
Appeal Reference:	2022/A0027
Appeal against:	The refusal of full permission for a retrospective application for extraction of basalt within existing quarry, retention of processing plant, weighbridge, site offices and access road including a lateral extension incorporating wheel wash, realigned quarry access road, landscaping and full site restoration.
Location:	Keady Quarry, 121 Broad Road, Limavady
Claim by:	Ardstraw Quarries Ltd.
Claim against:	Causeway Coast and Glens Borough Council
Decision by:	Commissioner K S Donaghey, dated 4 th April 2024

Decision

An award of costs is denied.

Reasons

- 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.

Eligibility

- The claimant submitted the costs award claim for this appeal under Section 58 of the Planning Act (Northern Ireland) 2011. It is one of the types of appeal for which a costs claim can be made. 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

- Paragraph 20 of the Commission's Costs Award Guidance states that in cases where it is argued that a party has caused an unnecessary appeal, the costs claim should accompany the claiming party's statement of case. The claim for costs was submitted in writing by the claimant after the exchange of evidence and some days before the hearing. Given the Commission's procedures regarding making costs claims whereby deadlines are strictly applied, this was subsequently returned to the claimant.

4. At the hearing, the claimant presented a legal submission which included a claim for costs. This submission argued that the position of the respondent regarding the material weight afforded to the fall-back position was incorrect in law and hence the appeal was unnecessary.
5. Notwithstanding the legal arguments presented within the claim itself, the claimant was aware of the respondent's position since planning application stage. The respondent argues that the claim was not timely as it was not submitted with the claimant's statement of case as required by the Commission's published guidance.
6. The guidance is clear in outlining that a timely claim in respect of causing an unnecessary appeal should accompany the claimant's statement of case. No justification has been provided to demonstrate why it did not. Consequently, the claim is not a timely one and an award of costs is denied.
7. Even if I had considered the claim to be a timely one, the respondent is entitled to maintain their considered position in the disputed matter. Whilst the claimant did not agree with the position taken by the respondent and argued that it was incorrect in law, the respondent provided adequate reasoning in support of its position on this matter. Disagreement is an expected feature of the appeals process and is not inherently unreasonable.
8. For the reasons set out above a full award of costs is denied.

COMMISSIONER KENNETH DONAGHEY

List of Appearances

Planning Authority:- Mr S Mathers (Causeway Coast and Glens Borough Council)
Ms E Olphert (Causeway Coast and Glens Borough Council)
Mr G Doherty (Causeway Coast and Glens Borough Council)
Mr A Gillen (DFI Roads Service)

Appellants:- Mr W Orbinson KC
Ms Nicole McAlorum (Carson McDowell Partnership)
Mr T Beattie (6West)
Mr J Hurlstone (Hurlstone Partnership)
Mr Aidan Harley (Ardstraw Quarries Ltd)
Mr Dermot Harley (Ardstraw Quarries Ltd)
Mr B Mullan
Mr S Mullan

Third Parties:- Mr W Stewart (Keady Residents Association)
Mr N Bateson (objector)

List of Documents

Appellant - C1 – Claim for costs and appendices

Planning Authority - R1-Rebuttal and appendices