

## Costs Decision

Inquiry opened on 21 July 2021

Site visit made on 30 July 2021

**by Paul Dignan MSc PhD**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 November 2021**

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### **Costs application in relation to APP/M9496/C/18/3215789 Land at Mickleden Edge, Midhope Moor, Bradfield, Yorkshire.**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Daniel Thomas Richmond-Watson (on behalf of Dunlin Ltd) for a full or partial award of costs against the Peak District National Park Authority (PDNPA).
  - The inquiry was in connection with an appeal against an enforcement notice alleging engineering operations consisting of the laying of geotextile matting and wooden log rafts on the land to form a track.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. Parties to a planning appeal are normally expected to bear their own costs, but costs can be awarded where the unreasonable behaviour of a party has caused another party to incur unnecessary or wasted expense.
3. The appellant has maintained all along that the enforcement notice is a nullity because it requires the recipient to do something unlawful, or that it is reasonable to anticipate that they must do something unlawful, insofar as the steps give rise to an obligation to give Natural England notice pursuant to section 28E(1)(a) of the Wildlife and Countryside Act 1981 Act, and failure to do so is a criminal offence. For the reasons given in my decision I have found that the notice is not a nullity. The application for full costs alleges that issuing a notice that is a nullity amounted to unreasonable behaviour on the part of the PDNPA, but clearly this is unsustainable in view of my conclusions on the matter.
4. A partial award is sought in relation to what is argued to be unreasonable behaviour in defending the appeal made on ground (f). This is in two parts. First it is argued that the planting requirements set out in the notice do not seek to remedy the breach of planning control, but seek to put the land in a better condition than it was in prior to the breaches of planning control. I have rejected this argument, for the reasons set out in my decision, hence it cannot provide a basis for an award of costs.
5. The second part of this application concerns the specification of aspects of the method of removal of the geotextile matting and log rafts. I have agreed with the appellant that the relevant step is overly prescriptive, but ultimately I consider it unlikely that the approach taken to removal is likely to be much

different, the prescribed method being entirely sensible and not unduly onerous. While I have made the variation sought by the appellant, in the context of the appeal as a whole it is a minor and technical point that need not have consumed the Inquiry time that it did. If anything, the specification would have been of assistance to the appellant. Even in the light of the 'Strines'<sup>1</sup> decision, where a similar variation was made to a notice issued by PDNPA, in view of the sensitivity of this site I do not consider it unreasonable of the PDNPA in this case to seek to ensure that the works would be undertaken in a manner that would safeguard the protected sites.

6. For these reasons I consider that the conditions necessary for an award of costs, either full or partial, against the Council are not demonstrated.

*Paul Dignan*

INSPECTOR

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<sup>1</sup> Appeal Ref. APP/M9496/C/18/3208720