Trinity Term

[2021] UKSC 36

On appeal from: [2019] EWCA Civ 1230

JUDGMENT

CPRE Kent (Appellant) v Secretary of State for Communities and Local Government (Respondent)

before

Lord Reed, President

Lord Hodge, Deputy President

Lord Lloyd-Jones

Lord Leggatt

Lord Burrows

JUDGMENT GIVEN ON

30 July 2021

Heard on 28 January 2021

Appellant	Respondent
Ned Westaway	James Maurici QC
Esther Drabkin-Reiter	Jacqueline Lean
(Instructed by Richard Buxton Environmental & Public Law)	(Instructed by The Government Legal Department)

Respondents:

(1) Secretary of State for Communities and Local Government

(2) [Maidstone Borough Council]

LORD HODGE: (with whom Lord Reed, Lord Lloyd-Jones, Lord Leggatt and Lord Burrows agree)

1.
This is an appeal against an order for costs. The context is an application for statutory review of a planning decision in which the claimant was refused permission to proceed. The question is whether the Court of Appeal erred in law in upholding as a practice that, in the context of such a refusal of permission, where two defendants and an interested party each incurred expense in preparing a

separate acknowledgement of service and summary grounds for contesting the claim, each had a prima facie entitlement to its costs.

2.
The question raised by the appeal, as the Court of Appeal recognised, extends beyond a statutory challenge under planning legislation subject to the procedure set out in Practice Direction 8C ("PD 8C"). A similar issue can arise in an application for judicial review which is unsuccessful because the court refuses permission as there are similar rules for acknowledgement of service by defendants and interested parties in the Civil Procedure Rules ("CPR") Part 54 and Practice Direction 54A ("PD 54A").

(1) Practice Direction 8C

3.
CPR Part 8 provides a procedure for claims in which a claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact or which relate to specified types of proceedings. PD 8C, which supplements CPR Part 8, sets out an alternative procedure for statutory review of certain planning matters, specified in PD 8C paragraph 1.1. PD 8C paragraph 4.1 provides that the claim form must be served on the appropriate Minister or government department and, where different, the authority directly concerned with the decision, order or action. Paragraph 5 provides for an acknowledgement of service. Paragraph 5.2 states:

"Any person served with the claim form who wishes to take part in the planning statutory review must file an acknowledgement of service in the relevant practice form in accordance with paragraphs 5.3 to 5.6."

Those requirements include a time limit for filing the acknowledgement of service within 21 days after service of the claim form (paragraph 5.3) and, if the person filing the acknowledgement of service intends to contest the claim, a requirement to "set out a summary of his grounds for doing so" (paragraph 5.5(a)(i)).

4.
Paragraph 6 of PD 8C sets out the consequences of a failure to file an acknowledgement of service. It provides:

"6.1 Where a person served with the claim form has failed to file an acknowledgement of service … rule 8.4 does not apply and that person -

(a) may not take part in a hearing to decide whether permission should be given unless the court allows him to do so; but

(b) provided that person complies with paragraphs 12.1 to 12.3 or any other direction of the court regarding the filing and service of -

(i) detailed grounds for contesting the claim or supporting it on additional grounds; and

(ii) any written evidence,

may take part in the hearing of the planning statutory review.

6.2 Where that person takes part in the hearing of the planning statutory review, the court may take the failure to file an acknowledgement of service into account when deciding what order to make about costs."

Essentially the same rules are set out in Part 54 of the CPR, which deals with judicial and statutory review. See, in particular, rules 54.8 and 54.9 which I have set out in para 22 below.

(2) The factual background to the appeal

5.
Maidstone Borough Council ("the Council") produced a local plan for the years 2011-2031 ("the local plan"), which it adopted on 25 October 2017. Before the adoption, the Secretary of State for Communities and Local Government ("the Secretary of State") appointed an inspector to examine the local plan and produce a report on the examination together with suggested main modifications under Part 2 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"). The inspector in his report found that the local plan was sound and directed that it be adopted subject to several main modifications. Among the policies which the inspector upheld was an employment policy, Policy EMP1(4), which related to a site owned by Roxhill Developments Ltd ("Roxhill"). Policy EMP1(4) provided for the allocation of a 16.8 hectare site at Woodcut Farm for up to 49,000 square metres of mixed employment floorspace.

