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Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2243
- Site address: Ladystone Steading, Ladystone, Bunchrew, Inverness-shire IV3 8TB
- Claim for expenses by Christy Marshall against The Highland Council
- Date of site visit by reporter: 30 June 2021 and 24 September 2021

Date of decision: 4 November 2021

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## 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. Scottish Government Circular 6/1990 contains advice on the Scottish Ministers' use of their power to award expenses in planning appeals. The Circular states that certain conditions will normally require to be met before an award of expenses will be made. These conditions are that the claim was made at the appropriate stage of the proceedings; that the party against whom the claim is made has acted unreasonably; and that unreasonable conduct has caused the other party unnecessary expense, either because it should not have been necessary for the case to come before the Ministers for determination, or because of the manner in which the party against whom the claim is made has conducted their part of the proceedings.

### The first test

2. The claim was made at the time of the appellant's appeal and was done so at the appropriate stage of the proceedings.

### The second test

3. The appellant claims that she has incurred expenses due to delays incurred by the council's processing of her application submitted in June 2020 and determined by notice dated 9 March 2021. It is contended that this time period was due, in part, to the extent of information that was required by the council and this has caused her a "significant financial burden". Secondly, it is argued that expenses were incurred due to the handling the case by the council's South Planning Applications Committee (the committee). Finally it is alleged that there was misconduct by the committee, termed by the appellant as a "lack of democratic process", due to members referring to what are described as non-material



planning considerations and showing an alleged bias against the proposal. The appellant has also countered the council's response to the claim of expenses.

4. I have noted that the council sought additional information before it was able to determine the planning application. I have also studied the appellant's submissions that describe the internal handling of the case by the council's officials. Overall I conclude that the scope of the information required in the context of an application for planning permission in principle is a matter for the council. Expenses resultant from any delays that may have arisen are outwith the scope of Circular 6/1990. In any event the appellant was able to appeal against the council's non-determination of the planning application had it not made a timeous determination, as provided for by the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

5. The decision of the council to refuse the planning application was made contrary to the recommendation of its planning officer. Nevertheless, the council's two reasons for refusing the planning application are valid planning reasons and are based upon policies in the Highland-wide Local Development Plan 2012 and the Inner Moray Firth Local Development Plan 2015, the adopted local development plan. In dismissing the appeal I have also concluded that the proposal would be contrary to the development plan. The council contends that the actions of its officers and members in processing and determining the planning application do not constitute unreasonable behaviour that caused the appellant unnecessary expenses. In coming to its view on the proposal the council had before it a lengthy report prepared by its planning officer and a significant amount of background material was also available. The committee is entitled to take into account representations of opposition and of support, that are based upon valid planning matters, and reach its own decision on the planning application. Despite the recommendation of its officers, the members of the committee simply differed both in their conclusions on the planning issues and in the weight that they gave to their various conclusions. Matters relating to the conduct of a named individual member of the committee are the responsibility of the council.

6. Circular 6/1990 limits the scope of any award to the expenses incurred by parties because of unreasonable conduct. In response to the second test, and contrary to the appellant's claim, I do not consider that the council acted unreasonably. Matters raised by the appellant in relation to the council's handling of the application, both during its processing and the committee's conduct when it was determined, are not covered by the 1990 Circular. Such matters are not part of the appeal proceedings. Similarly, any alleged consequential losses attributable to the time period taken to determine the planning application are not within the scope of the 1990 Circular.

### The third test

7. Having regard to the 1990 Circular, I do not find that there has been unreasonable behaviour on the part of the council. As I have found there to have been no unreasonable behaviour on the council's part, there is no need for me to consider whether its decision has resulted in unnecessary expense. Accordingly, in exercise of the powers delegated to me, I decline to make any award.

*Chris Norman*  
Reporter