**IN THE COUNTY COURT AT DARTF0RD** **Claim No. C27YJ975**

Before:

**HIS HONOUR JUDGE SIMPKISS**

Between:

MEDWAY COUNCIL

Claimant

-v-

RAJ RAM

Defendant

Counsel for the Claimants Ryan Kohli

Counsel for the Defendant Juan Lopez

**JUDGMENT**

**Introduction**

1. This appears to be a straightforward claim by the claimant council to recover costs from the defendant which it incurred in taking direct action under section 178(1) of the Town and Country Planning Act 1990 (*"the Act"*).
2. The defendant has been assisted by counsel, instructed under the direct access scheme. This, as is relatively common, usually means that counsel is involved intermittently and that much of the management of the case on the defendant's side is done in person. The defendant says that he has had significant medical issues which have interfered with his ability to conduct the defence, and it is relevant to the

substantive defence. I will discuss this later, but it is clear that he has had some medical problems.

3. For one reason or another, witness statements were not exchanged until a few days before the trial. I refused the defendant's application to rely on the witness statement of his planning consultant, Mr. Barron, and gave reasons in an earlier judgment. This was partly because it was not relevant to the pleaded issues and partly because it was late, even under the pragmatic timetable agreed between the parties without the approval of the court, in order to keep the trial date. There were also significant issues as to what case the defendant was permitted to run on the current pleadings. An amendment was agreed, and approved by me, on the first day of the trial.
4. None of the above was satisfactory and the case advanced by the defendant's council at trial was in many respects unclear until final submissions. Mr. Lopez, specialist planning counsel, did not provide a skeleton argument at any stage. He told me that this was because of personal difficulties. Of course, I accept his difficulties and I do not know when he was given the go ahead to represent the defendant at trial. I don't therefore make any criticism of him personally, but this is a case where a skeleton argument would have assisted the court and counsel for the claimant a great deal. More to the point, it makes a close look at the pleadings even more essential to ensure that the Claimant has not been disadvantaged by being caught by surprise by points that it was not open to the Defendant to run on the pleadings.
5. Partly because of argument about the pleadings on the first morning of the hearing and partly because the precise way in which the Defendant put his case was not at all clear to me or to Mr. Kohli until final submissions, there was insufficient time to complete final submissions. I therefore directed that Mr. Kohli should put in written submissions (unless he preferred a further hearing at a later date). He put in written

submissions and Mr. Lopez has also replied to them, although not strictly entitled to. I have read and taken into account all these

**The facts**

6. The defendant was the owner of land at Goldsworthy Drive, Strood, Kent, which had planning permission to build houses on it in accordance with a permission granted on 13th January 2004.
7. The defendant constructed 4 houses on the land, but Plot 4 was constructed in breach of the planning permission. On 17th August 2012, an enforcement notice ("the EN") was served on him under the Act This required the defendant either to demolish the house on plot 4 ("the house") within 3 months unless it was altered in accordance with the approved plans under the 2004 planning permission.
8. The defendant appealed the EN to the Planning Inspectorate. The appeal was dismissed and by paragraph 1 of the Inspector's appeal decision the defendant was required to demolish the house of alter the dwelling to comply with the planning permission. One of the grounds of appeal was that the EN had not given enough time for the defendant to comply. The Inspector dismissed that ground. Following the appeal decision, the defendant had until 5th May 2013 to comply.
9. The defendant did not appeal that decision under section 289 of the Act and still failed to comply. He was prosecuted for the failure and pleaded guilty on 18th October 2013, being fined £1,000 and costs of £705. In his oral evidence to me, he suggested that he had argued before the magistrates that his health had prevented him from complying with the EN, but the plea is inconsistent with this. This, and his subsequent conduct, strongly point to his complete intransigence with the planning authority and its requirements. He was taken in detail through a report prepared by Alison Munck ("the

report"), an enforcement officer of the claimant, for a meeting of the planning committee on 3rd June 2015. I will return to this.

10. In October 2013 the defendant carried out some works on the site to comply with the EN, but by November 2014 only minor works had been completed. There were then some discussions with the planning department officials, which led to an amendment of the planning permission (as I understand it in a way which is not relevant to these proceedings) and then to an application by the defendant to vary the original permission plans. This application was refused on 19th June 2014.

