

Party: Claimants
Witness: P Clarke
Statement: First
Exhibits: "PC1" - "PC5"
Date: 04.02.22

Claim Number:

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

B E T W E E N

- (1) 1 LEADENHALL GP LIMITED
- (2) 1 LEADENHALL NOMINEE LIMITED
- (3) MULTIPLEX CONSTRUCTION EUROPE LIMITED

Claimants

and

PERSONS UNKNOWN ENTERING IN OR REMAINING AT
THE CONSTRUCTION SITE AT 1 LEADENHALL STREET
LONDON EC3V 1PP WITHOUT THE CLAIMANTS' PERMISSION

Defendants

WITNESS STATEMENT OF

PETER CLARKE

I, PETER CLARKE of One Canada Square, Level 26 Canary Wharf, London E14 5AB WILL SAY as follows:-

1. I am a Vice President for Development for Brookfield Properties in the UK.
2. I make this witness statement in support of the Claimants' application for an injunction to prevent the Defendants from trespassing on the 1 Leadenhall Street Construction Site (as defined in the Particulars of Claim).
3. Where the facts referred to in this witness statement are within my own knowledge they are true; where the facts are not within my own knowledge, I believe them to be true and I have provided the source of my information.

Background

4. The First Claimant is the General Partner of 1 Leadenhall Limited Partnership ("1LLP") and the Second Claimant is the Nominee for 1LLP.
5. 1LLP is the registered leasehold owner (and the party entitled to immediate possession) of the 1 Leadenhall Street Construction Site shown edged in red on the plan attached to the Particulars of Claim. The building under construction, known as One Leadenhall is a 35 storey building immediately adjacent to the Leadenhall Market. When complete it will stand approximately 176.6 metres above ordnance datum. The completed development will extend to around 690,000 square feet (Gross Internal Area).
6. The 1 Leadenhall Construction Site comprises the 3 registered titles listed in the table below. Each of the leases is for a term of 210 years from and including 15 January 2021.

Title No	Property	Freehold/Leasehold
AGL523784	Leadenhall Court	Leasehold
AGL542346	Land adjoining 1 Leadenhall Street (airspace only)	Leasehold
AGL541898	Land adjoining 1 Leadenhall Street (airspace only)	Leasehold

7. 1LLP also has the benefit of licences issued by the City of London Corporation which allow scaffolding and hoarding to be erected on Leadenhall Street and Whittington Avenue from 26 September 2021 until 17 November 2024.
8. Copies of the registered title and the hoarding licences are attached to this statement marked "**PC1**".
9. Brookfield Properties (for whom I work) develops and operates real estate investments on behalf of Brookfield Asset Management – one of the largest alternative asset managers in the world. In the United Kingdom the company's real estate assets are valued at more than £5 billion.
10. 1LLP has appointed Brookfield Properties as the development manager for the 1 Leadenhall Construction Site. I have overall responsibility for the delivery of this project.
11. 1LLP has also appointed the Third Claimant to act as Construction Manager. The terms of this appointment include the following provisions:-

"16.2 Organise the Site during the Construction Period with regards to safety precautions, fire protection (including compliance by the Construction Manager and Trade Contractors with the Joint Fire Code), security, welfare, transportation, delivery of goods, materials, plant and equipment (including that of the Trade Contractors), control of pollution including noise, maintenance of good personnel and labour / industrial relations and general Site services including inter alia, allocation of space for Trade Contractors' offices and compounds, and the restriction of access to the Site to authorised persons only and the preparation and issue of a manual of rules and regulations appertaining to the Project to be observed by all persons having business upon the Site."

"16.17 Ensure that the Construction Phase Plan is fully prepared before the Site set-up, that Site security is maintained at all times to use all reasonable endeavours to prevent unauthorised access by persons to the Site and that all site operators and authorised visitors follow the rules and standards as outlined within the Construction Phase Plan."

