SECOND DIVISION, INNER HOUSE, COURT OF SESSION

[2017] CSIH 67
P895/17

Lord Justice Clerk
Lord Drummond Young
Lord Malcolm

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in the Petition

of

COMMUNITY WINDPOWER LIMITED

Petitioner and Reclaimer

against

EAST AYRSHIRE COUNCIL

Respondent

Petitioner and Reclaimer: Steele, QC, O'Carroll; Balfour & Manson LLP
Respondent: Gale, QC; Ledingham Chalmers LLP

9 November 2017

Introduction

[1] This petition is concerned with the lawfulness of a Stop Notice dated 9 August 2017 served upon the petitioner by the respondent. An Enforcement Notice was served on the same date, and that is the subject of a separate, ongoing, appeal process.

[2] The petition turned upon the proper interpretation of (1) a decision by the Reporter dated 23 February 2017; and (2) the terms of the Stop Notice, served 9 August 2017.

[3] The issues for the Lord Ordinary were whether the decision to serve the Stop Notice was irrational and whether the Notice was a nullity for want of specification, lack of clarity and other reasons. On 6 October 2017, after hearing parties at the first hearing and on a motion for urgent disposal, the Lord Ordinary dismissed the petition.

Background

Planning Permission

[4] The petitioner is the developer of the wind farm known as Sneddon Law wind farm, Moscow, East Ayrshire. It holds the planning permission for the development of 15 wind turbines with certain prescribed characteristics.

[5] The permission contained 47 conditions. Condition 36 concerned private water supplies that may be affected by the development. The land does not benefit from mains water, and there are adjacent private and commercial properties whose water is supplied privately. Condition 36 required, amongst other things, completion and production of a satisfactory water risk assessment ("WRA") prior to commencement of the development.

[6] On 28 October 2015, the petitioner submitted a WRA to the respondent and applied for discharge of Condition 36. The application was refused by notice dated 14 January 2016, which the petitioner appealed to Scottish Ministers. The Reporter appointed to hear the appeal was not satisfied with the initial WRA, which underwent revision during the appeal process. The Reporter issued two procedure notices, dated 30 November 2016 and 20 January 2017, proposing further alteration of the mitigation measures specified in the WRA. Ultimately the appeal was granted on 23 February 2017. The Reporter's decision stated:

> "**Decision**
>
> I allow the appeal and discharge Condition 36 of Planning Consent 13/0198/PP on the basis of the Technical Report on Private Water Supplies: Consolidated Water Risk Assessment dated 15 November 2016, as read with the Response for the Appellant to Procedure Notice dated 20 January 2017, which I hereby approve subject to the four conditions listed at the end of this decision notice."

[7] In his reasoning, the Reporter stated in relation to one affected property that provision of a replacement water supply was necessary before the start of the development and that mitigation was required in relation to other specified supplies or properties (paras 5-8). The Reporter narrated that the second Procedure Notice asked the petitioner for amendments to the proposed mitigation measures in the WRA which would secure that five steps had been taken before development began, and that the petitioner's response had set out proposals aimed at meeting these requirements (paras 15 and 16). Nevertheless, he concluded that there remained valid concerns which still needed to be addressed (para 18). He continued:

> "19. By making the discharge of Condition 36 conditional on compliance with the contents of the Procedure Notice, I can ensure that the work on the wind farm site does not begin until the required mitigation is in place… All conditions, both of the planning permission itself and of the discharge of conditions under it, will be enforceable by the planning authority."

His conclusion was stated as follows:

> "*Conclusion*
>
> 33. I consider that a great deal of progress has been made since the original WRA was rejected by the council in January 2016… I acknowledge the concerns of those who depend on private water supplies, and in discharging the condition I have significantly strengthened the mitigation measures to ensure that these will reduce risks to a level I consider acceptable. I also acknowledge that these measures will have cost and potential delay implications for the appellant, but it is necessary to strike a reasonable balance between the appellant's interests and those of local residents and businesses who could be affected.

> 34. Overall, I consider that the Consolidated Water Risk Assessment, as supplemented by the appellant's response to the 20 January Procedure Notice and subject to the conditions I am imposing, meets the requirements of Condition 36…".

