

The Highland Council
Planning, Development and Infrastructure Committee
4 November 2015

Agenda Item	11
Report No	PDI 66/15

Planning Appeals Update

Report by Director of Development and Infrastructure

Summary

This report provides Members with a summary of appeal decisions by the Directorate for Planning and Environmental Appeals from 1 April 2014 to 1 September 2015. It also provides an overview of decisions made by the Planning Review Body.

1. Introduction

1.1 This main purpose of this report is to advise the Planning, Development and Infrastructure Committee of the decisions on planning appeals issued by the Directorate of Planning and Environmental Appeals (DPEA) and the Scottish Ministers during the period 1 April 2014 to 1 September 2015. It also highlights decisions taken by the Planning Review Body during 2014/15.

2. Appeal Decisions

2.1 **Appendix 1** to this report provides a summary of the decisions made by the DPEA on appeals within the Highland Council area relating to planning applications and Section 75 Agreements, enforcement notices and High Hedge Notices. There were 33 such appeals (not including those appeals which were withdrawn or which the DPEA decided they had no remit).

2.2 Of the 26 cases where appeals were made against applications having been refused, 54% of appeals were dismissed. Of the remaining 12 (46%) where the appeals were allowed, only in 1 case were expenses awarded against the Council.

2.3 Two appeals were made against the Council's non determination of planning applications – one of which was allowed (housing development in Drumnadrochit) and one of which was dismissed (Beinn Mhor wind farm). The Reporter's decision in this latter case is the subject of a statutory appeal to the Court of Session.

2.4 A number of appeals against enforcement notices have taken place during the period, reflecting the increased emphasis being placed on enforcement issues. The new arrangements for high hedges also resulted in one appeal against the terms of a high hedge notice served, which was dismissed.

3. Review Body Decisions

- 3.1 **Appendix 2** illustrates the performance of the Planning Review Body over the financial year period 2014/15, compared with performance across Scotland as a whole. The Council dealt with a total of 34 cases, and the original decision was upheld in 55.9% of cases, compared to a Scottish average of 64.3%.

4. Planning Appeal and Public Inquiry Costs

- 4.1 The costs of defending planning appeals and public inquiries related to Section 36/37 applications and any related legal challenges is reported to this Committee at regular intervals. The cost of these appeals, public inquiries and legal challenges over the financial year 2014/15 was approximately £117,000.

5. Implications

- 5.1 Resource
The costs associated with planning appeals are managed within the service budget.
- 5.2 Equality, Legal, Climate Change/Carbon Clever, Risk, Rural and Gaelic
There are no direct legal, equality, climate change/Carbon Clever, risk, rural or Gaelic implications directly arising from this report.

Recommendation

The Committee is recommended to note the outcomes of appeals as detailed in the report.

Designation: Director of Development and Infrastructure

Date: 20 October 2015

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Appendix 1

Appellant	Site	Officer Recommendation	Committee Decision	Appeal Decision	Expenses Claim
Erection Of A Temporary (24 Months) 60M Anemometer Mast	Land 645M West Of Cloughmor, Farr, Near Inverness	Grant (14/04385/FUL)	Refusal of Application	Appeal Allowed	Expenses awarded
Land 265M NW Of Upper Northfield Farm, Hempriggs, Thrumster, Wick	Land 265M Nw Of Upper Northfield Farm, Hempriggs, Thrumster, Wick	Refusal of Application (14/03832/FUL)	Refusal of Application	Appeal Allowed	No award of expenses
Erection Of 3 Sheds (Retrospective)	14 Fountain Square, Haster, Wick, KW1 5SX	Grant (14/04307/FUL)	Refusal of Application	Appeal Allowed	No award of expenses
Erection Of House, Formation Of Vehicular Access (Planning Permission In Principle) (Site 1)	Land East Of Lower Bayfield, Nigg, Tain, IV19 1QP	Refusal of Application (14/01944/PIP)	Refusal of Application	Appeal Dismissed	
Erection Of House, Formation Of Vehicular Access (Planning Permission In Principle) (Site 2)	Land 90M North West Of Redburn House, Nigg, Tain	Refusal of Application (14/01945/PIP)	Refusal of Application	Appeal Dismissed	
Erection Of House, Formation Of Vehicular Access (Planning Permission In Principle) (Site 3)	Land East Of Lower Bayfield, Nigg, Tain	Refusal of Application (14/01121/PIP)	Refusal of Application	Appeal Dismissed	
Modify The Planning Obligation Entered Into In Connection With The Grant Of Planning Permission For The Erection Of A House SW Of Westerlea, Croy (Ref. No. 10/00005/PIPIN)	Carrickholm, Cantray Cross Road, Croy, Inverness, IV2 5PN	Refusal of Application (14/04083/S75M)	n/a	Appeal Dismissed	