6.
The appellant ("CPRE-Kent") is the Kent branch of the Campaign to Protect Rural England which is now known as "CPRE, the Countryside charity" ("CPRE"). CPRE-Kent is a charity seeking to preserve the Kent countryside from what it considers to be inappropriate development. CPRE-Kent, having engaged in pre-action correspondence, filed a claim for statutory review under section 113 of the 2004 Act challenging the adoption of Policy EMP1(4). Lang J by order dated 31 January 2018, which I discuss in para 8 below, accepted that its claim fell within the scope of article 9 of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters adopted at Aarhus, Denmark on 25 June 1998 ("the Aarhus Convention"). As a result, CPRE-Kent obtained protection under CPR Part 45 against adverse costs by means of a cap of £10,000 ("the Aarhus cap").

7.
It was CPRE-Kent's intention to serve the claim on the Council and Roxhill, but, on the advice of the staff of the Administrative Court, the claim form was amended to name the Secretary of State as the first defendant, the Council as the second defendant, and Roxhill as an interested party. The defendants and the interested party in their summaries of grounds suggested that that advice was in error. Following service, each of the Secretary of State, the Council, and Roxhill filed acknowledgements of service and grounds for contesting the claim in which they invited the court to refuse permission for it.

8.
On 31 January 2018 Lang J refused permission for the claim and made costs orders which awarded £2,879 to the Secretary of State, £5,245.50 to the Council, and £1,875.50 to Roxhill, thereby exhausting the Aarhus cost cap of £10,000. CPRE-Kent did not renew its application for statutory review but challenged the costs decision. By an order dated 20 April 2018, HHJ Evans-Gordon affirmed Lang J's award of costs. In her reasons she explained that defendants and interested parties should as a general rule be awarded their costs of preparing acknowledgements of service as they were required to file such documents if they wished to participate in the proceedings and contest the claim. She observed that there were potential costs penalties if an acknowledgement of service were not filed and the claim was later defeated because the filing of the document might have prevented the grant of permission and thereby saved costs. She pointed out that a defendant or interested party

could not know at this stage whether other parties would seek to defend the claim or what grounds of defence they might raise and that filing of an acknowledgement of service was an important step in protecting its position.

(3) The judgment of the Court of Appeal

9.
The Court of Appeal granted permission to appeal. In a judgment dated 15 July 2019 ([2019] EWCA Civ 1230; [2020] 1 WLR 352) the Court of Appeal (David Richards, Hamblen and Coulson LJJ) dismissed the appeal. The issue which is relevant for the current appeal is the first issue which Coulson LJ, who produced the leading judgment, described in para 8 of his judgment. He observed that the ordinary rule in relation to costs is that a claimant who issues and serves proceedings on other parties, and whose claim is struck out or refused at an early stage, will prima facie be liable for the other parties' reasonable and proportionate costs. He described the issue as whether different rules apply to claimants in judicial or statutory review cases (particularly planning cases), or whether they "are prima facie liable for the reasonable and proportionate costs of defendants and interested parties of preparing and filing an AoS [acknowledgement of service] and summary grounds, if permission is then refused." The court's conclusion was that different rules do not apply and such claimants may be liable for more than one set of reasonable and proportionate costs.

10.
I discuss Coulson LJ's reasoning in paras 28-29 below. It is sufficient at this stage to quote his conclusion as to the applicable principles at para 37 of the judgment in which he stated:

"[The principles] apply both to judicial review and statutory review cases.

(a) When permission to seek review is refused, a claimant may be liable to more than one defendant and/or interested party for their costs of preparing and filing their AoS and summary grounds.

(b) It is not necessary for the additional defendant(s) and/or interested party to show 'exceptional' or 'special' circumstances in order, in principle, to recover those costs.

(c) However, to be recoverable, those costs must be reasonable and proportionate. So, for example, if there is an obvious lead defendant and the court was not assisted by the AoS or summary grounds of an additional defendant(s) and/or interested party, then the costs of that additional defendant(s) and/or interested party may not be proportionate and so will not be recoverable. That is an assessment which is case-specific and not susceptible to more general rules."

(4) The challenge in this court

11.
Before this court Mr Westaway for CPRE-Kent advanced arguments which in their essence were those which did not find favour with the Court of Appeal. He founded those arguments on the guidance given by the House of Lords, after the House had heard a substantive planning appeal and had received submissions on costs, in Bolton Metropolitan District Council v Secretary of State for the Environment (Practice Note) [1995] 1 WLR 1176 to the effect 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. He submitted that there is no principled justification for adopting a different approach at the stage of the permission hearing. He submitted that the courts should recognise that statutory and judicial reviews, involving as they do public law challenges which are about correcting allegedly wrong administrative decisions, differ from private law litigation.