Of the four conditions attached to the decision letter, the first reflected the requirements of the Procedure Notice of 20 January 2017 and stated that, unless otherwise agreed by the respondent, five things should be in place before development began. These included (1.1) fully operational water supplies for certain specified properties; (1.2) other specified mitigation measures for certain other properties at significant risk; (1.3) that the full cost of implementing and maintaining the mitigation measures should be met by the Operator throughout the lifetime of the planning permission; and (1.4) that the Operator should supply the professional credentials of certain persons.

Enforcement and Stop Notices

[8] On 9 August 2017 the respondent served an Enforcement Notice on the petitioner in terms of section 127 of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act") in respect of an alleged breach of planning control, set out in paragraph 3.1:

> "Commencement of works specifically excluded by Condition 36 of planning consent 13/0198/PP, namely intrusive site investigation works involving the drilling of proposed turbine locations, prior to demonstration of fulfilment of this condition."

[9] Paragraph 3.2 narrated as a separate breach commencement of the site investigations works involving the drilling of proposed turbine locations prior to certain specified mitigation, the detail of which reflected the terms of conditions 1.1 to 1.3 of the Reporter's decision of 23 February 2017. The statement of reasons for issuing the Enforcement Notice specifically relied on the four conditions which had been imposed by the Reporter in discharging condition 36.

[10] At the same time a Stop Notice was served, in terms of section 140 of the 1997 Act, which provides:

> **"140.— Stop notices.**
>
> (1) Where the planning authority consider it expedient that any relevant activity should cease before the expiry of the compliance period in respect of an enforcement notice, they may, when they serve the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a *'stop notice'*) prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.
>
> (2) In this section, *'relevant activity'* means any activity specified in the enforcement notice as an activity which the planning authority require to cease and any activity carried out as part of that activity or associated with that activity.
>
> …
>
> (7) A stop notice shall specify the date when it is to come into effect, and that date—
>
> (a) must not be earlier than 3 days after the date when the notice is served, unless the planning authority consider that there are special reasons for specifying an earlier date and a statement of those reasons is served with the stop notice…"

[11] The Stop Notice prohibited the carrying out of "the unauthorised activity specified in Schedule 2 to this Notice with effect from 9 August 2017". Schedule 2 narrated:

> "Site investigation works have been undertaken on site, at or adjacent to the turbine locations identified in planning consent 13/0198/PP prior to the discharge of negative suspensive conditions attached to the said consent. It is believed that this works (sic) has been undertaken in preparation for commencement of more intrusive engineering works at the site. Stop all works associated with the windfarm development including intrusive ground investigation works with immediate effect with the exception of any works required to fulfil the requirements of Condition 36 of Planning Permission 13/0198/PP."

[12] In an Appendix to the Notice headed "Reasons for the immediate effect of the Stop Notice" the Notice stated:

> "The works described in Schedule 2 in the attached notice have the potential to cause environmental harm by way of contamination and pollution of existing private water

> supplies as identified by the MacArthur Green Technical Report on Private Water Supplies; Consolidated Risk Assessment dated 15 November 2016 and … Michael Cunliffe's Decision Notice relating to the discharge of Condition 36 of 13/0198/PP. No acceptable mitigation measures have been demonstrated for the site as being in place as required by Condition 36. It is therefore considered expedient that this Stop Notice takes immediate effect."

Issues before the Lord Ordinary

[13] The petitioner maintained that the decision to serve the Stop Notice was unlawful in that it involved the respondent acting irrationally by issuing a notice which is (1) based on a planning condition which is no longer extant; (2) void for want of adequate specification; and (3) contradictory *et separatim* irrelevant. It sought reduction of the Stop Notice, and associated remedies.

[14] The Lord Ordinary took the view (para 15) that condition 36 had been discharged by the Reporter's decision, but the planning permission became subject to the terms of the approved WRA, including the four conditions which the Reporter had imposed, the first of which contained five requirements which had to be satisfied before development could begin. The Stop Notice required to be read sensibly having regard to the knowledge which an informed reader would have. The reference to condition 36 in the exception did not render the Notice a nullity. Construing the exception from the prohibition sensibly, having regard to the history of the approval of the WRA with conditions, the informed reader would understand that the excepted works were those required to fulfil the requirements of the WRA, including the conditions. Schedule 2 specifies with sufficient clarity the unauthorised activity, and the Notice was not inherently contradictory.

