the application of basic principle to its particular facts. For the Secretary of State to show compliance with his rights under the Human Rights Act it was

incumbent on him to demonstrate a substantial objective justification for the impugned provisions in the byelaws, amounting to an undoubted pressing social need (see para 39 of Laws LJ's judgment). This he could not do. There was no evidence of any significant obstruction of the highway. There was no apparent harm to the Convention rights or the freedoms of others. The right of the appellants to demonstrate did not have to be balanced against anybody else's right to freedom of expression, assembly, or worship. No private interests were affected. The fact that nothing had been done to put a stop to the camp over the 23 years of its existence was significant. Had the Secretary of State entertained substantial objections to the camp he could have acted to deal with it (see para 41 of Laws LJ's judgment). Instead he had treated the AWPC's presence at Aldermaston "for all the world as if it were no more nor less than a nuisance" (para 42).

The present case

147. There is, and can be, no doubt that in exercising their rights under Articles 10 and 11 of the Convention the defendants are, in principle, entitled to express the views they want to express, and to assemble peacefully in a public place to do so. The crucial differences between the two sides in this case relate to the constraints placed upon those Convention rights, in Articles 10(2) and 11(2) respectively. Those constraints, include such "… restrictions … as are prescribed by law and are necessary in a democratic society in the interests of … public safety, for the prevention of disorder or crime … for the protection of [under Article 10, "the reputation or"] rights ["and", under Article 11, "freedoms"] of others." The rights of others include the right, under Article 9 of the Convention, to "freedom of thought, conscience and religion", which entails the "freedom, either alone or in community with others and in public or private, to manifest [one's] religion or belief, in worship, teaching, practice and observance".

148. It is incorrect to think, as paragraph 35 i) of Ms Samede's defence avers, that the City's consideration of the Article 10 and 11 rights engaged is "not relevant to the court's obligation to undertake a proportionality review". That is a misconception. In making its own assessment of necessity and proportionality the court is not obliged to ignore the balance struck when the original decision was made. And where a local authority has set itself the task of balancing the rights of individuals against the wider interest and has reached a conclusion on a rational and defensible basis it may be difficult to upset that balance (see, for example. Baroness Hale's judgment in *Belfast City Council v Miss Behavin' Ltd.* [2007] UKHL 19). Mr Forsdick submitted, and I accept, that before it resolved to launch these proceedings the City was demonstrably conscious of the balancing exercise it needed to undertake. The City has recognized from the outset that the rights in Articles 10 and 11 of the Convention are autonomous rights and that interference with them would in any event have to be justified as being both necessary and proportionate. The report submitted to the City's Planning and Transportation Committee for its meeting on 28 October 2011 began by recognizing that the right to protest is essential in a democracy; that any decision to interfere with the right to protest required the most careful consideration; that the court would focus sharply and critically on the reasons put forward for the curtailing of a protest; and that any interference with the right to protest would have to be proportionate even if the protest was unlawful under domestic law. After the City's efforts to reach agreement with the protestors about the size of the camp, its impacts and its duration had come to nothing, the committee received another report, for its meeting on 15 November 2011. In this report the members were reminded of the need, when deciding whether to begin proceedings, "to give the most careful consideration … to the importance of the right to protest". They were advised, rightly, that:

> "… [the] Article 10 and Article 11 rights should only be overridden or limited where there is a pressing social need in a democratic society to do so to prevent the camped nature of the protest so as to protect the rights and freedoms of others, for public safety and /or for the prevention of disorder or crime. That is the approach adopted in this Report.".

In my judgment, the City went about the balancing exercise it had to carry out with a clear understanding of the legal issues involved and having regard only to relevant facts and considerations.

149. But, as I have said, it is ultimately the task of the court to consider and determine for itself the issues of necessity and proportionality on the evidence and submissions before it. I turn now to that task.

150. In paragraph 38 of his judgment in *Hall* Lord Neuberger made this observation, which I think is germane to the present case too:

> "… [The] greater the extent of the right claimed under article 10.1 or article 11.1, the greater the potential for the exercise of the claimed right interfering with the rights of others, and, consequently, the greater the risk of the claim having to be curtailed or rejected by virtue of article 10.2 or article 11.2."

151. The context for considering the defendants' evidence and submissions on their rights under Articles 10 and 11 is set by the formal admissions the City has made in the course of the proceedings, and the findings of fact I have made on the evidence.