11. The defendant said in his oral evidence, but not in his witness statement, that he was negotiating with the claimant's planning department between his conviction and October 2014. He has not produced any documentary evidence to support this. Nor did he provide a convincing explanation for not taking any serious steps to comply with the EN.

12. After the refusal of permission in June 2014, he suggested that he had put in further applications and that the claimant had refused to accept them. Again, he gave no details of this, provided no documents in support and it wasn't mentioned in his statement. I therefore reject this suggestion. If anything was to be made of this point, it needed to be pleaded, it should have been detailed in his statement and the claimant would then have been on notice and could have responded.

13. The defendant has repeatedly made a point that the claimant has not got the original plans in its archive. He has not been able to produce his copies with the planning permission. This point is not relevant, because the EN is not challengeable at this stage, but in any event it is not pleaded and the claimant has not therefore had notice that it was an issue.

14. In October 2014 the defendant agreed with the claimant to commence work to comply with the EN. The report sets out the matters which he agreed had not been completed at that stage. These included removal of a window and a door in the southern elevation of the house. It was also necessary to render the front elevation. The defendant agreed that all these matters were breaches of the planning permission.
15. In January 2015 the defendant approached the claimant about a hedge, which was necessary to screen what the planning Inspector described as an overbearing house. The defendant said that he intended to reduce the hedge to 2m. There was a meeting on site in February 2015 to discuss this, it being shown on the plans annexed to the planning permission to be retained to a height of 4m. The parties agreed that it could be reduced in height to 3m subject to additional planting and that a new planning application would be submitted showing the works agreed, including the removal of the window and door, and the reduction in height of the hedge. There was also discussion on 28th May 2015 about the construction of a retaining wall, which a landscape consultant would be employed by the defendant and that the new planning application would include these matters.
16. Within 2 days of this meeting the defendant started construction of the retaining wall and removed a large section of the hedge. Apart from anything else, this belies the defendant's assertion that he was unable to comply with the EN because of his own personal health problems. He is director of a family construction company, Kalor Group, and had plenty of available resources and a planning consultant to take steps to comply. Nor do I accept that his medical condition prevented him from ordering compliance during the 3 years that he took little or no steps to comply. He was involved in the planning aspects (albeit with a consultant assisting) and there is no real medical evidence that he was unable to be involved personally and no evidence

that his personal involvement was necessary. If he was incapacitated to that extent, he has not produced satisfactory proof.

17. Following the removal of the hedge Alison Munck prepared the report which recommended enforcement action. Four options were set out in the report:
    a. Do nothing.
    b. Further criminal prosecution.
    c. Injunction. Or
    d. Direct action.
18. The recommendation of the report was for direct action.
19. The matter came before the claimant's planning committee on 3rd June 2015. The minutes record the following resolution:

    *"**Decision:***

    *In the light of the factors outlined in the report, further enforcement action be authorised to secure compliance with the enforcement notice of 17th August 2012"*
20. I will deal with the details of what happened thereafter when I discuss the issues raised in the defence. Mr. Dave Harris, the claimant's head of planning, gave evidence at trial. He said that on 18th June 2015 the claimant received information from a neighbour, whom he believed was reliable, that the services were being connected to the house. It was common ground that the defendant intended to occupy the house with his family, although it was empty and remains empty. Mr. Harris says that he and his department were concerned that there was a risk of the family occupying the house and that this would make planning enforcement and direct action much more expensive and difficult. The urgency is mentioned in the discussion briefly summarised in the planning committee minute, although the connection of services was not known about at this stage.

21. Quotations were obtained from demolition firms and a firm, said to be specialist in carrying direct action to enforce planning, Enforcement Services Ltd ("ESL"), was instructed. On 7th July 2015 ESL attended the site with various units, in order to demolish the house. The services were disconnected and items inside the house were taken outside. Before any demolition commenced, an injunction was obtained in the Medway County Court (Judge Cameron) preventing further work. ESL reconnected the services and departed.

