

TRANSPORT AND WORKS ACT 1992

APPLICATION FOR THE AWARD OF COSTS BY PAUL EDMUND BAKER
OBJ/26

REGARDING THE APPLICATION FOR THE PROPOSED NETWORK RAIL
(SUFFOLK LEVEL CROSSING REDUCTION) ORDER

DATE 24 May 2018

1. Claimant :

- 1.1. Paul Edmund Baker, Partner of Messrs E Hudson Baker Chapel Farm Gipping Stowmarket Suffolk IP14 4PT. Occupier of land affected by the proposed changes to rights of way over crossing identified in the order as S12 Gooderhams, S13 Fords Green and S69 Bacton

2. Party Claimed against

- 2.1. Network Rail Infrastructure Limited, 1 Eversholt Street London NW1 2DN

3. Costs applied for:

- 3.1. In regard to extra costs incurred as a result of relying on incorrect information given to the claimant by Network Rails agent's

4. Guidance on the procedures for obtaining orders under the Transport and Works Act 1992

4.1. Section 4.123 indicates:

there are two circumstances where a party to an inquiry or hearing would be likely to be granted an award of costs against another party. These are:

- 4.1.1.(a) where a party is found to have behaved unreasonably and has thereby caused another party to incur unnecessary expense;
- 4.1.2.(b) where a statutory objector successfully opposes the compulsory acquisition of his or her land or rights in land (in whole or in part).

4.2. Section 4.124 indicates

in circumstance (a) behaviour before an inquiry is as relevant in this regard as behaviour at the inquiry itself. In particular, parties should be aware that the procedure rules are designed to secure maximum disclosure and exchange of information before the inquiry or hearing takes place, so that the proceedings can be conducted efficiently and effectively. Any attempt by a party to gain a tactical advantage by deliberately withholding evidence until the inquiry or hearing opens is not only doomed to fail - as the Inspector must give others the opportunity of considering the new evidence - but it could lead to an award of costs if, for example, the Inspector considered it necessary to adjourn the inquiry as a result.

5. Cost application is being submitted in respect to Network Rail and its Agents' unreasonable behaviour.

- 5.1. Poor communication and inefficient consultation causing stakeholders to object after the Order rather than being able to reach common ground solutions prior to the order.
- 5.2. Incomplete investigation of the Order proposals and failure to supply detail when requested.
- 5.3. Supply of incorrect information (then withdrawn at late stage) that was relied upon by stakeholders in good faith.

6. Background to the claim

- 6.1. Although we were fortunate to be included in the first scoping surveys in this process and were aware of and able to respond to the two rounds of public consultation constructive communication all but broke down when seeking clarification of Network Rails

intentions. Particularly regarding the crossings that we have an interest in following the second round of public consultation.

- 6.2. The claimant has had experience dealing with rights of way matters and procedures surrounding them. The claimants land agents and usual rights of way legal advisors were consulted but no representation at the Inquiry was sort. The experience of presentation of case would not outweigh the claimants on the ground knowledge combined with the verbally estimated cost of representation including briefing time and interpretation of Inquiry Evidence that the claimant would still have to have done.

6.3. **Numerous Attempts fail to clarify Order Proposals**

6.3.1. Numerous attempts prior to the order being served were made to clarify Network Rails proposals for these crossings as submitted in OP-INQ-40.

- 6.3.1.1. **14- February 2017** Miss Edwards of Bruton Knowles for Network Rail indicated the skeleton proposals as per the second round would be the basis of the order

By Return I requested further detail to identify the impact on our business

- 6.3.1.2. **15- February 2017** Miss Edwards supplied GEN-04 Design Freeze plans and indicated a site visit could be arranged to discuss detail and collect the land Referencing forms

- 6.3.1.3. **24- February 2017** I requested clarification from Miss Edwards why no contact had been made regarding detail and site visit.

Mr Jackson Of Bruton Knowles replied stating that he had been corresponding with my landlords agent Mr Crossman OBJ/25 and had assumed I had been copied in. At this stage (a month prior to the order notices being served on stakeholders) he confirmed the GEN-04 design freeze maps would be the basis of the order with the treatment of crossing S13 Fords Green virtually as per what is now my proposed order modification.

- 6.3.1.4. **8th March 2017** I emailed Mr Jackson regarding my considerations of the impact of the order on my business and again offered discussion to try to get a mutually agreed proposal to try to address all parties concerns and thus avoid Objections to the proposed order.

6.4. **Network Rail Serve Formal Notice of Order and pre Inquiry due process followed**

6.4.1. **23rd March 2017** Formal notices were served the Order proposals appeared to have been rolled back to a prior design freeze and not to the design as suggested by Network Rails agents only a month before. In common with other stakeholders our only recourse was objection.

6.4.2. **4th May 2018** Objection was lodged specifically identifying that the order was different to the GEN-04 design freeze we were led to believe would be the basis of the order.

6.4.3. **1st November 2018** I attended Pre Inquiry meeting

6.4.4. **16th January 2018** Proof of evidence submitted including proposed alternate for S13 modifications to order based on GEN-04 design freeze

6.5. Inquiry

6.5.1. **13th February 2018** On the **opening day** of the Inquiry the Inspector highlighted that new proposed rights of way cannot be added at a later date to the order if not already notified to landowner.

6.5.1.1. As far as I understood the GEN-04 design freeze plans covering the majority of my proposals had been submitted to the affected S13 Land owners and potentially other stakeholders so my alternate treatment of S13 proposals were not a “new proposed right of Way” and had been consulted on.

6.5.2. **14th-20th February 2018** I attended and contributed to **Strategic evidence phase** of proceedings.

6.5.2.1. Network Rails Evidence disclosed a number of crossing diversion routes had not been surveyed or investigated on the ground including some of the Bacton crossing routes due to lack of access.

6.5.3. Prior to the Bacton Crossings specific evidence being heard correspondence with Network Rail and the Inspector was exchanged regarding if I was to speak my alternative proposal as a modification of the order. I confirmed that I would be.

6.5.4. **15th-16th March 2018** At **Bacton crossing specific evidence** sessions at Bury St Edmunds Network Rail apologises for their agent Issuing the GEN-04 design freeze maps that I had relied upon, they should not have been issued

6.5.4.1. My Contention is that the incorrect disclosure of these maps misdirected my and other parties’ resources.

6.5.4.2. If stakeholders had not received the GEN-04 map or their relevance had been challenged earlier we would have been unlikely to pursue the alternate proposal as a valid modification of the order as per TWO procedure guidance.

6.5.4.3. Why was it only this late stage that evidence that been relied on was withdrawn as Network Rail was in possession of correspondence indicating it was being used as a basis of submission.

6.5.4.4. During these crossing specific sessions further discrepancies in Network Rails submissions were identified including queries regarding land ownership and status of Diversions and discounted alternative routes and assumptions made regarding drainage. (also in **19th April 20018** session Newmarket.)

6.5.4.5. Even within the Inquiry Network Rail would or could not give further detail on the likely impact of the order on the claimant

6.5.5. **24th May 2018 Closing Statement and Filling up of Order...** The removal of GEN-04 map as evidence of consultation weakened the case of my diversion of Bacton Footpath 20 as a valid modification. (Item 3 in the inspectors consideration of my order modification proposals)

7. Summary

I am not seeking to recover costs for what would be a normal liability from land occupation involved in TWO procedures. I am seeking the cost of my extra time away from my usual business caused by Network Rail’s poor communication and my reliance on incorrect information given by them and the late withdrawal of it.