



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 the City of Nottingham Council for a full award of costs against Commercial Estates Group.
 - 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.
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Decision

1. The application for an award of costs is allowed in part in the terms set out below.

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. In essence, the application is based on the premise that the appellant had no real grounds for appealing against the enforcement notice. Notwithstanding my decision on the section 174 appeal, I find this proposition largely lacking in merit.
 4. As I see it, the appellant's case is supported by sound, thorough, and cogent reasoning. It most certainly does not lack substance. In particular, the arguments advanced in support of the claim that the notice is a nullity, and that the matters alleged do not constitute a breach of planning control, are far from vacuous or hopeless. I therefore see nothing unreasonable in this. It may be that the notice has been complied with as the Council note, but this is not a matter to which I attach much weight; it neither vitiates nor undermines the efficacy of the case advanced by the appellant in these 2 respects.
 5. These conclusions do not, however, extend to the appellant's appeal on ground (e). Even if the enforcement notice was not served correctly as is claimed, having read that a copy was attached to the stop notice served on the appellant, it is almost inconceivable that the appellant would have been
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unaware of it. And, more significantly, as the appellant was able to appeal against the notice, I am unable to identify any substantial prejudice arising from any failure to serve the notice properly. Furthermore, noting that the appeal has been made by a professional agent acting on behalf of the appellant, it is reasonable to assume that the agent would have been fully aware of the provisions of section 176(5) of the 1990 Act.

6. I acknowledge that the Counsel's opinion appended to the appeal documents raised the possibility that the notice might be quashed on ground (e). Nevertheless, the circumstances of this case are such that there was no reasonable prospect of the appeal succeeding on this ground. Indeed, had the appeal been dealt with by means of an inquiry or hearing, I would have urged the appellant to withdraw the ground (e) appeal at the outset of the proceedings in order to focus on the substantive elements of the appeal as a whole.
7. In the light of the foregoing, I find that the pursuit of the appeal on ground (e) in this instance amounted to unreasonable behaviour on the part of the appellant which caused the Council to incur unnecessary expense in contesting this part of the appellant's case.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Commercial Estates Group shall pay to the City of Nottingham Council the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the appeal on ground (e) of section 174 of the 1990 Act; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to the body awarded against, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D H Brier

Inspector