



Costs Decision

Inquiry opened on 17 July 2018

by Heidi Cruickshank BSc, MSc (Hons), MIPROW

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

Decision date: 20 SEPTEMBER 2019

Costs application in relation to Order Ref: ROW/3181863

- The application is made under the Town and Country Planning Act 1990, sections 257 and 320(2), Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Melissa Salisbury for a full award of costs against the South Downs National Park Authority.
 - The Inquiry was held in connection with the South Downs National Park Authority (East Hampshire District) Public Path Diversion Order Reference Binsted Public Footpath 55 (Part) 2017.
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Decision

1. The costs application succeeds in part and a partial award of costs is being made.

The submissions by Mrs Salisbury

2. An initial application was made by email dated 26 October 2018¹, during the adjournment of the Inquiry from July 2018 to March 2019. The formal application was made orally at the close of the Inquiry, on 8 July 2019.
3. The application was said to follow the applications as made by Mr Salisbury and Mrs Fargeot, Mrs Salisbury having booked time off to attend the Inquiry. It was for a full award of costs in relation to the time which was wasted as a result of the Inquiry being adjourned due to the South Downs National Park Authority's ("SDNPA") inability to properly register and notify the Planning Inspectorate of representations received during the consultation period.
4. Mr Wilcox said that the community had not engaged in communication but the community have not been asked or communicated with.

The submissions by Mr Wilcox for the South Downs National Park Authority

5. Indicating that it was increasingly unclear if the applications relate to individual's costs or those of the wider community body, with the applicant's comments about 'we', the SDNPA adopted everything said in relation to the first two applications².
6. The relevant test has two limbs; first, there must be unreasonable behaviour; and second causation, in that it caused loss alleged to arise. Costs are a classic discretionary exercise and conduct in the round is relevant.
7. On the first day it was identified that two interested parties had not been notified; one was here anyway and other was not. As a consequence, the first

¹ Inquiry document 21

² From Mr Salisbury and Mrs Fargeot

- adjournment arose, which would have occurred regardless of retention issues. The Order was re-notified but there was no additional oral evidence.
8. It is accepted that the omission of notification was as a result of human error – there was an oversight because it was in the wrong email box. The issue of the potential interested party was flagged in the community statement of case and SDNPA asked for further information but nothing was said until Inquiry opened. Since the only people not notified, who should have been, were from Binsted Parish Council – who were notified as a body - it is unclear who else the statement of case might be referring to. Had they worked with SDNPA at that stage the issue could have been resolved at outset, but they did not assist. The difficulties faced by objectors are as a result of their own conduct.
 9. The Inquiry was initially set for three days and in event two full and two half days were used, albeit over a year. Therefore it has not been extended by delay anyway. The Inquiry could have been concluded in less time had the objectors heeded advice not to raise irrelevant matters such as planning matters. In terms of conduct in round, the length of the Inquiry is to do with the constant raising of irrelevant matters.
 10. The adjournment to July 2019 was due to the Planning Inspectorate rather than the SDNPA and that is relevant to the inconvenience at that date.

Reasons

11. The circumstances arising in relation to this Inquiry are set out in the Preliminary Matters of the Order decision. The SDNPA accept that human error caused the failure to provide all the relevant information to the Planning Inspectorate on 4 August 2017. As a result, the Planning Inspectorate, acting on behalf of the Secretary of State, could not give notification of the Inquiry to all statutory parties at the outset.
12. I am satisfied that the failure to submit all the statutory objections and representations amounted to unreasonable behaviour on the part of the SDNPA. As a direct result of that I found it necessary to adjourn the Inquiry on 18 July 2018 and subsequently to ask that the Order be readvertised.
13. Due to failures in the Planning Inspectorate's own notification of the resumed Inquiry on 18 March it was then necessary to adjourn the Inquiry for a second time on 19 March.
14. The SDNPA proof of evidence noted that the "*...community statement³ claims that...(4) some objections (for which details are not provided) were not included in the SDNPA's Statement of Case...*" and continued "*(4) The SDNPA has endeavoured to submit all correctly made representations to the Order to the Planning Inspectorate, as required. There is no specific requirement to include objections in the order making authority's statement of case, however, copies were attached to the SDNPA's Statement of Case in Appendix 6, along with copies of representations made prior to the making of the Order (Appendix 4), to assist the Inquiry. The SDNPA is not aware of any omissions, but invites further clarification on this point.*"
15. There is no information to show that the SDNPA contacted the 'members of the community' prior to the Inquiry to clarify this matter and so the matter was not dealt with until the Inquiry opened. The applicant indicated that she had

