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<b>Appeal Reference:</b>	2022/A0176
<b>Appeal against:</b>	Retrospective change of use from private garden to an extension of an existing builders yard with a new 2.55m high boundary wall and concrete surface
<b>Location:</b>	Lands to the rear of No. 48 Newcastle Street, Kilkeel
<b>Claim by:</b>	Mr Colin Knox (James Knox and Sons Ltd)
<b>Claim against:</b>	Newry, Mourne and Down District Council
<b>Decision by:</b>	Commissioner B Stevenson, dated 28 August 2024

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## Decision

1. A partial award of costs is made as set out below.

## Reasons

2. In accordance with its publication 'Guidance on Costs Awards Guidance in Planning and Related Appeals', the Commission will normally award costs only 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.
  - The unreasonable behaviour has caused the party claiming costs to incur unnecessary or wasted expense.
3. The Claimant submitted their costs award claim in relation to an appeal under Section 58 of the Planning Act (Northern Ireland) 2011 ("the Act") against the decision made by Newry, Mourne and Down District Council. Section 205 of the Act enables the Commission to make costs awards in Section 58 appeals. The costs claim accompanied the Claimant's Statement of Case and was therefore made in a timely manner. Given that the claim relates to a relevant type of appeal, and it was made in a timely manner, the first two above conditions are met.
4. The Claimant claims that the Respondent acted in an unreasonable manner by causing an unnecessary appeal for the following reasons:
  - the Respondent failed to produce any credible evidence to substantiate its claim that neighbouring properties would be detrimentally impacted by way of noise and disturbance;
  - the Respondent failed to produce any credible evidence to substantiate its claim that the boundary treatment would impact upon the amenity of neighbouring residents in terms of loss of light, dominance and overbearing impact and that appropriate means of boundary treatment have not been provided; and

- the Respondent failed to produce any credible evidence to substantiate its claim that the development is contrary to Policy NH5.
5. The Claimant states that this alleged unreasonable behaviour resulted in him incurring unnecessary and wasted expense pertaining to:
    - the appeal fee;
    - the acoustic consultant's fee for reading papers, general advice, considering the Statement of Case, reviewing Council's submissions, preparing a Technical Supporting Letter and attending associated meetings/conference calls with the planning consultant; and
    - the planning consultant's fee for reading papers, undertaking a site visit, offering planning advice, co-ordinating supplementary material, reviewing the Council's submissions, writing the Statement of Case and the Claim for Costs statement, the preparation for and attendance at the appeal hearing and associated meetings/conference calls.
  6. Paragraph 14 of the Costs Awards Guidance sets out some potential examples of behaviours which may be found unreasonable. One of which is where no credible evidence has been provided to substantiate the reasons given for refusing permission.
  7. While the Claimant alleges that the Respondent failed to produce any credible evidence to substantiate its claim that the proposal is contrary to Policy NH5, the Respondent clarified that the reference to Policy NH5 in the second refusal reason was cited incorrectly, and that Policy NH6 should have been referenced. The rest of the wording in the second refusal reason cites the wording in Policy NH6. This infers that the reference to Policy NH5 was a typo. Moreover, as set out in the accompanying decision, parties involved in the appeal considered the appeal development against the correct policy. Given these factors, I do not consider this error represents unreasonable behaviour.
  8. The Claimant contends that the Respondent provided insufficient information to demonstrate why it considers that the development would have a harmful impact on the Mourne AONB and on residential amenity. While the Respondent did not provide a fully comprehensive explanation of its consideration of the impact on the Mourne AONB and residential amenity, I consider the reasoning provided to be sufficient. Disagreement is a common feature of the appeals process and that, of itself, is not unreasonable behaviour. Moreover, certain material considerations are subjective and come down to planning judgement.
  9. The Claimant alleges that the Respondent dismissed the views of two separate expert parties - its Environmental Health Office (EHO) and the Claimant's noise consultant – without adequate explanation and proceeded to form its own contrary judgement without any justification, and for that reason, the Claimant feels strongly aggrieved. The Claimant's commissioned Noise Impact Assessment (NIA) was submitted during the processing of the planning application and while the Respondent accepted its methodology at the hearing, did not agree with the NIA's findings and conclusions. While a Council as a corporate body is entitled to reject the views of a consultee, they should provide justification for that stance. However, no compelling justification was provided for taking an opposing opinion other than stating "concerns remain".

10. Given that the Respondent provided no adequate reasons as to why it did not accept the NIA findings in light of the response from EHO, especially as they accepted the methodology in place, I conclude that they acted in an unreasonable manner. The third criterion is therefore met in this limited regard.
11. Paragraph 17 of the Costs Awards Guidance states that expenses arising in the course of the appeal process typically include the cost to the planning authority of assembling background documents to assist the Commission and the other parties in their preparation for the appeal; the cost of employing a member of staff or agent to prepare written evidence and/or appear at a hearing; and the cost of using the services of professional experts to provide technical advice to prepare written submissions or evidence. As unreasonable behaviour has occurred, I find that the Claimant had incurred unnecessary expense in relation to preparing his Statement of Case regarding the matter of noise and in preparing for and participating in the hearing in relation to the same issue. Accordingly, the fourth criterion is met insofar as stated.
12. A partial award of costs is made in the terms set out below.

### **Order**

**It is hereby ordered** that Newry, Mourne and Down District Council shall pay to Mr Colin Knox the partial costs incurred by the Claimant pertaining to the consultancy services of his planning and acoustic consultants in preparing his Statement of Case and appendices, reviewing the evidence, carrying out a site inspection in preparation for the hearing, and preparation for and participation in the hearing relating to those works undertaken at appeal stage regarding noise impact.

On receipt of this order, Mr Colin Knox may submit details of those costs to Newry, Mourne and Down District Council with a view to reaching agreement on the amount. If the parties are unable to agree, Mr Colin Knox may refer the matter to the Taxing Master of the High Court for a detailed assessment.

**COMMISSIONER B STEVENSON**

**List of Documents**

Claimant: -

C Cost Claim and appendix  
Mr Colin Knox (James Knox and Sons Ltd)

Respondent: -

R Cost Claim Rebuttal  
Newry, Mourne and Down District Council