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| Appeal Reference: | 2023/A0077 |
| Appeal against: | The refusal of full planning permission the retention of change of use from single family home to house in multiple occupation (5 beds). |
| Location: | 1 Grafton Street, Derry, BT48 0ER. |
| Claim by: | Mr. Steve Bradley. |
| Claim against: | Derry City and Strabane District Council for full award of costs. |
| Decision by: | Commissioner Kieran O’Connell, dated 5 th June 2024. |

Decision

1. An award of costs is denied.

Reasons

2. The Commission’s publication ‘Costs Awards Guidance’, states that 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 this appeal relates was made in accordance with Section 58 of the Act against the refusal of full planning permission for a change of use from a single occupancy dwelling house to a House of Multiple Occupancy by Derry City and Strabane District Council. The Commission therefore has the power to make an order as to the costs of parties in accordance with Section 205 of the Act.

Timeliness

4. Paragraph 20 of the ‘Guidance on Costs Awards in Planning Related Appeals’ states that in the case of an appeal proceeding by exchange of written representations, any costs claim must accompany the claiming party’s final written submission. As the claim for costs was submitted with the claiming party’s Statement of Case, it was made in a timely manner.

Unreasonable Behaviour

6. The Commission's Costs Award Guidance sets out some examples of behaviours that may be found to be unreasonable. The first relates to causing an unnecessary appeal. One instance in which an appeal may be judged to have been unnecessary is where the Planning Authority was unable to produce any credible evidence to substantiate its reason for refusing planning permission.
7. The Claimant alleges that the Council has acted unreasonably in refusing the application despite evidence of available parking spaces in the area. The full transcript of the Planning Committee meeting describes that members had local knowledge of Grafton Street and surrounding areas and used this knowledge to form the view that there was inadequate parking available. This and related issues were also raised by objectors both verbally at the Committee Meeting and in writing during the processing of the planning application. Such objections would have formed part of the decision-making process. Whilst I agree with the Claimant that the Council's evidence could have been better articulated and more robust to justify its concerns on these matters, I am broadly content that the transcript of the Planning Committee meeting provides adequate reasoning for their position. Disagreement is an expected feature of the appeals process and is not inherently unreasonable. For the reasons given, I am not persuaded that the decision of the Planning Committee or its rationale for the refusal of planning permission amounts to unreasonable behaviour.
8. The Claimant further states that two of the four Councillors who spoke on the application at the meeting did not raise access or parking concerns and focused on fears around student behaviour. Whilst this may be the case, given my conclusion above and that the Claimant has not substantiated how this resulted in unreasonable behaviour by the Council, I cannot uphold this discrete claim. In any event, the outcome of the debate at the meeting was to refuse planning permission and members exercised their right to vote with the motion before them. The fact that individual members raised specific matters during that discussion would not, in itself, amount to unreasonable behaviour as the Planning Committee can accept, depart from, or give alternative weight to the various arguments and material planning considerations before it, which may differ to that of their officers or other parties'.
9. The Claimant also alleges that the Council acted unreasonably in refusing this HMO but not others in the Rosemount area with similar parking and access issues. While the Claimant provides a list of these applications, no details have been provided within the Appellant's evidence to demonstrate how those cases are comparable to the circumstances of this appeal. As such, I am not persuaded that the Respondent has been inconsistent in its decision-making. Each case must be assessed on its own merits and whether an application complies with planning policy or not is a matter of planning judgment. For the reasons given, I am not persuaded that the Respondent has acted unreasonably on this issue.

Unnecessary Expenses

10. I have found that the Respondent has not displayed unreasonable behaviour which resulted in an unnecessary appeal. Nor does it follow that costs will be awarded to a party just because the appeal has been decided in their favour.

11. Disagreement between the parties is an expected feature of the appeal process and is not inherently unreasonable and not a ground for an award of costs. Accordingly, the claim for costs is denied.

COMMISSIONER KIERAN O'CONNELL