

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT**

**BEFORE Dan Kolinsky KC
(sitting as a Deputy Judge of the High Court)**

DATED 21 May 2024

BETWEEN:

**R (on the application of WELLINGBOROUGH
WALKS ACTION GROUP LTD)**

Claimant

- and -

NORTH NORTHAMPTONSHIRE COUNCIL

Defendant

- and -

STANTON CROSS DEVELOPMENTS LLP

Interested Party

DECISIONS ON ANCILLARY MATTERS

1. The draft judgment was circulated to the parties on 14 May 2024. There is no agreement in respect of various ancillary matters. This ruling explains the approach taken in the approved order.

Outcome and relief

2. As reflected in the judgment the Claimant has succeeded in parts of its case in respect of grounds 1, 2 and 4. Ground 3 has failed.
3. The judgment explains what the Court considers the correct approach to be. It explicitly deals with the declarations sought as part of the claim.
4. The Claimant asks the Court to make declarations in the order. As to these:-

- a. I do not consider that it is necessary to make a declaration in respect of the statutory undertakers exception. This is dealt with in the judgment and was not the subject of any substantive argument before me.
- b. As to the revised declaration in respect of pre-conditions 23, 32, 34 and 36, the substance of this point is addressed in the judgment. The terms of the declaration now requested do not reflect the claim for declaratory relief formulated in the pleadings. It reflects the partial success of this point. In my view, the judgment addresses this point sufficiently. I am not persuaded that it is appropriate or necessary to grant specific relief in a form not requested in the pleaded case.

Costs

5. There is no agreement on costs. Having considered the parties' submissions, I consider that the appropriate approach is as follows.
6. Costs is a matter in the discretion of the Court – see CPR Part 44.4. I have reflected on the extent to which the parties arguments have succeeded and relevant conduct issues.
7. I consider that the Claimant has succeeded in part of the claim but not to the full extent of its arguments.
8. Overall, I consider that it is appropriate for it to recover 80% of its recoverable costs. The discount reflects the fact that it advanced several points which did not succeed. These took time at the hearing and required detailed response from the other parties. In making an overall apportionment of 80%, I have taken account of 2 specific conduct issues. First, the Claimant sought to narrow issues (in early April) in without prejudice save as to costs correspondence. Second, the Claimant was put to additional costs responding to the Defendant's late evidence (which was more voluminous and less well organised that it should have been). But for these conduct issues, I would have thought that an apportionment overall of 70% would have been appropriate.
9. The Claimant asks the Court to order the Defendant to pay £35,000 of costs and order the Interested Party to pay an additional sum.
10. I consider that this argument is without merit.

11. A defining feature of these proceedings is that an Aarhus protective costs award was made at an early stage. The Claimant has benefited from this protection. It is unattractive and incorrect in my judgment for it to now seek to argue that it should be entitled to recover in excess of £35,000.
12. The Interested Party says that costs should be between the Defendant and the Claimant. By contrast, the Defendant says that they should be borne equally by the Defendant and Interested Party.
13. I consider that the primary costs award should be made against the Defendant. It is the local planning authority. Its decision making was somewhat opaque and it did not concede parts of the claim until at the oral hearing. It also added to the costs through the service of its late evidence.
14. However, in this case, the Interested Party advanced arguments which I have rejected. As reflected in the judgment, there was more common ground between the Claimant and the Defendant on some of the key points, than there was between the Interested Party and the Defendant. In these specific circumstances and taking account of the fact that it was the Interested Party's actions led to the proceedings, I consider that this is a case where the Interested Party should make a contribution towards the Claimant's costs.
15. I have reflected on how to deal with the costs cap, apportionment and the partial costs award. There is no perfect way but I have erred on the side of simplicity and proportionality.
16. It seems to me that the fairest way forward is to make a clear costs award which reflects what I consider to be fair and proportionate. It aims to reflect all of the points of conduct (identified above) and the specific circumstances of the case.
17. As reflected in the approved order, I consider that the Defendant should pay the Claimant £21,000 in costs. I consider that the Interested Party should pay the Claimant £7,000 in costs. This reflects the fact that the Defendant's primary responsibility (for the decision making process under challenge) but also the fact that the Interested Party's arguments failed.
18. The total amount of £28,000 reflects 80% of the £35,000 Aarhus cap. That seems to me to be an appropriate amount having regard to the fact that the Claimant advanced several arguments which were not successful. I do not consider that it would be appropriate or proportionate to order detailed assessment and facilitate a debate about how an 80% recovery award should relate to an overall £35,000 limitation. In

the exercise of my discretion and in the interests or proportionality, I prefer to make a final costs order reflecting precise sums.

19. For the avoidance of doubt, I consider that there is no merit in the argument that there should be any order for costs in favour of the Interested Party against the Claimant. Moreover, I do not consider that there is any basis for the award of any part of the proceedings (including in respect of the late witness statement).

Permission to appeal

20. I have not received any applications for permission to appeal. The Claimant now asks for an extension of 1 week to enable it to consider its position on a possible appeal on the terms of the order. I decline to grant such an extension of time. In the event that any party still wishes to ask this Court for permission to appeal, the Court expects to receive such submissions as soon as possible and in any event no later than 4pm on 23 May 2024.

Dan Kolinsky KC (sitting as a Deputy High Court Judge)

Dated 21 May 2024