
Decision by David Buylla and Karen Heywood, Reporters appointed by the Scottish Ministers

- Appeal reference: PPA-270-626
- Site address: former Morrison's site, Shore Road, Tain
- Claim for expenses by Santon Retail Ltd/Tesco Stores Ltd against The Highland Council
- Date of public local inquiry: 4, 5, 9, 10 and 11 March 2010

Date of decision: 6 May 2010

Decision

We find that the council has acted in an unreasonable manner resulting in liability for expenses.

Accordingly, in exercise of the powers delegated to us and conferred by section 265(9) as read with section 266(2) of the Town and Country Planning (Scotland) Act 1997, we find the council liable to the appellants in respect of the expenses of the public local inquiry. Normally parties are expected to agree expenses between themselves. However, if this is unsuccessful, we remit the account of expenses to the Auditor of the Court of Session to decide on a party/party basis. If requested, we shall make an order under section 265(9) read with section 266 of the Town and Country Planning (Scotland) Act 1997.

Reasoning

1. Our decision to allow the appeal has already been issued.
2. The claim was made at the appropriate stage in the proceedings.
3. The first reason for refusal does not explain what adverse impact would arise from the alleged shortfall in on-site parking. It is not therefore sufficiently precise, as required by Circular 6/1990. Its allegation that the level of parking submitted at the reserved matters stage, by not complying with the council's standards, did not meet the requirements of condition 9 of the outline planning permission is simply incorrect. Condition 9 explicitly allows the planning authority to exercise discretion in the required level of parking. In any event, the council presented no argument as to why the standards should necessarily be

interpreted as a minimum level (to be achieved) when structure plan policy TC9 applies them as a maximum (not to be exceeded).

4. The council also had before it at the 21 April 2009 meeting, a revised car parking layout that would have achieved the maximum level of parking in the council's standards. It was open to the council, in order to resolve its concerns over on-site parking, to defer consideration of the application to allow for re-notification and re-consultation on this amendment. Having received such advice from its own Principal Solicitor at that time, we do not consider it was reasonable for the council to have refused planning permission on parking grounds. We conclude that this reason for refusal is not sound, as required by the circular.

5. In defence of this reason for refusal, brief reference was made at the inquiry to other town centre car parks being full. However, this was not supported by evidence. The council also provided no evidence to identify any likely road safety or other adverse implications of there being too few on-site spaces. This is a further example of unreasonable behaviour.

6. Although the site's topography was known when it agreed to the principle of development, the council was entitled to favour a ramped pedestrian access from Chapel Street (as suggested at the outline stage) rather than the stepped access that was proposed in the reserved matters submission. However, the council could have approved the reserved matters application with a condition requiring the submission of details of a ramped pedestrian access from Chapel Street and we consider that its refusal of permission for this reason was also unsound.

7. The council's criticism of the trip generation figures in the appellant's transport assessment in evidence to the inquiry was not a response to our request for evidence on specific topics and was not a reasonable defence of the reasons for refusal, as the transport assessment had been accepted by the council when it granted outline planning permission. This unreasonably increased the duration of the inquiry.

8. The expenses incurred by the appellants in bringing this appeal are a direct result of the council's unreasonable behaviour, as outlined above. It should not have been necessary for the case to come before the Scottish Ministers for determination. The council is therefore liable to the appellants for all of the expenses incurred in making this appeal.

This is a true and certified copy of the decision issued on 06 May 2010.

DAVID BUYLLA
Reporter

KAREN HEYWOOD
Principal Reporter