



Costs Decision

Inquiry opened on 11 October 2018

Site visit made on 11 October 2018

by Susan Doran BA Hons MIPROW

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

Decision date: 18 January 2019

Costs application in relation to Order Ref: ROW/3191682

- 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 Ivybridge Town Council for a full and/or partial award of costs against Devon County Council.
- The inquiry was held in connection with the Devon County Council (Bridleway No.6, Ugborough) Definitive Map Modification Order 2016.

Decision: The application fails and no award of costs is made

The submissions for Ivybridge Town Council (“the Town Council”)

1. In the event that the (above-referenced) Order is not made, Ivybridge Town Council seeks its costs. It has been put to expense and effort in objecting to the route on the grounds that it has made since the beginning of proceedings in 2014. It would be unjust and unfair on the Town Council not to be compensated for those costs.
2. Further, and in any event, the Town Council seeks its costs of the “spur issue”. The Order as originally drafted before the meeting of the Rights of Way Committee¹ included a spur from the route to Filham Vets². That was rightly removed after the Town Council’s submissions³. The Town Council seeks 50% of its costs incurred from the start of the application to the removal of the spur in any event. The Town Council accepts that the matter of the Order route (points A-D on the plan attached to the Order) needed to be tested by way of an Inquiry. However, the law is clear that the spur route should never have been considered.

The response by Devon County Council (“the Council”)

3. The Planning Inspectorate’s Guidance⁴ states that in order to be awarded costs incurred for a Public Inquiry, the applicant needs to show that they incurred unnecessary or wasted costs because another party acted unreasonably. This will include whether a Public Inquiry may reasonably have been avoided,

¹ 26 November 2015

² As shown on the plan appended to the Council’s Committee Report, route J-F-G and F-K

³ Objections made on the basis that claimed use post-dated the implementation of the Town Council’s byelaws

⁴ Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England, 2018

- whether it has been unreasonably delayed, or extended, or the time table has not been adhered to.
4. None of these circumstances apply to this case. The Council has acted purely in accordance with its statutory duties under the Wildlife and Countryside Act 1981, to keep the Definitive Map under review and make modifications following certain events. The relevant event in this case was the Schedule 14 Application made in 2014 which the Council was under a duty to investigate⁵. It included the spur route.
 5. The Council's Officer duly investigated the application (in accordance with its duty) and discovered significant evidence from 62 users claiming to have used the route between 1946 and 2013 when the Town Council prevented use on horseback. These findings were sufficient to infer that a right of way subsisted or could reasonably be alleged to subsist over the route. The investigations included consultation with the Town Council. A report was put to the Committee recommending confirmation of the Order in accordance with the statutory regulations. The costs could not be avoided by the Council.
 6. One objection was received from the landowner, the Town Council, which could not be resolved because the evidence put forward by them at the time was not sufficient to rebut the presumption of dedication at common law, being largely based on irrelevant considerations.
 7. The Committee resolved to make the Order on the basis of the report and having received no evidence from the Town Council to justify turning it down. The Town Council was represented at the Committee Meeting.
 8. There was no challenge to the way the Committee considered the recommendation by way of Judicial Review, therefore it can only be assumed that proper processes were followed.
 9. Because of the unresolved objection, the matter was duly referred to the Secretary of State under Schedule 15 of the 1981 Act and a Local Inquiry has been caused to be held, in line with the statutory requirements. Since that process began, the Council has duly complied with the timetable set in a timely manner and has not caused any unreasonable delays.
 10. The Council has acted entirely reasonably and without delay throughout this process and should not be liable for the Town Council's costs. However, should it be decided that some costs should be awarded, then the fact that it was not necessary to instruct Counsel for an Inquiry when a Solicitor would have been sufficient, should be taken into account.

Reasons

11. I have considered this application for costs in light of the published guidance available and all the papers submitted in relation to the Order. 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. The Government's Planning Practice Guidance ("PPG")⁶ provides guidance on the principles of costs awards and Circular 1/09⁷ makes it

⁵ Under paragraph 3 of Schedule 14

⁶ National Planning Policy Framework Planning Practice Guidance, Appeals, The Award of Costs, Revision date 06/03/2014

⁷ Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09, Version 2, October 2009

clear that, by analogy, this guidance is applicable to parties in rights of way cases. In rights of way cases the parties are normally expected to meet their own expenses.

12. As regards the Town Council's first ground for a full award of costs, an award of costs does not necessarily follow the event, or follow directly from the result of the decision itself: costs are not awarded to the relevant party simply because an Order is confirmed, or in the alternative because it is not made. Accordingly, the Town Council's costs application cannot be founded on the Order not being confirmed, but must demonstrate that the Council has acted unreasonably.
13. In the current circumstances, 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.
14. In respect of the first ground, there is nothing to suggest that the Council has acted unreasonably.
15. As regards the Town Council's second ground for a partial award of costs, costs can only be awarded in relation to unnecessary or wasted expense with regard to the Inquiry process by which the Inspector's decision is reached⁸, although behaviour and actions at the time of the application can be taken into account in consideration of whether or not costs should be awarded. In other words, costs are not awarded for expenses unrelated to the Order itself or incurred before the Order was made.
16. The "spur issue" was not an issue before me for consideration as it did not form part of the Order for determination. It pre-dates the Inquiry process and indeed, the making of the Order itself. Accordingly, the Town Council's claim in this regard falls outside my remit. I consider that any issues relating to the County Council's procedures in assessing or determining the application, and any complaints in this regard should be raised with the Council itself, through its complaints procedure, or via the relevant Ombudsman.

Conclusions

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated, and no award of costs in this case is justified.

S Doran

Inspector

⁸ The Planning Inspectorate's Guidance (paragraph 3 above) states the costs must be quantifiable and incurred (in this case) in the Inquiry process.