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| **Costs Decision** |
| Inquiry held on 24 October 2023Site Visit made on 23 October 2023 |
| **by G D Jones BSc(Hons) DipTP DMS MA MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date:** |

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| **Costs application in relation to Order Ref: ROW/3305451** |
| * 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 Barnsley Metropolitan Borough Council for an award of costs against Terry Barron of Ivanhoe Homes.
* The Inquiry was held in connection with the Metropolitan Borough of Barnsley (West Riding of Yorkshire County Council Definitive Map and Statement) (Dearne) Modification Order (No. 20) 2022.
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| **Decision: An award of costs is made.** |

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**Background**

1. At the Inquiry, the representatives of Barnsley Metropolitan Borough Council (the Council) stated that it would like to make an application for an award of costs against Mr Barron of Ivanhoe Homes.  As he, nor anybody else acting on behalf of Ivanhoe Homes, was present to hear the application or to respond, I decided to allow the Council to make the application via correspondence.  This was communicated to all the effected parties via email on 24 October 2023.
2. The email went on to suggest a timetable as follows:
* The Council to submit its application in writing, copying-in Mr Barron, by Friday 28 October 2023 [sic];
* Mr Barron to respond in writing to the application, copying-in the Council, by midday on Friday 3 November 2023; and
* The Council to make any final comments, copying-in Mr Barron for information only, by midday on Wednesday 8 November 2023.
1. The email also stated that if the suggested timetable were to pose any concerns that they should be communicated as soon as possible, and by midday on Thursday 26 October 2023 at the latest. No such concerns were raised, notwithstanding, the erroneous date (Friday 28 October rather than 27 October).
2. The Council submitted its application in writing on 27 October 2023. However, it does not appear to have copied-in Mr Barron. Nonetheless, a copy was sent to him by the Inspectorate early on Monday 30 October 2023. No response to the application was received from Mr Barron or anyone else on behalf of Ivanhoe Homes by Friday 3 November 2023. A further deadline was granted to Mr Barron, extended until midday on Wednesday 8 November 2023. However, as no response to the application for an award of costs was received, Mr Barron has been advised that this Costs Decision will be made in the absence of one.

**Submissions**

1. The Council states that upon submitting the Order and the three objections to the Inspectorate, it considered the matter could be adequately dealt with by using the written representation procedure and communicated this as its preference. It adds that one objector, Mr Barron of Ivanhoe Homes, rejected the use of the written representation procedure and ‘insisted’ on the holding of an Inquiry. The Council understands that neither of the other two objectors expressed any preference.
2. The Council also refers to none of the objectors complying with the Inspectorate’s published Inquiry timetable. It advises that one of its officers contacted all three objectors in advance of the Inquiry to enquire of their intentions; Mr Barron indicated that he might attend, the second did not respond, while the third said he would not attend.
3. The Council maintains that on the basis that Mr Barron stated he may be likely to attend, it was he who ‘insisted’ on the Inquiry, and that public notice of the Inquiry had already been published, it was put to the task of continuing to prepare for the Inquiry, involving booking a venue, maintaining site notices, preparing case bundles to facilitate the Inquiry and officer time to prepare and attend the Inquiry.
4. The Council considers that having ‘insisted’ on the Inquiry instead of the written representations procedure, then not complying with the Inspectorate’s timetable and ultimately ‘refusing’ to attend the Inquiry, Mr Barron has acted unreasonably and put the Council to unnecessary and wasted expense.

**Reasons**

1. I have considered this application for costs in light of the published guidance available and all the papers submitted in relation to the Order. Irrespective of the outcome of the Order, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily. The Government’s Planning Practice Guidance (PPG) provides guidance on the principles of costs awards and the Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09, Version 2, October 2009 makes it clear that, by analogy, this guidance is applicable to parties in rights of way cases.
2. In rights of way cases the parties are normally expected to meet their own expenses. Costs can only be awarded in relation to unnecessary or wasted expense with regard to the Inquiry process by which the Inspector’s decision is reached.
3. In this case it appears that the Inquiry procedure was followed in preference to written representations because of Mr Barron’s submissions on the matter. Despite this, no one attended the Inquiry on his behalf or on the behalf of Ivanhoe Homes. Nor did Mr Barron give clear forewarning that this would be the case. It was only once I had opened the Inquiry, following a phone call made by a Council officer at my request, that Mr Barron confirmed that no one from Ivanhoe Homes, including himself, would be attending.
4. In spite of having been provided with adequate opportunity to respond to the Council’s costs application, Mr Barron has failed to provide any such response nor to offer any coherent justification for seeking to have an Inquiry yet failing to attend. This is unreasonable behaviour, which will have caused the Council avoidable expense associated with the Inquiry. Although the Council has not expressly stated whether it is seeking full or only partial costs, partial costs only are warranted. That is to say only those costs associated with the Inquiry in comparison to the written representations procedure, which would have been followed otherwise.

**Conclusion**

1. I, therefore, find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has been demonstrated, and an award of costs is justified.

**Costs Order**

1. In exercise of the powers under Section 250(5) of the Local Government Act 1972, the Wildlife and Countryside Act 1981, Schedule 15 (as amended) and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Terry Barron of Ivanhoe Homes shall pay Barnsley Metropolitan Borough Council the costs associated with having followed the Inquiry procedure rather than the written representations procedure, such costs to be assessed in the Senior Courts Cost Office if not agreed. The proceedings relate to those described in the heading of this decision.
2. Barnsley Metropolitan Borough Council is now invited to submit to Terry Barron of Ivanhoe Homes, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

G D Jones

INSPECTOR