

|  |
| --- |
| **Costs Decision** |
| Hearing opened on 21 June 2022 |
| **by Heidi Cruickshank BSc (Hons), MSc, MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 April 2022** |

|  |
| --- |
| **Costs application in relation to Order Ref: ROW/3224688** |
| * 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 J Cheal, Mogers Drewett, on behalf of Mr & Mrs Edwards and Mr DK Legg for a partial award of costs against Axbridge Bridleways Association.
 |
| * The Inquiry was held in connection with The North Somerset District Council (Upgrade part of Footpath AX20/8 to Bridleway AX20/9 and addition of Bridleway AX20/9 Locking Head Drove, Locking) Definitive Map and Statement Modification Order No. 5 2018.
 |
|  |

Decision

1. Theapplication for an award of costs is refused.

The submissions

1. The application was made on behalf of the objectors to the Order by their legal representative. It was said that the case could and should have been dealt with by way of written representations and that the costs of the difference between use of that procedure and the hearing procedure should be met by those asking to be heard. The application was made orally at the close of the hearing, on 22 November 2021.
2. The applicants for the Order, Axbridge Bridleways Association (ABA), spoke in support of it at the hearing as North Somerset Council (NSC) took a neutral stance. They indicated that a hearing was needed as they felt that the case was more complicated than the objectors indicated.

Reasons

1. The Planning Practice Guidance (PPG) and Defra Rights of Way Circular 1/09, version 2, advise that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the process.
2. Parties normally meet their own expenses with the costs regime intended to encourage proper use of the system. It is aimed at ensuring that all those involved behave in an acceptable way and are encouraged to follow good practice, whether in terms of timeliness or in quality of the case they are making.
3. Costs will be awarded where the following conditions have been met:
* the party against whom the award is sought has behaved unreasonably; and
* the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
1. As noted in the Order decision this case was initially due to be heard on 1 April 2020 but the introduction of Government Health Restrictions relating to Covid-19 meant that the hearing was postponed.
2. The hearing related to an application and case resting on documentary evidence. There was no user evidence to be tested, which may lead to the need for cross-examination at an Inquiry. Whilst the case was not simple, there was nothing that could not have been dealt with fairly and adequately by way of exchanges of written representations. Having reviewed the case the Planning Inspectorate wrote to all parties in February 2021 noting that the Inspector was content that matters could be dealt with in this way.
3. With a remaining request to be heard, a case conference was organised and held on 22 March 2021 to discuss the way forward. At the case conference I again indicated that I felt the matter could be dealt with by way of written representations, however, the supporters to the Order, ABA, wished to continue with the matter by way of a hearing.
4. A further case conference was held on 19 April 2021 to clarify technical issues and timings, with the hearing opening on 21 June 2021. Due to the volume of matters raised it was not possible to complete the hearing in a day, which would normally be the expectation. As a result, an adjournment was taken and the hearing closed on 22 November 2021.
5. The adjournment of the hearing led to an additional party joining the hearing, which the objectors felt wasted time, looking at decisions relating to inclosure awards in the north of England. Whilst ABA indicated that this witness was required due to the documents submitted by NSC, I would note that these were only 2 pages, compared to over 160 pages of evidence and comments submitted in support of ABA, albeit some of that was repetitious of evidence also submitted late (that is after the date of 5 February 2020), although prior to the opening of the hearing, by another ABA representative.
6. Whilst it is the case that the applicants for costs did not have to pay for a legal representative at the hearing, and it is not compulsory to take part, it is not reasonable to expect landowners affected by such matters not to seek advice. They did not wish to concede to the case being made in relation to the affected land. It is also not reasonable to compare the choice of ABA and NSC, who are regularly involved in such matters and did not feel the need for legal representation, with the choice that might be made by a landowner with no experience of such matters.
7. It is not open to the Inspector, acting on behalf of the Secretary of State, to determine the procedure in relation to such matters. Whilst I remain of the view that the hearing itself did not assist in the understanding of the cases being made, statutory parties to an Order have the right to be heard by a person appointed by the Secretary of State. As such I do not consider that exercising that right can in itself be regarded as unreasonable, even if the matter could have been dealt with by another means.
8. The need for a second day was not as a result of any specific action on the part of the parties to the hearing. It is the case that virtual events often sit for shorter days than physical events and this can lead to additional sitting days in some cases. The discussion entered into by a new witness on that additional day took time but was not in and of itself unreasonable, with the Inspector preventing yet more material being presented at the last minute. Again it did not assist understanding of the case which could not have been derived from the written material presented.
9. Whilst I may agree that the matter could have been dealt with by other means the right to be heard remains a statutory one, which was exercised in this case by one party; I cannot find that to be unreasonable. The volume of evidence presented to the second day of the hearing was notably long but was not entirely new to the parties. As a result, I do not consider that unreasonable behaviour arose in relation to the witness on this matter speaking to the hearing, which was already arranged to run into a second day.
10. I accept that there was what could be viewed as unnecessary expense arising from the need to attend a hearing, rather than simply deal with matters on paper. However, this did not arise from anything which can be categorised as unreasonable behaviour by ABA under the relevant legislation and guidance.

Conclusions

1. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. As a result, the application for a partial award of costs fails.

Heidi Cruickshank

**Inspector**