

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



Scottish Government
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Decision by Stuart West, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2236
- Site address: High View, Lower Muckovie Inshes, Inverness, IV2 5BB
- Claim for expenses by Brian Rizza against Highland Council
- Date of site visit by reporter: 1 April 2021

Date of decision: 14 June 2021

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. Circular 6/1990 states that in planning proceedings the parties are normally expected to meet their own expenses. Awards of expenses do not necessarily follow the decision on the planning merits. Paragraph 5 of the circular sets out the conditions which would normally need to be met for a claim for an award of expenses to be successful.
2. The appellant's claim was made at an appropriate stage of proceedings, thereby satisfying the first of these conditions. The circular also requires that the party against whom the claim is made (in this case, the council) has acted unreasonably, and that this unreasonable conduct has caused the party making the application (the appellant) to incur unnecessary expense.

Unreasonable conduct

3. The appellant claims that the council has acted unreasonably by:
 - Refusing the planning application solely on the grounds that it does not accord with the development plan, and without having had regard to other material considerations.
4. This is an example of unreasonable behaviour included in Scottish Government Circular 6/1990 on awards of expenses in appeals. I consider below whether such unreasonable behaviour did occur.



5. Within his claim for expenses the appellant has highlighted a section of the planning officer's Report of Handling that was presented to the planning committee, which stated:

'Other Material Considerations

7.1 Scottish Government Planning Policy and Guidance

Not applicable'

6. The appellant states that this is not a fair and reasonable examination of the material considerations presented within the information submitted in support of the planning application, suggesting that the decision to refuse was made solely based upon a judgement of non-compliance with the local development plan policies stated within the decision notice.

7. I have read the planning handling report and I note several references to other material considerations above and beyond the local development plan alone. Paragraph 8.1 of the report makes it clear that all other material considerations must be taken into account in the determination of the application. The council has stated in response to the claim for expenses that the section highlighted by the appellant relates only to Scottish Government Planning Policy and Guidance. I also note, however, that paragraph 8.13 states that there are no other material considerations beyond those listed at paragraph 8.3; namely compliance with the development plan, siting and design, and flood risk.

8. Despite the statement at 8.13, the report clearly references the information submitted in support of the planning application, the planning history of the site, and the material planning considerations received within third party representations. The concluding paragraph of the report states that all relevant matters have been taken into account and compliance with the development plan has been balanced against relevant material considerations in making the recommendation to committee.

9. Given the retrospective nature of the planning application, the Planning Manager used his discretion to present the proposal to the planning committee rather than determine the application under delegated powers. I am satisfied that the members of the planning committee were provided with all relevant material considerations and information with which to determine the appeal and that the relevant matters were summarised/referred to within the planning handling report.

10. Furthermore, the appellant raised a number of specific matters as material considerations within his appeal statement, which it was alleged had not been taken into account by the planning authority. I have dealt with these in my decision on the appeal. The matters raised were either not material considerations (the effects of removing the development) or had properly been considered by the planning authority.

11. I find that the council has not behaved unreasonably and that the appellant has therefore incurred no unnecessary additional expenses.

Stuart West

Reporter