[15] The decision to issue the Stop Notice was not irrational. It was based upon the respondent's view that conditions 1.1 to 1.4 had not been complied with at the date of service of the Notice, a view which the relevant officers of the respondent held and were

entitled to hold. It was not part of the court's supervisory jurisdiction to look behind this. There was a proper basis for the respondent to consider it expedient that the relevant activity should cease (section 140(1)), and to reach the view that there were special reasons for specifying that the Notice should have immediate effect (section 140(7)(a)). The petition appeared to be a thinly veiled attempt at a merits review, rather than a legitimate challenge to the legality of the decision.

Submissions in the Reclaiming Motion

Reclaimer

Ground 1

[16] The Lord Ordinary adopted the wrong test for interpreting the Stop Notice. Condition 36 had been discharged by the Reporter's decision of 23 February 2017, the conditions of which qualified the planning permission. The description of unauthorised activity in schedule 2 under reference to an exception of those required to fulfil condition 36, was inept and lacking in specification. Stop Notices required to be construed strictly, since breach could have penal consequences (*East Riding County Council* v *Park Estate (Bridlington)* [1957] AC 223, 233-236). The need for this strict approach was confirmed in *Francis* v *Yiewsly & West Drayton Urban District Council* [1958] 1 QB 478. Even if the strictest interpretation is not applied, one cannot read in something which is not there, i.e condition 1 imposed by the Reporter in discharging Condition 36, which is in another application altogether and not referred to in the Stop Notice. There was a lack of specification, and the reference to a discharged condition was contradictory and left uncertainty as to what was prohibited. The original planning permission, containing Condition 36, is 13/0198/PP which narrated a total of 41 conditions, of which 19 were negative suspensive conditions. The application in which

Condition 36 was discharged was a different application, number 15/08/05AMCPP. Schedule 2 refers to consent 13/0198/PP, and the "negative suspensive conditions attached to said consent": these cannot be the conditions imposed to discharge Condition 36 as these were not attached to that consent, but were the subject of an entirely different application. The Stop Notice repeatedly refers to Condition 36, which compounds the problem, Condition 36 having been discharged. The Lord Ordinary's view that the Stop Notice required to be read sensibly having regard to the knowledge which an informed reader would have, was based on a case relating to planning conditions, not Stop Notices (*Telford & Wrekin Council* v *Secretary of State* [2013] EWHC 79 (Admin)).

Ground 2

[17] The Lord Ordinary erred in not holding that it was irrational for the Stop Notice to rely on a condition which had been discharged. The respondent had perilled its case on an argument that Condition 36 remained extant. It was mutually exclusive to hold that Condition 36 had been discharged but that reliance on that condition in the Stop Notice did not render the Notice void for want of clarity and certainty.

Ground 3

[18] The Lord Ordinary erred in placing any weight on the terms of the Enforcement Notice and by using it as an interpretative aid to the Stop Notice. The Stop Notice and the Enforcement Notice are separate documents with separate functions. The Stop Notice requires to be comprehensible in its own terms.

Ground 4

[19] The Lord Ordinary erred in not finding that the Stop Notice was invalid by reason of having purportedly been issued with immediate effect, without specification of the "special reasons" required by section 140(7) of the 1997 Act for such an effect. An undertaking had

been given that no development work would take place during a period longer than that normally required for service of a Stop Notice. No special reasons had been provided, and none existed. No prejudice could be pointed to, but the reason could not be said to provide any possible justification for giving immediate effect to the Stop Notice.

Ground 5

[20] The reason given for immediate effect relied expressly on Condition 36, and was itself irrational, as the Lord Ordinary should have determined.

Ground 6

[21] The Lord Ordinary erred in failing to take account of the submission that the petitioners and reclaimers had carried out works at the development site with the full knowledge and permission of the respondent. An email sent by the respondent's Enforcement Officer dated 4 July 2017 provided the respondent's written agreement to works which the subsequent Stop Notice purported to prevent. Had the Lord Ordinary properly taken this into account, he ought to have found that the decision to issue the Stop Notice was contradictory and irrational.