Discharge The Planning Obligation Entered Into In Connection With The Grant Of Planning Permission For The Erection Of A House	Holly Cottage, Muir Of Balnagowan, Ardersier, Inverness, IV2 7QX	Refusal of Application (14/03123/S75D)	n/a	Appeal Dismissed	
Erection Of 6 Turbines, Height 119.5M (Rated At Up To 3MW Each) & Associated Infrastructure	Beinn Mhor Wind Farm, Guisachan, Tomich, Cannich, Beauly	Failure to give a decision (14/01731/FUL)	n/a	Appeal Dismissed (Decision appealed to Court of Session)	
Alleged Unauthorised Building Of Extension Not In Accordance With Condition 1, Or Approved Plans, Of Planning Permission 07/00695/FULIN (Section 123(1)(B) Of The Act)	Clisham, 71 Culduthel Road, Inverness, IV2 4HH	Enforcement Notice (14/00369/ENF)	n/a	Appeal Dismissed	
Alleged Unauthorised Failure To Comply With Conditions No. 1 And No.3 Of Planning Permission 14/02059/FUL Granted On 11 August 2014	Land Adjacent To Keeper's Cottage, Strathsteven, Brora, KW9 6NL	Enforcement Notice (14/00333/ENF)	n/a	Appeal Allowed	No expenses awarded
Unauthorised Installation Of 3 No External Steel Roller Shutters (And Associated Fixtures And Fittings) Over Window Openings On Front Elevation Of The Church Hall	The Church Hall, Crescent Road, Nairn, IV12 4NE	Enforcement Notice (14/00034/ENF)	n/a	Appeal Dismissed	
Certificate Of Lawfulness Proposed Development (Construction Of House)	Plot 1 , Land 50M Se Of Culbo Mains Farm, Culbokie, Dingwall	Refusal of Application (14/02535/CLE)	n/a	Appeal Allowed	No expenses awarded

Certificate Of Lawfulness Of Proposed Development (Construction Of House)	Plot 2, Land 50M Se Of Culbo Mains Farm, Culbokie, Dingwall	Refusal of Application (14/02536/CLE)	n/a	Appeal Allowed	No expenses awarded
Alleged Unauthorised Importation & Deposit Of Inert Waste Materials And Subsequent Engineering Operations To Form A Shoreline Bund; The Creation Of An Embankment And Raising Of Ground Levels; And The Culverting Of The Watercourse Near The Shoreline	Friars Croft, Milton Of Culloden, Inverness	Enforcement Notice (13/00099/ENF)	n/a	Appeal Allowed in Part	No expenses awarded
Change Of Use Of Open Amenity Ground To House Curtilage	59B Strathspey Drive, Grantown-On-Spey, PH26 3EY	Grant (14/03015/FUL)	Refusal of Application	Appeal Allowed	No expenses awarded
Wind Farm Comprising 7 Wind Turbines With A Maximum Tip Height Of 100M, And With An Installed Generating Capacity Of Up To 21 Megawatts. Associated Infrastructure Includes Wind Turbine Transformers, A Meteorological Mast, New And Upgraded Access Tracks, Control Building And Substation, Underground Cables, And A Temporary Construction Compound.	Land 1300M East Of Spittal Hill, Spittal, Caithness	Refusal of Application (13/04559/FUL)	n/a	Appeal Dismissed	
One 50Kw Wind Turbine, Height To Hub 24.6M, Height To Tip 34.2M, Blade Diameter 19.2M And Siting Of Equipment Cabin (Resubmission Of 12/02302/FUL)	Rootfield Farm, Muir Of Ord, IV6 7RF	Grant (13/00284/FUL)	Refusal of Application	Appeal Dismissed	

