

**PLANNING APPEALS COMMISSION**

**THE PLANNING ACT (NORTHERN IRELAND) 2011  
SECTION 205**

**Claim by HFK Construction  
for an award of costs against Mid and East Antrim Borough Council in respect of  
appeal 2023/A0033**

**Report  
by  
Commissioner Gareth McCallion**

**Planning Authority Reference: LA02/2022/1080/F**

**Report Date: 1<sup>st</sup> May 2024**

## **1.0 BACKGROUND**

- 1.1 A claim for an award of full costs against Mid and East Antrim Borough Council was made on behalf of Mr Hugh Kelly (HFK Construction) as submitted on 17<sup>th</sup> January 2023.

## **2.0 CLAIMANT'S CASE**

- 2.1 The basis of the claim is that the Mid and East Antrim Borough Council caused an unnecessary appeal. The claim includes costs incurred from the beginning to the end of the appeal process, including any costs incurred in pursuing a settlement of those costs after the date of the decision.

- 2.2 The main issue in this appeal is whether the information required to determine private streets ought properly to have been required, and its absence then become a cause for refusal of permission. We contend that the Council erred in the following respects:

- The Private Streets serving the appeal site were already determined and were the subject of an Agreement/Bond under the terms of the Private Streets (Northern Ireland) Order. No further determination is required.
- The private streets Order is a separate piece of legislation, in the same way that the building regulations are, and should not form the basis of a refusal of planning permission in any case. There are perhaps dozens of decisions of the Commission which record that approach.
- The approach taken to the relationship between private streets and the housing proposed in this case differs from that taken in respect of the adjacent site, served by the same private streets determination, in application reference LA02/2021/1141/F.

- 2.3 The management of LA02/2021/1141/F by Mid and East Antrim Borough Council will have demonstrated that, regardless of the consultation responses from DfI in the appealed case, the refusal of planning permission would be inconsistent with the approach taken on the adjacent site, in almost identical circumstances regarding the roads matters. The Council will have known that the refusal would expose it to charges of inconsistency, both in the context of a planning appeal decision, and in respect of a claim for costs.

## **3.0 RESPONDENT'S CASE**

- 3.1 The Council would agree with the Claimant in the assertion that an unnecessary appeal has been caused. However, for opposing reasons. The Claimant was provided several opportunities to provide the information requested by the Statutory Consultee in the form of Private Streets Determination (PSD) drawings. This information was not forthcoming.
- 3.2 The Claimant was advised explicitly during the determination process that failure to provide the requested information, within a stipulated timeframe, would ultimately result in the refusal of planning permission.

- 3.3 At no point during the determination did the Claimant clarify or contend to the Planning Department that the information required by the Road Service was unnecessary, despite having opportunities to do so.
- 3.4 As set out in the Council's statement of case, there is no comparison between the application subject to this appeal and planning ref. LA02/2021/1141/F in that the statutory authority did not request any further information in relation to Private Streets Determination during the determination process.

#### **4.0 CONSIDERATION**

- 4.1 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

- 4.2 The planning application to which this appeal relates was made in accordance with the Planning Act (NI) 2011 (the Act). An appeal was made in accordance with Section 58 of the Act against the refusal of full planning permission for the construction of 4 dwellings, 2 semi-detached and 2 detached, on an existing housing development by Mid and East Antrim Borough Council. Therefore, the Commission has the power to make an order as to the costs of parties in accordance with Section 205 of the Act.

##### Timeliness

- 4.3 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 (also dated 17<sup>th</sup> January 2023), it was made in a timely manner.

##### Unreasonable Behaviour

- 4.4 Whilst the approach taken on planning applications on lands adjoining the appeal site differ, it was clear to the Claimant during the processing of their planning application that there was a requirement for further information; in this case a drawing relating to an amended private streets determination. It is acknowledged by both parties that the Council's position with respect to the application of advice from the statutory consultee (the Department for Instructure) and in turn the legislation (Private Streets Order (NI) 1980 or the Private Streets (As amended) varies from case to case. However, each of the planning applications for development on sites surrounding the appeal site, has been considered and determined on its own merits.

- 4.5 The planning application, the subject of the appeal, was also considered on its own merits, with information required by the Council to properly determine the same. The Claimant contends that the Private Streets (NI) Order 1980 (and amendments to the same) is akin to building regulations. However, unlike the building regulations and pursuant to the Order at Article 3(4) states that *“the Department may, where it considers it necessary for the exercise of street planning functions, require the applicant for permission for the development of any land to submit plans and particulars showing the general scheme for the development of the land of which any street is intended to form part”*. Article 4(1) directs that subject to the provisions of the Order, functions exercisable in relation to development under the Planning (Northern Ireland) Order 1991 [now the Planning Act (Northern Ireland) 2011] shall be deemed to include street planning functions.
- 4.6 Whilst the Claimant’s frustration is evident, the question is not whether the information ought to have been requested. Rather, the absence of the submission of this information was a determining factor and resulted in the appeal. An amended PSD drawing is required to address changes to the previously approved layout, including dropped kerbs to facilitate access to the proposed dwellings. Consequently, I do not consider that the Council has acted unreasonably and did not cause an unnecessary appeal.

Unnecessary Expenses

- 4.7 As I have found that the Respondent has not caused an unnecessary appeal, no unnecessary expenses have been incurred by the Claimant. Accordingly, no award of costs should be made.

**5.0 RECOMMENDATION**

- 5.1 I recommend to the Commission that the claim for full costs be denied.

**COMMISSIONER GARETH McCALLION**

## **List of Documents**

Claimant: Costs Claim (Ward Design on behalf of HFK Construction)

Respondent: Response to Costs Claim (on behalf of Mid and East Antrim Borough Council)