22. This claim is to recover the charges which the claimant has paid to ESL for the aborted direct action (£36,470). To date the house has not been demolished. On 15th September 2015 the injunction was discharged on the grounds that the county court has no jurisdiction.

**The Defence**

23. Mr. Lopez raises the following 4 points in defence:

    a. The power of recovery under section 178(1) of the Act does not permit recovery of costs where the direct action was not completed, or at least, where it was not effectively commenced. There is no recovery for an aborted operation, whatever the cause.

    b. The claimant is debarred by the principle of ***res judicata*** from taking steps to recover the costs, because this issue should have been raised in the injunction proceedings and was not.

    c. The claimant did not have authority to take direct action. This is split into a number of elements:

        i. There was no corporate authority authorising direct action. The resolution recorded in the planning committee minutes does not authorise direct action;

ii. If that argument fails, then there is no valid authority under the claimant's delegated authority to contract with ESL.

iii. The defendant challenges the propriety of the decision to take direct action on the grounds of breaches of the ***Equality Act 2010***, article 1 to the First Protocol and Article 8 of the ***ECHR***. Furthermore, by failing to have regard to the defendant's personal circumstances at the date of the decision and the date of the direct action. This is a reference to his personal health problems.

d. The sum invoiced by ESL is not reasonable and not therefore recoverable. Mr. Lopez acknowledged that the court might, if it thought appropriate, substitute an alternative sum which was reasonable.

**The Statutory Framework**

24. Section 172 if the ***Act*** provides that a local planning authority may issue an enforcement notice where it appears that there has been a breach of planning control; and that it is expedient to issue the notice having regard to the provisions of the development plan and to any other material considerations.

25. Section 171A defines the taking of enforcement action for the purposes of the ***Act*** as issuing an enforcement notice, issuing an enforcement warning notice or service of breach of condition notice.

26. Section 178(1) is in the following terms:

*"(1) Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may:*

*a. Enter the land and take the steps; and*

*b. Recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so."*

27. The reference to "*steps*" is to section 173(3) of the ***Act*** and the steps specified in the enforcement notice in order to achieve, wholly or partly, any of a list of purposes set out in sub-paragraph (4). These include the remedying of the breach or restoring the land to its condition before the breach took place.

**Ground (i) – S.178(1) does not extend to the abortive works**

28. This ground raises no pleading point as it is made clear in paragraph 16(i) of the Defence. Mr. Lopez' argument is that because none of the steps taken by the Claimant were steps identified in the EN, there is no statutory or other jurisdiction to enable recovery of the costs. In short, because the house was not demolished, or at least partially demolished, on 7th July 2015 but the attempt to enforce was aborted (and barred by an injunction it is now clear the court did not have jurisdiction to grant) the Claimant cannot recover the costs. It is an understatement to say that this is a bold submission.

29. Mr. Lopez' primary submission is that before any expenses can be recovered it is necessary for the Council to complete the steps required by the EN. Alternatively, at least start them so that they are partially complete. He bases his argument on s. 178(1) which he says cannot be interpreted as permitting recovery unless these pre-conditions are satisfied. The steps required are those set out in the EN. These require the demolition of the house, unless the house is altered in accordance with the approved plans, and the removal of any resultant rubble.

30. No authority was cited in support of this argument. The first point to make is that if Mr. Lopez' argument is correct, the Council could never recover the costs incurred by an abortive attempt to enforce the EN. For example, if the when the workmen contracted to demolish the house are unable to do so because the owner chains himself to the front door and cannot be removed that day. If the house is demolished

later, then the logic of Mr. Lopez' submission is that only the costs of the later visit to the site can be recovered. It is difficult to see how the statute could be interpreted so as to lead to that result. For some reason the injunction order was not drawn up. The implied cross-undertaking in damages might well have been an alternative route for the Claimant to recover the costs of the abortive enforcement.

31. S. 178(1) provides for the planning authority to enter the land and to take the steps. Expenses reasonably incurred in so doing can be recovered. On the face of it, the planning authority can recover reasonable expenses for entering the land and this is not dependent upon the steps being taken. Similarly, did the legislature really intend that costs would not be recovered where the planning authority was thwarted by protestors from taking the steps, beyond attending the site with contractors, and before they could return to take the steps it became unnecessary to do so because the owner had complied with the planning requirements. If is was, then the owner could avoid paying the planning authority's costs by blocking their attempts to take the steps and then, complying with the EN having at last appreciated that the authority meant business.