Wind Farm (Max. 50Mw Installed Capacity) Comprising 20 Turbines (110M Max. High To Blade Tip) And Associated Infrastructure, Access Tracks And 3 Borrow Pits (Glen Kyllachy Wind Farm)	Land 6000M West Of Findhorn Bridge, At Glen Kyllachy, Tomatin	Grant (13/02441/FUL)	Refusal of Application	Appeal Allowed	No expenses awarded
Application Under Section 42 To Develop Land Without Compliance With Condition 5 Previously Attached To Planning Permission Ref: 11/04228/FUL Nb For The Operation Of A Marine Fish Farm (Atlantic Salmon)	Site North West Of Sgeir Dughall Loch Torridon, Diabaig, Torridon	Refusal of Application (14/01868/S42)	Refusal of Application	Appeal Dismissed (Decision appealed to Court of Session)	
Appeal Against High Hedge Notice By Hedge Neighbour Disputing The Height The Hedge Is To Be Reduced To (Notice Requires Hedge To Be Reduced To 4 Metres In Height)	9 Charleston Place, Inverness, IV3 8NB	High Hedge Notice (14/00001/HH)	n/a	High Hedge decision confirmed	
Change Of Use To Waste Transfer Station (Capacity 24,999 Tonnes)	38 Carsegate Road North, Inverness	Grant (14/02502/FUL)	Refusal of Application	Appeal Allowed	No expenses awarded
Erection Of Temporary 80 Metre High Meteorological Mast And Associated Fencing.	Land At Farley Estate, By Kilmorack, Beauly	Grant (14/00644/FUL)	Refusal of Application	Appeal Allowed	No expenses awarded
Lochend Wind Farm. Erection Of 4 No. 2300Kw Wind Turbines With A Height To Tip Of 99.5M, Height Hub Of 64M, Rotor Diameter Of 71M And Associated Works	Land 978 M SE Of Lochend Holding, Barrock, Caithness	Refusal of Application (13/02682/FUL)	Refusal of Application	Appeal Allowed	No expenses awarded

Revised Layout And Design - Demolition Of Rose Street Hall & Decked Car Park & Phased Redevelopment To Provide Multi-Storey Student Accommodation, Shops, Food & Drink Premises, Public Space & Environmental Enhancement	South And West Of Rose Street, Inverness	Grant (13/04137/FUL)	Refusal of Application	Appeal Dismissed	
Construction And Operation Of A 15 Turbine (2 To 3 Mw Output, 14 No. Up To 121M Tip Height And 1 No. Up To 110M Tip Height) Wind Farm, Crane Hardstandings, Site Access And Tracks, Single Substation Compound, Control Building, Three Borrow Pits, Felling Of Up To Approximately 1Ha Of Trees, Two Temporary Compounds And Associated Parking	Balnacoil Lodge, Brora, KW9 6LX	Refusal of Application (13/03312/FUL)	n/a	Appeal Dismissed	
Mixed Use Development Comprising, Housing, Affordable Housing, Homes For The Elderly, Mixed Commercial Uses, Health Centre, Public Open Space And Associated Infrastructure	Land 145M North Of Smiddy Bar, Lewiston, Drumnadrochit	Failure to give a decision (13/03694/PIP)		Appeal Allowed	Expenses awarded
Replace Windows On Front And Rear Elevation With Double Glazed Sash And Case Lookalike Windows	7 Campbell Street, Thurso, KW14 7HA	Refusal of Application (12/04062/FUL)	Refusal of Application	Appeal Dismissed	
Construction And Operation Of Wind Farm (Tressady) Consisting Of Thirteen Wind Turbines And Associated Works	Land 1600M West Of Craggiemore, Tressady Estate, Rogart	Grant (13/02749/FUL)	Refusal of Application	Appeal Dismissed	

Erection Of House (Resubmission Of Application 13/00812/FUL)	Land South Of 17 Marine Park, North Kessock	Grant (13/03989/FUL)	Refusal of Application	Appeal Allowed	No expenses awarded
Construction Of A Windfarm Comprising 10No. Wind Turbines With A Tip Height Of Up To 99.5M, Crane Hard-Standings, Access Tracks, 64M Anemometry Mast; Control Building, Buried Cables, Construction Compound And 2 Temporary Borrow Pits	Lyth Wind Farm, Near Lyth, Wick	Refusal of Application (13/01832/FUL)	Refusal of Application	Appeal Dismissed	
Wind Farm Comprising 13 Wind Turbines (2.5Kw), Crane Hardstandings, External Transformers, Access Bell Mouth From The A9, Access Tracks, 60M Anemometry Mast, Control Building And Substation Compound	Bad A Cheo Wind Farm, Achkeepster, Spittal, Caithness	Grant (12/02868/FUL)	Refusal of Application	Appeal Allowed	No expenses awarded
Residential Development Of 319 Units And Associated Infrastructure And Public Open Space	Land At Cawdor Road, Nairn	Grant (11/04355/FUL)	Refusal of Application	Appeal Dismissed	Expenses awarded

