Planning Appeals Commission

Appeal Decision

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Appeal Against:	2021/A0007
Location:	Land to the west of Nos 20-24 Watsons Road Newry
Claim by:	EDB Construction Ltd.
Claim Against:	Newry Mourne and Down District Council
Decision by:	Commissioner Helen Fitzsimons 31st March 2022

Decision

1. The award of costs is denied.

Reasons

2. Paragraph 12 of the Commission's Costs Award Guidance states that the Commission will normally award costs only where all of four stated conditions are met. The stated conditions are as follows:-

   - 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

3. The claimant submitted the costs award claim for this appeal under Section 60 of The Planning (Northern Ireland) Act 2011 one of the types of appeal for which a costs claim can be made. The claim was submitted before the claimant's final submission in a timely manner. The first two conditions are met.

4. The application for planning permission was made on 7th May 2020. An extension of the statutory date to determine the application was granted by the respondent on 5th November 2020 with a new time limit of 10th December 2020.

5. Evidence within the claimant's submission suggests that there had been ongoing communication with the respondent between November 2020 and April 2021 regarding the status of the application for planning permission and that there was disagreement between the parties on the matter of improvements to the carriageway that ought to have been carried out under Condition 9 of previous planning permission P/2006/1117/F.

6. The claimant argued that on 21st December 2020, shortly after the agreed extended time limit had expired, the respondent sent an email advising that it had all the necessary information it required to commence writing a report to present to its

Planning Committee. However, it later transpired that this was not the case and the application for planning permission was still under consideration.

7. Email correspondence submitted by the claimant asserts that on 4th February 2021 it had furnished the respondent with information that should have satisfied the respondent that Condition 9 of planning permission P/2006/1117/F had been lawfully discharged. This was in the form of a Preliminary Certificate of Adoption and a Certificate of Lawfulness of Existing Development that planning permission P/2006/1117/F had been lawfully commenced. On 30th March 2021 the claimant provided further information regarding the discharge of Condition 9 by virtue of a court judgement. The claimant also advised the respondent that if it continued to withhold a decision on the application for planning permission then it would lodge an appeal with the Planning Appeals Commission in default of that decision by 9th April 2021.

8. The respondent advised by email dated 9th April 2021 that it was' continuing to work to achieve a positive outcome to the application for planning permission and that it would prefer if this was not done through the offices of the Planning Appeals Commission.' The respondent also advised it was unable to facilitate the request for a decision to issue by 7th April 2021 and continued that even if consideration of the case had been completed, the respondent's procedures in relation to determining planning applications would not have allowed for a decision to issue in that time period.

9. On 23rd April the claimant advised the respondent it had not further sought to extend the statutory period for a number of reasons one of which was 'the Council will be required to indicate its position to the Commission in early course as part of the appeal process and that is the opportune time to indicate a 'positive outcome''.

10. I see nothing in the respondent's email of 21st December 2020 that infers that the application for planning permission would be granted. It is incumbent on the respondent as the planning authority to satisfy itself that its decisions are lawful and in this case that Condition 9 of planning permission P/2006/1117/F had been complied with. I do not accept that the respondent was acting unlawfully in taking time to consider the matters before it or that it was unreasonable for it to do so.

11. Given the timing and content of the email exchanges between the claimant and the respondent during the period December 2020 and April 2021 I am satisfied that the respondent was working towards a way of resolving the outstanding matters pertaining to the application for planning permission and I do not consider that there was any undue delay in that process. Although I was not given any details, as far as I am aware, the procedures for a Council determining the outcome of an application for planning permission are bound by previously agreed Planning Committee cycles and it is not inconceivable that the claimant's request for a decision before 7th April 2021 fell outwith such a cycle. I have no evidence from the claimant to persuade me otherwise. Taking account of all of the above, I do not accept that at the time the appeal was lodged the respondent's actions were unreasonable behaviour that led the claimant to incur an unnecessary or wasted expense.

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COMMISSIONER HELEN FITZSIMONS

2021/A0007

Documents

Claimant:- Statement of Case C1

Respondent:- Response R1