30 July 2021

PRESS SUMMARY

CPRE Kent (Appellant) v Secretary of State for Communities and Local Government (Respondent)
[2021] UKSC 36
On appeal from: [2019] EWCA Civ 1230

JUSTICES: Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Leggatt, Lord Burrows

BACKGROUND TO THE APPEAL

This appeal is an appeal against an order for costs. The context is an application for statutory review of a planning decision where the court has refused the claimant permission to proceed with the claim. The question the Supreme Court is asked to determine is whether, in that context, a court can make orders in favour of multiple defendants and/or interested parties for their costs in filing acknowledgments of service. The relevance of this question extends beyond statutory planning reviews which are subject to the procedure set out in the Civil Procedure Rules (**CPR**) Practice Direction 8C. This is because applications for judicial review are subject to a similar procedure for acknowledgment of service under CPR Part 54.

In 2017, Maidstone Borough Council (the **Council**) adopted a local plan for the years 2011-2031 (the **Local Plan**). This followed a finding by an inspector appointed by the Respondent, the Secretary of State for Communities and Local Government (the **Secretary of State**) that, subject to modifications, the Local Plan was sound under Part II of the Planning and Compulsory Purchase Act 2004 (the **2004 Act**). The Local Plan included a policy which provided for the allocation of a site at Woodcut Farm owned by Roxhill Developments Limited (**Roxhill**) for mixed employment floorspace (the **Policy**).

The Appellant, the Kent branch of the Campaign to Protect Rural England (**CPRE**), filed a claim for statutory review under section 113 of the 2004 Act challenging the adoption of the Policy. It served the claim on the Secretary of State as the first defendant, the Council as the second defendant and Roxhill as an interested party. Following service, each of the Secretary of State, the Council and Roxhill filed acknowledgements of service and summary grounds for contesting the claim. The judge refused permission for the claim. In awarding costs, the judge acknowledged the claim was an Aarhus Convention claim and made cost orders in favour of each of the Secretary of State, the Council and Roxhill up to the Aarhus cost cap of £10,000. That cost decision was subsequently confirmed following a challenge by CPRE. The Court of Appeal dismissed an appeal by CPRE, finding that unsuccessful claimants at the permission stage may be liable to more than one defendant and/or interested party for their reasonable and proportionate costs in preparing and filing acknowledgments of service and summary grounds.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. The Court holds that the Court of Appeal has the principal responsibility for developing practice in relation to orders for costs. Absent an error of law, there is no basis for the Court to intervene in this case. Lord Hodge gives the judgment with whom Lord Reed, Lord Lloyd-Jones, Lord Leggatt and Lord Burrows agree.

REASONS FOR THE JUDGMENT

The Supreme Court states that a court's authority in relation to the award of costs come from a variety of sources. First, section 51 of the Senior Courts Act 1981 (the **1981 Act**) confers power on the High Court and Court of Appeal to make cost orders at their discretion. Secondly, there are rules of court made by the Civil Procedure Rules Committee. Thirdly, the rules of court are supplemented by practice directions made by the Master of the Rolls. Fourthly, the appellate courts are responsible for developing principles for the award of costs within the framework of the 1981 Act, the rules of court and the practice directions **[14]**.

This appeal is concerned with the fourth category of authority and it is therefore necessary to consider the Supreme Court's recent decision in *R (Gourlay) v Parole Board* [2020] UKSC 50. In *Gourlay*, the Court explained that the principles laid down by the appellate courts are generally matters of practice and not matters of law. Responsibility for developing practice in relation to cost orders lies principally with the Court of Appeal. The reason for this is that the Court of Appeal, which hears many more cases than the Supreme Court, is better placed to assess what changes in practice are appropriate with speed, flexibility and sensitivity. Thus, only in the rare circumstance where an appeal on costs raises a question of law of general public importance will it be appropriate for the Supreme Court to intervene **[15-17]**.

Applying the reasoning in *Gourlay* to the facts of this case, the appeal discloses no error of law and must therefore be dismissed.

First, *Bolton Metropolitan District Council v Secretary of State for the Environment (Practice Note)* [1995] 1 WLR 1176, relied on by CPRE as establishing that where there is multiple representation in a planning appeal, the losing party will not normally be required to pay more than one set of costs, is as its title indicates a case providing guidance on practice. The case also concerned the award of costs after a substantive hearing and predated the CPR, which introduced the acknowledgment of service procedure **[20-21]**. CPR Part 54 has been the subject of judicial consideration in a number of High Court and Court of Appeal judgments. The case law emphasises that CPR Part 54 obliges a defendant or interested party to file an acknowledgement of service and summary grounds if it wishes to take part in a judicial review (whereas in the past there had been no such obligation). In those circumstances, an unsuccessful claimant should in principle be liable for the reasonable and proportionate costs of defendants and interested parties in relation to that initial procedural step **[23-27]**. As recognised by the Court of Appeal, this reasoning applies equally in the context of statutory planning reviews. In so far as the Court of Appeal's approach qualifies the guidance in *Bolton*, this does not give rise to any error of law since that decision is itself no more than guidance as to practice **[28-29]**.

Secondly, the Court of Appeal has made no error of law in its construction of CPR Part 54 and Practice Direction 8C. It was correct to find that filing an acknowledgment of service is mandatory if a defendant or interested party wishes to take part in a statutory or judicial review. Further, there is nothing in the CPR to exclude an award of costs for the preparation of the acknowledgment of service. While CPR Part 54 establishes a general practice in relation to the award of costs for attending the oral permission hearing, it is silent on the cost of preparing the acknowledgement of service **[29]**.

References in square brackets are to paragraphs in the judgment