

SECRETARY OF STATE FOR TRANSPORT

DEPARTMENT FOR TRANSPORT

**APPLICATION BY MR. RICHARD BUTTERFIELD FOR AN ORDER UNDER 247 TOWN AND COUNTRY
PLANNING ACT 1990**

ORDER REF: NATTRAN/Y&H/ S247/4337

**IN RELATION TO LAND AT WOLFSTONE HEIGHTS FARM CONCERNING THE STOPPING UP AND
DIVERSION OF PART OF HOLMIRTH FOOTPATH 60**

PUBLIC INQUIRY (VIRTUAL EVENT)

COMMENCED ON 24TH AUGUST 2021

ADJOURNED 27TH AUGUST 2021 AND RE-CONVENED 28TH JANUARY 2022.

APPLICATION FOR COSTS (PART CLAIM)

ON BEHALF OF APPLICANT

(Submitted 28th January 2022)

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1. The Applicant makes a Claim for Costs for the unreasonable behaviour of the Council, which has led to unnecessary and wasted expense on the part of the Applicant.
 2. In order to be awarded costs, a party has to show that they have incurred unnecessary or wasted expense as a result of another party acting unreasonably.
 3. In the following we are guided by and use expressions derived from the Planning Inspectorate Guidance on Procedures for Considering Objections to Definitive Map and Public Orders (updated 31st December 2021), as well as the Planning Practice Guidance ('PPG'), as updated from time to time.
 4. The PPG describes (at paragraph 031, Reference ID: 16-031-20140306) that the word "unreasonable" in this context is to be used in its ordinary meaning, as established by the Court in *Manchester City Council v SSE & Mercury Communications Ltd*¹. Unreasonable behaviour in the context of an application for an award of costs may either (i) procedural (i.e. relating to the process); or (ii) substantive (i.e. relating to issues arising from the merits of the appeal).
 5. We should state for completeness and out of fairness that the SoS Inspector does have discretion when deciding an award of costs, enabling extenuating circumstances to be taken into account.

¹ [1988] JPL 774

6. We could have feasibly applied for costs against all statutory consultees. However, the Parish Council wrote what was in the end a generic and rather token letter. Although the Parish Council had a right to attend and/or be represented at the Inquiry, it chose to rely on its written submission, which was again nothing more than a generic and rather token generic letter. The Parish Council, although not attending the Inquiry to substantiate its objection, does have a right not to attend the Inquiry and may rely on its 'written evidence', which as stated is a generic letter. Accordingly, and in line with the relevant guidance, that cannot reasonably be construed as unreasonable behaviour, unless the Parish Council had not informed the Inspector in good time that it was not attending.

7. The Peak and Northern Footpaths Society evidence was in our submission found deeply wanting on examination, but at least the PNFS did front up and attempt to substantiate its objection. It is acknowledged that, unless the Inspector would disagree and although the PNFS was found wanting on examination, this could not amount to unreasonable behaviour for these purposes on the part of the PNFS.

8. The Council's position, as a statutory consultee and thereby statutory objector, is something different, Sir. The Applicant submission is that for the following reasons, the Council has demonstrated unreasonable behaviour, which has led to unnecessary and wasted expense on the part of the Applicant.

9. The headline reasons that the Applicant asserts that the Council has behaved unreasonably, and this unreasonable behaviour has led to unnecessary and wasted expense, are in no particular order but interconnected, as follows:

- 1) The Council's officers, following resolution from its duly convened Strategic Planning Committee, have strayed significantly beyond the parameters of the Committee's reason for objecting to the draft order ('Beyond the Authority for Objection')
- 2) The Council, following 1 above, has in fact not in any way substantiated any aspect of its objection as a statutory objector (the 'Substantive Objection')
- 3) The Council's Senior Legal Officer (Mrs. Sandra Haigh) instructing Mr. Gill and with direct legal stewardship of the Council's objection case, was observed by the Inspector and the Applicant's representative as being in the same room and sat straight opposite the Council's only witness (Mr. Phil Champion) during examination (the 'Procedural Impropriety')
- 4) The Council has obfuscated and not assisted or facilitated the compilation of a Unilateral Undertaking which would see monies paid to them for improvements to the verge on Wolfstones Road (the 'UU Issue')

10. The Applicant briefly elaborates in the following and provides any necessary information with this application for Costs.

