
Decision by Janet M McNair, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-200-242
- Site address: Lower Kilmardinny/Westpark, Milngavie Road, Bearsden G61 3DH
- Claim for an award of expenses by East Dunbartonshire Council against CALA Management Ltd and Stewart Milne Holdings Ltd
- Dates of inquiry: 17-29 August and 15-16 December 2008

Date of decision: 28 July 2009

Decision

I find that the appellants have 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. Parties are normally expected to meet their own expenses in planning appeals. SODD Circular 6/1990 makes clear that awards of expenses do not follow the decision on the planning merits of a case and are made only where each of the following tests is met:

- The claim is made at the appropriate stage of the proceedings; and
- The party against whom the claim is made has acted unreasonably; and, if so
- This unreasonable conduct has caused the party making the application unnecessary expense, either because it was unnecessary for the matter to come to appeal, or because of the way the party against whom the claim is made conducted its case.

2. The claim was made at the appropriate stage of the proceedings, prior to the conclusion of the inquiry.

3. In relation to the second and third tests, the council submits that it should be awarded the expenses it incurred in the reconvened session of the inquiry, on 15 and 16 December 2008, on account of the appellants' unreasonable behaviour. It is submitted that the appellants argued that the fact that the "modification" that it emerged towards the end of the August session of the inquiry the council had intended to make to the East Dunbartonshire Local Plan had not been made had much wider implications for the appeal

than their own witnesses subsequently agreed. The appellants also asked for the inquiry to be reconvened so that they could lead evidence on the A81 Corridor Strategy contribution that the council was seeking, having stated that they were only prepared to contribute up to £3 million towards transport improvements. However, following the reconvened session, they stated that they would leave it to me to decide what measures they should fund. If they had done this earlier, the inquiry need not have reconvened.

4. In response, the appellants deny that they behaved unreasonably and argue that the council's submission regarding the local plan "modification" is founded on an interpretation of the evidence that is not supported by the evidence as a whole. While accepting that it took some time during the reconvened session of the inquiry for their position regarding an A81 Corridor Strategy contribution to become clear, they also maintain that it would have been necessary for the inquiry to reconvene because the council had provided no justification in August for the £1.4 million contribution it was seeking and that its witnesses were unable to explain what these measures were. Even if the council's arguments regarding the matters mentioned in its claim are accepted, time was also taken up in December in discussing a replacement sports centre. On this basis, the council is clearly not entitled to all the expenses it incurred then.

5. As regards the first of the two matters mentioned in the claim, I am satisfied that, if the council had modified the local plan as it intended, Schedule UC 2C would have referred to sustainable transport provision in accordance with the recommendations of the study that was to be done following the council's successful bid for Scottish Executive funding, rather than specifying a rail halt. In the event, the study identified a rail halt as the preferred sustainable transport solution for the site. The appellants' witnesses accepted in December that this brought the adopted plan to the same point as the council had intended. The evidence that the appellants led in December did not substantiate their submission in August that this matter had wider implications for the determination of the appeal.

6. As regards the second matter, the appellants' supplementary statement of case for the December session maintained that £3 million, to cover the off-site junction improvements and on-site measures that had been discussed in August, which included a green travel plan, would be an appropriate A81 Corridor Strategy contribution. Their final position evolved in the course of the December session and it was unclear at some stages what it would turn out to be. I find that the appellants' behaviour on these matters can fairly be regarded as unreasonable.

7. However, it would have been necessary to reconvene the inquiry even if the appellants had not behaved unreasonably. I am also satisfied that the appellants' behaviour did not add materially to the length of the December session, which was completed within 2 days. The draft minute of agreement that the council lodged at the start of the inquiry on 19 August did not specify clearly the sustainable transport measures the £1.4 million contribution was intended to fund, how these related to the measures the council had approved on 12 August, or assign costs to individual measures. Council witnesses were also unable to explain what measures the contribution was intended to fund, or how this figure had been calculated. This information was not provided until the council lodged its supplementary statement of case in September, when it was presented

as 12 measures, rather than 7 as previously. I therefore needed to hear evidence on these and related matters in order to inform my decision on the measures that I ought to require. Time was also taken up in December on issues relating to a replacement sports centre. In addition, possible planning conditions had to be discussed. For various reasons, including the timing and terms of the draft minute of agreement lodged by the council, there was not time to do that in August.

8. Drawing these matters together, while I consider that the appellants behaved unreasonably in the respects described at paragraphs 5 and 6, this behaviour did not cause the council unnecessary expense. I therefore decline to make any award.

This is a true and certified copy of the decision issued on 28th July 2010.

JANET M McNAIR
Reporter