12.
Mr Westaway also advanced policy arguments against the practice of awarding multiple costs at the permission stage. He referred the court to commentary in Supperstone, Goudie and Walker, Judicial Review (Supplement to 6th ed) (2019), para 19.85, which questioned whether there should be a departure from the "general rule" in Bolton in the context of an acknowledgement of service and suggested that exposure to high costs could be a significant barrier to access to justice, which was a policy argument in favour of retaining a general rule that the court would award only one set of costs against a claimant in a judicial review. He referred to Halsbury's Laws of England, Judicial Review, vol 61A (2018), para 86 (and footnote 10) for the proposition that at the permission stage the court has a broad discretion as to whether on the facts of each case "there are exceptional circumstances justifying the award of costs against an unsuccessful claimant." He also referred to an article by Alistair Mills, "Costs, Permission and Interested Parties" [2014] JR 173-179 in which he argues against a practice that an interested party in a judicial review should receive its costs for submitting an acknowledgement of service. Mr Westaway supported his policy arguments by referring to witness statements by Mr Richard Buxton, CPRE-Kent's solicitor, in which he argued that the departure from a general principle to award only one set of costs has created financial uncertainty for claimants, has resulted in interested parties making large claims for costs, and on occasion the court has raised the Aarhus cap to accommodate a claim for costs by an interested party. A claimant is also significantly exposed if the court were to decide not to grant an Aarhus cap and that uncertainty has a chilling effect on the pursuit of claims. The practice of awarding multiple costs has also created an incentive for a claimant to delay service on an interested party in a statutory appeal until after the permission stage.

13.
Mr Westaway submitted that it was clear from the summaries of grounds which the defendants and the interested party lodged that they had cooperated in their responses and that all of the important points against the claim had been made by the Council, which alone should have and had received its costs. However, as I explain below, this court is not concerned with the question of the application of practice rules to the facts of a case but generally limits its interventions to cases where there has been an error of law.

(5) Jurisdiction as to costs: R (Gourlay) v Parole Board

14.
This is, as I have said, an appeal relating to an order for costs. A court's authority in relation to the award of costs comes from various sources. First, there is statutory power in section 51 of the Senior Courts Act 1981, which confers jurisdiction on the High Court and the civil division of the Court of Appeal to make orders as to costs at their discretion. Secondly, this jurisdiction is subject to rules of court made by the Civil Procedure Rule Committee established under section 2 of the Civil Procedure Act 1997. Thirdly, the rules of court are supplemented by practice directions which are the responsibility of the Lord Chief Justice of England and Wales, who has nominated the Master of the Rolls to carry out this function in relation to the civil courts, and practice directions are made by the Master of the Rolls with the consent of the Lord Chancellor: see Constitutional Reform Act 2005, section 13 and Schedule 2, and section 5 of the Civil Procedure Act 1997. Fourthly, because the rules of court and practice directions are not a comprehensive code, the appellate courts, and principally the Court of Appeal, have responsibility for developing the principles upon which courts may exercise their discretionary power within the framework of the statute, the rules of court and the practice

directions. This appeal is concerned with guidance given in decisions made under this fourth category of authority.

15.
One must therefore have regard to this court's recent decision in R (Gourlay) v Parole Board [2020] UKSC 50; [2020] 1 WLR 5344 ("Gourlay"), which gives guidance on the primary responsibility of the Court of Appeal in developing principles in relation to the exercise by the High Court and the Court of Appeal of their discretionary power to make orders as to costs and on the limited circumstances in which this court will intervene to review the Court of Appeal's decisions in such matters.

16.
As Lord Reed, the President of this court, explained in Gourlay (para 24) the principles laid down by the appellate courts in this fourth category, are generally matters of practice and not matters of law. As the Court of Appeal has the principal responsibility for monitoring and controlling the developing practice in relation to orders for costs, it is well established that the House of Lords was, and now this court is, ordinarily very slow to intervene: Callery v Gray (Nos 1 and 2) [2002] UKHL 28; [2002] 1 WLR 2000, para 8 per Lord Bingham of Cornhill, para 17 per Lord Hoffmann. This is, as Lord Bingham explained, because this court cannot respond to changes in practice with the speed and sensitivity of the Court of Appeal which is likely to hear more relevant cases over time. There is therefore a normal approach of non-interference with guidance on costs and other matters of practice: BPP Holdings Ltd v Revenue and Customs Comrs [2017] UKSC 55; [2017] 1 WLR 2945, para 26 per Lord Neuberger of Abbotsbury. Lord Reed continued (para 32):

