

Directorate for Planning and Environmental Appeals
Claim for an Award of Expenses Decision Notice

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

- Appeal reference: PPA-270-2130
- Site address: Land 3010 metres west of Larig Hill, Grantown on Spey
- Claim for expenses by Ourack Wind Farm LLP against Highland Council

Date of decision: 14 September 2015

Decision

I find that the council has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

Reasoning

1. The claim was made at the appropriate stage of the proceedings. The appellant maintains that the council has acted in a manifestly disproportionate manner. Against the professional advice of its own planning staff and without offering any objective justification, the decision was taken to refuse planning permission where there were no planning grounds for doing so. The appellant alleges the following unreasonable behaviour by the council, all within the examples given in the paragraph 7 of Circular 6/1990:

- Failing to give complete, precise and relevant reasons for refusal;
- Reaching their decision without reasonable planning grounds for doing so;
- Refusing the application solely on the grounds that it does not accord with the provisions of the development plan and without having had regard to other material considerations.

2. The appellant argues that this unreasonable conduct has caused it to incur the unnecessary expense of pursuing the appeals, and in particular the cost of preparing the ZTV map and wireframe to demonstrate the lack of justification for the council's reasons for refusal.

3. The council refutes these arguments, and maintains that the South Planning Applications Committee acted reasonably and appropriately applied the statutory test when determining the planning application. The committee was not obliged to follow the recommendation of its planning staff, and has supported its reasons for refusal. The council had reasonable planning grounds for its decision to refuse planning permission. The committee took into account material considerations as well as all relevant policies of

the development plan, as summarised in the planning officer's committee report. The appellant could have prepared and submitted the ZTV map and wireframe as part of the application process.

4. I have reviewed the council's stated reasons for refusing planning permission. These were that:

- The proposed development would be contrary to Policies 28 and 61 of the development plan in that it would have an unacceptable visual impact on the landscape and scenery of the area by reason of its height and prominence when viewed from the Dava Way, an important tourist route; and
- The proposed development would be contrary to Policy 57 of the development plan due to its detrimental effect on the landscape character of the Drynachan, Lochindorb and Dava Moors Special Landscape Area.

5. In my decision on the appeal, I have found that the proposed mast would have a minor visual impact when viewed from the Dava Way, and that there would be a slight effect on the landscape character of the Special Landscape Area. I have concluded that these impacts, particularly given their limited duration of two years, are not sufficiently serious to bring the proposal into conflict with the relevant policies of the development plan. However, that is a judgement which involves a degree of subjectivity, and the committee was entitled to attach greater weight to the impacts and to reach a different conclusion.

6. In considering the appeal, I have found it helpful to have the ZTV map and wireframe. The committee did not have that advantage. While the council could have requested this information at the time of the application (and did not), it would have been open to the appellant to supply these drawings voluntarily on the basis that what was being proposed – a lattice mast 90 metres high and about 1 metre across – was likely to have a notable presence in a Special Landscape Area, and to give rise to some concerns.

7. I do not consider that the council has failed to give complete, precise and relevant reasons for refusal. The reasons, while brief, are precise and relevant. The committee had reasonable planning grounds for reaching its decision. While I think those grounds were overstated, they do not in my view stray into unreasonable conduct. I am satisfied that the committee had regard to other material considerations. It was not obliged to cite these in its reasons for refusal.

8. I therefore conclude that the council has not acted in an unreasonable manner, and that there is no basis for an award of expenses.

Michael J P Cunliffe

Reporter