
Appeal Reference:	2023/A0002
Appeal against:	The refusal of full planning permission for the retention of temporary car park
Location:	Site at junction of Academy Street Exchange Street and Hector Street, Belfast
Claim by:	MBA Planning on behalf of Smart Parking Ltd.
Claim against:	Belfast City Council
Decision by:	Commissioner Cathy McKeary dated 29th March 2024

Decision

1. An award of costs is allowed in part.

Reasons

2. Paragraph 12 of the Commission's Costs Awards Guidance states that the Commission will normally award costs only where all four of the following conditions are met: -
 - a party has made a timely claim;
 - the claim relates to a relevant type of appeal;
 - 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.
3. In the case of an appeal proceedings by exchange of written representations, any costs claim must accompany the claiming party's final written submission. The final submission will normally be the party's rebuttal to the evidence submitted by the opposing party or parties. The costs claim was made on 23rd January 2024. This was within the two weeks stipulated at the hearing on 9th January 2024 when the claimant raised the matter based on circumstances that day. I am therefore satisfied that the claim was made in a timely manner.
4. The costs claim related to an appeal that was submitted under Section 58 of the Planning Act (Northern Ireland) 2011 ("the Planning Act"). Section 205 of the Planning Act enables the Commission to make costs awards in Section 58 appeals. The claim therefore relates to one of the appeal types for which the

Commission can award costs. Accordingly, an eligible costs claim is before me. The first two conditions are therefore met.

5. In relation to the third condition, the Claimant alleged that the Council did not notify them of any revised refusal reasons based on the adoption of the new plan strategy. In particular, it was argued that the third refusal reason introduced an entirely new matter that was not apparent to the appellant before the exchange of evidence. The appellant considers that this was unfair because they were denied an opportunity to respond to it in writing before the hearing. This refusal reason was then withdrawn at the hearing despite the appellant having gathered new evidence which was intended to address this additional objection at the hearing.
6. The Council was under no obligation to provide the appellant with the amended refusal reasons prior to the exchange of evidence. However, it would have been helpful given that a new plan strategy had been adopted between the decision being issued and the appeal being heard. The appellant only had sight of the third refusal reason once the statements of case were exchanged. Furthermore, they could at the very least have expected an updated position from the Council considering the change in circumstances brought about by the new plan strategy. However, the appellant had the opportunity to make their case at the hearing and to address the issue there. This was not unreasonable behaviour.
7. Notwithstanding my conclusion above, the Council went on to withdraw the third refusal reason during the hearing. They said that there was a drafting error within the plan in relation to the policy referred to within that refusal reason. This revised position from the Council at such a late juncture in the appeal process was unreasonable behaviour and caused the appellant nugatory work in reviewing the new policy and preparing their case for the hearing.
8. As regards the email chain between DfL Roads and the Council, this was requested by me at the hearing to enable a reasoned and informed decision to be made. This information in any form had been omitted from the background papers supplied by the Council to the Commission and, in its final form dated 29th August 2023, it could not have formed part of the statement of case which was submitted by 25th August 2023. Whether or not the email chain should have been made available on the planning portal is a matter for the Council. An adjournment was given to allow all parties to the appeal to consider the full content of all the emails. The appellant accepted that the emails did not provide further clarification on the matter of 'need'. This issue was addressed in the appellant's submission as part of the wider policy consideration of which the email chain only informed a part. The additional work was limited to the short adjournment and comprised a small proportion of the hearing. As the Commission sought clarification on this issue, the Council did not act unreasonably and the appellant was put to limited additional work.
9. I have found that unreasonable behaviour has taken place for the reasons given above. Thus, the appellant incurred unnecessary expenses in respect of that matter so an award of costs is allowed. The award of costs relates solely to the time and effort given to preparing evidence for the hearing in relation to the third refusal reason which was subsequently withdrawn.

Order

10. **It is hereby ordered** that Belfast City Council shall pay to Smart Parking Ltd. the costs of the appeal proceedings, limited to all costs incurred in respect of the third reason for refusal. On receipt of this order Smart Parking Ltd may submit details of those costs to Belfast City Council with a view to reaching agreement on the amount. If the parties are unable to agree, the claimant may refer the matter to the Taxing Master of the High Court for a detailed assessment.

COMMISSIONER CATHY MCKEARY

List of Documents

The Claimant: - Statement of case by MBA Planning on behalf of Smart Parking Ltd.

The Respondent: - Rebuttal by Belfast City Council