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| **Costs Decision** |
| Hearing held on 8 November 2022 |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 December 2022**  |

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| **Costs Application in relation to Order Ref: ROW/3280678** |
| * 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 Bedford Borough Council for a full award of costs against the Open Spaces Society.
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| * The hearing was held in connection with the Bedford Borough Council (Brickhill: Footpath No. 9) Public Path Extinguishment Order 2021.
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| Decision: The application for an award of costs is refused.  |

The Submission by Bedford Borough Council

1. The application was made by Bedford Borough Council (the Council) against the Open Spaces Society (OSS) because they considered that the objection maintained was unreasonable and resulted in additional costs and resources. They considered that it was unreasonable for the OSS to request a hearing when the Order could have been determined by written representations. The application was made in writing at the close of the hearing on 8 December 2022.
2. The Council considered that the OSS are well rehearsed in the legislation surrounding public path orders. They have a history of objecting to orders made by the Council stretching back a number of years. They considered that some of the objections were based on issues that fall outside of the remit of the Order referring to their opinion that a diversion or other order should have been made instead of an extinguishment order. They made the OSS aware of this but their objection was not withdrawn.
3. The Council considered that the OSS had not demonstrated why the footpath is needed for public use or proved that it would be well used if it were made available. They have simply stated that it ‘is needed for public use’ but failed to expand on why it is needed when there is open access over Waveney Green.
4. The Council argued that there were similarities to a recently confirmed order involving the OSS which was resolved by written representations. Therefore, the OSS should have withdrawn their request for a hearing and agreed to written representations.
5. The Council are seeking costs which included displaying documents, arranging the venue, pre-inquiry meetings, preparing their opening and closing statements, site notices, preparing for and attending the hearing and printing, milage, and press notice costs.

**The Response by the OSS**

1. The OSS provided a written response after being advised by email on 7 November that the Council were planning on requesting costs. A brief adjournment was held to allow them to read the Council’s written request and prepare a more detailed oral response as they had not previously been provided with a copy of it.
2. The OSS asked if it was the intention to claim costs against the OSS or against their representative personally. The Council advised that if they were following OSS policies then it would be against the OSS rather than their representative. The OSS advised that it was clear from the headed paper that their representative was representing them and they were following its policies.
3. The OSS stated the Council did not inform them that their objection was not ‘unduly made’ in the only letter sent to them dated 5 July 2021.
4. The OSS referred to the Planning Inspectorate letter dated 26 April 2022 where they were offered the choice of dealing with the Order via written representations or to be heard by a person appointed for the purpose. They are exercising their right to be heard.
5. The OSS stated that they thought the costs claimed were excessive.

Reasons

1. The Planning Practice Guidance (PPG) and Defra Rights of Way Circular 1/09, version 2 (Circular 1/09), 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 the 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. The right to object to an Order is a statutory one and costs should not be awarded simply because someone has objected or refused to withdraw their objection. The OSS objection was made on the grounds that the footpath was needed for public use, which is a relevant objection to an extinguishment order. They referred to ‘other reasons’, although they did not expand on this. I consider that it would have been helpful if more detail had been provided in their objection as to why they considered that the footpath was needed and their other grounds for objecting.
2. In their letter to the OSS dated 5 July 2021, the Council requested that they withdraw their objection as they considered that it had no bearing on the confirmation of the Order. By asking for the withdrawal of the objection they appear to have accepted that the objection was duly made.
3. More details of the grounds for objection were provided in the statement of case from the OSS. I appreciate that the Council and the objectors have different opinions as to whether the path is needed for public use or not, but this in itself does not mean that the objector is behaving unreasonably.
4. The OSS did raise some points that were not directly relevant to the Order before me, such as their preference for a diversion of the footpath rather than its extinguishment. However, this was a passing reference and was not actively pursued during the hearing. Very little hearing time was taken up on such matters and I do not consider that this prolonged the event.
5. Whilst I consider that the Order could have been dealt with by written representations, statutory parties do have the right to be heard by a person appointed by the Secretary of State. Providing the grounds for objection are relevant, 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 other means. In any event the hearing did assist me in clarifying some matters which were not raised in the written documents before me.
6. When determining an Order, I must consider the facts of the matter before me. Just because another Order is considered under written representations, it does not follow that this Order should be determined using the same procedure. The OSS must have considered that there were differences in these Orders which required a hearing for this matter and not the other.
7. Had the matter been determined by written representations, as requested by the Council, they would have spent a similar amount of time and incurred similar expenses in preparation, displaying documents and responding to written representations as they would have for a hearing.
8. 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 the OSS 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 and Circular 1/09, has not been demonstrated. As a result, the application for an award of costs fails.

Claire Tregembo

**Inspector**