12. The 1 Leadenhall Street Construction Site currently includes one tower crane (marked TC4 on the crane plans). At its fully climbed height inside the core, this crane will extend to 223 metres (with the cab height at 180 metres).
13. In April 2022, two further tower cranes are due to be erected (those marked TC1 and TC2). During 2023, TC3 will be added and those marked TC1 and TC2 will be replaced by those marked TC1A and TC2A. The tallest of these cranes (TC2A) will be 248 metres (with the cab height at 210 metres).
14. Some recent photographs of the 1 Leadenhall Street Construction Site are attached to this statement marked **"PC2"**.
15. Some Tower Crane Site Plans are attached to this statement marked **"PC3"**.

Urban Exploring

16. Urban exploring is an activity which involves the exploration of buildings and man-made structures within the urban environment. The activity is associated with trespassing on parts of buildings to which public access is prohibited and on other property including construction sites.
17. The term urban exploration is commonly abbreviated to *urbex*, *UE*, *bexing* and *urbexing*.
18. One particular variant of urban exploration is known as 'roof-topping'. This is an activity in which individuals will gain access to the roof of a building (without the consent of the building owner) in order to take photographs and / or videos. Typically urban explorers target the tall "trophy" buildings in any given city – particularly those which offer excellent and photogenic views.

19. This issue is not limited to tall buildings which are occupied. It also affects structures under construction and, in particular, the tall cranes which are used to construct them.
20. A similar, but less frequently encountered form of trespass on tall buildings and construction sites is what is known as "base jumping". This activity involves jumping from fixed tall objects and using a parachute to descend to ground level.
21. Whilst trespass on construction sites is not a new phenomenon, the key difference with the recent focus of urban exploring on construction sites (and the reason for the Claimants' concern in this case) is the use of social media platforms (including YouTube, Instagram, Facebook and TikTok) to upload videos and still images. The desire of those who engage in urban exploring to increase their social media profile and obtain more views (which can also generate revenue) leads them to seek out dangerous situations whilst trespassing. This is causing particular problems and risks:-
 - 21.1 first, it has promoted the activity more widely and encourages others to participate in "copy-cat" acts, with some sites being repeatedly trespassed by a series of different individuals (as the videos commonly show others how the sites can be accessed);
 - 21.2 secondly, the desire for exciting and novel footage encourages urban explorers to engage in increasingly dangerous activities, such as performing acrobatic stunts on ledges at extreme height or climbing along the jibs of cranes in the manner of monkey bars.

Construction Sites

22. Almost all urban exploring is dangerous, but trespassing on construction sites has particular hazards which construction workers are aware of and which they are trained to deal with (but which urban explorers and other trespassers will necessarily be unaware of). All lawful visitors to a construction site are obliged to wear full Personal Protective Equipment – something urban explorers never do.
23. The risks associated with such hazards are increased in circumstances where once they have been seen, urban explorers first reaction is often to run away in an attempt to avoid being caught by security guards or the Police.
24. At the 1 Leadenhall Street Construction Site various arrangements are in place (and more will be in place as construction progresses) to protect workers on site,

such as scaffold guardrails to protect people from falling down voids – some of which are several stories deep. Urban explorers think nothing of vaulting over fences and scaffold guardrails and this is often visible on urban exploring videos where being chased by security guards is actually presented as part of the entertainment. On a construction site this is particularly dangerous.

25. Numerous other risks arise from normal construction hazards (including risks of tripping and falling) which are again heightened in relation to people who are unfamiliar with the site and who are exploring it at night (which is when most activity occurs) and who are not wearing any form of personal protective equipment.

Security at 1 Leadenhall Street

26. The Claimants take safety and security issues extremely seriously.
27. We always aim to exceed the minimum requirements in relation to these issues which are prescribed by key legislation, namely the Construction Design and Management Regulations 2015.
28. The Site Security Plan for this project (both in its original version dated July 2021 and the latest revision in September 2021) identifies base jumpers and urban climbers as the principal risk group in the section which addresses "Key Threat Groups". The Executive Summary provides as follows (my emphasis):-

"During the original conduct of a Site Security Plan several areas of risk were identified within the 1 Leadenhall project. The aim of updating the SSP is to identify and document these areas to assist Multiplex in understanding the current risk environment and the consequence that it may have on its personnel and assets. This Security Plan will help to analyse the current security measures in place, procedures thereof and ability to react to an incident that coincides with the current risk environment. The assessments followed guidelines set in the framework of ISO3100 Risk Management.

