Costs Decision

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Appeal Reference:	2016/A0105.
Appeal against:	The refusal of full planning permission for change of use of property No. 45 to 1 no. duplex apartment including alterations and demolition of remaining buildings and erection of 18 no. apartments (total 19 no. apartments overall) including ancillary works such as communal gardens, bin storage area, parking and access.
Location:	39, 45 – 51 Castle Street, Ballymena.
Claim by:	Helm Housing.
Claim against:	Mid & East Antrim Borough Council for a full award of costs.
Decision by:	Commissioner Mark Watson, dated 23 March 2017.

Decision

1. The claim for a full award of costs is denied.

Reasons

2. In accordance with the Commission's publication 'Costs Awards Guidance' costs will normally only be awarded where all four of the following conditions are met:
   - the claim relates to a relevant type of appeal;
   - the claim is timely;
   - the party against whom the award is sought has acted unreasonably; and
   - the unreasonable behaviour has caused the party claiming costs to incur unnecessary or wasted expense.

Eligibility

3. The planning application to which the appeal relates was determined under the Planning Act (NI) 2011. An appeal was made in accordance with Section 58 of the Planning Act against the refusal of full planning permission. The Commission therefore has the power to make an order as to the costs of parties in accordance with Section 205 of the Planning Act.

Timeliness

4. Paragraph 20 of 'Guidance on Costs Awards in Planning Related Appeals' states that in the case of an appeal taking place as a hearing, if, for example, it is being argued that another party was responsible for causing an unnecessary appeal, the costs claim should accompany the claiming party's statement of case. The Claimant submitted the costs claim along with the statement of case. The claim is therefore timely.

Unreasonable Behaviour

5. The Claimant considers the Council behaved unreasonably as it refused planning permission for the appeal proposal despite the recommendation to approve from the Council planners.

6. The Claimant considered that the proposal fully met prevailing regional policy and following negotiations with the Council planners, agreement on the level of parking provision had been reached. The Council planners had considered the proposal in full, including the issues raised by Transport NI and objectors and found it acceptable. The Council Planning Committee however disagreed and chose to refuse planning permission, despite the proposed development meeting all planning policy provisions, thus causing an unnecessary appeal. The Claimant also pointed to inconsistent decision making in the locality, with several other developments granted planning permission in the town centre with reduced parking standards and in one case, no on-site parking at all. Thus an issue of administrative fairness existed.

7. The Council is the statutory decision taker in respect of planning decisions. It is entitled to differ in its decision from the recommendation provided by the planners, though such a decision must still be justified. The matter of application of parking standards for particular proposals includes an element of subjective judgement, particularly when considering instances within Policy AMP7 where relaxations can be applied. Other material considerations must also be weighed in to the decision making process. The issue of parking was contentious throughout the processing of the application, with the Claimant aware that both Transport NI and third parties were not satisfied with the proposed level of on-site provision. The Council as the planning authority considered that a reduced standard of 9 on-site spaces was too great a reduction and despite the recommendation to approve from the planners, chose to refuse planning permission. This in itself is not unreasonable behaviour.

8. In respect of the other approved developments within a similar town centre context, although the earlier decisions were all made within the same policy context, several were approved by the then Department of the Environment, not the Council. An explanation was given at the hearing as to why the Council deemed the Broadway Avenue development to be acceptable with no on-site parking provision. Notwithstanding the merits or otherwise of that explanation, I am not persuaded that an issue of administrative fairness exists that amounts to a demonstration of unreasonable behaviour on behalf of the Council in refusing planning permission for the appeal development.

9. Whilst the outcome of the appeal decision favoured the Claimant, it does not automatically follow that a costs claim will also succeed. I am not persuaded that the subjective decision by the Council to disagree with its planners on parking provision amounted to unreasonable behaviour that resulted in an unnecessary appeal.

Unnecessary Expenses

10. The Claimant stated that it had to retain the services of both a planning consultancy and a traffic consultancy to mount the appeal case. The issue of parking provision at a reduced rate within a town centre site requires careful consideration to reach a reasoned and informed decision. The argument for the reduced parking provision on site was one made by the Claimant at application stage, but reiterated and expanded upon during the appeal process. The

consultants engaged by the Claimant were necessary in order to make the case that the proposed reduced rate of parking provision on the site was acceptable, a case the Commission ultimately accepted. As I have found that the Council has not behaved unreasonably and that the Claimant's engagement of those consultancies was integral to successfully making their case, no unnecessary expenses have been incurred.

11. Given the above reasoning the claim for full costs is denied.

COMMISSIONER MARK WATSON

List of Documents

Claimant:- ‘CA’ Cost Claim (Strategic Planning on behalf of Helm Housing)

Respondent:- ‘CB’ Rebuttal to Costs Claim (Mid & East Antrim Borough Council)