



Costs Decision

Inquiry Held on 18 July 2017

Site visit made on 19 July 2017

by **Alan Beckett BA MSc MIPROW**

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

Decision date: **29 AUG 2017**

Costs application in relation to Order Ref: **FPS/G3300/7/97**

- 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 Mrs Marlene Masters on behalf of Mr Rodney Peppard for a full award of costs against Mrs S Bucks of the South Somerset Bridleways Association and Mr C Earl of the Somerset Ramblers' Association.
 - The inquiry was held in connection with the Somerset County Council (No. 1) Modification Order, 2015.
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Decision: The application fails and no award of costs is made.

The submissions for Mrs Masters

1. The objectors had failed to produce any new evidence which related to footpath L12/33 and if they disagreed with the decision of the Inspector following the schedule 14 non-statutory inquiry, they should have sought judicial review of that decision in the High Court.
2. The objectors had been put on notice that the pursuit of their objection at the inquiry would be considered to be unreasonable behaviour and had been invited to withdraw but no acknowledgement of that invitation had been received directly from either Mrs Bucks or Mr Earl.

The response on behalf of Mrs Bucks and Mr Earl

3. The letters sent to Mrs Bucks and Mr Earl had been acknowledged by Mr Kind acting as the agent for the objectors. The question as to whether unreasonable behaviour has been demonstrated has to be seen in the context of the Order and the inquiry.
4. The schedule 14 process is a discrete process which stands alone and is separate from the schedule 15 process. The outcome of an Order made as a result of the decision following the non-statutory inquiry was 'up for grabs' – it was not inevitable that the decision following the schedule 15 inquiry would follow the decision made at the schedule 14 stage; it often does not. An Inspector determining an Order consequent on a Schedule 14 decision is not bound by that decision.
5. As regards this Order, Mrs Bucks and Mr Earl (on behalf of their respective organisations) put in a detailed and comprehensive statement of case in accordance with the timetable after notifying PINs that they would be content

with the written representation procedure; the objectors did not exercise their right to be heard.

6. Furthermore, Mrs Masters chose not to put in her statement of case at the time the Somerset County Council would have been required to submit its statement of case had it chosen to promote the Order; the failure to do so was a direct cause of the objectors having to make further submissions, all of which was properly sent by the objectors to Mrs Masters and Somerset County Council.
7. The objectors had argued a viable case against the confirmation of the Order. In the circumstances of this case, the objectors do not have to demonstrate that the definitive map is correct; the burden of proof lies firmly with Mrs Masters and it is right and proper that her case should be tested.
8. A counterclaim for costs is not being made as the inquiry process is intended for cases such as this to be argued out. In the context of the inquiry and in putting their case forward the objectors have behaved responsibly and properly.

Reasons

Reasons

9. I have considered this application for costs in the light of the relevant circulars and all the relevant circumstances. The general principle is that, irrespective of the outcome of the Order, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
10. In this case, it was the Secretary of State who determined on 3 February 2017 that an inquiry should be held into the Order. Having received representations from Mrs Masters on 8 February 2017 regarding the relevance of the objections which had been made to the Order, the Secretary of State gave further consideration to the procedure by which the Order should be determined. Following a review of the objections, PINS wrote to the parties on 10 March 2017 to suggest that the written representations procedure should be adopted in this case.
11. On behalf of the objectors, Mr Kind responded on 13 March 2017 that Mrs Bucks and Mr Earl would be content with the written representation procedure but that they would participate in an inquiry if Mrs Masters elected to be heard. Mr Earl sent a separate letter on 14 March 2017 that the Somerset Ramblers had no objection to the written representations procedure being adopted. On 15 March 2017, Somerset County Council also confirmed that the written representations procedure would be acceptable.
12. On 21 March 2017 Mrs Masters wrote to say that her clients did not agree to the written representations procedure; in his letter of 16 March 2017 Mr Peppard stated *"I do not agree with the suggestion that an inquiry is unnecessary. As the owner of the property my view is that a Public Inquiry is vital"*.
13. As agreement on the written representation procedure could not be reached, the inquiry called by the Secretary of State proceeded as previously arranged. The objectors put forward their case in accordance with the requirements of

the rules and submitted their statement of case in accordance with the timetable. Their case was conducted at the inquiry with diligence and courtesy.

14. Although Mrs Masters considers that it would have been open to the objectors to seek judicial review of decision of the Inspector following the non-statutory inquiry, that course of action is unlikely to have found any favour with the Court as the decision in favour of the supporters reached at the schedule 14 stage is not binding upon the Inspector appointed to determine the matter at the schedule 15 stage. The correct course of action for the objectors to pursue in objecting to the Order arising from the schedule 14 decision was through the inquiry process.
15. Given that the objectors had agreed that the written representations procedure could be adopted in this case, the non-agreement to written representations by the supporters and the view that an inquiry was "vital" meant that the expense to which Mrs Masters claims to have been put in preparing and attending the inquiry would have had to have been met in any case. In my view, Mrs Masters did not incur unnecessary costs as a result of the objectors' behaviour prior to or during the inquiry.

Conclusions

16. For these reasons I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

Alan Beckett

Inspector