The height of this building brings threats from such groups as BASE jumpers and Urban Climbers. *These groups are highly motivated and thrive on the thrill and attention that the documentation of their actions will receive. Their desire to improve their reputation and standing amongst their peers is multiplied by the financial implications that also come with this type of publicity. Social network allows streams of followers to view the stunts that these individuals take and thus opening the gateway for sponsorship from leading brands wishing to benefit from the publicity being achieved. Financial gain and social standing encourage these thrill seekers to take more and more risks pushing the boundaries further each time. The publicity of the few and help from on line groups encourages more and more young and*

*impressionable people to try and follow in their footsteps in spite of a clear lack of ability or knowledge. **Serious injury or worse is a very real possibility and the implication on Multiplex is huge. Everything should be done to deter and deny these persons from achieving their goals.***

*1 Leadenhall will occupy a prominent position on London's skyline, its location in the heart of the City of London, its proximity to other distinguished buildings of prominence and the heavy footfall of the area make it **a highly desirable target for Urban Explorers** and secondary threats to the site from organizations or individuals with hostile intent such as theft, Corporate espionage and terrorism.*

Eliminating all risk to 1 Leadenhall is neither realistic nor achievable, however, the security recommendations that are listed within this document have highlighted the remaining gaps in the perimeter and internal structure that require attention in order to mitigate the risk further. Compliance with the guidelines contained in this report will reduce such risks to an acceptable level in line with our legal, moral and financial duty of care."

29. The security measures which are in place at the 1 Leadenhall Street Construction Site to deter urban explorers and other trespassers include:-
- 29.1 a single entry point for personnel via a cabin on Gracechurch Street with access control systems including floor to ceiling turnstiles operated by swipe cards and biometric identity testing;
 - 29.2 24 hour security personnel (a minimum of 2 security guards at any one time);
 - 29.3 perimeter hoarding at a minimum height of 3640 mm (being 2440 mm plywood hoarding topped with 1200m scaffold guard, handrail and netting);
 - 29.4 lighting;
 - 29.5 anti-climb measures on tower cranes (4 sided anti climb mesh and a lockable metal ladder hatch); and
 - 29.6 closed circuit television (including 19 full colour digital cameras on the perimeter (2 of which are fully rotational) and 4 monitors in the security office) which includes an integrated loudspeaker system.
30. I am satisfied that all sensible precautions that could be taken to prevent urban explorers from gaining access to the 1 Leadenhall Construction Site have been taken.

The reasons for seeking an injunction

31. Brookfield Properties has previously obtained injunctions to restrain trespass by urban explorers at:-
 - 31.1 the Canary Wharf Estate (Case No HQ8X00612) in its capacity as a shareholder in Canary Wharf Investments Ltd;
 - 31.2 100 Bishopsgate – an office development on Bishopsgate in the City of London comprising 40 floors (Case No HQ18X02657) through the 100 Bishopsgate Limited Partnership (the 4th and 5th Claimants);
 - 31.3 Principal Place - a residential development on Bishopsgate comprising 60 floors through Principal Place Commercial SARL (the 6th Claimant in the case mentioned in the previous paragraph).
32. However, Brookfield Properties does not automatically seek injunction to restrain trespass on all of our construction sites. It makes an assessment of those sites where the threat of trespass is sufficiently obvious and real to necessitate seeking the Court's assistance.
33. The 1 Leadenhall Street Construction Site has all the features which make it an obvious and specific target for urban explorers:-
 - 33.1 it is a large and high profile construction site in the heart of the City of London of what will, when completed, be one of the taller buildings in the City;
 - 33.2 it is centrally located in the City, very close to many landmark buildings which can obviously be viewed (or filmed) at height from the site;
 - 33.3 it includes a very tall tower crane and will soon contain more; and
34. I believe that the site is regularly being scouted by people potentially seeking out opportunities to enter the site and scale its cranes. Since July 2021, the security cameras have recorded a number of incidents which our security team has logged because individuals appear to have been monitoring the 1 Leadenhall Construction Site, possibly with a view to trespassing upon it. All of these incidents have taken place outside normal working hours. Many of them have taken place late at night and in the early morning.
35. A copy of this list is attached to this statement marked "**PC4**".