32. Mr. Lopez' submission would mean that an owner in breach of an EN who then unlawfully obstructed the steps being taken by the planning authority, and in this case obtained an injunction from the court without informing the judge that it did not have jurisdiction to grant it, would not be liable for the costs of the abortive attempt at taking the steps under s. 178(1). That simply can't be right and if it is, it is very surprising that there is no authority on the point.

33. In any event, I am satisfied that the Claimant, by its contractors, entered the land and started to take steps. There was evidence that the contractors had disconnected the services, which they re-connected once it became apparent that the injunction had

been granted. Personal belongings were also removed from the house. These were preparatory steps.

34. I therefore reject the first ground of the defence. The Claimant is entitled to recover the costs of an abortive attempt as part of the taking of the steps.

**Ground ii – Res Judicatur by "electing not to recover under s.178(1)" in the injunction proceedings.**

35. That is the case pleaded in paragraph 16(ii) of the Defence. In final submissions, but not before, Mr. Lopez submitted that this was not a ***Henderson v Henderson*** point but an argument that the costs paid to Mr. Wicks for matters not directly relating to the demolition should have been recovered in the injunction proceedings.

36. This cannot in any sense be a ***Henderson v Henderson*** point and the claim is not barred by *res judicata*. These were not costs of the injunction proceedings and could not have been claimed in them. They were in any case dismissed on jurisdiction grounds. Another problem was identified when I obtained a print-out from Caseman. It appeared that no proceedings have ever been issued formally in the injunction case, although various orders were made.

37. The point raised by Mr. Lopez in final submissions is not pleaded and the Claimant was unaware of it until final submissions. What is now said arises out of answers given by Mr. Wicks in cross-examination. He was asked about is charges and, in particular, the £2520 in the first line of his hours charged. What Mr. Lopez says it that these were costs which should have been recovered in the injunction proceedings because they relate to time spend by Mr. Wicks in correlating evidence of what happened at the site on 7th July 2015. Mr. Wicks explained that when he carried out direct action for breach of an EN it was necessary to film and record everything possible that happened on the site. This was because allegations were often made later

(as in this case) of misbehaviour by the contractors. This is why Mr. Wicks' firm was employed to carry out this job, because the Claimant anticipated that the enforcement might be resisted (as it was) and not be peaceful. If evidence is not obtained then the enforcers are vulnerable to malicious allegations (whether or not made in this particular case). Following the events of 7th July 2015 Mr. Wicks prepared a report correlating the evidence obtained on the day in case any allegations were later made that he or his made had behaved improperly or unlawfully. In my judgment this was an entirely reasonable step to take and with the benefit of hindsight well justified. In her witness statement, although not in the Defence, the Defendant's wife alleges that Mr. Wicks and his men "*intimidated, bullied and scared*" her and also that she was not served with the appropriate papers. Preparing to meet such allegations was entirely reasonable and the costs incurred nothing to do with the misconceived injunction proceedings.

38. This ground fails but is in any case not pleaded as eventually put and no application was made to amend to plead it. I would have refused if an application had been made on the ground that it was unfair and prejudicial to the Claimant to raise this point at such a late stage.

**Ground iii – Authority to bring direct action**

39. In final submissions Mr. Lopez argued 2 points in relation to the Claimant's authority to bring and charge for direct action to enforce the EN:

    a. Lack of corporate authority to bring direct action

    b. Failure to comply with the contract procedure rules

40. The pleading of lack of authority was made in paragraph 16(iii) of the Defence with is in the following terms:

*"Alternatively, there can be no recovery against the Defendant in circumstances where the Claimant has failed to demonstrate in evidence: (i) corporate authority authorising the taking of direct action (by the Claimant and any idependent contractor, including ESL), and further, (ii) the propriety of taking direct action. In purporting to take direct action, the Claimant has (i) failed to act without property authority (sic) to authorise/ take direct action and/or to instruct entry to the Land and/or (ii) otherwise failed to properly conclude that direct action be taken;"*

41. Paragraphs 17 and 18 effectively put the Claimant to proof that direct action under s. 178 is authorised by a resolution (at delegated office level or Committee level) in accordance with the Claimant's constitution or of the actual or ostensible authority of the officer who instructed the persons who entered the land to carry out the direct action. *"there has therefore prima facie been an improper or unlawful entry onto the land"*.

