
Appeal Reference:	2023/A0103
Appeal against:	The refusal of full planning permission
Proposal:	Residential development consisting of 39 no dwellings, parking, open space, landscaping and associated ancillary works
Location:	Lands within the southwest portion of the former Craighill Quarry east of Ballyeastern Road and south of Craighill Park, Ballyclare
Claim by:	Craighill Developments Ltd
Claim against:	Antrim and Newtownabbey Borough Council
Decision by:	Commissioner Mandy Jones, dated 30 October 2024

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 Antrim and Newtownabbey Borough 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 claimant's statement of case, it was made in a timely manner.

Unreasonable Behaviour

5. The claimant asserts that the respondent has acted unreasonably in relation to three of the four reasons for refusal stating that the reasons cannot be substantiated and are erroneous. It was claimed that this has resulted in the retention of specialist advisors incurring costs as a direct result of the unreasonable behaviour of the respondent.
6. Refusal reason one relates to the lack of a comprehensive masterplan for the wider zoning. The planning application was submitted 14 September 2022 and the Concept Master Plan (CMP) was submitted on 8 December 2023 – over one year later.
7. The case officers report (dated October 2023) to the Planning Committee references an earlier version of the CMP which related to previous approvals. The claimant states that there is no evidence of the 8 December 2023 CMP being considered.
8. The respondent provided a detailed timeline in which the CMP was received by email on Friday 8 December 2023, and time stamped 15.12pm. As such, it was not included in the Planning Committee Report which was published on 6 December 2023. I was told that the Council's protocol requires that information to be considered by the Planning Committee should be submitted on or before 12 noon on Friday 8 December 2023. Whilst the information was submitted after this time and is available to the Committee, no addendum report was circulated. However, the respondent maintained that as the information was submitted, the claimant could take up speaking rights to address any changes however, I was told that the claimant did not take up this opportunity. The claimant could have submitted a revised proposal for consideration by the Committee and could have sought a deferral of the planning application or made representations to the Planning Committee, however this was not availed of either.
9. Notwithstanding, the respondent was still of the opinion that the revised CMP, did not provide sufficient information that would change their refusal reason.
10. The claimant stated that the revised CMP was a further iteration of previous masterplans which accompanied earlier phases of development within the wider zoning which were all approved. However, the main difference was the re-location of neighbourhood facilities which have been displaced from the appeal site and re-located to the east, positioned centrally within the overall zoning and close to the quarry lake and road. The respondent was of the opinion that the level of information within the CMP falls short of requirements of Policy QD2. The claimant argued that this level of information is similar to that previously submitted and approved and deliverability / phasing plans were never requested with the previous CMP's, which now have become established.
11. Whilst the respondent's reason for refusal was policy based, I accepted that in these circumstances given the planning history of the overall zoning, the information within the CMP was broadly acceptable. 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.

12. Regarding the processing of the application, this is a matter for the Council's own complaints procedures or the Local Government Ombudsman and cannot form part of an Award of Costs application.
13. Refusal reason three relates to parking provision for the proposed development. The claimant argues that the respondent had acted unreasonably by basing this refusal reason on a miscalculation of the proposed parking provision.
14. As set out in the accompanying appeal decision, the respondent and claimant had differing interpretations regarding the provision of parking spaces as set out in Creating Places and I favoured the claimant's approach. Again, 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.
15. Refusal reason four related to sewage disposal. It was accepted by the Council that following the receipt of the Solutions Engineers Report on 5 December 2023, an Addendum Committee Report was prepared and circulated and the fourth reason for refusal was removed. However, I was told that due to an administrative error, this reason for refusal was not removed from the Decision Notice dated 15 December 2023. Refusal reason four was withdrawn, as per email from the respondent to the PAC on 5 July 2024, just prior to the hearing.
16. The claimant would have been aware of the addendum report withdrawing this reason for refusal and subsequent discussions at the Planning Committee Meeting. This was referred to within their Statement of Case (at paragraph 3.37). However, the claimant maintains that the reason for refusal remained on the Decision Notice, and they had to prepare a Statement of Case on this issue. I note that the Statement of Case included no further specialist technical information in relation to sewage disposal and there were no discussions at the hearing regarding this issue.
17. I accept this to be an administrative error on the part of the respondent. I would agree with the respondent that the claimant could have sought clarification from them at any time as it was clear that the matter had been resolved and the reason for refusal was removed prior to the Committee meeting.
18. Overall, 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 Craighill Developments Ltd

Response: Response from Antrim and Newtownabbey Borough Council