



Costs Decisions

Inquiry opened on 28 June 2011

by **Alan Beckett BA, MSc, MIPROW**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: **29 SEP 2011**

Costs application in relation to **FPS/Q1770/7/70R**

- 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 Hampshire County Council ('the County Council') for a partial award of costs against Mrs Maureen Comber of The Old Cottage, Frith End, Bordon, Hampshire, GU33 0QS.
- The inquiry was held to determine the Hampshire (East Hampshire District No. 27) (Parish of Headley) Definitive Map Modification Order 2008.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

Costs application in relation to **FPS/Q1770/7/70R**

- 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 Lithuanian House Limited ('LHL') for a partial award of costs against Mrs Maureen Comber of The Old Cottage, Frith End, Bordon, Hampshire, GU33 0QS.
- The inquiry was held to determine the Hampshire (East Hampshire District No. 27) (Parish of Headley) Definitive Map Modification Order 2008.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The submissions made on behalf of Hampshire County Council

1. The County Council fully accepted the need for the inquiry to take place following the quashing of the previous Inspector's decision and costs were not sought in respect of the inquiry. The application was made for a partial award of costs limited to four hours of work undertaken by both Mr Austin and Mr Piper in preparation for the inquiry.
2. It was claimed that Mrs Comber had behaved unreasonably in her approach to the second public inquiry into the Order. In her Supplementary Statement of Case dated 18 May 2011, Mrs Comber stated '*the Planning Inspectorate already has copies of the material provided on behalf of the Applicant at the earlier public inquiry held in connection with this matter, which commenced on 29 September 2009*'. The Supplementary Statement of Case also stated that '*The Applicant continues to rely on all of the material previously submitted to the Inspectorate in connection with the previous inquiry*'.

3. Mrs Comber's previously submitted material amounted to 400 pages of documentary evidence much of which was of no relevance to the question of whether a public right of way subsisted over the route described in the Order. The 'covering letter' of 13 July 2009 which formed Mrs Comber's Statement of Case for the first inquiry amounted to 60 pages. Mrs Comber's reliance upon the previously submitted material had resulted in time having to be spent researching and considering that material.
4. Pages 3-6 of Mrs Comber's initial statement of case related a number of irrelevant matters; the consent order of the Court of Appeal into the 80 acres of land to the west of D; to the Chief Commons Commissioners decision regarding the claims for rights of common on Broxhead Common; and to a re-submission of papers relating to a claim for footpath 3 to be upgraded to bridleway. Within these irrelevant pages were references to a number of appendices to the Statement of Case which were of no relevance to the matter before the inquiry.
5. Furthermore, pages 8-11 of the initial Statement of Case discussed speed limits; the maintenance of Cradle Lane; bridleway 504 at Sickles Hatch; fencing and made reference to yet more appendices (88-92; 95c; 88; 21 and 23); none of which served to forward the consideration of the Order. Nonetheless, because of the approach taken by Mrs Comber, time had to be spent researching and considering the relevance of the matters contained in the 'material previously submitted'.
6. Other parts of the original Statement of Case were considered to be of no relevance to the Order route. Page 28 dealt with a claim for a missing link in the bridleway network but was not part of the issue before the inquiry. Page 30 dealt with a claim for the restoration of the width of bridleway 4. Page 31 dealt with the obstruction of gates at the junction of bridleways 4 and 47. Page 33 dealt with the claim for the restoration of the original line of bridleway 47. Pages 43-50 dealt with the resubmission of a claim for the upgrading of footpath 3. All of these matters were accompanied by numerous appendices.
7. A substantial part of the material on which Mrs Comber relied to make her case was of no relevance to the determination of the Order and yet Mrs Comber continued to rely upon that material prior to the second inquiry. The first inquiry into this matter had been held 21 months ago; as Mrs Comber continued to rely on all the material submitted, that material had to be read, analysed and assessed for relevance. Those parts of Mrs Comber's material identified above, not being of any relevance to the issues being contemplated by the inquiry, had resulted in unnecessary work being undertaken and expense being incurred in preparation for the inquiry. In persisting with her reliance upon irrelevant material, Mrs Comber had behaved unreasonably.

The submissions made on behalf of Lithuanian House Limited

8. The application for a partial award of costs supported the application made by the County Council and was made on similar grounds. The case for the confirmation of the Order route as a whole and that part of the route relevant to LHL had by virtue of the manner in which the material had been submitted and relied upon by Mrs Comber entailed examination of voluminous material which was either of no relevance whatsoever or was of such tenuous relevance that no reasonable Applicant would have presented it for consideration.