"The position is different where an appeal on costs raises a question of law. Appeals to the House of Lords, or in more recent times to this court, which are purely on costs have long been discouraged, as a general rule, and will rarely meet the court's central criterion for the grant of permission to appeal, namely that the appeal must 'raise an arguable point of law of general public importance': UKSC Practice Direction 3, paragraph 3.3.3. Nevertheless, where permission to appeal has been granted, the court will intervene if an error of law is established."

17.
Lord Reed went on to refer to three cases in which this court has intervened in an appeal relating to an order for costs because the appellant established that there had been an error of law: R (Hunt) v North Somerset Council [2015] 1 WLR 3575; Cartier International AG v British Sky Broadcasting Ltd (Open Rights Group intervening) [2018] 1 WLR 3259; and XYZ v Travelers Insurance Co Ltd [2019] 1 WLR 6075. He explained in summary (para 36) that the reason for the court's reluctance to intervene was because (a) responsibility for monitoring and controlling developments in practice generally lies with the Court of Appeal, (b) the Court of Appeal heard many more cases than this court and was better placed to assess what changes in practice were appropriate, and (c) this court could not respond with the speed, flexibility and sensitivity of the Court of Appeal. Only in the rare circumstance that an appeal on costs raised a question of law of general public importance was it appropriate to appeal to this court solely on a question of costs.

18.
Because the Court of Appeal has primary responsibility for monitoring and controlling developments in practice, it has to keep its decisions laying down guidance on practice, including principles as to how lower courts should exercise their discretion in relation to costs, under review. It was wrong therefore to treat its rulings on principles of practice as binding legal precedents from which it could not depart (para 37). Nonetheless, it was appropriate for the Court of Appeal to review a decision

laying down a principle of practice only where there was a sufficient reason to do so, such as where there has been a material change of circumstances or where a previous case had been decided per incuriam (para 40).

(6) Application to the facts of this appeal

19.
The first question in this appeal therefore is whether CPRE-Kent has established that the Court of Appeal has erred in law. For the reasons which I set out below, I am satisfied that it has not and that the appeal must be dismissed.

20.
I begin by observing that the case of Bolton, on which Mr Westaway placed great weight, was, as is indicated in its title ("Practice Note"), a case providing guidance on practice. Lord Lloyd of Berwick was clear on this matter when he stated (pp 1178-1179):

"The House will be astute to ensure that unnecessary costs are not incurred. Where there is multiple representation, the losing party will not normally be required to pay more than one set of costs, unless the recovery of further costs is justified in the circumstances of the particular case. …

What then is the proper approach? As in all questions to do with costs, the fundamental rule is that there are no rules. Costs are always in the discretion of the court, and a practice, however widespread and longstanding, must never be allowed to harden into a rule. …" (Emphasis added)

His Lordship went on to set out four propositions that may be applied in a planning case, which Bolton was: (i) the Secretary of State when successful in defending his decision will normally be entitled to the whole of his costs, (ii) the developer will not normally be entitled to his costs unless there was likely to be a separate issue in which he was entitled to be heard or on which he has an interest which requires separate representation, (iii) a second set of costs is more likely to be awarded at first instance than on appeal as the issues should have crystallised by that time, and (iv) an award of a third set of costs will rarely be justified, even if there are in theory three or more separate interests.

21.
Bolton and Berkeley v Secretary of State for the Environment, Transport and the Regions Court of Appeal 12 February 1998; The Times, 7 April 1998 which followed Bolton, and on which Mr Westaway also relied, were concerned with the award of costs after a substantive hearing and predated the introduction of the CPR in 1999, which introduced the acknowledgement of service procedure.

22.
The relevant CPR rules are as follows:

"Acknowledgement of service

54.8(1) Any person served with the claim form who wishes to take part in the judicial review must file an acknowledgement of service in the relevant practice form in accordance with the following provisions of this rule.

(2) Any acknowledgement of service must be - (a) filed not more than 21 days after service of the claim form; and (b) served on - (i) the claimant; and (ii) subject to any direction under rule 54.7(b), any other person named in the claim form, as soon as practicable and, in any event, not later than seven days after it is filed.

(3) The time limits under this rule may not be extended by agreement between the parties.