³ Which was produced, coordinated and presented by Mr Salisbury

- booked time off to be at the Inquiry and asked for the costs associated with the sitting and intended sitting days.
16. There were complaints regarding the proposed venue ahead of the Inquiry, which were resolved by use of the Alton Maltings. Previous bookings meant that it was agreed to resume the Inquiry on Mondays, on the understanding that this would mean that the venue was available for three days if required. I am satisfied that at both adjournments the time that might be required to deal with the evidence was discussed. It was open to any party to say that they did not consider the suggested time to be necessary; that they were only available at a specific time, which I would have sought to accommodate; or, that someone else would represent them at the Inquiry.
 17. The Inquiry sat for four days in total across five days – due to half days on 18 July 2018 and 8 July 2019 - of nine possible Inquiry sitting days. As noted in my decision, I consider that one day was taken in dealing directly with the issues arising from the failure to submit all the statutory objections at the appropriate time. I consider it likely the Inquiry could have been completed within the original charted time 17 – 19 July 2018 had these issues not arisen.
 18. Being satisfied that the SDNPA behaved unreasonably in their failure to submit all the required documents to the Inquiry I consider unreasonable expense in needing to attend the Inquiry arose in relation to all the time set aside for the first sitting, and potential sitting time, of 17 – 19 July 2018.
 19. Whilst the matters arose following on directly from the problems caused by the SDNPA, I cannot ignore the issues arising from the Planning Inspectorate's failure in relation to the second proposed sitting time of 18 – 20 March 2019. We did make use of two of the three scheduled days but I do not consider that any expense associated with the inability to make use of the third day – and complete the Inquiry at that time – can be fairly placed on the SDNPA.
 20. In relation to the final three potential days of 8 – 10 July 2019, I consider that the additional day ultimately may not have been required had the statutory requirements been met initially. However, I consider that the second adjournment arose due to matters caused by the Planning Inspectorate. As such unreasonable behaviour on the part of the SDNPA did not cause any unnecessary expense for the applicant during that period.

Costs Order

21. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the South Downs National Park Authority shall pay to Mrs Melissa Salisbury, the costs of the proceedings described in the heading of this decision limited to those costs incurred in relation to attending, or potentially attending, the Inquiry on 17 – 19 July 2018; such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to the South Downs National Park Authority, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Heidi Cruickshank

Inspector



Costs Decision

Inquiry opened on 17 July 2018

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

Decision date: 20 September 2019

Costs application in relation to Order Ref: ROW/3181863

- The application is made under the Town and Country Planning Act 1990, sections 257 and 320(2), Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Ian Salisbury for a full award of costs against the South Downs National Park Authority.
 - The Inquiry was held in connection with the South Downs National Park Authority (East Hampshire District) Public Path Diversion Order Reference Binsted Public Footpath 55 (Part) 2017.
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Decision

1. The costs application succeeds in part and a partial award of costs is being made.

The submissions by Mr Salisbury

2. An initial application was made by email dated 26 October 2018¹, during the adjournment of the Inquiry from July 2018 to March 2019. The formal application was made orally at the close of the Inquiry, on 8 July 2019.
3. The application was confirmed to be for a full award of costs in relation to the time which was wasted as a result of the Inquiry being adjourned due to the South Downs National Park Authority's ("the SDNPA") inability to properly register and notify the Planning Inspectorate of representations received during the consultation period.
4. The Inquiry was expected to last for the period set out in original documents. Because the SDNPA were not able to maintain accurate records of the people who made objections, and so did not invite those persons to take part, the Inquiry ran on for a number of extra days. As Mr Salisbury runs his own business, and people book his time per day, he assigned the time off for the Inquiry irrespective of whether it then sat on that day or not. If he was back in the office on the afternoon of 8 July 2019 he would not be working on a project, as he had passed work on.
5. The SDNPA Retention Schedule is clear that representations in planning matters should be permanently kept. Clearly SDNPA accepted that they were not able to do so, as the server backup failed. This was not the fault of the objectors and, therefore, the actions were unreasonable.
6. The members of the community were not responsible for the SDNPA's job. It was not Mr Salisbury's responsibility to work out who had written in with an

