
Appeal Reference:	2022/A0162.
Appeal against:	The refusal of outline planning permission for proposed residential development.
Location:	Lands south and west of Nos. 55 – 57 Gulf Road, Killaloo, Co. Derry.
Claim by:	Millwell Properties Ltd.
Claim against:	Derry City & Strabane District Council for a full award of costs.
Decision by:	Commissioner Mark Watson, dated 7 August 2024.

Decision

1. The claim for a full award of 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 (the Act). An appeal was made in accordance with Section 58 of the Act against the 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. Paragraph 20 of 'Guidance on Costs Awards in Planning Related Appeals' states that when a hearing takes place, any costs claim should be made as soon as reasonably practicable after the behaviour that triggered the claim. It goes on to state that all claims must be in writing unless they arise from behaviour that occurred or came to light during the hearing, in which case a claim may be made orally at the end of the hearing.
5. The Claimant's claim for costs was submitted alongside their statement of case in relation to the substantive appeal. The claim is a timely one.

Unreasonable Behaviour

6. The Claimant considered that the Respondent's Planning Committee Report had made numerous references to the proposed development, now subject of appeal, being acceptable in principle. Furthermore, the Council failed to grant outline permission for the development of the site, subject to conditions. This amounted to unreasonable behaviour, giving rise to an unnecessary appeal.
7. The Commission guidance at paragraph 14 acknowledges that there can be instances where unreasonable behaviour can have said to have occurred, giving several scenarios, including causing an unnecessary appeal. Whether there has actually been unreasonable behaviour in a particular case will be a matter of judgment for the Commission and every claim for costs will be assessed on its own facts and the party seeking costs will have to show that it was put to unnecessary or wasted expense.
8. The Respondent explained that its references to the proposal being acceptable in principle related to the site's location within the development limit of Killaloo, but that even so, it was still subject to assessment against the provisions of the Derry Area Plan and other relevant planning policy. I agree that it does not follow that residential development being deemed acceptable in principle on a site should, in and of itself, result in the granting of permission, subject to planning conditions. Even in respect to outline planning applications, there remains consideration of the development against the relevant local development plan and other relevant planning policy, which in this case related to matters of design, landscaping, private amenity space, as well as parking and turning provision. The Respondent had concerns that the submitted Design Concept Statement (DCS) did not demonstrate that a quality residential development could be achieved on the site.
9. The Respondent stated that it had explained its objections to the Claimant's representative at a meeting and afforded an opportunity to submit a further revised DCS. The Respondent stated that the Claimant instead accepted that the quantum of units on the site might need reduced if Creating Places standards could not be achieved at the reserved matters stage and that, during the Planning Committee Meeting, the Claimant's representative indicated their intention to appeal in respect of the development. Disagreement is an expected feature of the appeals process, with that between the parties in this case not out of the ordinary. I do not find the Respondent's position that further information was required, nor its refusal to simply grant permission with conditions attached when it was not certain that a quality residential development could be achieved, to be unreasonable. No unreasonable behaviour has taken place.

Unnecessary Expenses

10. As I have found that no unreasonable behaviour occurred, the Claimant has not incurred any unnecessary or wasted costs.
11. Given the above reasoning the claim for full costs is denied.

COMMISSIONER MARK WATSON

List of Documents

Claimant:- 'CA' Cost Claim (MKA Planning on behalf of Millwell Properties Ltd.)

Respondent:- 'CB' Response to Cost Claim (Derry City & Strabane District Council)