



Costs Decision

Inquiry held on 18-20 September 2019

by Mark Yates BA(Hons) MIPROW

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

Decision date: 13 December 2019

Costs application in relation to case Ref: ROW/3217055

- This 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 on behalf of Mr and Mrs Kingston ("the landowners") for a full award of costs against the Axbridge Bridleways Association ("the applicant"). Alternatively, a partial award of costs is sought against the applicant.
 - The inquiry was held in connection with The North Somerset District Council (Footpath AX 16/31 to Bridleway AX 16/31 Wrington Road to Cleeve Hill Road Congresbury) Definitive Map and Statement Modification Order No. 6 2018.
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Summary of Decision

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

The Submissions by Mr Mills for the Landowners

2. The landowners apply for costs against the applicant in relation to the holding of this inquiry. This is an application for a full award of costs, alternatively a partial award of costs is sought.
 3. The ground of the application is that the applicant has unreasonably pursued a hopeless case.
 4. The applicant's broad claim (that the route is a bridleway) was previously considered in great depth by Inspector Jeapes. The two main pieces of new evidence relied upon are hopeless:
 - (1) The diversion documentation. This does not make any material reference to the status of the claimed route. It therefore cannot assist the applicant, and certainly not to the balance of probabilities standard.
 - (2) The 1925 memorandum. The applicant sought to reason from inference regarding the claimed route not being marked as subject to a private agreement. However, they failed to investigate the records of the Bristol Municipal Charities ("BMC") which provides an explanation to this. Even once these records were put to the applicant, they continued to press their argument on this point.
 5. In relation to the evidence of correspondence from Col Towill and Mr Harvey, historic evidence relating to them was considered at the previous inquiry. The new evidence has not made out the applicant's case.
 6. The applicant failed to consider the force of the point regarding the BMC's capacity to dedicate land. This is fundamental, in relation to land formerly held
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- by BMC. Even after the point was made to the applicant, they have not taken it on board or withdrawn their points.
7. The question of whether the claimed route should be a bridleway was previously considered by Inspector Jeapes. There was no challenge to that decision by the applicant. If they considered that there were legal errors in Inspector Jeapes' decision, that was the correct course of action.
 8. Relying on minimal additional evidence in an attempt to justify a reconsideration of the issues is unreasonable, and burdensome for landowners wishing to avoid an unjustified (and possibly dangerous) upgrade of a public right of way. If it was to avoid the costs of a court challenge, then the point has even more force.
 9. The applicant's bringing and sustaining of arguments which are frankly unjustifiable has caused the landowners to incur costs. If the applicant had conceded their position, the inquiry could have been avoided, or at least much shorter.
 10. The landowners seek a full or partial award of costs against the applicant.

The Response by Mrs Gawthorpe on Behalf of the Applicant

11. It is not accepted that they have behaved unreasonably or pursued a hopeless case.
12. By reference to Defra Circular 1/09, it is submitted that they have not:
 - Failed to address procedural requirements or failed to attend the inquiry.
 - Withdrawn an objection at the last minute resulting in the cancellation of the inquiry.
 - Pursued an Order with a defect that renders it incapable of confirmation.
 - Pursued a case where the Secretary of State has advised in writing that it is not legally relevant.
13. It should be borne in mind that they won an appeal to the Secretary of State. If they had not won their appeal there would have been no public inquiry.
14. They do not consider that they have behaved unreasonably.

Reasons

15. I have considered this application for costs in light of the published Planning Practice Guidance relating to costs. The guidance advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense.
16. A full award of costs will apply to the costs incurred following the making of the relevant Order. In this case, North Somerset District Council was directed by the Secretary of State to make the Order following an appeal by the applicant. The Appeal Inspector took the view that the evidence was supportive of the express dedication of a bridleway. It follows in my view that a full award of costs against the applicant could not be justified.

17. The request for a public inquiry to be held to determine the Order was made by the landowners. I agree with Mrs Gawthorpe that she complied with the procedural requirements in relation to the inquiry.
18. The Inspector at the appeal stage considered that the new and previously submitted evidence was sufficient to warrant the making of the Order and the applicant was entitled to place reliance on this decision when making the case in support of the confirmation of the Order. Further, I have found that some of the evidence is supportive of the dedication of higher public rights over the claimed route. I do not therefore conclude that the applicant has pursued a hopeless case. Whilst I did not agree with the applicant on certain matters, this does not make her conduct unreasonable.
19. An issue does arise out of the legal submissions and advice regarding whether BMC had the capacity to dedicate a bridleway. I distinguish these submissions from the evidence of Mrs Kingston on such matters which did not stand up to scrutiny at the inquiry.
20. The applicant did not present any meaningful response on the capacity issue to rebut the point made on behalf of the landowners. However, this matter warranted further consideration at the inquiry and others did challenge the submissions made on behalf of the landowners. It cannot be said that the ownership of land by a charity is an absolute bar to the dedication of a public right of way.
21. For these reasons I do not conclude that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated.

Mark Yates

Inspector