152. After a trial lasting five days, mostly devoted to the hearing of evidence and cross-examination, it may fairly be said, in my view, that the City's case for the orders it seeks has been subjected to sufficient scrutiny, and that the court is thus well equipped to concentrate on the rationale of that case with the rigour and care required. As Mr Forsdick submitted, the City's evidence stood up well to the testing it had. The City's witnesses were closely cross-examined by leading and junior counsel for Ms Samede, and questioned further by Mr Barda and Mr Ashman. The concessions they made were, I believe, fairly made, reinforcing my impression that the evidence they gave could be relied on. Their narrative was underpinned by numerous documents, including reports prepared by environmental health officers, and illustrated by a large number of photographs. Overall, I do not think they were trying to exaggerate the harmful effects of the camp. On the defendants' side there was no convincing refutation of the evidence those witnesses gave. Most of its factual content was left intact. Indeed, much of the evidence given for the defendants was not merely consistent with the City's but lent it more force, for it displayed the ultimate failure of the protestors, both individually and acting through their General Assembly and various working groups, to put right many of the problems caused by the camp. As Mr Forsdick submitted, it is telling that at the end of the trial of this claim the advice given to the City's committee before proceedings were begun has been vindicated by the evidence the court has heard.

153. Against the making of the orders sought by the City several arguments were put forward by the defendants.

154. First of all, the defendants rely on the fundamental importance in a democratic society of the rights under Articles 10 and 11 of the Convention. This, as I have said, is not in dispute. The City has never questioned the defendants' right to engage in lawful protest, or their right to do so on the highway in St Paul's Churchyard. Naturally, I accept this too. There is no doubt that the defendants have the right to express whatever views they want to express; that they have the right to assemble to do so; that they may exercise those rights on the highway; and that they may do this, if they want to, in St Paul's Churchyard.

155. Secondly, it is said that the defendants, and many others too, are powerfully motivated by the causes that inspire them, and that the causes themselves are – or ought to be – of concern to the whole of mankind. 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. The same was so in *Hall*. In that case Lord Neuberger said (at para 17) that the concerns expressed by the participants in Democracy Village in Parliament Square were "of prime public importance, and in the first rank of topics which article 10 is concerned to respect, in that they are political in nature". He then went on to say this:

> "The importance of having an unrestricted right to express publicly and strongly a controversial view on a political, or any other, topic cannot be doubted: it is of the essence of a free democratic society and should be vigilantly protected by the legislature, the executive and the judiciary. Accordingly, it was unnecessary for the defendants in this case to expand on their views, with which many may agree strongly and many may disagree strongly, relating to the environment, alleged genocide, the wars in Iraq and Afghanistan, and more specific issues such as the use of depleted uranium."

Very much the same can be said here. The concerns raised by the defendants and their fellow protestors span a broad range of economic, environmental and political issues, within a national, international and, indeed, global setting. They largely centre on, but are far from being confined to, the crisis – or

perceived crisis – of capitalism, and of the banking industry, and the inability – or perceived inability – of traditional democratic institutions to cope with many of the world's most pressing problems. They encompass climate change, social and economic injustice, the iniquitous use of tax havens, the culpability of western governments in a number of conflicts, and many more issues besides. All of these topics, clearly, are of very great political importance. All of them were ventilated in written and oral evidence for the defendants, and in the submissions of Mr Barda and Mr Ashman, with much eloquence and vigour. Views will divide on the thoughts and sentiments expressed. Some might gain a wide consensus; others might not. However, as I said more than once in the course of the hearing, and as was accepted by Mr Cooper, this is not for the court to judge. Contrary to Mr Barda's submission, 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 Mr Forsdick 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. Confirming Ms Samede's acceptance of this principle on behalf of the protestors whom she represents, Mr Cooper reminded me of a maxim sometimes wrongly attributed to Voltaire – "I disapprove of what you say, but I will defend to the death your right to say it." 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.