Ground 7

[22] The Lord Ordinary found that it was the respondent's view that conditions 1.1 to 1.4 had not been complied with and it was on that basis that he found that it had been entitled to issue the Stop Notice. In relying on conditions not mentioned in the Stop Notice as entitling the respondent to serve it, the Lord Ordinary erred in law.

Respondent

Ground 1

[23] The challenge in this case is to the authority's decision to serve the Stop Notice. That,

however, is a matter for the exercise of a planning judgment of the authority, as seen by section 140(1) which provides that such a notice may be served when the "authority consider it expedient" that a relevant activity should cease prior to expiry of the compliance period set out in the Enforcement Notice to which the Stop Notice relates. There is an inter-dependency between Enforcement Notices and Stop Notices.

[24] The Lord Ordinary's approach to the proper interpretation of the Stop Notice accords with the approach in *Telford & Wrekin Council* v *Secretary of State*. There is no reason why the approach to construing a stop notice should not follow the sensible reading which an informed reader would bring to its consideration. Reference was made to Rowan Robinson and Others: *Scottish Planning Law and Procedure,* para 12-123, where the authors observed, under reference to authority, albeit in the context of Enforcement Notices, that notices had to be construed against the history and background and state of knowledge of the recipient: that is what the Lord Ordinary did. As the Lord Ordinary found, the Stop Notice specified with sufficient clarity the unauthorised activity and there was no dubiety as to what was prohibited. What was prohibited was "all works associated with the windfarm development, including intrusive ground investigation work" save for those to which the exception related. The Lord Ordinary did not err in law in concluding that the Notice had to be construed sensibly, having regard to its history, and that "the informed reader would understand that what is excepted are works required to fulfil the requirements of the WRA, including the conditions". No connection is suggested between any allegedly fatal flaw in the Stop Notice and any alleged confusion in the mind of the recipient of the Notice.

Ground 2

[25] The Respondent's case was not perilled on the submission that Condition 36 had not been discharged: an alternative submission was advanced that the unauthorised activity was

sufficiently specified in Schedule 2. The Lord Ordinary correctly concluded that the reference to Condition 36 in the exception did not render the Notice a nullity. The Lord Ordinary, applying the sensible eye of an informed reader, viewed the reference to Condition 36 in the Stop Notice in context and there was no inconsistency in his doing so.

Ground 3

[26] The Lord Ordinary did not use his view of the Enforcement Notice as an aide to the construction of the Stop Notice. It is clear that he considered the Stop Notice on its own terms (see, e.g. paras 18 and 19). In any event, the Enforcement Notice and the Stop Notice are interdependent documents and consideration of the terms of the former is a legitimate aid to construction of the latter. (*Bristol Stadium Limited* v *Brown* 1980 JPL 107).

Grounds 4 and 5

[27] In para 13 the Lord Ordinary had referred to the material, including affidavits, placed before him to explain the basis of the respondent's decision. He was correct to conclude that the respondent was entitled to the view that conditions 1.1-1.4 had not been complied with, and that there were special reasons for specifying immediate effect. He was correct in his observation that the reclaimer's submissions were "…a thinly veiled attempt to engage upon a merits review…".

Ground 6

[28] The material upon which this ground is advanced seeks to review the merits of the decision. In any event, no issue of personal bar or waiver is raised.

Ground 7

[29] The submissions in respect of the foregoing grounds answer this point. The Lord Ordinary's reasoning is soundly based and correct in law, and the reclaiming motion should be refused.