9. Mrs Comber's Statement of Case was just that; pre-inquiry correspondence was not the appropriate mechanism by which the volume of documentation could be negotiated down. Only when the case comes before the inquiry will the relevance of the submitted material be demonstrated. Document 13 (the County Council's bundle) from the first inquiry is not in issue; the application for costs relates to the time required to consider the volume of material put forward by the Applicant (Document 1 from the first inquiry) much of which related to irrelevant matters concerning those parts of Broxhead Common not crossed by the Order route.
10. The case referable to the use of Broxhead Common was presented on the basis that it was relevant to the existence of a route to the north which was said to be the Order route. However, an examination of the material revealed that the documents related to a much wider range of issues than the use of Broxhead Common as the County Council's costs application had set out. All this material had to be read and considered; the time spent giving consideration to material which criticises the County Council or which seeks to raise a claim for other ways not associated with the Order route was time which was wasted unnecessarily as a result of Mrs Comber's unreasonable approach. It was inexcusable for Mrs Comber to resubmit material which was irrelevant.
11. An award of costs was sought, limited to half a day of preparation time for each of Counsel and Mr Montgomery.

The response made on behalf of Mrs Comber

12. Both applications for costs were groundless. It was significant that no application for costs was made at the end of the first inquiry; the applications made related to what has happened at this inquiry and not what has happened before. It was submitted that Mrs Comber could not have acted in any other way.
13. The pre-inquiry correspondence with the Planning Inspectorate established that all the evidence which was made available to the first Inspector would be made available to the Inspector at the second inquiry. An opportunity had also been given to add further evidence which Mrs Comber had taken advantage of; a Supplementary Statement of Case had been submitted together with additional witness statements to focus attention onto the live issues following the quashing of the first Inspector's decision by the High Court.
14. In his opening statement Mr Grant had made reference to what the first Inspector had listed as document 13. This was a bundle of documentary evidence which had been referred to extensively during the second inquiry; it was inconceivable that the documentary evidence could be ignored. As a matter of law, the Planning Inspectorate could not ignore the documentary evidence which had been submitted to the first inquiry having initially accepted that evidence before the first inquiry and the decision of the first inspector having been quashed.
15. Additionally, both parties now seeking their costs were present at the first inquiry and were therefore familiar with all the material. In addition, if there was material that was considered to be irrelevant then concerns should have been raised in correspondence prior to the commencement of the inquiry. Finally, much of the material submitted related to Broxhead Common and was therefore more relevant to the County Council's case in objection than to Mr

Grant's. It was considered that the County Council's application was groundless and Mr Grant's application even more so.

Reasons

16. I have considered this application for costs in the light of the published costs policy guidance in Defra Circular 1/09 (version 2, October 09) and Circular 8/93 and all the relevant circumstances. Irrespective of the outcome of the order – subject to the exceptional cases noted in Circular 1/09, paragraphs 9.6 and 9.7 – costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
17. The matter before the inquiry was whether the evidence adduced demonstrated on a balance of probabilities, that a public right of way on horseback subsisted over the route described in the Order plan and schedule. The claimed bridleway formed a continuous route between Cradle Lane (a Byway Open to All Traffic) and bridleway 54 with the two halves of the route being intersected by Picketts Hill.
18. The position of the Order route is therefore readily identifiable and other than the points at which the route connects with Cradle Lane, bridleway 54 and Picketts Hill, the Order route is not linked with any other public highway within the parish. As the County Council point out, parts of Mrs Comber's Statement of Case and appendices relate to her claim that footpath 3 should be upgraded to the status of bridleway; that bridleway 4 should be restored to what Mrs Comber claims to be its former width; that bridleway 47 should be restored to what Mrs Comber contends is its original line; and that passage along bridleways 4 and 47 was impeded by the presence of gates.
19. None of the routes identified in the Applicant's Statement of Case (footpath 3, bridleway 4 and bridleway 47) connect directly with the route which was in issue at the inquiry. Consequently the status, position or width of footpath 3, bridleway 4 and bridleway 47 had no bearing or relevance to the matters under consideration at the inquiry.
20. Similarly, it is clear from the correspondence which appears on the files relating to this case, that Mrs Comber has been dissatisfied with the approach taken by the County Council to rights of way matters and to the management of Broxhead Common. There are numerous channels open to Mrs Comber through which her concerns about, or dissatisfaction with, the County Council's performance can be addressed, but an inquiry into whether a public right of way has come into existence over the Order route through relatively recent long use is not one of them. These matters were irrelevant to my consideration of the Order.
21. Furthermore, the views of Mrs Comber as to the extent of the public's rights over Broxhead Common in general, the recitation of the claims made to the existence of rights of common over what is now Mr Whitworth's fenced land and Mrs Comber's views on the validity of the Appeal Court's decision regarding rights of common over Mr Whitworth's land were also not relevant. Of the documents relating to the question of rights of common, the only one which could be said to have been of relevance to the Order route was the 1974 report of the Chief Commons Commissioner. However, the relevance of that document as evidence of the existence of a public bridleway over the claimed route was somewhat limited.

