
Costs Decision

Inquiry held on 28 October 2014

by **Barney Grimshaw BA DPA MRTPI(Rtd)**

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

Decision date: 1 July 2015

Costs application in relation to Application Ref: COM 555

- The application is made under the Commons Registration (England) Regulations 2014, Regulation 37, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr I Flindall, Mr A Wilson and Mrs S Wilson for a full award of costs against Save Penwith Moors.
 - The inquiry was held in connection with the application to register waste land of a manor at Morvah Cliffs, Cornwall.
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Decision

1. I refuse the application for the award of costs.

The submission by Mr Flindall, Mr Wilson and Mrs Wilson

2. In their objection to the application dated 22 November 2013, Mr Flindall and Mrs Wilson stated that, should the matter be referred to a public inquiry then they would request an order for costs against the applicants. The reason given was that the application was vexatious in that the applicants had no personal interest or involvement in the subject land.
3. Subsequently, after the inquiry, Mr Flindall added that having viewed the applicants' website it appeared that the application was vexatious because the applicants were seeking to use the Commons Act 2006 (the 2006 Act) as a tool to obstruct Natural England and prevent the participation of farmers in environmental improvement schemes and their lawful commercial endeavours rather than to achieve accuracy in the commons register as intended by the Act.
4. It was further stated by both Mr Flindall and Mr Wilson that it had been clear that the application land did not fit the criteria for registration as common land and that the application should have been withdrawn.

The response for Save Penwith Moors (SPM)

5. The objectors have misinterpreted the information on the SPM website. In any event, SPM was well aware that whatever its aspirations they would not affect the decision made on the application. A letter dated 6 January 2014 from Lord de Mauley, Under Secretary of State for Natural Environment and Science to Andrew George MP states that *"The motives of the applicant and objectors are not taken into account in determining such applications, nor the effect of future management if land is registered as common land. What matters is whether the applicant can prove to the independent planning inspector, beyond*

reasonable doubt, that they have shown the land meets the regulatory requirements as common land."

6. SPM has taken note of advice given on behalf of the Commons Registration Authority (CRA) in this and other applications.
7. The application was made in the belief that the application land satisfied the criteria set out in the 2006 Act for it to be regarded as waste land of a manor and accordingly to be registered as common land. The initial support of the CRA and positive decisions in previous applications also suggested it would be successful. It cannot therefore be said that SPM has acted unreasonably in this case.
8. Attention is also drawn to PINS Common Land Guidance Sheet 3 which states that "*The applicant, legal advisers and any other persons attending the inquiry or hearing must pay their own costs and expenses*".

Reasons

9. I have considered this application for costs in light of current guidance¹ and the Department for Communities and Local Government Planning Practice Guidance ("the PPG") relating to costs. Costs can be awarded in relation to an application made under Schedule 2 to the 2006 Act by reference to regulation 37 of *The Commons Registration (England) Regulations 2014*². An order for costs may be made against an applicant, in favour of an objector, where, in the opinion of the Inspector, the applicant has acted unreasonably.
10. Current guidance states that it should seldom be appropriate to award costs in relation to an application. However, as set out in both the guidance and the PPG, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense. The word "unreasonable" is used in its ordinary meaning, as established by the courts in *Manchester City Council v SSE & Mercury Communications Limited*³. Unreasonable behaviour in this context may be either procedural or substantive, that is relating to the issues arising from the merits of the case.
11. With regard to the objectors' original grounds, paragraph 4(6) of Schedule 2 to the 2006 Act makes it clear that any person may apply to the CRA to register waste land of a manor as common land. An application cannot therefore be said to be vexatious simply because the applicant has no personal interest or involvement in the subject land.
12. The case put forward by the applicants was that the application land had been manorial land and met the criteria for it to be regarded as waste land of the manor and ought therefore to be registered as common land in accordance with the provisions of Schedule 2, paragraph 4 of the 2006 Act. This was in my view a perfectly legitimate basis for such an application to be made. I do not know whether the applicants also had other reasons for wishing the land to be registered as common. If so, these were not put to me and certainly formed no part of my consideration of the application. Lord de Mauley was also in my view

¹ Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate, Version 2, December 2014.

² SI 2014 No. 3038

³ [1988] JPL 774

correct in stating that the motives of applicants (or objectors) are not taken into account in the determination of applications although I would point out that the relevant test in such cases is that the evidence should show that on the balance of probability the land meets the requirements of the Act not that this must be demonstrated beyond reasonable doubt.

13. In the event, I was satisfied that the application met several of the criteria for registration but I did not accept that it satisfied all the requirements. In particular, I did not think the land could reasonably be regarded as open, unoccupied and uncultivated at the time of the application. However, there are to my knowledge no officially accepted definitions of these terms for the purpose of the 2006 Act and they are open to interpretation in different ways. It is therefore necessary to consider carefully the particular circumstances of each case. Accordingly, whilst I did not agree with the interpretation put forward by SPM in this case, I do not think it can be said that they acted unreasonably in putting forward the arguments they did. I am also aware that there have been a number of applications in the area recently and that different decisions have been reached after consideration of the detailed circumstances of each case and that some of these might have given encouragement to the applicants. Accordingly, I do not think it was clear before the inquiry that the application land did not fit the criteria for registration as common land.
14. PINS Common Land Guidance Sheet 3, referred to by the applicants, does not apply to applications under Schedule 2 to the 2006 Act.

Conclusions

15. Overall, in the light of all the circumstances of this case, it is my view that SPM did not act unreasonably in making the Application and the objectors did not incur unnecessary expense as a result.

Barney Grimshaw

Inspector