(4) The acknowledgement of service - (a) must - (i) where the person filing it intends to contest the claim, set out a summary of his grounds for doing so; and (ia) where the person filing it intends to contest the application for permission on the basis that it is highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not occurred, set out a summary of the grounds for doing so; and (ii) state the name and address of any person the person filing it considers to be an interested party; and (b) may include or be accompanied by an application for directions.

(5) Rule 10(3)(2) does not apply. …

Failure to file acknowledgement of service

54.9(1) Where a person served with the claim form has failed to file an acknowledgement of service in accordance with rule 54.8, he - (a) may not take part in a hearing to decide whether permission should be given unless the court allows him to do so; but (b) provided he complies with rule 54.14 or any other direction of the court regarding the filing and service of - (i) detailed grounds for contesting the claim or supporting it on additional grounds; and (ii) any written evidence, may take part in the hearing of the judicial review.

(2) Where that person takes part in the hearing of the judicial review, the court my take his failure to file an acknowledgement of service into account when deciding what order to make about costs.

(3) Rule 8(4) does not apply."

23.
These rules have been the subject of judicial consideration in the High Court and in the Court of Appeal. In In re Leach [2001] EWHC Admin 455; [2001] CP Rep 97, Collins J pointed out that a defendant or an interested party under the CPR was obliged to file an acknowledgement of service and a summary of grounds whereas in the past they had not been under such an obligation. This is because rule 54.14 has the effect that, where points which defeated the claim were made at a hearing and could have been made at the permission stage, the court might refuse to order the applicant to bear the extra costs which could have been avoided if the point had been taken earlier.

24.
The Court of Appeal addressed these rules in R (Mount Cook Land Ltd) v Westminster City Council [2003] EWCA Civ 1346; [2017] PTSR 1166 ("Mount Cook"). In that case there was only one defendant, which was the local planning authority, and the appeal did not involve a claim by an interested party. The relevant issue was the fourth issue in the appeal, which was the circumstances in which a court on an oral application for permission to claim judicial review, may award costs to a defendant who has attended and successfully resisted the application. Delivering the judgment of the court, Auld LJ recognised that the issue was one of considerable public importance and affected not only claimants and defendants but also interested parties. He observed that the acknowledgement of service procedure involves the proposed defendant and any interested party right from the start and that it is generally dealt with in the first instance as a paper application. He observed that CPR Part 54 says nothing about the costs of filing an acknowledgement of service but stated (para 51) that there is now a positive obligation on a defendant or interested party served with a claim to acknowledge service and, on deciding to contest the claim, to summarise their case at the permission stage. In para 71 he described the objects of that obligation as being: "(1) to assist claimants with a speedy and relatively

inexpensive determination by the court of the arguability of their claims; and (2) to prompt defendants - public authorities - to give early consideration to and, where appropriate, to fulfil their public duties."

25.
Auld LJ stated that the only direct provision as to costs at the permission stage was in paragraph 8.6 of the Part 54 Practice Direction when read with paragraph 8.5. Those paragraphs are now paragraphs 7.4 and 7.5 of PD 54A. Those paras stated:

"8.5 Neither the defendant nor any interested party need attend a hearing on the question of permission unless the court directs otherwise.

8.6 Where the defendant or any party does attend a hearing, the court will not generally make an order for costs against the claimant."

It was clear from paragraphs 8.5 and 8.6 of the Practice Direction that a defendant or interested party did not need to attend a permission hearing and that the court would not normally make an award of costs against a claimant for their attendance at that hearing. Auld LJ supported the guidance given in the Practice Direction that a defendant or interested party should not as a general rule and in the absence of exceptional circumstances receive their costs for attending an oral permission hearing: the oral hearing was intended to be short and not a rehearsal for or a hearing of the substantive claim. By contrast, he commended the good sense of Collins J in In re Leach in concluding that the obligation in CPR rule 54.8 to file an acknowledgement of service was a reason for requiring the claimant to pay the costs of that initial procedural step (para 74). He therefore stated as general guidance (para 76(1)):

"The effect of In re Leach, certainly in a case to which the pre-action protocol applies and where a defendant or other interested party has complied with it, is that a successful defendant or other party at the permission stage who has filed an acknowledgement of service pursuant to CPR rule 54.8 should generally recover the costs of doing so from the claimant, whether or not he attends any permission hearing."