Analysis and decision

Ground 1

[30] We agree with the Lord Ordinary that the effect of the Reporter's decision had been to qualify the planning consent in the way described by the Lord Ordinary at para 15 of his opinion, and summarised at para 14 above. The application to qualify that consent may have been made in a different application, number 15/08/05AMCPP, but its effect was to qualify the consent 13/0198/PP. The conditions imposed by the Reporter in discharging Condition 36 thus became conditions of that planning consent. We do not agree with the submission that the Lord Ordinary applied the wrong test for interpreting the Stop Notice. The case of *East Riding Council* is essentially a case about whether certain specific formalities, as required by legislation then in operation, had been followed. Any question of interpretation which arose was a secondary issue. Beyond making it clear that the terms of an Enforcement Notice must be sufficient to inform the recipient of what was wrong, and why, we do not see that the case advanced the reclaimer's argument to any extent. All that can be said in the case of a Stop Notice is that the prohibited activity must be specified with sufficient clarity. Section 140 does not prescribe any particular form of notice, nor does it specify any particular information to be given. It merely states that if the authority considers it expedient that an activity should cease, it can serve a notice prohibiting that activity. The present case is therefore not one in which statutory formalities of the kind which arose in the *East Riding* case apply; it is simply a matter of the proper interpretation of the schedule in the Notice. The schedule must be interpreted sensibly, on what appears to be a reasonable meaning in all the circumstances of the case, including the potential consequences of breach. The point in the *East Riding* case was simply, as noted by Jenkins LJ in *Francis* v *Yiewsley and West Drayton Urban District Council* [1958] 1 QB 478 at 491, that:

> "An owner of land whose rights are to be affected by the service of a notice of this sort is…..entitled to a proper notice setting out the real grounds of the complaint or claim against him.."

The question for the Lord Ordinary was, bearing in mind the consequences which such a notice might have, whether the notice set out the prohibited activity with sufficient clarity.

[31] The Notice stated: "Stop all works associated with the windfarm development, including intrusive ground investigation works with immediate effect". The reference to works required to fulfil Condition 36 is stated by way of an exception to the prohibition. Given that it is abundantly clear that Condition 36 was discharged subject to the imposition of further conditions, it can only be those conditions to which reference in the exception is being made. We agree with the Lord Ordinary that, in the context of the reference to the exception of works required to fulfil the requirements of Condition 36, the "negative suspensive conditions attached to the said consent" referred to in Schedule 2 of the Stop Notice were those conditions which had been imposed by the Reporter as part of the discharge of Condition 36. (If there was room for doubt, it would be removed by the terms of the reasons given for the immediate effect of the Stop Notice which mention the Decision Notice "relating to the discharge of Condition 36 of 13/0198/PP.") It was thus sufficiently clear that the only work which was not prohibited was work which was required to fulfil the four conditions imposed by the Reporter as a qualification of the planning permission 13/0198/PP.

[32] In any event, in our view the Lord Ordinary was correct to say that the Stop Notice should be interpreted sensibly in the context of the history relating to the approval of the WRA. Given that history, and the way in which the additional conditions were imposed on the discharge of condition 36, the "exception of works required to fulfil the requirement of condition 36 of planning permission 13/0198/PP" referred to in the Stop Notice could only

reasonably be taken to mean the work required to discharge the "negative suspensive conditions" which had been imported into that consent, and which were also referred to in the Stop Notice.

[33] It follows from the above that we reject the submission that the references in the Stop Notice to the discharged condition necessarily invalidate the Notice. The submission was based on a strict or "formalistic" approach which is difficult to reconcile with the approach of the Court of Appeal (albeit to Enforcement Notices) in the much quoted decision in *Miller-Mead* v *Minister of Housing and Local Government and Another* 1963 2 QB 196, and that of the UK Supreme Court in *Trump International Golf Club Scotland Ltd* v *Scottish Ministers* 2016 SC (UKSC) 25. For example, in the former Upjohn LJ stated that "the function of the court is not to introduce strict rules not justified by the words of the section" (page 232). In the latter decision, Lord Carnwath, after a review of the authorities, stated that a condition of a planning permission, "as with any other legal document, " should, if at all possible, and notwithstanding incompetent drafting, be given a sensible meaning (paragraph 55). The "modern approach" has moved away from the view that "planning control as an interference with property rights (requires) to be kept within narrow limits" (paragraph 60). Delivering the majority opinion in that case, Lord Hodge expressed a similar view. At para 33 he referred to

> "'a modern tendency in the law to break down divisions in the rules on the interpretation of different kinds of document, both private and public, and to look for more general rules on how to ascertain the meaning of words. In particular there has been a harmonisation of the interpretation of contracts, unilateral notices, patents and testamentary documents."

