



## Costs Decision

Inquiry held on 16 August 2016

**by Heidi Cruickshank BSc (Hons), MSc, MIPROW**

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

**Decision date: 15 September 2016**

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### **Costs Application in relation to Order Refs: FPS/W1850/7/12 & FPS/W1850/7/13**

- 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 Mr C Whitmey for a full award of costs against Herefordshire Council.
  - The Inquiry was held in connection with The County of Herefordshire District Council Wildlife and Countryside Act 1981 Addition of Footpaths in the Parish of Fownhope (To Be Known as Fownhope FWB12, Fownhope FWB13, Fownhope FWB14 and Fownhope FWB15) Modification Order 2002 and The County of Herefordshire District Council addition of Footpaths FWB12, FWB13, FWB14 and FWB15 Modification Order 2009.
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### **Decision**

1. The costs application fails and no award of costs is being made.

### **Preliminary matters**

2. The application was made orally at the close of the Inquiry, on 16 August 2016.

### **Basis for determining the costs application**

3. In rights of way cases the parties are normally expected to meet their own expenses. Irrespective of the outcome of the Order, subject to the exceptional cases noted in the Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09, Version 2, October 2009, relating to analogous orders, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
4. The Government's Planning Practice Guidance (PPG) provides guidance on the principles of costs awards and Circular 1/09 makes it clear that, by analogy, this guidance is applicable to parties in rights of way cases.
5. The application for costs has been considered in the light of Circular 1/09, the relevant part of the PPG, the case papers, the costs submission and response and all the relevant circumstances.

### **Reasons**

6. The applicant for costs argues that the making of the second Order in 2009 meant that he needed to revisit the Order more than once, with attendant time and costs implications. I have noted the circumstances leading to the making of Order B in the Preliminary Matters of my Order decision. I have also noted this to be an unusual course of action.
7. Herefordshire Council, ("the Council"), have indicated that remaking the Order in 2009 was done with the best of intentions in terms of being open and fair, due to the time from the making of Order A in 2002. The applicant made a statutory objection to both Orders.

8. The objection to the Order A was a letter dated on 19 June 2002. The 2009 objection to Order B was an email dated 28 August 2009 and refers back to matters raised in the Order A objection; 'discovery of evidence'; and reference to emails sent to the Council in 2009 regarding procedural matters, asking to inspect the evidence.
9. It will be noted from my Order decision that the Orders are identical. It will also be seen that I have taken account of all statutory objections and representations made to either Order, such that there was no need to make a further objection, although I accept that the applicant would not necessarily have understood that to be the case.
10. The Council comment that whenever an Inquiry might have been held those seeking to be heard would have incurred costs.

### **Conclusions**

11. Whilst I understand the applicant believes that the Council should not have made Order B, but simply submitted Order A, I consider the 'revisiting' of the matter in 2009 to have been minimal. As I understand it, that there was some difficulty in obtaining information from the Council at that time, which has been addressed by the assistance given subsequently by the current representative.
12. The submission of an objection, which is not withdrawn, must be pursued to a formal determination, whether by Inquiry or otherwise. It is therefore reasonable to conclude that anyone making a representation or objection accepts that some costs may arise, albeit that this should not be due to unreasonable behaviour.
13. The objection to Order A was bound to be determined and, as set out in the Order decision, the evidential matters remain effectively the same. An award of costs may be made only where unreasonable behaviour causes the applicant (for costs) to incur unnecessary or wasted expense in the proceedings. In this case, as the Council indicate in response to the costs application, the claimed expense would arise in maintaining the objection to Order A and, therefore, was not wasted because it was commonly incurred in relation to both Orders.
14. I accept that there will have been a small amount of time spent on the matter in 2009, which appears to have resulted in some unhappiness with the process and the Council. However, I consider that there was no evidence of any real time or costs being wasted as a result of that. In the particular circumstances, and on the information available, I find it difficult to conclude that an award of costs should be made in this case.

### **Formal Decision**

15. For these reasons I have decided that an award of costs, on grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense, is not justified in the particular circumstances.
16. A copy of this decision letter has been sent to the Council.

*Heidi Cruickshank*

**Inspector**