Beyond the Authority

11. It was clearly established in XX of Mr. Champion, that the Council's officers had severely broken the parameters of the Council's objection as specified and resolved on by its duly convened Strategic Planning Committee.

12. The said Strategic Planning Committee had, on recommendation from the officers, followed the decision of the earlier Planning Sub-Committee (Huddersfield Area) in objecting on the grounds of safety.

13. Instead of focussing on safety, the Council's officer have taken this

14. I simply refer you to **Paragraph 220 to 251 of the Applicant's Closing Statement** in this respect. In fairness I do not think that Members of the duly elected Committee can be criticised in this respect, but officers have clearly not carried out the duly elected Members' instructions, which is completely unreasonable behaviour on the part of the Council.

15. Accordingly, the Applicant has had to prepare extensively to examine the Council way beyond anything that it would have needed to.

Substantive Objection

16. Even the Inspector has raised at the end of EIC that he did not fundamentally understand what the Council's objection was. We have described in **Paragraphs 247 and 262** of the Applicant's Closing Statement, and elsewhere in the same.

17. The Council, as well as seeing officers acting beyond the authority of Committee, the Council has not at all substantiated its objection (its real and Committee delegated objection) regarding safety.

18. However, the Applicant has had to prepare for the entirety of the Council's Statement of Case, even though its position is very confusing and ambiguous, meaning the objection (whatever it actually is) is completely unsubstantiated. Much unnecessary time, money and resources, including of the public purse, has been incurred and in this sense has been wasted.

The Procedural Impropriety

19. The Council's legal officer being in the same room as its own witness giving evidence and further still passing documents to him, does not in the Applicant's submission, require elaboration. This is manifestly unreasonable behaviour and does not require elaboration.

20. We refer the Inspector to **paragraphs 213 to 219** of the Applicant's Closing Statement.

21. The Council, and in fact the Inspector has now had to adjust as a result of this. The Inspector does of course have powers to issue a costs award unilaterally where in his opinion there has undoubtedly been unreasonable behaviour. Undoubtedly, this event,

which has caused adjustment and thereby expense for all, apart from being seriously improper and has resulted in a separate complaint to the Council², is unreasonable behaviour. That is beyond any doubt.

The UU Issue

22. The Council has obfuscated and not assisted or facilitated the compilation of a Unilateral Undertaking which would see monies paid to them for improvements to the verge on Wolfstones Road.

23. Sir, we were hoping that the Council would return to the proverbial table on this, as we have said in the Applicant Closing Statement.

24. A substantial Draft UU was submitted the Inquiry. The Inspector has elected to deal with this in correspondence. The Inspector requested a written response from the Council, which was duly sent by Mrs. Haigh to the Programme Officer on 21st January 2022.

25. We wrote finally to the Council in a letter dated 24th January 2022 which has been supplied to the Programme Officer.

26. We have now received a final Delegated Decision dated 25th January 2022, sent by email to the Applicant on 26th January 2022, the correspondence for which is attached. The Council is still maintaining that it will not apply the monies towards any improvements to the Verge. This is a position that it is allowed to take, but it has taken all of this time, i.e. until 27th January 2022, to finally establish its position.

27. We say finally establish its position, but the

28. We have tried to engage with the Council, whose original position was that a verge was required. Then it was not required. Now it will only look to a by-the-book 2m sealed pavement (against its own engineers' advice due to it creating drainage problems down the road), but in any event will not apply any monies received from the Applicant through the UU).

29. Moreover, the Council will not answer any further questions, but maintains that a by-the-book pavement is required.

30. Mrs. Haigh on behalf of the Council, on 27th January 2022, finally confirmed that it will not answer any further questions.

31. The Applicant has spent considerable time compiling the UU and attempting to engage the Council at all stages, even asking it for assistance in what it would like to see come forward and the amount of monies involved. The enclosed correspondence shows a complete intransigence and unwillingness to work with the Council at all stages.

² This can be provided but is not thought to be appropriate, unless of course the Inspector would require this.

32. The Applicant has incurred unnecessary expense, whilst trying to work with the Council on this issue.

33. The Applicant is prepared to withdraw this reason for a costs claim, where there is assistance and final clarity on this matter in the next three working days.

Any further information of correspondence can be provided at any time.

**NOEL SCANLON, DIRECTOR & CONSULTANT
FOR AND ON BEHALF OF NSCL, FOR THE APPLICANT
28TH JANUARY 2022**