
Appeal Reference:	2022/A0005
Appeal against:	The refusal of full planning permission
Proposal:	Proposed change of use from office building into 11 bedroom HMO incorporating a 3 storey rear return
Location:	1 Dacre Terrace, Londonderry
Claim by:	Mr Breen
Claim against:	Derry City and Strabane District Council
Decision by:	Commissioner Mandy Jones, dated 16 March 2023.

Decision

1. The claim for 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 Act against the decision made 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 Planning Act.

Timeliness

4. As the claim for costs was part of the appellant's rebuttal statement, it was made in a timely manner.

Unreasonable Behaviour

5. The claimant argues unreasonable behaviour by the Council in creating two unnecessary appeals. (2022/A0005 & 2022/A0006). It was argued that on two occasions the Council's planning officers presented both the planning application and the demolition consent within a Conservation Area application to the planning

committee with an opinion to approve. The claimant maintains that this opinion was rejected on the basis of non – valid planning reasons. It was argued that the refusal reason is not clear, precise or gives a full explanation of why the proposal is unacceptable to planning policy as required under paragraph 5.72 of the SPPS.

6. It was also stated that the Council failed in their planning committee reports or refusal notice to demonstrate how the proposal would cause demonstrable harm to interests of acknowledged importance. The validity of the refusal reason is questioned as it does not refer to any particular paragraph or policy within the SPPS.
7. Notwithstanding that Planning Officers recommended approval of the planning application and the consent for demolition within a conservation area on 2 separate occasions (5 January 2022 and 2 February 2022), the Local Planning Authority's corporate stance on both planning applications subject of these appeals are set out in the reason for refusal on decision notices issued by Derry City and Strabane District Council on 1st March 2022.
8. The planning committee report stated that it resolved to overturn the Planning Officers recommendation to approve planning application LA11/2020/0824/FR, on the grounds that the proposal provided unacceptable living standards and was detrimental to the character of the area.
9. The single reason for refusal refers to the SPPS and states that, if permitted would harm the residential amenity of proposed residents and the character of the existing residential area. Although there is no specific reference to the paragraph number within the SPPS, it refers to policy and states the harm. In fact, the claimant submitted updated Ground Floor Plans with his statement of case, to specifically address the residential amenity concerns of the Council, that is, the restricted kitchen size for the number of proposed residents. Within the Minutes of the Planning Committee meeting, I consider that the refusal reason is supported by evidence and is policy based.
10. 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. Paragraph 11 of the Costs Awards Guidance states that where all parties behave entirely reasonably, there can be no justification for a costs award and parties can expect to meet their own expenses.
11. I do not accept that the respondent acted unreasonably, and that the claimant has incurred unnecessary expenses. Accordingly, the claim for costs is denied.

COMMISSIONER MANDY JONES

Documents:

Claimant: Costs claim by L Kennedy (E)

Response: Response from Derry City and Strabane District Council (F)