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| Mr Lawrence Malyon  Norfolk County Council  Community and Environmental Services  County Hall  Martineau Lane  Norwich  NR1 2SG | |  |  | | --- | --- | | Your Ref: LM/55733/HP453/2 |  | | Our Ref: ROW/3227322 |  | | Date: 05 June 2025 |  | |

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)**

**WILDLIFE AND COUNTRYSIDE ACT 1981 - SECTION 53(2)(b)**

**NORFOLK COUNTY COUNCIL**

**TITLE OF ORDER: NORFOLK COUNTY COUNCIL (THOMPSON, POCKTHORPE LANE) MODIFICATION ORDER 2018**

**APPLICATION FOR AN AWARD OF COSTS**

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to Inspector Sue Arnott’s interim decision of 27 March 2023 confirming the above order subject to modifications. The effect of the order, had it been confirmed as originally submitted to the Secretary of State, was as stated in the preamble to her decision. The inquiry into the order originally opened on 22 February 2022 but was immediately adjourned. It was eventually held on 15 – 17 November 2022. At the inquiry an application for an award of costs was made by Norfolk County Council, as order making authority (OMA), against Mr & Mrs Scott who were statutory objectors. Inspector Arnott prepared a draft cost decision in relation to this application.

2. An objection was made to the proposed modifications and as Inspector Arnott is no longer employed by the Planning Inspectorate, Inspector Mark Yates was appointed to consider it. A second inquiry was held on 26 November 2024 and the final order decision was issued on 30 April 2025. In respect of the OMA’s costs application made at the first inquiry, Inspector Yates has prepared a costs report for the Secretary of State based on the submissions of the parties and Inspector Arnott’s conclusions. As he explains in the report, it was not appropriate for him to reach a decision on the costs application. A copy of his report is enclosed and forms part of the Secretary of State’s decision on the application.

3. During the first inquiry, an application for an award of costs was also made on behalf of Mr & Mrs Scott against Norfolk County Council. This is the subject of a separate decision.

**Summary of costs decision**

4. The costs application succeeds to the extent that a partial award of costs is being made. The formal decision and costs order are set out in paragraphs 11 & 12 below.

# Basis for determining the costs applications

5.The application for costs have been carefully considered in the light of:

* the relevant costs guidance in the Government’s Planning Practice Guidance (PPG) which is applicable to rights of way cases by analogy with planning proceedings
* relevant published policy guidance on awards of costs in section 9 (“applications for costs”) in Defra Rights of Way Circular 1/09
* Inspector Arnott’s interim order decision
* Inspector Yates’ costs report
* the order papers
* and all the relevant circumstances.

6. In definitive map modification order proceedings, as for planning proceedings, the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of unreasonable[[1]](#footnote-1) behaviour by one party resulting in unnecessary expense to another party.

**The Inspector’s costs report**

7. The Inspector’s costs report summarised the parties’ costs submissions made at the first inquiry concerning the application by the OMA against Mr & Mrs Scott. The conclusions on the costs application are in paragraphs 30 to 39 of the report. Paragraph 39 states that Inspector Arnott’s conclusion regarding the costs application is that a partial award of costs would be justified.

8. The costs application was made in relation to several matters which the OMA considered to be unreasonable behaviour on behalf of Mr & Mrs Scott. Inspector Arnott addressed these matters and the report summarises her conclusions relating to each one. Not all were considered to constitute unreasonable behaviour, however paragraphs 31 and 34 of the report refer to specific items of late evidence submitted during the inquiry on behalf of Mr & Mrs Scott which in turn resulted in additional inquiry time being necessary to consider them. Inspector Arnott concludes that the submission of this evidence could have been made earlier and as such constituted unreasonable behaviour.

### Reasons for decisions

9. Having carefully considered the Inspector’s costs report, along with all the available evidence, the Secretary of State generally agrees with the conclusions and accepts that a partial award would be justified in the particular circumstances.

10. As to the extent of the award, the Secretary of State takes the view that it be limited to the associated additional expense incurred by the late submission of the evidence identified in paragraphs 31 and 34 of the report. For the avoidance of doubt, the Secretary of State does not decide the amount of costs payable. This is for the parties’ agreement or, if necessary, via application for a detailed assessment in the Senior Courts Costs Office.

**FORMAL DECISIONS**

11.For these reasons the Secretary of State has decided that a partial award of costs be made in favour of Norfolk County Council as set out in the costs order below.

**COSTS ORDER**

12. Accordingly, the Secretary of State for Environment, Food and Rural Affairs, in exercise of his powers under section 250(5) of the Local Government Act 1972, and section 53(2b) of the Wildlife and Countryside Act 1981, and all other powers enabling her in that behalf, **HEREBY ORDERS** that Mr & Mrs Scott shall pay to Norfolk County Council their costs of the order proceedings before the Secretary of State limited to the expense incurred in respect of the late evidence submitted to the first inquiry into the order; such costs to be assessed in the Senior Courts Costs Office if not agreed. The subject of the proceedings was the rights of ways order more particularly described in the Inspector’s decision on the order.

13. Norfolk County Council are now invited to submit to Mr & Mrs Scott’s representative, Mr Andy Dunlop, to whom a copy of this decision letter has been sent, details of those costs with a view to reaching agreement on the amount.

Yours faithfully

E. R. Humphrey

ELIZABETH HUMPHREY

Authorised by the Secretary of State

to sign in that behalf

1. For the avoidance of doubt the Secretary of State does not consider that a costs application is, in itself, unreasonable. [↑](#footnote-ref-1)