36. I therefore believe that there is a real and immediate risk of trespass by urban explorers at the site.
37. Whilst I am satisfied that the security arrangements are as robust as they reasonably can be, our construction sites can never be 100% secure against one or more determined urban explorers.
38. We wish to do everything reasonably practicable to prevent another tragic accident from urban exploring on our site. That is the background against which we have assessed the risks and consequences of trespass at the 1 Leadenhall Construction Site.
39. I believe that the risks and potential consequences if and when urban explorers do enter the site are very significant:-
- 39.1 any trespass, but particularly trespass by those engaged in urban exploring, carries significant dangers which the steps we have already taken cannot eliminate. As I have already explained, the activities which urban explorers engage in are inherently dangerous. They are dangerous not only for the individuals concerned but also for the Claimants' employees or contractors and for the emergency services and others who would have to come to their assistance should they get into difficulty;
- 39.2 many urban exploring videos demonstrate that urban explorers often behave recklessly and show little regard for their own safety or awareness of, or concern for, the level of damage which they are exposing themselves to. The Claimants have no confidence that anyone trespassing on the 1 Leadenhall Street Construction Site would prioritise their safety or that of others;
- 39.3 I have already noted above the fact that:-
- 39.3.1 construction sites present hidden dangers of which urban explorers will be unaware of and which they are not trained to deal with; and
- 39.3.2 these dangers are exacerbated by the fact that once spotted urban explorers will often attempt to evade capture and take additional risks whilst doing so which in turn exposes them and our security team to additional risk.
- 39.4 Although it is a secondary concern, the potential financial impact of urban exploring could also be significant. Tower cranes which have been climbed

have then to be checked, with potential consequential delays to work on the site. If anyone were injured on the site, that area or the site as a whole may have to be closed down to allow authorities to investigate. Any such interruptions would be financially significant for a development of this scale. However, I stress the Claimants' primary objective in seeking this injunction is to preserve the safety of everyone at the 1 Leadenhall Construction Site.

40. These risks can only be addressed by dissuading urban explorers from trespassing at all. I am aware and believe that one of the reasons that injunctions are effective against urban exploring is that they are a genuine deterrent. At least the more experienced individuals who are engaged in this activity understand that breaching an injunction constitutes "contempt of court" and has serious consequences. I have read the witness statement of Stuart Wortley of Eversheds Sutherland and what he says about this issue.

Timing

41. Brookfield Properties wished to obtain an injunction in September 2021 and took advice from Eversheds Sutherland at that time. We would have done so at that point but for the fact that we were informed that the state of the law at that point would effectively prevent us from obtaining such an injunction. As soon as I became aware that the legal difficulties in this area had been resolved I instructed Eversheds Sutherland to proceed.

Justification for an Injunction

42. I would respectfully point out that the Order which is sought by the Claimants is so framed that it will prevent only activity which is a trespass and which I am therefore advised is inherently unlawful. I have no reason to believe that the 1 Leadenhall Street Construction Site is likely to be the target of protest of any kind, or that there is any other reason why the Court might be concerned that the injunction might interfere with some activity which is worthy of protection.
43. Any attempt to enter the 1 Leadenhall Street Construction Site for the purposes of urban exploring will entail a significant risk of death or serious personal injury and, indeed, financial loss. I therefore believe that there is a real risk of an invasion of the 1LLP's property rights if an injunction is not granted, and of serious injury to the Claimants (and others). Given the nature of those risks, and the nature of any likely defendants, damages would clearly not be an adequate remedy to the Claimants.

44. Conversely, since the Order which the Claimants seek is only to prevent unlawful activity, there is no question of the Defendant suffering any actionable loss or needing compensation in damages.
45. Although I can foresee no way in which anyone affected by the injunction could suffer loss or damage, I am nevertheless authorised on behalf of ILLP to provide the necessary cross-undertaking to pay any sum which the Court considers appropriate to compensate the Defendant for any loss if it is subsequently determined that the Claimants are not entitled to the Order which they seek.

STATEMENT OF TRUTH

I believe that the facts contained in this Witness Statement and Exhibits are true.

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised to make a Statement on behalf of the Claimants.

Peter Clarke

4 February 2022