26.
The Court of Appeal took the same approach in R (Luton Borough Council) v Central Bedfordshire Council [2015] EWCA Civ 537; [2015] 2 P & CR 19, in which the court refused an appeal from a decision of Holgate J to allow the interested parties their costs of filing an acknowledgement of service and summary grounds after the court refused the claimant's application for judicial review. Holgate J followed this decision in awarding a second set of costs for preparing, filing and serving an acknowledgement of service in R (D2M Solutions Ltd) v Secretary of State for Communities and Local Government [2017] EWHC 3409 (Admin); [2018] PTSR 1125.

27.
There has thus been case law since 2001, including Court of Appeal decisions since 2003, giving guidance which supports the view that the procedural innovations in CPR Part 54 justify an exception from the practice set out in Bolton in relation to the cost of preparing and filing an acknowledgement of service and a summary of grounds. This reasoning applies mutatis mutandis to claims pursued under PD 8C.

28.

In this case Coulson LJ concluded that there was no general rule in planning cases which limits the number of parties who can recover their reasonable and proportionate costs of preparing those documents, if the application is refused at permission stage. He reached this view for essentially two reasons. First, this practice is the obvious consequence of the innovation of the acknowledgement of service procedure in the CPR which makes it mandatory for a person served with a claim form who wishes to take part in a judicial review to file an acknowledgement of service. Secondly, the authorities, which I have discussed above, establish that person's entitlement to its reasonable and proportionate costs in those circumstances (paras 21-22). The guidance set out by the House of Lords in Bolton has to be read in the light of this subsequent development of new rules in the CPR (para 23). The Bolton principles however remain relevant in planning cases because the successful defendant or interested party can only recover its costs for preparing those documents where the costs are reasonable and proportionate. Proportionality has become an important yardstick in an award of costs and replication of another's arguments remained relevant: "Thus, where a judge has two sets of summary grounds of dispute, he or she will consider the utility of each and the extent to which one defendant should have anticipated the points raised by another, so as to make proportionate costs orders" (para 25). Coulson LJ set out his conclusions, which I have quoted in para 10 above, in para 37 of his judgment.

29.
For the reasons set out in paras 14-18 above, CPRE-Kent can succeed in this appeal only if it can establish an error of law in the decision of the Court of Appeal in this case. There is no error of law in the decision to qualify or make an exception to the guidance as to practice contained in Bolton because that decision is itself no more than guidance as to practice. The only remaining question is whether the Court of Appeal has erred in law in its construction of CPR rule 54.8 and 54.9 and the equivalent provisions in PD 8C. I am satisfied that it has not. First, the Court of Appeal in Mount Cook and this case was correct to consider that the preparation, filing and service of the acknowledgement of service is mandatory if the person served with the claim wishes to take part in the judicial review. That person risks losing an entitlement to attend the permission hearing which might give an opportunity to defeat a claim at an early stage: CPR rule 54.8(1) and 54.9(1)(a) (and PD 8C paras 5.2 and 6.1(a)). It is possible for that person to take part in a substantive hearing by meeting the requirements of rule 54.9(1)(b) (and PD 8C para 6.1(b)), but the rules (rule 54.9(2) and PD 8C para 6.2) pose a risk that that person might not recover his or her costs if successful. Secondly, there is nothing in the CPR rules to exclude an award of costs for the preparation of the acknowledgement of service. Thirdly, paragraph 8.6 of the Part 54 Practice Direction (now paragraph 7.5 of PD 54A), which Auld LJ discussed in paras 52 and 72 of Mount Cook, establishes a general practice in relation to the award of costs for attending the oral permission hearing but is silent as to the cost of preparing the acknowledgement of service.

30.
In so far as CPRE-Kent advance arguments of policy, I observe that the courts in In re Leach (Collins J at para 18), Mount Cook (Auld LJ at para 75) and R (Ewing) v Office of the Deputy Prime Minister [2005] EWCA Civ 1583; [2006] 1 WLR 1260 (Carnwath LJ at para 46) have called on the Civil Procedure Rule Committee to address the procedure for applications for costs at the permission stage and in the latter judgment the principles to be applied. That Committee can make rules, or the Master of the Rolls can make an appropriate practice direction, or the Court of Appeal can review its guidance on practice. Absent an error of law of general public importance, it would not ordinarily be appropriate for this court, for the reasons set out by Lord Reed in Gourlay at para 36, to intervene in a decision on costs, and there is no basis for intervening in this case.

(7) Conclusion

31.
I would dismiss this appeal.