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| **Costs Decisions** |
| Hearing Held on 24 May 2022Site visit made on 23 May 2022 |
| **by C Beeby BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 21 December 2022** |

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| **Costs Application 1 in relation to Order Ref: ROW/3239564** |
| * The application is made under the Highways Act 1980 (the 1980 Act), Schedule 6 (as amended) and the Local Government Act 1972, section 250(5).
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| * The application is made by Derbyshire County Council for a full award of costs against Mrs Y Anderson.
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| * The hearing was held in connection with the Derbyshire County Council (Public Footpath No.56 (part) – Alfreton, now in the parish of Somercotes) Public Path Diversion Order 2019.
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| **Costs Application 2 in relation to Order Ref: ROW/3239564** |
| * The application is made under the Highways Act 1980, Schedule 6 (as amended) and the Local Government Act 1972, section 250(5).
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| * The application is made by EP Industries Ltd for a full award of costs against Mrs Y Anderson.
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| * The hearing was held in connection with the Derbyshire County Council (Public Footpath No.56 (part) – Alfreton, now in the parish of Somercotes) Public Path Diversion Order 2019.
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Background

1. The costs applications relate to a hearing held on 24 May 2022 into a public path order made by Derbyshire County Council under section 119 of the 1980 Act. The public path order followed an application by EP Industries Ltd, the landowner. One objection to the order was made by Mrs Y Anderson, and I have been appointed to make a determination. The costs procedure was conducted in writing.

Decision: Costs Application 1

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Derbyshire County Council

***Unreasonable behaviour***

1. The Council submits that Mrs Anderson has behaved unreasonably in two key respects:

A) By failing to specify valid or relevant grounds of objection prior to the hearing.

B) By insisting on a right to be heard despite failure to comply with the requisite procedure.

The response by Mrs Y Anderson

1. The Planning Inspectorate invited Mrs Anderson to respond to the costs application made against her, however no substantive response was received.

Reasons

1. I have considered both of these applications for an award of costs in light of the Planning Practice Guidance on Appeals and the award of costs. This advises that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
2. Furthermore, the Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders (updated June 2022) sets out that a person who has made an irrelevant objection and who unreasonably insists on being heard at a hearing or an inquiry risks an award of costs.
3. The objector’s submissions are based on procedural concerns including the lack of an application form for the Order, and a belief that the Order would extinguish or cause the obstruction of an alleged private right of way associated with her property. Minimal reasoning is provided to support the statements made.
4. The Council wrote to the objector in September 2019 explaining, amongst other matters, that an application form was not required by the relevant legislation and that, in this instance, one had not been submitted. This aspect of the objector’s concerns was consequently addressed by the Council some time prior to the hearing.
5. A letter submitted by the objector in the month prior to the hearing continues to make reference to the point about the application form but without additional reasoning. As set out in my decision, the objector has failed to adequately explain how her submission concerning the application form may be relevant. Thus, I have not given it weight in reaching my decision. It follows that I consider the matter to form an irrelevant objection. Although the objector was not legally represented, it nevertheless amounted to unreasonable behaviour to continue to pursue an irrelevant objection on a point which had been adequately addressed by the Council a considerable time before the hearing.
6. Whilst I consider that the effect (if any) on a coexisting private right of way may be a relevant matter for consideration in respect of such an Order, the objector has provided minimal reasoning or evidence in support of this submission. In the absence of sufficient information, the point is wholly unsubstantiated.
7. Furthermore, although an additional point concerning the potential to remove obstructions quickly is raised in a letter submitted by the objector at the hearing, its relevance to consideration of the Order is not explained.
8. The objection would usually have been dealt with by the written representations procedure. The hearing resulted from the exercise, by the objector, of her right to be heard. The insistence on being heard was, however, unreasonable due to the irrelevant nature of the objections. Thus, a hearing could reasonably have been avoided. The unreasonable behaviour directly caused the Council to incur unnecessary or wasted expense in the hearing process.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified. For the avoidance of any doubt, the unnecessary and wasted expense incurred by the Council in participating in the written exchange after the hearing was adjourned on 24 May 2022 and until it was closed on 19 July 2022 is part of the award of costs.

**Costs Order: Costs Application 1**

1. 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 Mrs Y Anderson shall pay to Derbyshire County Council the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. The applicant is now invited to submit to Mrs Y Anderson, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

**Decision: Costs Application 2**

1. The application for an award of costs is allowed in the terms set out below.

**The submissions for EP Industries Ltd**

***Unreasonable behaviour***

1. The applicant (EP Industries Ltd) submits that the respondent (Mrs Y Anderson) has behaved unreasonably in four key respects:

1) By maintaining objections which lack proper foundation and which relate to matters which are not material to the confirmation of the Order.

2) By failure to submit documents within the required timescales of the hearing process.

3) By failure to set out her objections when requested to at the hearing and by reference to additional evidence, thus causing the hearing to be adjourned.

4) By failure to indicate that she had received a document (which the hearing was adjourned in order for her to study) some weeks prior to the hearing.

**The response by Mrs Y Anderson**

1. The Planning Inspectorate invited Mrs Anderson to respond to the costs application made against her, however no substantive response was received.

**Reasons**

1. I have found above that the insistence by the objector on being heard was unreasonable due to the irrelevant nature of the objections. The failure to explain the basis of her objections at the hearing also contributed to the unreasonable behaviour in this regard. The unreasonable behaviour directly caused EP Industries Ltd to incur unnecessary or wasted expense in the hearing process.
2. Turning to the applicant’s second ground, the objector was notified during the hearing process that she may wish to rely on her objection as a statement of case. She was not requested to confirm whether this was her chosen course of action. Furthermore, the submission of a proof of evidence is not a mandatory part of the hearing process. The absence of these two documents, in itself, consequently does not form evidence of unreasonable behaviour on the part of the objector.
3. Nevertheless, and turning to the remainder of ground three, the objector subsequently submitted a number of new documents at the hearing, including letters, photographs and maps. Any reasons for their late submission were not adequately explained. As a result, and due to the nature of the material in question, I consider that these could have been submitted earlier. Unreasonable behaviour has therefore additionally been demonstrated by the failure to submit these documents before the hearing. Their submission at the hearing necessitated the copying of the documents for circulation, and an adjournment for their review by the applicant, causing unnecessary expense in the process.
4. The hearing was adjourned (pending a written exchange and subsequent closure in writing) in order to allow sufficient time for the objector to review the applicant’s statement of case. It is unclear whether the objector’s letter of 30 May 2022 intends to suggest that she had already received the applicant’s statement some weeks prior to the hearing. However, records suggest that the document was first sent to her only a few days before the hearing. Furthermore, the objector stated at the hearing that she had not received it until the previous day. In light of these matters, there is no evidential basis for me to find that unreasonable behaviour has been demonstrated on this final ground.
5. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated by the applicant’s first and third grounds (at paragraph 17 above), and that a partial award of costs is justified.
6. For the avoidance of any doubt, the unnecessary and wasted expense incurred by EP Industries Ltd in participating in the written exchange after the hearing was adjourned on 24 May 2022 and until it was closed on 19 July 2022 is part of the award of costs. Expense incurred in respect of the applicant’s second and fourth grounds (at paragraph 17 above) is not part of the award.

**Costs Order: Costs Application 2**

1. 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 Mrs Y Anderson shall pay to EP Industries Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to grounds one and three set out at paragraph 17 above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. The applicant is now invited to submit to Mrs Y Anderson, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*C Beeby*

INSPECTOR