¹ Inquiry document 23

- objection and who had not; he had never met some of the people involved before. It was the SDNPA's duty.
7. There was an opportunity for a technical adviser to comment on this matter initially but on the second day the response was from Mr Ainsley, who is not an email expert. The Inspector was not satisfied on this matter and so adjourned the Inquiry. At the review stage we ended up with a report from the technical officer, Paul Barnes, who said there had been failure of the backup system in that period. Although Mr Wilcox says that the email was in the wrong email box, the SDNPA technical department said there had been a failure and that is why the Inspector asked for that process to restart.
 8. Time is claimed for one day wasted in preparation and responding to the SDNPA email review.
 9. Mr Wilcox referred to the RA and OSS; their lack of response until March was because they say they were not notified. So when Mr Wilcox lists people and/or bodies and says that silence can be seen as acceptance, this is not necessarily the case. When notified of the opportunity to object, they did so. The failure of the process is why we are here today. Whether that responsibility lies with the Planning Inspectorate or the SDNPA is not relevant; Mr Salisbury was present because people were not notified.

The submissions by Mr Wilcox for the South Downs National Park Authority

10. The relevant test has two limbs; first, there must be unreasonable behaviour; and second causation, in that it caused loss alleged to arise. Costs are a classic discretionary exercise and conduct in the round is relevant.
11. In relation to the Retention Schedule the retention of records has not caused additional Inquiry time. What happened was that on first day it was identified that two interested parties had not been notified; one was here anyway and the other was Mr Fleming. As a consequence of this the first adjournment arose and that would have occurred regardless of retention issues. The Order was re-notified in the round but there was no additional oral evidence. The Retention Schedule is not a good basis for the costs application.
12. It is accepted that the omission of notification to Mr Fleming was as a result of human error – there was an oversight because it was in the wrong email box. The issue of the potential interested party was flagged in the community statement of case and SDNPA asked for further information but nothing was said until inquiry opened. Since the only people not notified, who should have been, were from Binsted Parish Council it is unclear who else the statement of case might be referring to. Had they worked with SDNPA at that stage the issue could have been resolved at outset, but they did not assist. This is not helpful from a Parish Council, who are public authority. The difficulties faced by objectors are as a result of their own conduct.
13. The Inquiry was initially set for three days and two full and two half days were used, albeit over a year. Therefore it has not been extended by delay anyway. The Inquiry could have been concluded in less time had the objectors, including Mr Salisbury, heeded advice not to raise irrelevant matters such as planning matters but he continued to raise them. In terms of conduct in round, the length of the Inquiry is to do with the constant raising of irrelevant matters.

14. The adjournment to July 2019 was due to the Planning Inspectorate rather than the SDNPA and that is relevant to that inconvenience.

