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Decision by Dannie Onn, a Reporter appointed by the Scottish Ministers

- Appeal reference: P/PPA/270/2017
- Site address: Land at Cromarty Firth Industrial Park, Invergordon, IV18 0LE
- Claim for expenses by Combined Power and Heat (Highlands) Ltd against The Highland Council

Date of decision: 11 May 2010

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## Decision

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

Accordingly, in exercise of the powers delegated to me and conferred by section 265(9) as read with section 266(2) of the Town and Country Planning (Scotland) Act 1997, I find the council liable to the appellant in respect of the expenses of the appeal related to reasons for refusal numbered 3, 4 and 5. Normally parties are expected to agree expenses between themselves. However, if this is unsuccessful, I remit the account of expenses to the Auditor of the Court of Session to decide on an agent/client basis. If requested, I shall make an order under section 265(9) read with section 266 of the Town and Country Planning (Scotland) Act 1997.

## Reasoning

1. The claim was made at the appropriate stage of the proceedings.
2. The council decided the application against the recommendations of its officers. The first reason for refusal concerns road safety. Transport Scotland and the local highway authority raised no objection to the proposed development. The council provided records for the Tomich junction on the A9, which show an increase in the number of traffic accidents. That is a material planning consideration supporting the council's view that the junction is sub-standard and dangerous. The council made its decision in the light of the officer's report, debate at the committee meeting and local knowledge of the road junction. Although I have found differently on the evidence presented, the council's behaviour on this issue was not unreasonable.

3. The second reason for refusal deals with the amenity of the area. Assessments on such issues are frequently a matter of planning judgement. It is not unreasonable that the council has come to a conclusion different from its officers, even though I have come to a different view based on the evidence.
4. In its third reason for refusal the council refers to conflict with the proximity principle of the national waste plan. That plan seeks as far as possible that waste will be dealt with in the area where it is produced. In this case that is the Highland region and that is what is proposed. This reason for refusal is clearly unreasonable.
5. The fourth reason for refusal relates to the location of the proposed development. I have considered this matter in my appeal decision, concluding that the choice of site is supported by council policy as well as national guidance. The council has not substantiated the contrary view on grounds other than matters covered by other reasons for refusal. That is unreasonable.
6. Public health protection is a matter for Scottish Environment Protection Agency (SEPA) to consider when a license is applied for. PAN 63 advises that planning authorities should accept that Pollution Prevention and Control licensing (by SEPA) is adequate and suitable for public health protection from pollution. The council's fifth reason for refusal is clearly unreasonable.
7. The council should not make a decision based on local opposition unless it is founded on valid planning reasons. I acknowledge that the council's planning committee spent several hours debating the application at a hearing. Nevertheless, the council has not shown reasonable planning grounds for some of their reasons for refusal. Therefore I make a partial award against them.
8. The appellant is entitled to recover expenses for the time spent addressing reasons for refusal 3, 4 and 5. Much of the evidence submitted with the application covers the matters raised by the council. Despite this, I am satisfied that the appellant has been put to some unnecessary expense in addressing these matters in the appeal statement and further representations.

*This is a true and certified copy of the decision issued on 11 May 2010.*

Dannie Onn  
Reporter