In the case of public documents, such as planning permission, because of their public nature there is only limited scope for the use of extrinsic material. Furthermore, because failure to

comply with a condition in a public law consent may give rise to criminal liability, there must be clarity and precision in the drafting of such conditions. Nevertheless, at paragraph [34], he noted that when the court is concerned with the interpretation of such a document:

> "... it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which casts light on the purpose of the relevant words, and common sense…….Other documents may be relevant if they are incorporated into the consent by reference….or there is an ambiguity in the consent, which can be resolved, for example, by considering the application for consent.".

Ground 2

[34] The respondents did not peril their case on an argument that condition 36 remained extant. It is quite clear from the Lord Ordinary's opinion that an alternative case was advanced to the effect that in any event the Stop Notice provided sufficient information. That this was the respondent's position is also clear from the pleadings. To the extent that this ground of appeal also alleges invalidity and irrationality because of the references in the Stop Notice to the discharged condition, we refer to the discussion above.

Ground 3

[35] It does not seem to us that the Lord Ordinary used the Enforcement Notice as an aid to construction of the Stop Notice. He recognised that it, with the Reporter's decision, provided part of the context in which the Stop Notice was issued. We are satisfied that the nature of the prohibited activity would have been clear from the terms of the Stop Notice itself, and that the Lord Ordinary was of that view. We do not require to address the question of how far regard may be had to an Enforcement Notice in interpreting a Stop

Notice following thereon. We are aware that there may be conflicting English authorities on the matter: the only relevant case drawn to our attention (the case having been put out for urgent disposal) was *Bristol Stadium*, which suggests that such an approach would be permissible. Although the two notices are different, and fulfil different functions, they are inter-related. That inter-relation is a close one (see section 140(1) and (2) for example) of a nature which may make it permissible to refer to the Enforcement Notice. At the very least, the Enforcement Notice would be part of the context against which the Stop Notice would require to be construed. In our view, that is the extent to which the Lord Ordinary referred to the Enforcement Notice.

Grounds 4 and 5

[36] Section 140(7) provides that a Stop Notice shall come into effect not earlier than three days after it is served, "unless the planning authority consider that there are special reasons for specifying an earlier date". A Stop Notice may only have immediate effect if a statement of special reasons is supplied at the time when the Stop Notice is served. Such a statement was supplied, stating that the reason was that the works had the potential to cause environmental harm by way of contamination and pollution of existing private water supplies, and that no adequate mitigation had been put in place to prevent this. It is a matter of planning judgment for the authority to determine whether special reasons exist to justify immediate effect. It is not for this court to reach a decision on that matter: the point for the court is to ascertain whether the reasons advanced are legitimately capable of seeming to the authority to be special reasons for specifying an earlier commencement date. Reasons do not require to be labelled "special" to qualify as such for the purposes of the section. In our view the risk of pollution to private water supplies was a significant risk to

health of such importance as to constitute a special reason justifying the immediate effect of the Stop Notice. The respondent was not required to rely on any undertaking offered by the reclaimers and was entitled to conclude that the circumstances were sufficiently serious to justify the course of action adopted by it. The reasons given make it clear that Condition 36 had been discharged and in our view there is no irrationality on the part of the respondent.

Grounds 6 and 7

[37] In our view the issues which these grounds of appeal address concern the underlying merits of the decision. Planning merits and issues of planning judgment are matters beyond the scope of these proceedings. It is not suggested that the fact that there might have been correspondence of the kind referred to would prevent the respondent from being able to issue a Stop Notice, rather it is suggested that the Lord Ordinary did not give this issue sufficient "weight". In any event, the background material available to the court suggests that the email of 4 July 2017 was but part of an ongoing and developing picture concerning the operations carried out on the site. Those are issues more appropriate to the appeal against the Enforcement Notice. This court cannot explore such matters, nor examine the factual dispute between the parties as to the extent to which the conditions have been satisfied.

[38] The complaint that the Lord Ordinary did not quash the Notice because of the absence of any specific reference to the conditions imposed by the Reporter is no more than a repetition of the earlier complaint as to alleged deficiencies in the text, albeit expressed in a slightly different way. It raises no separate or additional issues.

Disposal

[39] For the reasons given the reclaiming motion is refused. The interim suspension of

the Stop Notice granted pending this judgment will be lifted, and the Lord Ordinary's decision upheld. All questions of expenses are reserved.