



Decision by Gordon S Reid, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-130-2077
- Site address: land south east of Elderslie, Oban, PA34 4SA
- Claim for expenses by G MacEachen against Argyll and Bute Council
- Date of site visit by reporter: 7 May 2021

Date of decision: 05 August 2021

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. The claim was made at the appropriate stage of the proceedings.
2. The appellant claims that the council has acted unreasonably by:
 - failing to provide complete, precise, accurate and relevant reasons for refusal;
 - reaching their decision, without reasonable planning grounds for doing so;
 - refusing the application when an earlier appeal was dismissed, and it is clear from the decision on that appeal that no objection would be seen to the revised planning application; and
 - refusing an application because of local opposition, where that opposition is not founded upon valid planning reasons.
3. Examples of unreasonable behaviour are included in Scottish Government Circular 6/1990 on awards and expenses in appeals. The list of examples is not exhaustive.
4. The appellant claims that the council's reason for refusal does not accurately reflect the local development plan, as the relevant provisions of the policy and related supplementary guidance are neither directly nor fully quoted within it. I note from the council's decision notice that the reason for refusal contains reference to the specific policy and related supplementary guidance it considers the appeal proposal does not accord with. In addition, an explanation is provided as to why the council considers the appeal proposal does not accord with the policy and supplementary guidance. The council's report of handling also sets out a full and detailed assessment of the appeal proposal against the relevant local development plan policies, related supplementary guidance and material



considerations. As a detailed assessment is provided within the report of handling I do not consider that it is necessary for the council to quote the complete wording of the relevant policy or supplementary guidance in the reasons for refusal. Overall, I am satisfied that the reasons for refusal are complete, precise, accurate and relevant in this instance.

5. The appellant argues that it was not necessary for the council to require the submission of a full structural survey of the bridge/culvert prior to planning permission in principle being granted. The appellant contends that this could have been addressed through the use of a suspensive condition and as such did not constitute reasonable grounds for the council to reach its decision.

6. I note that the council in accordance with policy LDP 11 and supplementary guidance LDP TRAN 4 requested the submission of the structural survey along with a safety audit, risk assessment and traffic management plan to demonstrate that a safe and satisfactory access could be achieved and that the road could be brought up to an adoptable standard. Whilst the appellant submitted the requested Road Assessment, a structural survey of the bridge/culvert was not provided. Although the council found the appellant's Road Assessment to be satisfactory it concluded that without the structural survey information it had not been fully demonstrated that a satisfactory access could be achieved.

7. The council in its report of handling sets out its considerations regarding the potential of using a suspensive condition but concluded that, as the information related to a matter of principle, it should be provided prior to planning permission in principle being granted. The council highlights that the use of a suspensive condition was debated at the Planning, Protective Services and Licensing Committee meeting by members before the decision to refuse planning permission in principle was made.

8. I acknowledge that it is for the council as the decision-maker to make its own judgement on whether the potential use of a suspensive condition is appropriate taking account of the circumstances of each case. I am satisfied that the council gave proper consideration to the use of a suspensive condition and provided sufficient reasoning for why it did not consider it appropriate in this instance. Overall, I consider that the council had reasonable planning grounds for reaching its decision.

9. The appellant also claims that the planning officer in their presentation may have unintentionally misinformed the committee by referring to the requirement for the bridge/culvert to accommodate a 44 tonne vehicle during the construction phase. Whilst, I acknowledge that the officer's statement may have focused only on the construction phase for the requirement of the structural survey, it is factually correct to the extent that it is the weight of vehicle required to be accommodated by the bridge/culvert in order for the road to be to an adoptable standard. As the full details for the requirement of the structural survey were set out in the report of handling I do not find that this demonstrates or led to any apparent confused interpretation by the Planning, Protective Services and Licensing Committee members in the consideration of the appeal proposal.

10. The appellant contends that the principle outlined in circular 6/1990 regarding revised planning applications has been breached by the council. I note that the circular refers to the principle where an earlier appeal decision is dismissed and not to the determination of a planning application by the council. In this case no appeal decision has been made in relation to the development of the appeal site. However, the appellant

contends that as a previous planning application was submitted for the same development on the site and matters discussed informally with the council in terms of amendments to the access arrangements and to the site boundary, it is unreasonable for it to now refuse the revised planning application. I note that the previous planning application was withdrawn by the appellant and, therefore, no determination was made by the council on the proposed development. Accordingly, as the council did not determine the previous application it cannot be established that there would have been no objection to a revised planning application as specified in the circular. The council advises the appeal proposal was considered on its own merits and that it did not comply with the provisions of the development plan and there were no material considerations to outweigh this conclusion. Accordingly, I am satisfied that the council took account of the relevant material considerations and did not act unreasonably in its determination of the appeal proposal.

11. The appellant contends that local objection had undue influence over the outcome of the decision. I note that the council's report of handling includes reference to the representations received from local residents. Those raising valid planning concerns including overdevelopment, pedestrian and traffic safety, drainage, flooding and the structural integrity of the bridge were addressed as material considerations in the determination of the planning application. I am satisfied that the council acted appropriately in taking into account the valid planning concerns raised in the representations. In addition, it is for the decision-maker to determine the weight that should be given to material considerations, and I do not find any evidence of undue influence by parties on the council's assessment.

12. Therefore, despite my separate decision to allow the related planning appeal, I do not consider that the council has acted in an unreasonable manner in refusing planning permission or that any unnecessary costs have been incurred by the appellant. Consequently, I find that an award of costs is not justified.

Gordon S Reid
Reporter