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Ms K Lyons
Highland Council
Sent By E-mail

Our ref: PPA-270-2196
Planning Authority ref: 17/05184/FUL

30 October 2018

Dear Ms Lyons

PLANNING PERMISSION APPEAL: STOER CHURCH LAND 75M EAST OF 162 STOER LOCHINVER IV27 4JD

Please find attached a copy of the claim for award of expenses decision.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see <https://beta.gov.scot/publications/challenging-planning-decisions-guidance/>.

We collect information if you take part in the planning process, use DPEA websites, send correspondence to DPEA or attend a webcast. To find out more about what information is collected, how the information is used and managed please read the [DPEA's privacy notice](https://beta.gov.scot/publications/planning-and-environmental-appeals-division-privacy-notice/) - <https://beta.gov.scot/publications/planning-and-environmental-appeals-division-privacy-notice/>

I trust this information is clear. Please do not hesitate to contact me if you require any further information or a paper copy of any of the above documentation.

Yours sincerely

Christopher Kennedy

CHRISTOPHER KENNEDY
Case Officer
Planning and Environmental Appeals Division



E l e y v I T c o p y s c r i b e d t o t h e p u b l i c d o m a i n f o r i n f o r m a t i o n a l p u r p o s e s .
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In reply to:



Notice

T: 0300 244 6668
F: 0131 244 8988
E: dpea@gov.scot

Decision by Sinéad Lynch, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2196
- Site address: land 75 metres east of 162 Stoer, Lochinver, IV27 4JD
- Claim for expenses by Mr Morgan against The Highland Council

Date of decision: 30 October 2018

Decision

I find that The Highland 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. Circular 6/1990: '*Awards of expenses in appeals and other planning proceedings*' provides that awards of expenses do not follow the decision on the planning merits, and are only made where each of the following tests is met:

- the claim is made at the appropriate stage in the proceedings;
- the party against whom the claim is made has acted unreasonably; and
- this unreasonable conduct has caused the party making the application unnecessary expense, either because it was unnecessary for the matter to come before the Scottish Ministers, or because of the way in which the party against whom the claim is made has conducted its side of the case.

2. I find that the claim was made at the appropriate stage of the proceedings, and both parties accept that position.

3. The appellant considers that the council has acted unreasonably in the context of the tests as set out in the circular, in that there was a failing on the part of the council to give complete, precise and relevant reasons for refusal of the application. The appellant also considers that the council considered matters unrelated to planning and was overly influenced by local opposition to the proposal. The appellant is of the view that the council did not give sufficient weight to the implications of the previous appeal decision.



4. In response to the claim for expenses, the council is of the view that it is entitled to take both the development plan and other material considerations into account in reaching its decisions, that the Committee acted reasonably and had planning grounds for the decision to refuse planning permission. The matters considered by the council are valid material planning matters and the reasons for refusal are supported by both the Committee minutes and the PARF.

5. 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 which, under paragraph 5.3, must also have caused the claimant to incur unnecessary expense.

6. On the matter of amenity, my appeal decision reaches a different conclusion from the council. The fact that I have come to a different view in my conclusions on this matter does not in itself indicate that the council acted unreasonably. I consider the council was entitled to come to its own view on the application of policy and material considerations. The officers report to Committee clearly set out the material considerations in this case, which are reflected in the reasons for refusal as set out in the decision notice.

7. On the matter of material considerations and local opposition, whilst the appellant considers that the reasons for the council's decision were not related to planning, not material and contradicted the view of its planning officer, I consider the council was entitled to come to its own conclusion on these matters. I find that the planning officers report had identified material considerations which included matters raised by those opposing the proposal. In addition, I find that the councils reasoning and reasons for refusal reflected the concerns of residents in relation to the potential impact of the proposed development on material considerations such as access to the graveyard, residential amenity and potential impact on nearby residents. These are legitimate planning concerns which are reflected in the relevant provisions of the Local Development Plan and in my own conclusions on this appeal.

8. Overall, I conclude that in the terms as set out in Circular 6/1990, the council did not act unreasonably in reaching a conclusion contrary to the recommendation of its officers. In my reaching that conclusion, there is no need to consider whether the appellant incurred any unnecessary expense.

9. I do not consider an award of expenses is justified in this case.

Sinéad Lynch
Reporter