42. At the start of the hearing Mr. Kohli asked the court to obtain clarification from Mr. Lopez of the defence. I indicated that I did not consider that the Defence was at all clear as to the Defendant's case and, in particular, the detail of what was alleged. I therefore gave Mr. Lopez an opportunity of applying to amend, and a short amendment was produced over the midday adjournment. No amendment was made to paragraph 16 of the Defence but an attempt was made to clarify the Equality Act defence. I indicated that I would deal with this amendment in my judgment. In the end it became irrelevant because it was quite clear that the Defendant is not disabled within the meaning of the Equality Act and no evidence was adduced from which a relevant disability could be found. Mr Lopez did not proceed with this point in final submissions. I also indicated that I would hear whatever submissions Mr. Lopez

wished to make, but would decide whether the points he made were open to him on the pleadings when I gave my judgment.

43. The way in which this case has been pleaded by the Defendant is highly unsatisfactory. It would be unusual and unnecessary for a planning authority to plead authority and provide evidence of authority for its decisions in order to prove entitlement to recover these moneys. What the Claimant has to prove is that the Defendant is in breach of the EN and that direct action has been taken by the Council entitling it to recover expenses and that these were reasonably incurred.

44. Mr. Kohli referred to Lord Diplock in Hoffman-La Roche & Co v Secretary of State for Trade and Industry [1975] AC 295 at 366A and to R (on the application of Archway Sheet Metal Works) v SSCLG [2015] EWHC 794. I agree with his submission that these cases together are authority for the proposition that there is a presumption that all administrative acts of local authorities are regular unless it is proved to the contrary. This means that the burden of proving that the Claimant lacked authority to bring direct action and to contract with ESL is firmly on the Defendant. It is not enough for them to put the Claimant to proof. If the authority and lawfulness of the Claimant's actions is to be challenged then a positive case must be pleaded with sufficient detail to enable the other party to understand what is being alleged. A claimant must not be ambushed, as has effectively happened in this case. Even if there had been a skeleton argument then the Claimant could have asked for an adjournment to deal with issues which I am quite satisfied were not adequately raised before the trial.

45. What the Defendant has in fact done is to advance questions that might arise if the authority was challenged, but it has not put forward any positive case as to why there was no authority. If it was going to advance a positive case then it should have

obtained disclosure on the authority issue, and then pleaded the lack of authority with reasons why. This failure relates to both limbs of the authority defence. The Claimant has been deprived of the opportunity to call evidence, for example, there is no hint of any case based on failure to follow the Claimant's contract rules.

46. In ***Lombard North Central Plc v Automobile World (UK) Ltd*** [2010] EWCA Civ 20 Rix LJ emphasised the importance of a litigant (even a litigant in person) identifying clearly points that were going to be taken at trial and not raising them during final submissions for the first time. It was not clear to me and not clear to Mr. Kholi until cross-examination of the Claimant's witnesses exactly what was being alleged and not until final submissions was there any real clarity about the Defendant's case. I was prepared to proceed on the basis that I did, leaving pleading issues to the end, partly because Mr. Kohli said that he could proceed on that basis and partly because the alternative was to adjourn a relatively low value claim and incur disproportionate costs.

47. The purpose of the CPR was to force parties to put their cards on the table at an early stage and for the issues to be clarified and narrowed. The opposite situation has been achieved in this case.

48. I therefore conclude that it is not open to the Defendant to put forward a positive case that the Claimant did not have authority to bring direct action or that the contract with ESL was unlawful because of a failure to comply with internal contract procedures.

