



Neutral Citation Number: [2023] EWHC 2825 (Admin)

Case Nos. AC-2023-LDS-000092  
CO/1251/2023

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**PLANNING COURT**  
**SITTING IN LEEDS**

Wednesday, 15 November 2023

**Before:**  
**MR JUSTICE FORDHAM**

**Between:**  
**KIRKLEES COUNCIL** **Claimant**  
**- and -**  
**SECRETARY OF STATE FOR TRANSPORT** **Defendant**  
**- and -**  
**(1) LOVELL PARTNERSHIPS**  
**(2) UPPER DEARNE VALLEY** **Interested**  
**ENVIRONMENTAL TRUST** **Parties**

**Ruth Stockley** (instructed by Kirklees Council) for the **Claimant**  
**Katharine Elliot** (instructed by Government Legal Department) for the **Defendant**  
The **Interested Parties** did not appear and were not represented

Written submissions: 10, 19 and 20 October 2023

**Judgment on Costs**  
**Approved**

and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

**MR JUSTICE FORDHAM:**

1. This is a sequel to my judgment [2023] EWHC 2459 (Admin) (the First Judgment), foreshadowed at §23. It is a determination on papers of a consequential costs issue. It is a judicial act to which the open justice principle applies and, for that reason, I consider it appropriate to give my reasons in a short judgment in the public domain rather than a reasoned Order available to the parties and from the court records.
2. This judgment was released to the parties on 10 November 2023 on a non-confidential basis, approved subject to typos, for a formal hand-down on 15 November 2023. My costs Order was made and released to the parties on 10 November 2023.
3. LP are the First Interested Party, whose actions necessitated the hearing and costs in this case. I ended the First Judgment with this (§§16-18):

*16. As a consequential issue, which arises in light of the judgment which I have just given, there is a double application for the costs of today's hearing. Both the Council and the Secretary of State make applications that their costs of today should be paid by LP. For the reasons which I have already explained, today's hearing has been solely necessitated by the position adopted by LP, in declining to sign the draft Consent Orders and declining to communicate that the quashing order, to take immediate effect, was agreed and not opposed. My provisional view is that it is entirely unsurprising, and entirely predictable, that the Council and the Secretary of State should now make the applications for costs that have been made. My provisional starting point is that there is a powerful case in support of such orders.*

*17. Having said that, I am also – and again provisionally – somewhat surprised to find that neither the Council nor the Secretary of State have considered it appropriate to have given a clear and open warning to LP of these potential costs applications. This would have necessitated nothing more than a letter or an email. Had there been such a warning, the position today, so far as today's costs are concerned, would in my judgment have been irresistible: I would now be making two costs orders without hesitation, in circumstances where LP had continued to resist the order being sought, notwithstanding clear costs warnings. I am, again provisionally only, not currently attracted to the Secretary of State's argument that no warning was given because the position crystallised only very recently, or only today.*

*18. In my judgment, there is clearly a prima face a case in support of the costs orders that are sought against LP. However, and remembering that LP is not legally represented, the course which I have decided is appropriate is as follows. I will direct that LP shall have until 4pm on Thursday 12 October 2023 to file and serve any submissions as to any reasons why the Court should not make such an order; and the Council and Secretary of State shall have until 4pm on Tuesday 17 October 2023 to file and serve any submissions in reply. These must all simultaneously be emailed to my clerk. This process ensures that there is no risk of unfairness or unfair surprise. I will then deal with the question of costs on the papers, in light of any written submissions received, as is conventional with costs matters following a judgment. I am currently minded, when I do so, to release a short sequel judgment which will explain, consistently with the open justice principle, how this issue was determined or resolved...*

4. I received submissions from LP on 10 October 2023. Unfortunately, LP failed to copy-in or serve the other parties and so it was necessary to extend their time for response. The Secretary of State responded on 19 October 2023 and the Council on 20 October 2023.
5. LP's resistance to the costs orders – as I see it – really came to this. LP relies on the points I recorded at First Judgment §17. LP says the absence of a clear and open warning mirrors how unprofessionally, unlawfully and untruthfully the Council and

Secretary of State have operated in these proceedings. LP reiterates and repeats what it says were its original reasons for refusing to sign the consent order: untruthfulness by the Council in comments referencing LP. LP's representations record that the Secretary of State "acted unlawfully" and claims that LP is "perplexed as to why this order has been met with such resistance and has drained so much resource for all parties involved".

6. These submissions have done nothing to persuade me not to take the course for which I said there was a prima facie case (First Judgment §18). LP clearly perfectly well understood that resistance of the order drained resources for parties to the proceedings. But that was LP's "resistance". And "resources" drained in consequence were those of the Council and the Secretary of State. I have already ruled that LP identified no good reason to resist the order agreed by the principal parties. LP was a party to the proceedings. They had procedural entitlements. But they also had responsibilities and ran risks. LP was perfectly entitled to insist that a Judge be persuaded to make the Order. LP was perfectly entitled to identify any reason why the Court should not make the Order. Ultimately, a position was taken by LP. It was that LP wanted a full 2 year period before any quashing took effect (First Judgment §9). LP advanced that argument and it was the subject of an adverse ruling (§12). The position taken was baseless. I still think (§17) that clear and open warning letters, which could then be showed to the Court, ought to have been written. The failure to do so meant that the costs orders sought were not immediate. But LP had their eyes wide open and took points, at the outset and then in the run up to the hearing, which were no proper basis at all for resisting the Order. I am satisfied that ordering costs – and ordering two sets of costs – is justified, appropriate and proportionate. The Council's costs schedule records the costs of the hearing as £4,628.40 and the Secretary of State's equivalent schedule is in the sum of £1,006.67. I have adopted a modest broad-brush reduction, reflecting the fact that I am not ordering costs on an indemnity basis.
7. My Order, made and circulated to the parties on 10 November 2023, is that LP shall within 28 days pay the Council's costs summarily assessed at £4,000 and the Secretary of State's costs summarily assessed at £850.

Issued: 10.11.23

Hand-down: 15.11.23