
Costs Decision

Site visit made on 8 October 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Costs application in relation to Appeal Ref: APP/U3100/C/18/3218191 Land at Dix Pit, Stanton Harcourt, Oxfordshire

- 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 Sheehan Reclamation Ltd for a full award of costs against Oxfordshire County Council.
 - The appeal was against an enforcement notice alleging the failure to comply with conditions Nos. 2, 3 and 4 of a planning permission Ref 16/04159/CM granted on 18 April 2017.
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Decision and Costs Order

1. The application for an award of costs is allowed in the terms set out below.
2. 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 Oxfordshire County Council shall pay to Sheehan Reclamation Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
3. The applicant is now invited to submit to Oxfordshire County Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Reasons

4. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. In determining the appeal, I quashed the notice on ground (e) that the notice was not served as required by the Act and associated regulations, in that it appeared that an owner of part of the site to which the notice related was not served with a copy of the notice as required. The Act provides powers for a local planning authority to require anyone with an interest in land to provide the authority with information about land ownership. There is no evidence that the Council utilised those powers in this case, but there is no legal requirement to do so. However, in this case, the Council had already issued an enforcement notice in respect of the same site, and in that case all owners had been served. Moreover, the application for planning permission which led to the imposition of the conditions in dispute in the appeal was accompanied by Certificate B which declared that the applicants did not own all of the site and named the other owner. Thus, the Council should have been aware of the strong likelihood that

the appellants were not the only owners of the site, and now accepts that All Souls' College should have been served with a copy of the notice.

6. The Planning Practice Guidance provides direction on when a local planning authority's handling of an enforcement notice prior to the appeal might lead to an award of costs¹. It says that for enforcement action, local planning authorities must carry out adequate prior investigation and says that they are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would either have avoided the need to serve the notice in the first place, or ensured that it was accurate.
7. I consider that in the circumstances of this case, the Council failed to carry out diligent investigation of land ownership and thus did not take adequate and reasonable care to ensure that the statutory requirements were met in serving the notice correctly. This amounts to unreasonable behaviour within the meaning of the guidance and caused the appellants to incur unnecessary costs in bringing the appeal. The Council argues that the alleged breaches of planning control were wholly the responsibility of the appellants, and that the public interest justified issuing the notice. However, it is unnecessary to examine the strength of these arguments because they are not factors which justify the failure to serve the notice in accordance with statutory provisions.
8. As the notice was quashed for this reason, it follows that the whole of the appellants' costs were wasted by this instance of unreasonable behaviour. Whether some or all of those costs would be incurred by the appellants in submitting a subsequent planning application is irrelevant to my considerations in respect of the costs incurred in this appeal. It is unnecessary for me to consider the other allegations of unreasonableness on the part of the Council.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

JP Roberts

INSPECTOR

¹ Paragraph: 048 Reference ID: 16-048-20140306