

Directorate for Planning and Environmental Appeals

Claim for an Award of Expenses Decision Notice

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Decision by Gerry Farrington, a Reporter appointed by the Scottish Ministers

- Appeal reference: P/PPA/270/510 [E]
- Site address: Site No. 2, Neil Gunn Drive, Ormie Industrial Estate, Thurso, KW14 7QU
- Claim for expenses by the Appellant, E Petrie Painters against Highland Council

Date of decision: 23 June 2008

Decision

I find that the council has not acted unreasonably resulting in liability for expenses and I decline to make any award.

Reasoning

1. As noted in Scottish Development Department Circular 6/1990, parties to a planning appeal are normally expected to meet their own expenses. Awards of expenses do not follow the decision on the planning merits and are made where each of the following tests is met; (1) the claim is made at the appropriate stage in the proceedings; (2) the party against whom the claim is made has acted unreasonably; and, if so; (3) such unreasonable conduct has caused the claiming party unnecessary expense, either because it was unnecessary for the matter to come before the Scottish Ministers, or because of the way in which the party claimed against has conducted its side of the case.
2. The claim was made at the appropriate stage of the proceedings and therefore the first test is met. In respect of the second test, I consider that the council's failure to make a decision stemmed from a reasonable concern as to the impact of the proposed development as a material variation from the development approved under application reference 03/00434/FULCA on the amenities of residents of adjacent properties. In so finding, it is significant in my opinion that the committee's deliberations in early September 2007 prompted the appellant into submitting improvements to the façade and landscaping proposals, which it is agreed would reduce the adverse impact on residential amenity. I am satisfied that the committee's decision that ultimately prompted the appeal made on 23 October 2007 to defer consideration of the application pending exploration of further ways to soften the impact of the building including suggesting sites for its relocation was still within the bounds of reasonable conduct for the planning authority in seeking to reconcile the



aspirations of the appellant and the concerns of the neighbouring residents. I have no reason to doubt that the committee's sense of unhappiness with the juxtaposition of the land allocations for industry and housing in the local plan adopted in 2002 arose from a genuine planning concern. It is not particularly surprising, therefore, that it influenced the committee's deliberations and, in my opinion, this did not amount to unreasonable conduct. Finally, that the committee's approach was at variance with the advice of its officers is immaterial given that the elected members of the authority bear the statutory responsibility for making planning decisions.

3. I can appreciate the appellant's frustration at the council's failure to decide the application. However, as the balancing of the material considerations outlined in the appeal decision notice indicates, this was not the most straightforward or clear-cut of cases. In these circumstances the committee's prolonging of its deliberations is understandable and the appeal under Section 47 of the Town and Country Planning (Scotland) Act 1997 availed of by the appellant has itself provided a statutory means of redress for the failure to reach a decision.
4. Although I allowed the appeal I am satisfied that the council has not acted unreasonably. Therefore, I find that the claim for an award of expenses fails the second test identified in paragraph (1) above. The third test is only applicable if the second test is met.

GERRY FARRINGTON
Reporter