



## Claim for an Award of Expenses Decision Notice

---

Decision by Christopher Warren, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2267
- Site address: The Viewmount, East Terrace, Kingussie, PH21 1JS
- Claim for expenses by Esther Botha against The Highland Council
- Date of site visit by reporter: 05 September 2022

Date of decision: 23 September 2022

---

### 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.

### Preliminary matter

The appellant has made a claim for an award of expenses in regard to the refusal of planning permission, which I deal with in this notice, and a claim has also been made as part of the parallel enforcement appeal, reference ENA-270-2042. The appellant has provided a single statement and other evidence in respect of both claims.

As it is necessary for me to consider the claims made as part of each appeal separately, in this notice I deal only with those points that are relevant to the determination of the planning application. Those aspects of the expenses claim which relate to the enforcement notice are dealt with in a separate expenses decision notice.

### Reasoning

1. The determination of a claim for an award of expenses is guided by the provisions of Circular 6/1990. Paragraph 5 of the circular sets out the conditions which would normally need to be met for a claim to be successful.
2. The appellant's claim has been 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) must have acted unreasonably, and that this unreasonable conduct has caused the party making the application (the appellant) to incur unnecessary expense.
3. Circular 6/1990 provides extensive guidance on what may constitute unreasonable behaviour in paragraphs 6 to 9. The list is illustrative and each claim must be considered on a case-by-case basis. Awards of expenses do not necessarily follow the decision on the planning merits, meaning that an appellant is not awarded expenses simply because the appeal has succeeded, as is the case here.

4. The appellant contends that the council has acted in an unreasonable manner by failing to take account of relevant material considerations. However, I find no evidence of this being the case. The appellant is critical of the presentation and some of the verbal information given to the committee, but in my opinion the committee report provided a proportionate assessment of the proposal, including all relevant policies and other material considerations, which will have principally guided the decision-making by the committee. In any event, the reasonableness of the decision itself is of much greater importance than any perceived or actual failings in the process leading up to that point.

5. I note that the case officer had recommended approval, but the committee was nevertheless fully within its rights to reach a different view. In this case, the council concluded that the character and appearance of the concrete wall had an unacceptable impact, and this impact was contrary to the development plan. It did not find these impacts to be outweighed by other considerations. I agree with the appellant that there is subjectivity involved in reaching that finding, but there is almost always some degree of subjectivity in planning decisions. It is for the decision-maker to determine the weight to be given to the relevant material considerations, in the context that section 25 of the Town and Country Planning (Scotland) Act 1997 requires the decision to be taken in accordance with the development plan unless material considerations indicate otherwise. I have not seen anything to indicate that the decision was taken improperly, and I am satisfied that the reason for refusal was based on legitimate planning grounds.

6. The appellant has noted that the council did not make her aware of a letter from the Cairngorms National Park Authority confirming its position on the application. I have addressed the materiality of that letter in paragraph 17 of my appeal decision notice. The question for here is whether the council acted unreasonably by virtue of it not forwarding this to the appellant, or by not making her aware of it.

7. There is nothing before me to suggest that the existence or content of this letter was withheld from the appellant. This letter, along with all other consultation responses and representations, were published on the online ePlanning system. The council has confirmed that the appellant was informed about how to access this system. The purpose of publishing responses online is to enable all interested parties including applicants, their agents, and members of the public, to stay abreast of submissions. The council's reliance on the ePlanning system in this way is both the norm and good practice, fulfilling its duty to provide the applicant/appellant with access to all relevant documentation. Whilst I appreciate that this was a busy period for the appellant, conversely it would be unrealistic to expect a planning department to inform applicants of individual consultation responses as they arrive, and particularly where the matters raised are unlikely to be determinative.

8. I can appreciate that this has been a challenging and stressful period for the appellant, but I have not seen any evidence to indicate that the decision was taken improperly or that the council behaved unreasonably in refusing planning permission. It has not been demonstrated that the council has behaved unreasonably in this case, in terms of its determination of the application or in its subsequent conduct during the appeal process.

9. It therefore follows that no unnecessary expense has been incurred by the appellant, and I decline to make any award.

*Christopher Warren*  
Reporter