



Costs Decision

Inquiry opened on 19 December 2018

by Sue Arnott FIPROW

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

Decision date: 4 November 2019

Costs application in relation to Order ref: ROW/3198009

- 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 on behalf of Professor R Tregay for a full award of costs against Rutland County Council.
- The inquiry was held in connection with the Rutland County Council District Council (Clipsham) Definitive Map and Statement Modification Order No 1 of 2017.

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

Preliminary matters

1. The application was made orally before the close of the inquiry on 27 September 2019 by Ms Meager (of Counsel) on behalf of Professor R Tregay, an objector to the Order.

Basis for determining an application for an award of costs

2. In rights of way cases, all parties are normally expected to meet their own expenses. Irrespective of the outcome of an order, (subject to the exceptional cases noted in Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09 Version 2 dated 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. The costs must be quantifiable and incurred in the hearing or inquiry process.
3. Circular 1/09 makes clear that, by analogy, the principles set out in the Government's Planning Practice Guidance (PPG) relating to planning appeals and the award of costs is also applicable to parties in rights of way cases.
4. I have considered this application for costs in the context of Circular 1/09, the relevant part of the PPG, the case papers, the submissions made by both parties in relation to the costs application and all the relevant circumstances.

Reasons

5. The applicant for costs, Professor Tregay, argued that RCC had behaved unreasonably insofar as it had "*pursued an order with a fundamental defect that renders it incapable of confirmation*", this being one of the examples of unreasonable behaviour set out in Circular 1/09.
6. Professor Tregay's submission was dependent on rejection of the Order on the basis that the claimed footpath as described in the Order (from point A to B) cannot exist as a cul-de-sac resulting from a finding that Clipsham Park Wood

is not a 'place of popular resort'. If it is determined that the Order, as made, had no reasonable prospect of success since the fundamental nature of the claimed path could not amount to a highway, then the objector argues that this point should have been fully addressed by RCC long before it was raised (by the Inspector) at the inquiry. There is no reference to the point being fully considered in any report or statement produced by RCC before the inquiry. As a consequence, Professor Tregay had incurred unnecessary expense in addressing the evidence presented over the five days of the inquiry when this technical matter should have been considered much earlier by the authority.

7. Responding to the claim for costs on behalf of RCC, Mr Stedman-Jones (of Counsel) submitted there was nothing unreasonable about the authority's approach. The status of the woodland had been considered by RCC well in advance, as demonstrated by an email from the Forestry Commission dated 14 October 2014¹. There is therefore no basis to the assertion that RCC did not take the matter into consideration. RCC made legal submissions at the inquiry in relation to the question over Clipsham Park Wood being a place of popular resort (as did the objector). Further, Mr Stedman-Jones argued that it is imperative that such points are tested in relation to the legal principle and that RCC's approach had been entirely reasonable.
8. In my Order Decision, I concluded that the evidence was not sufficient to raise a presumption of dedication as a public right of way along the Order route since the claimed usage was not enough to show the required level of use over the full 20-year period. Consequently, the Order has not been confirmed but on grounds which do not relate to the cul-de-sac issue. The basis for this claim for costs therefore falls away.
9. However, since that is the matter on which this claim for costs rests, I set out my conclusions on the issue in brief in paragraphs 67-75 of the Order Decision. For the reasons given, it is my view that it would not have been wholly inappropriate to record A-B as a public footpath had the evidence of use been sufficient to warrant confirmation of the Order.

Conclusions

10. In the circumstances and given my decision not to confirm the Order for other reasons, I conclude that an award of costs would not be appropriate in this case.

Formal Decision

11. 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.
12. A copy of this decision letter has been sent to the Council.

Sue Arnott

Inspector

¹ Listed as document 16 in the Order Decision
