
Appeal Reference:	2022/A0092
Appeal against:	Proposed erection of a dwelling.
Location:	Lands east of and immediate adjacent to 112b Moy Road, Scotch Street, Portadown and immediately north of 6-9 Timakeel Close, Scotch Street, Portadown
Claim by:	Mr C Douglas
Claim against:	Armagh City, Banbridge and Craigavon District Council.
Decision by:	Commissioner Jacqueline McParland dated 5 th September 2024.

Decision

1. An award of costs is denied.

Reasoning

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 (the Act). An appeal was made in accordance with Section 58 of the Act against a refusal of full planning permission. The Commission therefore has the power to make an order as to the costs of parties in accordance with Section 205 of the Act.

Timeliness

4. The appeal proceedings comprised of written representations and an accompanied site visit. At the time when the appeal papers were exchanged written representations with accompanied site visits were converted to written representations due to the Pandemic. The claim for award of costs was made in writing on 11th May 2023 by the claimant and accompanied their rebuttal statement which was the claimant's final written submission. The claim for cost was therefore made in a timely manner.

Unreasonable Behaviour

5. The claimant considered that the Council has acted unreasonably by:

- not issuing correspondence outlining the department's concerns in relation any aspect of the proposal in respect of design, scale and massing prior to refusing the planning application;
 - ignored the previous planning history on the site;
 - misinterpreted PPS 8 Policy OS 1; and
 - refused a request from a Councillor to allow the application to be called in to the local Planning Committee.
6. Paragraph 14 of the Commission's 'Costs Awards Guidance' lists examples of behaviours which may be found to be unreasonable. These include causing an unnecessary appeal.
 7. In relation to the Claimant's first concern relating to unreasonable behaviour, the Council is under no legislative obligation to outline any concerns with the layout or design. The reasons for refusal were clearly set out on the case officer's report and the delegated list dated of 20th January 2022. The agent had the opportunity to submit sufficient reasoning to the Council to have the application called in to be considered by the planning committee (subject to the Council's scheme of delegation dated 2nd July 2020) or to provide amendments for further consideration at that stage. Given the claimant made arrangements with a councillor to make representations to the Council on his behalf, it is obvious that he was aware of the refusal reasons in advance of the planning application being formally refused. Accordingly, I do not consider that the Council acting unreasonably in respect of the claimant's first concern.
 8. In relation to the claimant's second concern, the Council have noted the planning history within its case officer report and statement of case. Furthermore, the Council are a different planning authority, and the proposal represents a different house type to that of the previous planning permission which has lapsed. No valid fall-back position exists. The Council are not bound by the decisions of a previous planning authority. However, it did have regard to the planning history in question. Consequently, the Council have not acted unreasonably in respect of the claimant's second concern.
 9. In respect of the claimant's third concern, the interpretation of planning policy OS 1 of PPS 8 is subjective. The deciding authority must make an evaluative judgement on whether the land constitutes a visual amenity which has public value. Disagreement and differences in policy interpretation are part and parcel of the planning process. The Council were entitled to come to a different conclusion than the claimant. Consequently, the Council did not act unreasonably in this regard.
 10. The appellant's fourth concern in relation to unreasonable behaviour, relates to the Council's decision not to call the application before planning committee under its scheme of delegation dated 2nd July 2020. The Council have advised that the Councillor did not set out the planning merits of a call-in, which is required in accordance with the Council's scheme of delegation. The claimant did not provide me with any evidence to the contrary. Accordingly, I do not consider that the Council acted unreasonably by adhering to their scheme of delegation.

Unnecessary or Wasted Expense

11. The Commission's 'Cost Award Guidance' states that a claim for costs needs to provide all information listed within annex 2 which includes full details on the

allegedly unreasonable behaviour, the nature of the expenses incurred by the claiming party and the reasons why those expenses were originally incurred.

12. Whilst the appellant did not provide a breakdown of expenses as required by the guidance, I have found that no unreasonable behaviour occurred. Consequently, I do not consider that the claimant incurred any unnecessary or wasted expense.
13. Given the reasons set out above, no award of costs will be made.

COMMISSIONER JACQUELINE MCPARLAND

List of Documents

The Claimant: - Award of Costs Claim

The Council: - Rebuttal