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| **Costs Decision** |
| Inquiry opened on 13 June 2023Site visit made on 12 June 2023 |
| **by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)** |
|  **appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 8 September 2023** |

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| **Costs application in relation to Order Ref: ROW/3281765**  |
| * The application is made under the Wildlife and Countryside Act 1981, Schedule 15 (as amended) and the Local Government Act 1972, section 250 (5).
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| * The application is made by Mr T Farthing of Farthing & Co. for a full award of costs against Mr T McMaster.
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| * The Inquiry was held in connection with the Wiltshire Council Parish of Melksham Path No. 107 & Melksham Without Path No. 151 Rights of Way Modification Order 2020.
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Decision

1. The application for an award of costs is refused.

The submissions for Mr T Farthing (the Applicant)

1. The costs application was made at the Inquiry by one of the objectors to the Order. The Applicant is seeking a full award of costs against Mr T McMaster who was the original applicant for the addition of the claimed routes in the parishes of Melksham and Melksham Without. The Applicant has put it to me that the Respondent has acted unreasonably by causing the Definitive Map Modification Order to be made without providing sufficient or accurate evidence, and which has resulted in unnecessary and wasted expense in the Inquiry process.
2. The Applicant maintains that as a result of insufficient or inaccurate evidence that caused the Order to be made, he has incurred costs in terms of submission of objections to the Council in addition to time taken to attend the Inquiry. The Applicant further put it to me that the time taken to consider the application and submit objections, prevented him from being able to attend to, and help resolve, an extremely difficult and sensitive personal family matter.

The response by Mr T McMaster (the Respondent)

1. At the Inquiry, Dr P Wadey provided the response to the costs application on behalf of the Respondent. The Respondent maintained that they supplied evidence of the use of the claimed routes and acted honestly in collecting those statements from people they had seen also using the claimed routes. At that point, the application was submitted to Wiltshire Council who then proceeded to investigate the matter and make a decision as to whether the evidence supported the recording of public rights of way.

Reasons

1. The Planning Practice Guidance (the 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. Parties normally meet their own expenses in such cases. However, the costs regime is intended to encourage proper use of the system and 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.
2. In terms of the conduct of the Respondent, they found evidence in the form of user statements which they believed, by reason of the number of users and frequency of use, showed that an application to add the claimed routes to the Definitive Map and Statement for the relevant areas was justified. It appears from the evidence before me that the Council then proceeded to consider and investigate the application, the submitted evidence of use and any objections raised, in accordance with their duties. Given that there was some conflicting evidence regarding use over a specific section of the claimed routes, and by reason of the maintained objections, it was necessary that evidence was tested at Inquiry.
3. As will be seen from the Order Decision, a number of users presented themselves for cross examination of their evidence at the Inquiry. Under questioning, I found that the users’ oral evidence was consistent with the previously submitted written evidence and statements, and it did not appear to me that that evidence regarding periods and frequency of use had been fabricated or exaggerated. It will be seen from the Order Decision that, on the balance of probabilities, there was, under the provisions of the Highways Act 1980, sufficient evidence to raise the presumption that the claimed routes had been dedicated as footpaths. As such, I do not find that the Respondent acted unreasonably regarding the collection of user evidence or that they acted unreasonably in respect of the submission of the application to the Council.
4. I have immense sympathy for the Applicant in respect of the extremely difficult and sensitive personal family matter that occurred during the period after which the application was submitted by the Respondent and determined by the Council. However, given the above reasoning I do not find that the Respondent was unjustified in making the application or acted unreasonably with regards to the collection and submission of evidence. I also do not find that the Respondent acted improperly in respect of their submissions or conduct at the Inquiry. As such, whilst reiterating my sympathy to the Applicant and his family, I do not find that the Respondent behaved unreasonably and thereby caused the Applicant to incur unnecessary or wasted expense in the process. In accordance with the abovementioned guidance, an award of costs is not justified in this instance.

**Conclusions**

1. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG and DEFRA Circular 1/09, version 2, has not been demonstrated. Consequently, the application for an award of costs fails.

Mr A Spencer-Peet

INSPECTOR