Local Review Bodies (LRBs)¹

Planning Authority	2014/15			2013/14			2012/13		
	Number of applications	Overall Average Time (weeks)	% Original decision upheld	Number of applications	Overall Average Time (weeks)	% Original decision upheld	Number of applications	Overall Average Time (weeks)	% Original decision upheld
Aberdeen City	25	5.8	72.0%	2	31.0	50.0%	3	5.0	33.3%
Aberdeenshire	60	19.5	76.7%	47	26.1	78.7%	49	26.9	71.4%
Angus	15	11.3	80.0%	20	7.7	85.0%	18	7.8	83.3%
Argyll & Bute	12	30.4	91.7%	14	16.3	64.3%	20	11.0	70.0%
Cairngorms NP ¹	0	-	-	0	-	-	n/a	n/a	n/a
Clackmannanshire	1	27.9	0.0%	1	15.9	100.0%	3	12.6	0.0%
Dumfries & Galloway	12	14.3	83.3%	21	14.2	76.2%	17	16.0	88.2%
Dundee City	7	16.2	100.0%	4	17.1	25.0%	9	15.9	66.7%
East Ayrshire	11	13.5	90.9%	21	14.6	66.7%	21	9.1	61.9%
East Dunbartonshire	9	11.0	66.7%	7	11.7	57.1%	10	13.6	40.0%
East Lothian	7	11.0	57.1%	12	12.6	58.3%	10	9.7	50.0%
East Renfrewshire	8	8.8	75.0%	6	7.4	50.0%	12	8.6	66.7%
City of Edinburgh	77	7.1	51.9%	75	6.4	62.7%	71	7.7	52.1%
Eilean Siar	3	11.6	0.0%	1	5.4	0.0%	1	9.3	0.0%
Falkirk	8	25.2	37.5%	3	17.6	33.3%	1	15.9	100.0%
Fife	47	16.9	63.8%	51	16.4	47.1%	42	16.3	47.6%
Glasgow City	35	8.9	68.6%	20	8.7	72.5%	26	9.7	42.3%
Highland	34	16.3	55.9%	28	14.8	35.7%	21	10.0	42.9%
Inverclyde	8	13.6	50.0%	9	13.7	44.4%	6	19.4	83.3%
Loch Lomond & The Trossachs NP	4	14.1	25.0%	0	-	-	1	16.1	100.0%
Midlothian	16	10.4	25.0%	16	11.7	31.3%	14	11.1	35.7%
Moray	14	11.0	78.6%	22	7.0	50.0%	28	8.6	42.9%
North Ayrshire	8	5.6	62.5%	9	7.0	77.8%	14	9.9	64.3%
North Lanarkshire	5	6.0	80.0%	2	7.1	0.0%	1	2.7	100.0%
Orkney Islands	3	11.3	66.7%	4	15.5	75.0%	7	15.4	28.6%
Perth & Kinross	42	18.5	69.0%	56	16.2	51.8%	60	15.4	70.0%
Renfrewshire	3	13.1	100.0%	3	10.9	66.7%	8	9.7	100.0%
Scottish Borders	27	7.1	63.0%	39	8.1	48.7%	19	8.4	73.7%
Shetland Islands	6	19.2	33.3%	0	-	-	2	15.4	0.0%
South Ayrshire	19	11.1	52.6%	22	10.2	72.7%	23	8.0	74.0%
South Lanarkshire	7	8.5	85.7%	4	10.2	100.0%	1	10.7	0.0%
Stirling	5	18.6	60.0%	7	10.4	85.7%	7	16.4	28.6%
West Dunbartonshire	1	12.0	0.0%	1	5.0	0.0%	0	-	-
West Lothian	15	7.0	60.0%	16	8.8	75.0%	12	6.7	50.0%
SCOTLAND^{2,3}	554	13.0	64.3%	543	12.8	59.8%	537	12.6	59.2%

1. The Cairngorms National Park Authority (CNPA) do not receive planning applications directly but are notified of applications which have been made to those planning authorities within the park boundaries. The CNPA may then decide to call applications in for their determination. Planning applications may therefore have already been in the system for a number of weeks before being transferred to the CNPA. The percentage of Cairngorms applications processed in under 2 and 4 months are lower than those of the other planning authorities due to the reasons stated above. The CPNA do not have delegation powers.

[For further explanation please see Cairngorms Statement.](#)