

**THE HIGHLAND COUNCIL**

**SOUTH PLANNING APPLICATIONS COMMITTEE**

**28 May 2013**

Agenda Item	6
Report No.	PLS/031/13

**Court of Session Decision: Paul Bova & Carole Christie (Petitioners and Reclaimers) v The Highland Council (Respondents) and BDW East Scotland Limited (Interested Party)**

**Erection of 64 houses and associated roads, car parking and below ground services at Land 50m South East of Cornriggs, Resaurie, Inverness (Ref: 09/00231/FULIN)**

**Joint Report by Head of Planning and Building Standards & Head of Legal and Democratic Services**

**SUMMARY**

The Inner House of the Court of Session has refused to quash the Council's decision to grant planning permission to Barratt for their housing development at Resaurie following a challenge by local residents.

**Recommendation** to NOTE the decision of the Inner House of the Court of Session.

**Ward:** 18 Culloden & Ardersier

**1. Background**

- 1.1 The Inverness, Nairn, Badenoch and Strathspey Planning Applications Committee (PAC) agreed on 11 August 2009 that it was minded to approve, subject to a section 75 agreement securing affordable housing, a planning application by Barratt East Scotland Limited (Barratt) for the erection of 64 houses and associated roads, car parking and below ground services at land 50m South East of Cornriggs, Resaurie, Inverness (Ref: 09/00231/FULIN).
- 1.2 A Notice of Amendment (Planning) was lodged in terms of the Council's Standing Orders and the application was referred to the Council's Planning, Environment and Development Committee (PED). On 23 September 2009 PED upheld the PAC decision and, following signature of the section 75 agreement, planning permission was issued to Barratt on 5 March 2010. The Council's grant of planning permission was challenged by local residents and the case was heard by Lord Pentland, in the Outer House of the Court of Session. Lord Pentland's decision, dated 19 August 2011, found in favour of the Council.

## **2. Appeal to the Inner House of the Court of Session**

- 2.1 The Petitioners, Mr Bova and Ms Christie, submitted a further challenge (by way of a reclaiming motion) to the Inner House of the Court of Session on two grounds: (1) In reaching their decision dated 5 March 2010, the Respondents (i.e. the Council) failed to have regard to a material consideration, namely the increased risk of ground water flooding to the petitioners' property and other properties on the southwest boundary of the site; and (2) Further, the Respondents failed to have regard to another material consideration, being a change of planning policy (in the interval between the resolution to grant consent and the formal grant) which introduced a requirement to take a precautionary approach to flood risk.
- 2.2 The Inner House issued its decision on 3 May 2013 and found, as regards (1), "there is nothing to suggest that the Respondents did not give adequate consideration to this issue." Therefore, the Petitioners failed on the first ground in their reclaiming motion. As regards (2) the Inner House differed from Lord Pentland in that the Court considered "that there was indeed some change in national planning policy on this issue which was effected by SPP in February 2010. However, we are of the view that the effect of the "slight amendment" in the finalised SPP was relatively minor – in colloquial terms, perhaps "fine tuning". That is to say, the Court, although upholding the Petitioners' argument regarding the change in policy, did not consider that there was a real possibility that the Council would have determined the planning application differently if the change in policy had been brought to its attention before the planning permission was issued after conclusion of the section 75 agreement.

## **3. Conclusion**

- 3.1 As a consequence of the Court's conclusions on these two grounds, the Inner House indicated that it was not prepared to quash the Council's decision to grant planning permission to Barratt. The Petitioners may appeal to the Supreme Court but this will depend on, among other things, obtaining funding for the appeal and having two advocates certify that the appeal is suitable. The Petitioners have 6 weeks from the date of the decision of the Inner House to lodge an appeal. If no appeal is lodged, it is expected that Barratt will proceed to market the houses built at Resaurie.

## **4. RECOMMENDATION**

That Committee NOTE the decision of the Inner House of the Court of Session.

Designation: Head of Planning and Building Standards & Head of Legal and Democratic Services

Date: 13 May 2013

Author: Karen Lyons, Legal Services

Background Papers: Decision of the Inner House of the Court of Session  
(<http://www.scotcourts.gov.uk/opinions/2013CSIH41.html>)