

---

Decision by John H Martin, a Reporter appointed by the Scottish Ministers

- Appeal reference: ENA-270-2016
- Site address: Land south of Angelshare, Abriachan, Inverness IV3 8LB
- Claim for expenses by Mrs Ann Edwards against Highland Council

Date of decision: 9 November 2015

---

## Decision

1. 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

2. The claim was made at the appropriate stage of the proceedings.

3. The appellant has set out at some length the areas where she feels that the council acted unfairly and inconsistently, particularly where it has allowed similar developments nearby without similar conditions. She also points out that the council have not taken account of the on-going negotiations with the various departments on the breaches of planning control, which could have been resolved without the need to resort to enforcement procedure. These would have been better dealt with by means of a retrospective planning application, as the council have allowed on a nearby campsite. This particularly applies to the installation of the foul water treatment system and the imposition of new conditions that did not form part of the previous permission.

4. The appellant also makes reference to the objections from neighbours and the Community Council, which have not been disclosed to her, but formed the main theme of the enforcement process. In her view, the council did not follow Scottish Government Circulars, national and local policy procedures and have thereby acted unreasonably, causing her the unnecessary expense of pursuing this appeal.

5. In response, the council answered each of the appellant's points by stating that the conditions were imposed because it was a new application and many of the matters outstanding from the previous permission had not been resolved, so further suspensive conditions were considered to be necessary, particularly on the foul water treatment system which did not comply with Building Standards. The council noted that the appellant did not take advantage of the right of appeal against any of the conditions.

6. The council refers to paragraph 8 of Circular 10/2009 which states *that "While it is the case that it may be possible to resolve a breach of planning control through informal negotiations, particularly where the breach is relatively minor and/or unintentional, where such an approach is initially unsuccessful, further negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop"*. In the council's view, the breaches of control were not minor but serious, particularly as the pods continued to be occupied, and enforcement action was therefore considered expedient in this case.
7. The council go on to outline the history of negotiations, particularly over the proposed foul water treatment plant that was initially installed without Building Warrant approval or even compliance with the recommendations of the JIG, the company the appellant engaged to prepare a Drainage Assessment. She therefore incurred extra costs because the system was deficient which led to a suspensive condition being necessary on the new permission. The whole problem could have been avoided had the appellant consulted the Planning Authority and Building Standards before relocating the pods and installing the temporary toilets.
8. The council go on to say that the other planning applications referred to are not comparable with the appeal proposal or are sufficiently different not to be relevant. It also refutes the appellant's claim that she has been severely prejudiced and that the breaches of the planning control resulted in proportionate action to remedy those breaches. The council asserts that it has been consistent, fair and reasonable in its approach towards the determination of the planning applications and the subsequent enforcement action.
9. Paragraph 4 of Circular 6/1990 states that, in planning proceedings, the parties are normally expected to meet their own expenses and expenses are only awarded on grounds of unreasonable behaviour. In this connection, I am unable to take account of any other similar applications in the area, the details of which are not before me.
10. This is an appeal against an enforcement notice alleging breaches of conditions on planning permission Ref: 14/04549/FUL dated 29 June 2015 which, although it related to a modified layout and design of the camping pods, was essentially a revision of the earlier permission for 10 No. camping wooden shelters (Ref: 10/013513/FUL). Both permissions contained suspensive conditions requiring the submission and approval of further details before work commenced or the pods are occupied. While the earlier permission was less restrictive on the occupancy of the wooden shelters, this permission was not implemented because the appellant's company wished to pursue the appeal application for 10 No. camping pods.
11. As this was a new permission, the council had every right to impose new conditions, particularly as work had already commenced on the new pods, without planning permission or Building Warrant approval, and they were being occupied before the terms of those conditions had been met. While I acknowledge that the council took enforcement action on 10 August 2015, rather soon after granting permission on 29 June 2015, most of the suspensive conditions on the previous and current permissions had not been complied with, and negotiations to resolve the breaches had not been satisfactorily concluded.

12. It is apparent from the submissions that while the appellant and her company were actively seeking to comply with the conditions, they continued with the building works regardless of the need to comply with them and, most particularly, allowed the pods to be occupied without the approved facilities contrary to the new permission. In recognising this, the council granted a 2 year permission for 2 temporary toilet/shower blocks as an amendment to the original permission (10/03513/FUL), subject to the installation of foul water drainage system.

13. Although I can understand the appellant's frustration at not being able to proceed with the development in the way she wished, had she and her company strictly complied with the conditions at all stages instead of continuing with the works without doing so, many of the problems they have faced would not have occurred. I therefore consider that, even though the council may have been rather premature in taking enforcement action in this case, which might be regarded as unreasonable, the appellant and her company have been just as unreasonable in the way they have carried out the development with little regard to the planning conditions imposed.

14. I therefore conclude that there is evidence of unreasonable behaviour on both sides and that an award of costs is not justified in this case.

*John H Martin*

Reporter