156. Thirdly, it is said that some inconvenience to other members of the public would be likely to result even from a lawful protest on this part of the highway. A "lawful protest" I take to mean one which did not cause an unreasonable obstruction of the highway and a nuisance – unlike Occupy's camp in St Paul's Churchyard, which, in my view, undoubtedly has caused, and continues to cause, such obstruction and nuisance. I acknowledge, as did the City, that if a daily or a nightly protest – even without any tents pitched on the land – were carried out on a substantial section of highway for as long as two months, it could well result in a court concluding that the obstruction caused was unreasonable and a nuisance. Such a conclusion would, of course, be contingent on the facts showing it to be right. Hypothetically, however, one can see that it might properly be reached. If such a protest were to be mounted in St Paul's Churchyard, then, again depending on how and where it occurred, the court might well consider that a private nuisance had been caused, for example by disturbance to worship in the cathedral. This too would be a question of fact, and it is not one that I have to decide. In my view, however, the harm caused by this protest camp, in this place, is materially greater than the harm that would be likely if the protest were conducted by the same protestors, assembling every day but without the tents and all the other impedimenta they have brought to the land. Mr Cooper contended that the City's concerns were with the protestors and not with the nature of the protest, that there "would be the same problems, if the protestors came back each day" (para 17 of the further written submissions for Ms Samede, dated 22 December 2011), and, in particular, that "the private nuisance concerns expressed by Mr Cottam" would be no different if this were to happen (ibid., para 18). I do not accept the apparent premise in those submissions, namely that the City is not concerned by the nature of the protest itself. The City is, in fact, very much concerned by the nature of the protest. It would not have come to court unless it was. But anyway, the notion that the same problems might arise from a protest of a different kind is neither here nor there. It would certainly not be an excuse for failing to address the real problems caused by the protest that is taking place. And Mr Cooper's suggestion that the City's main concerns could be met by an injunction stipulating that no tents were to be occupied between certain hours is, in my view, wholly unconvincing. Even if such an order could be effectively enforced – which I doubt – it would not serve to remove the obstruction of the highway. Nor would it overcome the problems

attributable to the presence of the camp, including the damage being done to the work of, and worship in, the cathedral, to the amenity of the cathedral's surroundings, and to local businesses.

157. Fourthly, in both evidence and submissions, the defendants indicated that they had still been prepared to negotiate after the City resorted to litigation. But the truth seems to be that the negotiations – if that is not a misnomer – never had any real chance of succeeding. The differences between the parties were huge. Mr Forsdick described the demands made on behalf of Occupy as extraneous to the true issues dividing the parties. He pointed out that no realistic counter-offer was ever made to the City. Mr Colvin's e-mail of 15 November 2011 to the protestors' solicitors left open the possibility of further negotiation. Neither side took the initiative after that. But the upshot was perfectly clear. Despite the offer of some seven weeks' grace until the end of 2011, it became clear, and has remained clear, that Occupy was not going to strike camp until it was ready to go, or was ordered to do so by the court.

158. Fifthly, it was submitted, many of the protestors have done everything they can to limit the impacts of the protest camp. They have co-operated with the police, and with the City so far as they can. Their endeavours have not been entirely in vain. A thoroughfare has been retained for pedestrians passing the camp. Fire lanes have been cleared. Efforts have been made by many protestors to keep the camp tidy and clean, and safe for its occupiers. All of this is true. But the defendants have not been able to prevent the camp causing substantial harm. Quite apart from its obstruction of the highway, the camp continues to cause nuisance and to disrupt the exercise by others of their Convention rights, including the Article 9 rights of those who wish to worship in St Paul's Cathedral. Disturbance to worship in the cathedral and to the work of Church staff in the Chapter House, some of it caused by the noise of musical instruments being played in the camp, has not been successfully abated despite repeated complaints and requests from the Church. For all their good intentions, the protestors have been unable to mitigate the effects of their chosen form of protest so as to avoid causing harm to others.

159. The considerations in favour of granting relief are, in my view, very strong.

160. First, I think it is necessary to give considerable weight to the fact that Parliament has legislated to give highway authorities powers and duties to protect public rights over the highway land vested in them, and local planning authorities' powers to enforce planning control in the public interest. Under the local government legislation a local authority holds a wider remit to act in the interests of its area, including the power in section 2 of the 2000 Act to do anything which it considers likely to promote or improve the economic, social and environmental well-being of that area. Mr Forsdick submitted that protestors camping in St Paul's Churchyard are responsible for the breach of several statutory provisions: section 137 of the 1980 Act (by the wilful obstruction of the highway), section 179 of the 1990 Act (by the failure to comply with the City's enforcement notice), and section 269 of the Public Health Act 1936 (by the siting of tents on the land without a licence to do so). Mr Forsdick also referred to section 2 of the Ecclesiastical Courts Jurisdiction Act 1860, which provides for penalties to be imposed on "persons found guilty of making a disturbance in churches, chapels, churchyards or burial grounds". Whether or not any of those violations of the law exposes any particular individual in the protest camp to criminal proceedings is not for me to decide. What is significant here, however, is that the continued presence of the protest camp on this land is plainly at odds with the intent and purpose of the statutory schemes to which I have referred. The corollary is this. For Parliament's intention in enacting those statutory schemes to be given effect it is necessary for the relief sought by the City to be granted.

