Directorate for Planning and Environmental Appeals

Claim for an Award of Expenses Decision Notice

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The Scottish Government

Decision by Michael J P Cunliffe, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2129
- Site address: Land south of West Cloughmor, Farr
- Claim for expenses by Airvolution Energy Ltd against Highland Council

Date of decision: 10 August 2015

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. 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 party/party basis. I certify Brodies LLP, Savills and Ash Design and Assessment as necessary experts for the appellant. 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. The appellant maintains that the council acted in a manifestly disproportionate manner. Against the professional advice of its own planning staff and without any objective justification, the committee decided to refuse planning permission where there were no planning grounds for doing so. In terms of Circular 6/1990, the appellant considers that the council:

- Failed to give complete, precise and relevant reasons for refusal;
- Reached its decision without reasonable planning grounds for doing so;
- Refused the application solely on the grounds that it did not accord with the provisions of the development plan and without having regard to other material considerations; and
- Refused the application because of local opposition, where that opposition was not founded upon valid planning reasons.

2. The appellant claims that this unreasonable conduct has caused it to incur unnecessary expense in pursuing the appeal, including the cost of preparing surveys (Zone

of Theoretical Visibility, ZTV, and Residential Visual Amenity Survey, RVAS) to demonstrate the lack of justification for the council's reason for refusal. The appellant seeks an award of the entire costs incurred in the appeal, and requests that Brodies LLP, Savills and Ash Design and Assessment should be certified as experts for their input to the appeal.

3. The council maintains that the committee acted reasonably and appropriately, applying the statutory test in section 25 of the 1997 Act. The committee is not obliged to follow the recommendation of its planning staff, particularly when subjective matters are under consideration. The committee, in the council's response to the appeal, has supported its reasons for refusal, and the council maintains that it had reasonable planning grounds for its decision. All appropriate policies in the development plan, and all material considerations, were taken into account by the committee. These were summarised in the report by the case officer. In the event of an award of expenses being made, the council considers this should exclude the cost of preparing the ZTV and RVAS since these could have been prepared and submitted as part of the application process, in which case they would have formed part of the costs associated with the planning application.

4. The council refused the application for the reason that "The proposed development is contrary to Policy 67 of the Highland-Wide Local Development Plan in that it will have significant visual impact on the landscape character of the area by reason of its height, with particular visual impact on residential properties at Balnafoich and Inverarnie". This is contrary to the advice provided to the committee by the planning officer on the basis of a careful analysis. While I accept that it is open to councillors to reach a different conclusion from officials, that conclusion needs to be informed by evidence and analysis, and the reasons for it properly explained. After considering the council's submissions on the appeal, I am still unable to understand why the proposal is thought to have a significant visual impact.

5. The proposed mast is only 150 millimetres in diameter. Balnafoich is 1.5 kilometres from the site, and Inverarnie over 2 kilometres. From these ranges, it would be possible to make out the mast, but it would be far from prominent and would be seen in a context of electricity pylons and commercial forestry. I cannot see how any reasonable decision-maker could reach the conclusion that it would have a significant visual impact either on residential properties at the distances involved, or on landscape character. The committee, if it was disposed to question the advice of the planning officer, could have sought further information from the applicant, arranged a site visit or arranged to view an existing similar mast from a comparable range. It appears to have done none of these things. Rather, it gave significant weight to the views expressed by local residents which I consider to be overstated and not soundly based on planning grounds.

6. I therefore find that the council has acted unreasonably in respect of the following grounds set out in Circular 6/1990:

- Failure to give complete, precise and relevant reasons for refusal;
- Reaching its decision without reasonable planning grounds for doing so; and
- Refusing the application because of local opposition, where that opposition was not founded upon valid planning reasons.

In respect of the alleged failure to take account of other material considerations, I accept that the councillors would have considered these in the context of the officer's report, and I do not uphold that ground.

7. It should not have been necessary for this matter to come before Scottish Ministers, and the applicant has incurred considerable expense in bringing the appeal. As regards the council's argument that the award should exclude the cost of preparing the ZTV and RVAS since these could have been prepared and submitted as part of the application process, it is not normal practice for planning authorities to require such studies to support applications for meteorological masts, but it was open to councillors to continue consideration of the application and ask for the studies to be carried out before reaching their decision. In my view it is entirely reasonable for the appellant to prepare such studies to support its case in seeking to refute the council's decision. I therefore allow the costs of preparing these studies as part of the award.

Michael J P Cunliffe

Reporter