***Authority to bring direct action***

49. Mr. Lopez's case is that the root of any authority to bring direct action can only be the resolution of the Claimant's planning committee dated 3rd March 2015. He submits that "*further enforcement action*" in the minute of the resolution did not permit direct action and that another resolution was necessary beforehand. He says that the Report

put forward a number of options as set out in paragraph 17 above – do nothing, further criminal prosecution, injunction, direct action. He submits that enforcement approved by the committee can mean one of 3 of these options and not, as a matter of law, only one of them. Unless and until the minute expressly authorises direct action, there is no authority.

50. In support of this proposition, Mr. Lopez relies on the Court of Appeal authority of ***Kirklees BC v Brook*** [2004] EWCA Civ 2841. In that case the planning authority had served enforcement notices on the defendant, who had ignored them and then been prosecuted successfully. He continued to ignore the orders and committed further breaches of planning control. The claimant brought proceedings for an injunction restraining further breaches and requiring removal of waste which had been brought on the land in breach of planning control. The defendant raised the issue of the authority to bring the proceedings for an injunction and contended that authority to bring injunction proceedings was not included within the claimant's delegated powers. The specific issue before the Court of Appeal was whether a power delegated to the head of planning services to take Enforcement Action included injunctions, since Enforcement Action is defined by the Act, and the court construed the provision delegating powers as referring to the enforcement action specifically defined in the Act and did not give it a more general and wider meaning. It was submitted that because of the use of capital letters, this was a direct reference to the statutory definition. Lloyd LJ rejected that submission and said that where there was an express definition in the delegation power, that should be applied, but absent a definition, the meaning of "enforcement action" had to be construed in the context in which it was being used. Looking at the delegation document as a whole he concluded that it did not delegate power to institute injunction proceedings.

51. Section 171A of the Act defines Enforcement Notice and the issue of an enforcement notice as defined by s. 172; and the issue of an enforcement warning notice under s. 173ZA and the service of a breach of condition notice under s. 187A. None of those is apt to describe the actions authorised by the Planning Committee on 3rd June 2015. It is not possible to give any sense to the resolution if the enforcement action referred to in it is restricted to the statutory definition. The EN had already been issued and served and prosecuted successfully. Nor was this one of the options that the Committee was given in the Report. Therefore in this case, unlike Kirklees, I find that the phrase has the more general meaning that Lloyd LJ considered might apply in an appropriate context. "Further enforcement action" in the resolution is not to be read according to the definition in s. 172A but in the context of the resolution. That means, in my judgment, that it provides authority to take any of the options put forward by the Report, including direct action. In fact the Report specifically recommended direct action. Mr. Harris also gave persuasive evidence that direct action was discussed at the meeting and that this was what the Committee decided should be taken.

52. If I had not ruled this defence argument out for the reasons given above, I would therefore have held that it did not succeed.

53. The issue of delegated authority was touched on but does not arise because Mr. Harris was clear that the decision to take direct action was made by the Planning Committee.

**Compliance with the Claimant's contractual procedure rules**

54. For reasons already given, it is not open to the Defendant to argue this point. I have heard no real evidence on it, simply what Mr. Lopez extracted from Mr. Harris in cross-examination in circumstances where Mr. Harris and the Claimant's legal team had not had adequate notice that this point would be taken. It is not therefore possible for me to make any findings about it at all.

55. One other matter was raised under paragraph 16(iii) of the Defence and, briefly in final submissions by Mr. Lopez. This was an allegation that the Claimant had "*failed to demonstrate the propriety of taking direct action*". Again, no positive case was advanced in the pleadings. In final submissions Mr. Lopez said that this was an allegation of failure to have regard to the Defendant's health and the fact that he and his family were going to occupy the house as their home. It appears to be a human rights argument, although I was not referred by Mr. Lopez to any points on the ECHR in his final submissions. The point can be dismissed quite shortly. Firstly, if there is a point then it should have been properly and adequately pleaded and argued. Secondly, there is no real evidence that the Defendant suffers ill health so as to make it improper for the Claimant to take steps to enforce the EN. The Defendant said in his witness statement that he suffered various health problems but no serious attempt was made to support this by medical evidence. Nor had the Defendant and his family moved into the house at the time the direct action was taken.

