
Appeal Reference:	2021/A0141.
Appeal against:	The refusal of outline planning permission for a single dwelling house (retirement).
Location:	Adjacent to and NW of 150A Vianstown Road, Downpatrick.
Claim by:	Sean & Linda Tumelty.
Claim against:	Newry, Mourne & Down District Council for a full award of costs.
Decision by:	Commissioner Mark Watson, dated 25 March 2024.

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 when a hearing takes place, any costs claim should be made as soon as reasonably practicable after the behaviour that triggered the claim. It goes on to state that all claims must be in writing unless they arise from behaviour that occurred or came to light during the hearing, in which case a claim may be made orally at the end of the hearing.
5. The Claimants' claim for costs was submitted alongside their rebuttal statement in relation to the substantive appeal. The claim is a timely one.

Unreasonable Behaviour

6. The Claimants considered that the Respondent's incorrect assessment of the plot sizes along the laneway within which the appeal site lies, resulted in an incorrect average plot size. This amounted to unreasonable behaviour, giving rise to an unnecessary appeal. They pointed to this error being repeated in the Respondent's evidence on the substantive appeal also.
7. The Commission guidance at paragraph 14 acknowledges that there can be instances where unreasonable behaviour can have said to have occurred, giving several scenarios, none of which the Claimants' claim falls within. However, the guidance goes on to state that the scenarios listed above are examples of potential unreasonable behaviour. Whether there has actually been unreasonable behaviour in a particular case will be a matter of judgment for the Commission and every claim for costs will be assessed on its own facts and the party seeking costs will have to show that it was put to unnecessary or wasted expense.
8. The Respondent was entitled to make its assessment on the plot sizes and determine an average, which I have not found to be erroneous to any appreciable degree that distorted its overall assessment of the development pattern along the subject laneway the appeal site was located on. Notwithstanding any disagreement in respect to the average plot size assessment under Policy CTY8 of Planning Policy Statement 21, it was only one of two policy based objections to the Claimants' development proposal. Disagreement is an expected feature of the appeals process and is not inherently unreasonable. Whilst the Commission ultimately decided the appeal in favour of the Claimants, it does not follow that an automatic award of costs will also be made. For the reasons given above I find that no unreasonable behaviour has taken place.

Unnecessary Expenses

9. As I have found that no unreasonable behaviour occurred, the Claimants have not incurred any unnecessary or wasted costs.
10. Given the above reasoning the claim for full costs is denied.

COMMISSIONER MARK WATSON

List of Documents

Claimant:- 'CA' Cost Claim (Sean & Linda Tumelty)

Respondent:- 'CB' Response to Cost Claim (Newry, Mourne & Down District Council)