Reasons

15. The circumstances arising in relation to this Inquiry are set out in the Preliminary Matters of the Order decision. The SDNPA accepted that an error caused the failure to provide all the relevant information to the Planning Inspectorate initially. As a result, the Planning Inspectorate, on behalf of the Secretary of State, could not give notification of the Inquiry to all statutory parties at the outset. Whilst the applicant referred to the SDNPA Retention Schedule I do not consider this to be directly relevant to these matters.
16. I am satisfied that the failure to submit all the statutory objections and representations amounted to unreasonable behaviour on the part of the SDNPA. As a direct result of that I found it necessary to adjourn the Inquiry on 18 July 2018 and subsequently to ask that the Order be readvertised.
17. Due to failures in the Planning Inspectorate's own notification of the resumed Inquiry on 18 March 2019 it was then necessary to adjourn the Inquiry for a second time on 19 March.
18. The SDNPA proof of evidence noted that the "*...community statement² claims that...(4) some objections (for which details are not provided) were not included in the SDNPA's Statement of Case...*" and continued "*(4) The SDNPA has endeavoured to submit all correctly made representations to the Order to the Planning Inspectorate, as required. There is no specific requirement to include objections in the order making authority's statement of case, however, copies were attached to the SDNPA's Statement of Case in Appendix 6, along with copies of representations made prior to the making of the Order (Appendix 4), to assist the Inquiry. The SDNPA is not aware of any omissions, but invites further clarification on this point.*"
19. There is no information to show that the SDNPA contacted Mr Salisbury directly prior to the Inquiry to clarify this matter. It would be fair to say that there were a number of procedural matters raised in relation to the Order, which appeared to be an attempt to derail the Inquiry and prevent confirmation on a technicality. This may have led to less weight being given to the raising of this matter, which was relevant to the Inquiry procedures.
20. The continued intimation by the applicant that there could be a number of people who may wish to speak at the Inquiry but had been denied the opportunity due to the failures in notification, was part of the concern to ensure adequate sitting time was available. To that extent I consider that behaviour 'in the round' is relevant in my consideration. However, I do not consider that Inquiry time was unduly extended by reference to irrelevant matters.
21. There had been complaints regarding the proposed venue ahead of the Inquiry, which were resolved by use of the Alton Maltings. However, previous bookings meant that it was agreed, unusually, to resume the Inquiry on both occasions on a Monday, again in consultation with all parties on the understanding that this would mean that the venue was available for three days if required.
22. I am satisfied that at both adjournments the time that might be required to deal with the relevant evidence was discussed. It was open to any party to say

² Which was produced, coordinated and presented by Mr Salisbury

- that they did not consider the suggested time to be necessary; that they were only available at a specific time, which I would have sought to accommodate; or, that someone else would represent them at the Inquiry.
23. The Inquiry sat for four days in total across five days – due to half days on 18 July 2018 and 8 July 2019 - of nine possible Inquiry sitting days. As noted in my decision, I consider that one day was taken in dealing directly with the issues arising from the failure to submit all the statutory objections at the appropriate time. I consider it likely the Inquiry could have been completed within the original charted time 17 – 19 July 2018 had these issues not arisen.
24. Being satisfied that the SDNPA behaved unreasonably in their failure to submit all the required documents to the Inquiry I consider unreasonable expense in needing to attend the Inquiry arose in relation to all the time set aside for the first sitting, and potential sitting, time of 17 – 19 July 2018.
25. Whilst the matters arose following on directly from the problems caused by the SDNPA, I cannot ignore the issues arising from the Planning Inspectorate's failure in relation to the second proposed sitting time of 18 – 20 March 2019. We did make use of two of the three scheduled days but I do not consider that any expense associated with the inability to make use of the third day – and complete the Inquiry at that time – can be fairly placed on the SDNPA.
26. Whilst it may be that the additional part day on 8 July 2019 would not have been required had the statutory requirements been met initially, I consider that the SDNPA cannot be held responsible for additional expense arising from issues caused by the Planning Inspectorate in needing to adjourn to this date; to this extent there was no unreasonable behaviour on the part of the SDNPA.
27. In addition to the Inquiry time, the applicant noted that he had spent a day preparing and responding to the SDNPA review of the issues, which was asked for during the initial adjournment. It was the findings and responses to them which led to the requirement for readvertisement of the Order. I consider that this was as a direct result of the unreasonable behaviour of the SDNPA in not submitting all the statutory objections that the review, and comments thereon, occurred. As such I consider that the additional preparation time caused unnecessary expense to the applicant.

Costs Order

28. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the South Downs National Park Authority shall pay to Mr Ian Salisbury, the costs of the proceedings described in the heading of this decision limited to those costs incurred in relation to attending, or potentially attending, the Inquiry on 17 – 19 July 2018 and one day of preparation in relation to the statutory objection review process carried out in September/October 2018; such costs to be assessed in the Senior Courts Costs Office if not agreed.
29. The applicant is now invited to submit to the South Downs National Park Authority, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

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