



Telephone: 0131 244 8173

E-mail: Morag.Smith@gov.scot

Ms K Lyons
Highland Council
Sent By E-mail

Our ref: PPA-270-2261
Planning Authority ref: 21/02473/FUL

21 April 2022

Dear Ms Lyons

PLANNING PERMISSION APPEAL: HAMARA COOLIN DRIVE PORTREE IV51 9DN

Please find attached a decision on a claim for award of expenses made in relation to the above appeal by Hany Metawie.

The reporter's decision is final. However you may wish to know that individuals unhappy with an expenses decision made by the reporter may be able apply to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ for a judicial review. An application for judicial review must be sought within 3 months of the expenses decision. The reporter's decision can only be challenged on a point of law and you might want to take legal advice before considering this option. For more information on challenging decisions made by DPEA please see <http://www.gov.scot/Topics/Built-Environment/planning/Appeals/ourperformance/commentsandcomplaints>.

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I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

Morag Smith

MORAG SMITH
Case Officer
Planning And Environmental Appeals Division





Claim for an Award of Expenses Decision Notice

Decision by Michael McGlynn, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2261
- Site address: Hamara, Coolin Drive, Portree, INV51 9DN
- Claim for expenses by Mr Metawie against the decision by The Highland Council
- Date of site visit by reporter: 16 February 2022

Date of decision: 21 April 2022

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.

Preliminary matter

My decision on the merits of the appeal to which this expenses claim relates is issued separately.

Reasoning

1. Scottish Government Circular 6/1990: awards and expenses 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 of the proceedings;
- the party against whom the claim is made has acted unreasonably; and,
- this unreasonable conduct has caused the party making the application to incur unnecessary expense, either because it should not have been necessary for the case to come before the Scottish Ministers for determination or because of the manner in which the party against whom the claim is made has conducted its side of the proceedings.

2. In relation to the first test, the claim was made at the appropriate stage.

3. In seeking an award of expenses, the appellant has indicated that he complied in full with the council's requirements and addressed concerns from objectors throughout the application process. The appellant goes on to say that the appeal procedure should have been unnecessary had the council accepted the recommendation by planning officers. In turn, costs have been incurred by the appellant and the agent in respect to the appeal.

4. I have noted that planning officers recommended that the application be approved. The reasons put forward by the committee members for refusal are contrary to officer's recommendation and assessment contained within the report of handling.
5. I find that the council's reason for refusal set out in the decision notice is complete and while it includes a degree of narration it explains the council's concern in relation to the proposed development. These concerns include: the development does not demonstrate sensitive siting, not in keeping with the character of the area, introducing tourist accommodation into the garden ground, and adverse impact on residential amenity resulting from increased activity, traffic movements, parking and noise. I find that these are material planning matters and are based on local development plan policies 28 Sustainable Design, 34 Settlement Development Areas and 44 Tourist Accommodation.
6. The council supported its reasons for refusal in its appeal response. The key point of the council's response was to explain that elected members considered the issues and recommendation by the planning officers set out in the report considered by committee. The council state that having considered the report, members of the committee applied the test contained in section 25 of the Town and Country Planning (Scotland) Act 1997 and came to a different conclusion to that of officers. Therefore, members decided to refuse the application. Whilst I came to a different conclusion, I consider that the council supported its reason for refusal adequately in the appeal process and showed it had reasonable grounds for its decision.
7. The appellant in making the claim for expenses stresses that as there was a supportive recommendation from officers, this should have been accepted by the committee.
8. It is open to the members of the committee to reach a different view from officers provided any decision is based on the development plan taking into account material considerations. I find that the decision notice is based on planning matters and the development plan while taking into account material considerations.
9. Although I came to a different conclusion from the council on the evidence, I find that the council's decision to refuse planning permission for the reason set out in its decision notice does not amount to unreasonable behaviour. Therefore, the claim fails on the second test. On that basis, it is not necessary for me to consider whether the appellant incurred unnecessary expense in relation to the third test.
10. Therefore, I decline to award any expenses to the appellant.

Michael McGlynn
Reporter