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Neutral Citation Number: [2020] EWHC 3564 (Admin)

Case No: CO/780/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/12/2020

Before :

MRS JUSTICE LIEVEN

Between :

VENETIA CRAGGS

Claimant

and

**SECRETARY OF STATE FOR THE ENVIRONMENT,
FOOD AND RURAL AFFAIRS**

Defendant

and

**SOMERSET COUNTY COUNCIL
MR PRS & MRS EB SCOTT
AGGREGATE INDUSTRIES UK LTD
MR M HEAL
MR J SMITH
MR KELLY**

Interested Parties

Mr Horatio Waller (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Mr Hugh Flanagan (instructed by **Government Legal Services**) for the **Defendant**

Hearing dates: 11 November 2020

Approved Judgment

Mrs Justice Lieven DBE :

1. This is a very short judgment on relief and costs consequential to the judgment.
2. The Claimant seeks a declaration setting out the legal position of the Route in the light of the judgment. The declaration merely sets out the position explained in full in the judgment. Although the judgment will be widely available, the benefit of a declaration is that it sets out the legal effect in one short and succinct statement. In my view that is of benefit to the parties and those who are interested in the legal effect on the Route.
3. I note in a number of cases concerning severance, including *Dunkley v Evans*, the Court did make a declaration explaining the effect of the severance. In my view this is the appropriate course.
4. The Defendant argues that he should only pay 50% of the Claimant's costs. This is because the Claimant did not raise the argument that although the creation of a public carriageway on the Route was ultra vires, the creation of a lesser right was not before the Inspector. The Defendant argues that the Claimant should be penalised in costs for this change in position.
5. The starting point is that the Claimant was successful in her challenge. It is correct that the argument that was successful before the Court was not advanced before the Inspector. However, the argument was a wholly legal one and involved this Court distinguishing the decision in *Buckland*. In my view it is highly unlikely that if the argument had been raised before the Inspector, she would have accepted it and distinguished *Buckland*. Further, I note that argument was set out in the pre-action protocol by the Claimant, but the Defendant did not accept the submissions. That both means that the Claimant had to pursue the case to Court through a contested hearing, but also suggests that the Inspector would have been unlikely to accept the argument.
6. For these reasons the fair outcome is that the Defendant do pay the Claimant's costs in the sum claimed.