
Appeal Reference:	2022/A0006
Appeal against:	The refusal of demolition consent within a Conservation Area.
Proposal :	Removal of rear return and outbuildings
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 96 (as applied by Section 105 (6)) of the Planning Act against the refusal of consent for Demolition within a Conservation Area. 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.

6. It was argued by the claimant that no evidence has been provided to support the refusal of consent for Demolition within a Conservation Area, other than committee members were advised by the City Solicitor that they had to refuse consent for this as they had already made the recommendation to refuse the full planning application. The claimant maintains that he does not find the evidence persuasive.
7. Notwithstanding that Planning Officers recommended approval of the planning application and the consent for demolition within a conservation area on 2 separate occasions, the Local Planning Authority's corporate stance on both planning applications subject of the appeals are set out in the reasons for refusal on decision notices issued by Derry City and Strabane District Council 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 an unacceptable living standards and was detrimental to the character of the area. With reference to the refusal of consent for demolition within a conservation area application, legal clarification was given that this must be refused as the scheme proposed had been refused and there is no longer any scheme that would allow demolition to go forward.
9. The single reason for refusal refers to Policy BH 14 of Planning Policy Statement 6: Planning, Archaeology and the Built Heritage, in that there is no approved redevelopment scheme for the site which justifies the proposed part demolition of this building within the Conservation Area. The reason for refusal is policy based and links the refusal of the demolition consent to the planning application refusal. Both the SPPS and PPS 6, Policy BH 14, require that consent for demolition (including part demolition) of an unlisted building should only be considered subject to appropriate arrangements for the redevelopment of the site. 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. 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 (G)