22. At the inquiry, recourse to the bundle submitted by Mrs Comber to the first inquiry (Document 1 from the first inquiry) was only made on a limited number of occasions. Mrs Comber's initial bundle contained (amongst many other things) copy extracts of the relevant Finance Act 1910 documents; a number of photographs of the junction of the Order route with Cradle Lane at point F, and the report of the Chief Commons Commissioner; these documents were referred to during the course of the inquiry. However, the vast majority of the papers contained in Mrs Comber's bundle were not referred to, primarily as they were not relevant to the matters in hand.
23. Whilst I accept that both the County Council and LHL had been present at the first inquiry and would therefore have been familiar with the material that was re-submitted by Mrs Comber, I also accept that the first inquiry had been held almost two years ago. In my view, the parties cannot be expected to retain a detailed working knowledge of some 400 pages of documents over that period of time.
24. In the weeks prior to the second inquiry, Mrs Comber unequivocally stated that reliance was placed on all the material which had been submitted to the first inquiry. The material put forward in support of the confirmation of the Order was contained within Mrs Comber's original Statement of Case and its appendices. In such circumstances, I consider that the representatives of the County Council and LHL would have acted in a foolhardy, if not negligent, manner had they chosen not to consider once again all the submitted material; as Mr Austin put it, there may have been some 'nugget' of information within the documentation that may have been overlooked previously. The majority of the material in Mrs Comber's original Statement of Case and appendices was, however, irrelevant to the question of whether public bridleway rights had been dedicated over the Order route.
25. I consider that the approach to the second inquiry taken by Mrs Comber left the County Council and LHL with no other option but to once again read the documents that made up Mrs Comber's original Statement of Case and to consider the implications of those documents. In stating that reliance was to be placed on a large quantity of irrelevant material, the approach taken by Mrs Comber in the weeks before the second inquiry was unreasonable and I am in no doubt that this approach led to preparation time being unnecessarily wasted by both the County Council and LHL.

Conclusions

26. For these reasons I conclude that unreasonable behaviour, as described in the Circulars, resulting in unnecessary or wasted expense, has been demonstrated.

Formal Decision and Costs Order for Hampshire County Council

27. In exercise of my powers under section 250 (5) of the Local Government Act 1972, the Wildlife and Countryside Act 1981, Schedule 15 (as amended) and all other powers enabling me in that behalf, I HEREBY ORDER that Mrs Maureen Comber of The Old Cottage, Frith End, Bordon, Hampshire will pay to Hampshire County Council, the costs of the order inquiry which commenced on 28 June 2011 limited to those costs incurred in preparation for the inquiry estimated by the County Council to be equivalent of four hours of Mr Austin's time and four hours of Mr Piper's time; such costs to be assessed in The Senior Courts Costs Office if not agreed. The proceedings concerned the order detailed above.

28. Hampshire County Council is now invited to submit to Mrs Maureen Comber, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by The Senior Court Costs Office is enclosed.

Formal Decision and Costs Order for Lithuanian House Limited

29. In exercise of my powers under section 250(5) of the Local Government Act 1972, the Wildlife and Countryside Act 1981, Schedule 15 (as amended) and all other powers enabling me in that behalf, I HEREBY ORDER that Mrs Maureen Comber of The Old Cottage, Frith End, Bordon, Hampshire will pay to Lithuanian House Ltd, the costs of the order inquiry which commenced on 28 June 2011 limited to those costs incurred in preparation for the inquiry estimated by Lithuanian House Ltd to be equivalent of one half-day of Mr Grant's time and one half-day of Mr Montgomery's time; such costs to be assessed in The Senior Courts Costs Office if not agreed. The proceedings concerned the order detailed above.

30. Lithuanian House Ltd. is now invited to submit to Mrs Maureen Comber, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by The Senior Court Costs Office is enclosed.

Alan Beckett

Inspector

The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 - section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment¹. This is handled by:

The Senior Courts Costs Office²
Clifford's Inn
Fetter Lane
London EC4A 1DQ
(Tel: 020 7947 7124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court³. This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL.

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

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¹ The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. These rules are available online at http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm
You can also buy the Rules from The Stationery Office bookshops or look at copies in your local library or council offices.

² Formerly named the Supreme Court Costs Office

³ Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.



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The Three Counties Bridleway
Group
Mrs M Comber
The Old Cottage
Frith End
Bordon, Hampshire
GU35 0QS

Your Ref:
Our Ref: FPS/Q1770/7/70R
Date: 29 September 2011

Applicant

Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53

Hampshire County Council

The Hampshire (East Hampshire District No. 27) (Parish of Headley) Definitive Map
Modification Order 2008

Please find enclosed a copy of the Inspector's decision on the applications for awards of costs in respect of the above-mentioned Order.

Please note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly.

If you have any queries relating to this decision please send them to:

Quality Assurance Unit
The Planning Inspectorate
4/11 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Tel: 0117372 8252

http://www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm

Yours faithfully

Clive Richards

Rights of Way Section

Costs (allow)