
Decision by Donald Harris, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-290-2023
- Site address: 24 High Street, Penicuik EH26 8HW
- Claim for expenses by Scotmid against Midlothian Council

Date of decision: 27 May 2014

Decision

I find that the council has acted in an unreasonable manner resulting in liability for expenses. Accordingly, in exercise of the powers delegated to me and conferred by section 265(9) as read with section 266(2) of the Town and Country Planning (Scotland) Act 1997, I find the council liable to the appellant in respect of the expenses of the appeal. Normally parties are expected to agree expenses between themselves. However, if this is unsuccessful, I remit the account of expenses to the Auditor of the Court of Session to decide on a party/party basis. If requested, I shall make an order under section 265(9) read with section 266 of the Town and Country Planning (Scotland) Act 1997.

Reasoning

1. My decision to allow the planning appeal has already been issued, so this notice deals solely with the appellant's claim for an award of expenses.
2. As noted in paragraph 4 of Circular 6/1990, parties are normally expected to meet their own expenses. In appeals under Part III of the Town and Country Planning (Scotland) Act 1972, awards of expenses are normally made only where each of three tests is met.
3. The **first test** refers to the making of the claim. The claim was made at the appropriate stage of the proceedings.
4. The **second test** is whether the party against whom the claim is made – in this case the council – has acted unreasonably. The appellant alleges that the council has failed to give complete, precise or relevant reasons for the refusal of the application. The council denies this, referring to the terms of the refusal notice:-

“The proposed development is contrary to the Midlothian Local Plan policy DP7 as the cumulative effect of an additional takeaway would adversely affect the vitality and viability of this part of the High Street due to the high number of hot food takeaways, cafes, restaurants, hotels and public houses in this part of the town.”

5. I note that the need to give “complete, precise and relevant reasons” is a test included in Circular 6/1990 (paragraph 7). In my opinion, the council’s reason for refusal is coherent and complete in itself. It needs no amplification for it to be understood. It is also precise; there is no doubt as to its meaning.

6. However, the reason lacks relevance. Policy DP7 states that:-

“Within existing shopping centres, consideration will be given to the cumulative effect of additional hot food takeaway establishments on the vitality and viability of the centre, and permission will not be granted if this is assessed to be seriously harmful”.

This refers to the centre - not to part of it, as does the reason for refusal. The reference to “This part of the High Street” does not relate to the policy. The council fails to address the effect on the vitality and viability of the centre, still less does it demonstrate the effect to be seriously harmful.

7. I conclude that the council has acted unreasonably.

8. The **third test** is whether the unreasonable conduct has caused the party making the application to incur unnecessary expense. As the reason for refusal is unsound, it should not have been necessary for the case to come before the Scottish Ministers for determination. The appellant has been caused unnecessary expense in making the appeal.

Donald Harris

Reporter