161. Secondly, even if one leaves those breaches of statute aside, it would be impossible in my view to reconcile the presence of the protest camp with the lawful function and character of this land as highway. This is not to say that the City would be able to resist a lawful protest in St Paul's Churchyard, which did not obstruct the highway, cause nuisance, or interfere with the rights and freedoms of others. It could not, and has said it would not want to. But it does oppose the occupation of the land by this protest camp. I do not think this stance is unreasonable. It is akin to the mayor's in the Parliament Square case, which was endorsed by the court both at first instance and on appeal (apart from the claim against Mr Haw, whose defence was different from the Democracy Village defendants'). One can see in paragraph 48 of Lord Neuberger's judgment in *Hall* how close the parallel is:

> "It is important to bear in mind that this was not a case in which there is any suggestion that the defendants should not be allowed to express their opinions or to assemble together. The claim against them only relates to their activities on PSG. It is not even a

> case where they have been absolutely prohibited from expressing themselves and assembling where, or in the manner, in which they choose. They have been allowed to express their views and assemble together at the location of their choice, PSG, for over two months on an effectively exclusive basis. It is not even as if they will necessarily be excluded from mounting an orthodox demonstration at PSG in the future. Plainly, those points are not necessarily determinative of their case, but, when it comes to balancing their rights against the rights of others, they are obviously significant factors."

With the substitution of "St Paul's Churchyard" for "PSG", that paragraph would state the position in this case equally well. In *Hall* the importance of Parliament Square as a location for demonstrations was a factor weighing both for and against the dismantling and removal of the Democracy Village. There was evidence that the presence of the camp had not prevented all other demonstrations taking place in Parliament Square while it had been there, and that it might actually have encouraged people to come to express or discuss the views supported by the protestors. The judge found, however, and the preponderance of the evidence showed, that the camp impeded the ability of others to demonstrate (see para 49 in Lord Neuberger's judgment). There is no evidence that any other protest or demonstration has been displaced by the protest camp in St Paul's Churchyard. But another consideration, which impressed the court in *Hall* and is relevant in this case too, is the effect on the rights of those "who simply want to walk or wander … , not perhaps Convention rights, but none the less important rights connected with freedom and self-expression" (ibid.). I think a good deal of weight attaches to that.

162. Thirdly, on the City's evidence I am convinced that the effects of Occupy's protest camp in St Paul's Churchyard have been such as to interfere seriously with the rights, under Article 9 of the Convention, of those who desire to worship in the cathedral. Occupy has erected its protest camp on the doorstep of a building that is one of London's major landmarks. But is also a holy building, and one of London's major places of worship. On the evidence I have heard and read I am in no doubt that the impact of the camp on the attendance at worship in St Paul's Cathedral, and on the number of those who merely visit the building, has been severe. During the camp's presence, and, in my view, largely if not totally as a result of its presence, there has been a drop of about two fifths in the numbers of those worshipping in the cathedral. About the same fraction has been lost in the number of visitors, an important source of funds for the upkeep of the building and for its ministry. To say that those who are put off attending services in the cathedral can go and worship elsewhere, with more than 450 other churches in the diocese of London to choose from, misses the point. It is to misunderstand the nature of the right in Article 9, which is not that one is entitled to worship only where the activities of others make it comfortable or convenient to do so, or where one is made to go by others in the exercise of their own Convention rights, but where one chooses to worship in accordance with the law. I do not see how the sacrifice of freedom to worship, which seems implicit in the defendants' argument and was explicit, for example, in the evidence of the Reverend Mr Green, can be squared with the right in Article 9. Heeding its duty under section 13 of the Human Rights Act, the court must, I believe, give considerable weight to the violation of that right. In my view this is a case in which the protection of the right to freedom of worship represents, in itself, a pressing social need. I also regard the effects of the presence of the protest camp on the work and morale of the cathedral staff as a significant factor in the balancing exercise. Mr Cottam explained the difficulties that those working under him have had to contend with; I accept what he said about this. Noise from the camp has been a persistent problem. There is evidence that members of the cathedral's staff have been verbally abused. Whether anybody staying in the camp did this I cannot be sure. Acts of desecration and vandalism have also occurred, and these, of course, are deeply offensive. Graffiti has been scrawled on the Chapter House and on the cathedral itself. Again, I am not convinced that occupiers of the camp have themselves been responsible for this. But what cannot be denied is that these incidents are abnormal and that they have coincided with the presence of the camp. In my view most of them, at least, would not have occurred had the camp not been there. In the light of Mr Cottam's evidence, which I found impressive for its clarity and restraint, it is clear that the presence of the camp constitutes a nuisance to the Church as well as a serious interference with the Article 9 rights of those who want to worship in the cathedral. Together, and without more, these two considerations would, in my view, justify the granting of relief. I have no hesitation in reaching that conclusion even though the Church is not itself a party in the City's claim and has not issued proceedings of its own.