56. I therefore dismiss this ground.

**Issue iv – reasonableness of costs**

57. Finally, I turn to the issue of reasonableness. The starting point is Mr. Harris' evidence that he reasonably believed that the Defendant and his family were about to move into the house. This would undoubtedly make it much more difficult to enforce the EN and was also completely contrary to the planning permission. I am satisfied that the Claimant was reasonably entitled to act when it received intelligence that this was about to happen. It didn't in fact need to give any notice to the Defendant, the house was empty and the Defendant had been ignoring the EN for a considerable period of time.

58. The Claimant therefore had to arrange for a contractor to carry out the steps required by the EN, in this case demolition of the house. I have already ruled that it is not open to the Defendant to challenge the internal contractual procedures used by the Claimant.

59. Ground iv is pleaded in the following terms: "*the quantum is absurdly high and plainly not reasonable for the purposes of s. 178(10*". In support of this assertion, what evidence has the Defendant adduced to challenge the reasonableness of the costs. The Defendant's witness statement is dated 28th February 2017. The only reference to the costs is in paragraph 11 which contains an assertion that the costs are "unreasonably and remarkably high". It then states that the actual cost of safely and properly carrying out the demolition of the house and removal of the debris would be between #312,500 and £18,430 excluding VAT. He exhibits 3 quotes that he says he has obtained. This is not expert evidence, because no expert evidence was either sought or directed on this issue. There is no reason to suppose that the Defendant is an expert, and he is not independent.

60. None of the 3 quotes is for a demolition in support of direct action under s. 178(1). As explained by Mr. Wicks, these are different because of the likelihood (reality in this case) that there would be objections on site to the work being carried out and complaints afterwards. The site needs to be secured and care taken in relation to third parties who might be interfering with the works. The Defendant did not know whether any of these quotes came from firms specialising in enforcement and there is therefore no evidence that they were. The quotes are not therefore comparable.

61. The Woooldridge Demolition quote excluded costs of isolating and disconnecting services which Mr. Wicks had included. With VAT this would be £22,116 plus the

costs of disconnecting services, but excluding any further charges because it was an enforcement and a job being carried out at short notice.

62. Mr. Ram's answer when it was put to him that Mr. Jaques, Mr. Wicks' sub-contractor, was charging less for supplying the machinery, was that this didn't include the demolition costs. In fact it did as it refers to "*clearance works at Rochester*".

63. The lower M & L Stevens Ltd quote (£14,000 ex VAT, £12,500 if the foundations are not grubbed up) did not include removing the debris or disconnecting services. Kaler Holdings is a family firm with whom the Defendant has close contacts and its quote cannot be regarded as reliable for this purpose.

64. Mr. Wicks was cross-examined about his charges. In particular, much was made of 2 aspects of the bill: Mr. Wicks' time spend in preparation and in preparing a subsequent memorial of the evidence of what happened on site. I find that it was reasonable for him to make a record because this was an enforcement. It was necessary for him to assemble the team and vehicles at short notice and that the necessary personnel and equipment were on site (or would arrive on site) on the day. This is not a normal demolition which could be carried out over a longer period or accommodate slippages.

65. The other aspect that Mr. Wicks was questioned about was the sum charged by AM Jaques, As stated above, he was actually carrying out the demolition. Mr. Wicks said that he had done about 10 previous jobs with him, all enforcement work for local authorities. He charged a higher rate that might be available elsewhere, about twice the market rate, but other sub-contractors were not reliable. He used Jaques because of the need for complete reliability. Mr. Wicks also said "the market doesn't want to get involved with s. 178).

66. I find that the fee charged for this job was a reasonable one. There is evidence of the urgency, the reluctance of competing demolition firms to get involved in direct action jobs, the need for reliability on the day, the difficulties of an enforced demolition with the likelihood that it would be interfered with or objected to and that Mr. Wicks specialist is this area. Against this, there was no expert evidence to challenge the fee and no comparable quotations. In these circumstances I find that the charges were reasonable.

67. One other matter was raised in the Defence and in final submissions was the issue of propriety.

**Conclusion**

68. The Claimant is entitled to judgment for the sum claimed and interest.