



## Costs Decision

Inquiry Opened on 27 March 2018

Site visit made on 29 March 2018

**by Martin Elliott BSc FIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 28 December 2018**

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### **Costs application in relation to Order Ref: ROW/3178391**

- The application is made under the Wildlife and Countryside Act 1981, Schedule 15 (as amended) and the Local Government Act 1972, section 250 (5).
  - The application is made by for a full award of costs by Liverpool City Council against Byron Court (Liverpool) Management Company Ltd (the Company).
  - The inquiry was held in connection with the Liverpool City Council Definitive Map and Statement Modification No. 5 Order 2016.
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### **Decision**

1. The application for an award of costs is refused.

### **The submissions for Liverpool City Council**

2. The costs are limited to the two adjournments which were required to investigate the title issue. Who held the land needed to be established and at the end of two adjournments it is confirmed that there was no legal title to the land. This is confirmed at paragraph 6 of the advice from Counsel which says that the Company cannot show legal title to the Byron Court or its grounds. This is confirmed at paragraph 9 of the advice. The advice also indicates that the prospects to rectify the non-registration of the lease are modest. It was incumbent on the Company to establish interest in the land and for it not to be established in 16 years is unreasonable.
3. It should be observed that an action of bringing into question is separate to showing a lack of intention to dedicate.

### **The response by Byron Court (Liverpool) Management Company Ltd**

4. The Council have cherry picked the advice which needs to be seen as a whole. The Company does have a claim.
5. In respect of the 16 years taken, no argument has ever been based on the fact that the tenants owned the land. It was that tenants brought the right to use the way into question. It was the Council who was responsible for the adjournment. The Company tried to respond as quickly as possible. There can be no fault on the Company's part.

### **Reasons**

6. The issue of the Head Lease was raised late on the second sitting day of the inquiry. It was no part of the Company's case that they owned the land

although given that once a presumption of dedication arises in respect of a statutory dedication the burden shifts to the landowner to provide sufficient evidence to demonstrate a lack of intention to dedicate. As such the consideration of the Head Lease was relevant to my decision. Although the Company was not relying on ownership as part of its case it was necessary in respect of my determination to me to establish ownership of the land crossed by the Order route. However, the fact that the Company did not establish ownership does not amount to unreasonable behaviour. The two adjournments were necessary for all parties to consider the implications of the Head Lease and were also necessary in the interests of fairness to all parties. It was also a matter on which I required submissions which would not have been possible without the adjournments.

7. Whilst the Council suggest that the failure not to establish ownership of the land in 16 years is unreasonable that is a matter between the Company and the landowner. The issue before me was the relevance of the Head Lease in the context of a landowner demonstrating a lack of intention to dedicate.

### **Conclusions**

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the published guidance, has not been demonstrated.

*Martin Elliott*

Inspector