163. Fourthly, in my judgment, the harm for which the protest camp is responsible does not end there. In addition to the obstruction of the highway, the effects of the camp – both direct and indirect – on

routes available to pedestrians, and the concomitant loss of open space that the public can get to, the protest camp has strained the local drainage system beyond capacity, has caused nuisance by the generation of noise and smell, has, by its presence, damaged the trade of local businesses, and has made a material change in the use of the land for which planning permission would not be granted. In aggregate, all this harm must carry significant weight. The City also alleges an increase in crime and disorder around the cathedral. It says this must be because the camp has been there. It concedes – as it must – that the camp cannot be blamed for the existence in society of problems such as homelessness, mental illness and addiction. But, Mr Forsdick submitted, the occupation of this land by a tented community has stimulated anti-social behaviour and criminal activity. Had the camp not been there, this would not have happened. In the light of the evidence of Inspector Zuber, I cannot disagree. The defendants say there is no evidence of a general increase in crime in the local area, and no evidence of particular crimes having been committed by occupiers of the protest camp. But I am in no doubt that, despite the good intent of most protestors, the camp has attracted people who have behaved in a criminal or disorderly fashion. The City's evidence has referred to incidents or reported incidents of urination and defecation in and around the camp, to the use of, and dealing in, controlled drugs within it, and to tensions and arguments between protestors, which have, on occasions, led to assaults. Allegations of offending have been made by some protestors. Criminal offences of various kinds have been recorded. The picture that emerged clearly from Inspector Zuber's evidence is one of increased crime and disorder in the area where the camp is sited, and as a result of its being there. This too is a factor of significant weight.

164. Fifthly, the length of time for which the camp has been present is relevant, as it was in the Parliament Square case. Again, the facts are quite similar. In *Hall* Lord Neuberger said (at para 49):

> "… The fact that Democracy Village have been exclusively in occupation of PSG for over two months is also relevant, especially as there is no sign of the camp being struck, as the defendants, have it may be said, had some 70 days to make their point."

By the time of the hearing more than two months had gone by since the protest camp was set up in St Paul's Churchyard. There was no evidence that the defendants had agreed a date for it to be removed. Some seemed intent on remaining until various aspirations, such as Mr Ashman's proposed list of "acts of reparation", had been achieved or particular demands met. If the protest camp is not removed now, by order of the court, it seems likely to remain, possibly for many months more. No firm date for its removal – nor even a provisional date – has been given to the City, or to the court. Whatever the protestors hope to achieve by leaving their camp where it is, they have had ample time in which to draw attention to the causes they espouse. They have made their point.

Conclusion

165. There are, therefore, 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. There is here, in my view, a distinctly stronger case for relief than there was in *Hall*. The effects here on the public's use of the highway, the nature and level of nuisance the camp has caused, and the harm to the Convention rights of others seem to me to be materially worse than they were in that case. And there are no circumstances affecting a particular defendant of the kind that led to success on appeal for Mr Haw (see paras 58 to 69 of Lord Neuberger's judgment). I conclude that Mr Forsdick's argument 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.

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. I have come to those conclusions on my own assessment of the evidence and submissions before me. However, I should add this. 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

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.

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.