
Costs Decision

Site visit made on 13 February 2017

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 February 2017

Costs application in relation to Appeal Ref: APP/Q3060/C/16/3152503 Allotments rear of 108 to 150 Russell Drive, Nottingham NG8 2BE (Radford Bridge Allotments)

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Commercial Estates Group for a full award of costs against the City of Nottingham Council.
 - The appeal was against an enforcement notice alleging carrying out of engineering operations comprising soil excavation, mounding, regrading of land and the creation of a roadway. And/or works of ground clearance, site clearance and site preparation in breach of conditions attached to planning permissions ref 12/1583/POUT and 15/03129/PVAR3.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The basis of the claim that the Council acted unreasonably is issuing the enforcement notice in the first instance and in issuing a defective notice.
4. As regards the issuing of the notice, this took place against a backcloth of a valid planning permission¹ for residential and related matters, including the regeneration of allotments, on the appeal site. From what I have read, after what the appellant terms 'clearance works' began on the site, the question of whether the works constituted a breach was the subject of dispute between the parties prior to the enforcement notice being issued. The appellant's stance appears to have been carried forward into the appeal.
5. Because of the nature of my appeal decision, the appeal on ground (c) did not need to be dealt with. Nor would it be appropriate for me to make such a determination in the context of a costs decision. That said, from what I saw on the site, in particular the formation of a clearly discernible access track leading into the land from Reynolds Drive, together with what appeared to be earth mounds, the works undertaken appeared to me to have amounted to rather

¹ And a further permission for the variation of a number of conditions.

more than merely site clearance. In the light of this, I am satisfied that the Council had reasonable grounds for concluding that there had been a breach of planning control and that it was expedient to take enforcement action. In this respect therefore, I do not consider the Council acted unreasonably in issuing the notice.

6. Turning to the notice itself, while I have not accepted the appellant's claim that it was a nullity, I have found it to be defective for the reasons set out in my appeal decision. The Council's acceptance that the notice could have been clearer and the extensive amendments suggested in response to the concerns and criticism contained in the appellant's statement of case could be taken as a concession that there were serious shortcomings in the notice. Be that as it may, the Council's appeal case includes cogent and substantive reasons explaining why they adopted the approach they took in issuing the notice. This warranted serious consideration. Moreover, as indicated in my appeal decision, but for the implications of reducing of the size of the 'site', I believe the notice was capable of being saved, albeit doing so would have necessitated a good deal of surgery.
7. I am not satisfied that this is a case where well known relevant legal authorities such as *Miller-Mead* and *Mansi* have been ignored or disregarded. Rather, it seems to me that in all probability the Council's approach was somewhat over ambitious, when perhaps something more succinct may have served their purposes better. Erroneous though this approach may have been, and allowing for the fact that, perhaps understandably, the appellant has felt obliged to go to great lengths to contest the matter, it is not something that I equate with unreasonableness on the part of the Council.
8. I have taken into account all the other matters raised. None, however, are sufficient to outweigh the considerations that have led me to my conclusions.

Overall Conclusion

9. In the light of the foregoing, I consider that unreasonable behaviour resulting in unnecessary expense has not been demonstrated, and I therefore conclude that an award of costs is not justified.

D H Brier

Inspector