

**ANGUS COUNCIL**

**DEVELOPMENT STANDARDS COMMITTEE – 15 SEPTEMBER 2015**

**CERTIFICATE OF LAWFUL USE APPEAL DECISION  
BARRY DOWNS CARNOUSTIE**

**REPORT BY HEAD OF PLANNING AND PLACE**

**Abstract:**

This report presents the findings of the Reporter appointed by the Scottish Ministers to determine the appeal against the refusal of Angus Council to issue a certificate of lawfulness (application No. 14/00895/CLU) for the existing residential use of the land within Class 9 consisting of huts and Park Homes occupied on either (1) a temporary basis for holiday and leisure purposes or (2) a permanent basis as a principal or primary or sole residence by individuals and their families on land at Barry Downs Carnoustie. The appeal was dismissed.

**1. RECOMMENDATION**

It is recommended that the Committee notes the outcome of the above appeal.

**2. INTRODUCTION**

2.1 The appeal was against the refusal of Angus Council to issue a certificate of lawfulness (application No. 14/00895/CLU) for the existing residential use of the land within Class 9 consisting of huts and Park Homes occupied on either (1) a temporary basis for holiday and leisure purposes or (2) a permanent basis as a principal or primary or sole residence by individuals and their families on land at Barry Downs Carnoustie.

2.2 The applicant, Shoreline Management, appealed against the refusal but the Council's decision was upheld. The Reporter's conclusions and decision are presented below.

2.3 Committee should note that the appellants have indicated through the appeal process that they have not implemented planning permission 11/00759/FULM (granted on 29 August 2012) which allowed for the use of the current application site as an extension of the caravan park at Barry Downs Holiday Park. Accordingly, the current use of the land as a caravan site is unauthorised. In addition, it is understood that a number of caravans are occupied as permanent residential accommodation. There is therefore a clear breach of planning control at this site. The appellants have a period of 6-weeks from the date of the appeal decision to challenge that decision at the Court of Session. A separate report on this matter will be presented to Committee following expiry of the 6-week period.

**3. REPORTER'S DECISION**

**Description and Background**

3.1 The application relates to a more or less rectangular area of land extending to 4.89ha situated between Monifieth and Barry. It lies east/west, and is currently mainly occupied by a development of new park homes within the larger central part of the site. The eastern part of the site is open ground, with the installation of infrastructure services for more park homes in progress at the time of the site visit. The western part of the application site is a grass amenity area adjoining the touring caravan site that lies to the west, now separated from the park homes site by a security fence and controlled gateway giving access to the park homes site.

3.2 The application is based on the long history of the use of this site for huts occupied by hutters for leisure and residential use, and the ancillary use of the associated land for activities connected with the huts, including vehicle parking and recreation. Since around 2009, the number of huts has been reduced, and they have been progressively replaced by the park homes, commencing in 2010. The appellant contends that the park homes do not require planning permission as they are moveable structures. They are in residential use, so that there has been no break in the residential use of the site.

- 3.3 The documentation lodged in support of the application includes affidavits stating that the site has been used for residential huts for many years, the numbers ranging from “hundreds” to around 90; the progressive replacement of the huts by park home units; and invoices relating to the clearance of waste from the site (2012) and from the manufacturer regarding the delivery of park homes (2010-2011). No planning permission was required to site the Park Homes as such homes are moveable and no building operation is involved. The appellant disputes the council’s view that there has been a material change of use through the introduction of the park homes, as they are a continuation of the residential use already established by the huts.
- 3.4 The appellant notes that planning permission (11/00759/FULM) was granted on 29 August 2012 for the use of the current application site as an extension of the caravan park at Barry Downs Holiday Park. This permission restricted the caravans to holiday occupation only, but has never been implemented.
- 3.5 The council accepts that the huts constituted an established residential use on the central part of the site. Aerial photos and a research report carried out for the Scottish Development Department (“Huts and Hutters in Scotland : 1999 : Draft Research Material”) supplied by the council indicate that there were about 150 huts in the 1960s, reducing to 49 at the time of the 1999 survey. The huts occupied about 2ha arranged in two areas on either side of a central open area. A description of the use of the site is contained in an article in The Big Issue (January 2009 : “The Last Heroes of Hutting”) also supplied by the council.
- 3.6 Huts were still present on the site when council officers visited it in May 2011. The council does not accept that the residential use is applicable to the remaining parts of the application site to west and east. The aerial photographs do not show any huts or open space or landscaped areas serving the huts on the eastern part of the site. This land cannot now benefit from any previous use for huts.
- 3.7 The council contends that the demolition of the huts combined with the installation of the park homes has resulted in the establishment of a caravan site on the land some time after 17 May 2011. This constitutes a change of use which has superseded any previous residential of the site. The number of park homes now present on the site is significantly greater than the 49 huts that remained. The council considers that both the change of use to a caravan site and the associated development comprising the formation of the access roads are unauthorised, and are not immune to planning enforcement irrespective of whether the 4 or 10 year period applies.
- 3.8 The council refused to issue the certificate that has been requested because the evidence available suggests that the use of the land to which the application relates is not lawful.

### **Reasoning**

- 3.9 Section 150(4) of the act requires a certificate to be issued if (on the balance of probability) the planning authority is satisfied that the use existing on the site at the time of the application is lawful. Section 150(2) states that a use is lawful if no enforcement action can be taken either because no planning permission is required or because the time for enforcement action has expired. Where an application for a certificate of lawful use is involved, as is the case here, section 124(3) of the act states that a use is immune to enforcement action if it has existed for at least 10 years. The use must have continued without interruption during the 10 year period up to the date of the application. The relevant date for the start of the 10 year period in this case is 17 October 2004.
- 3.10 The aerial photograph taken in 2000 confirms that about 50 huts remained on the site, forming a compact rectangle occupying about half of the site, with open grassland to the east and closely packed stored caravans and grassland to the west. The photograph taken in 2009 shows much the same number of huts, but this had reduced to around 40 by the time of the photograph taken in 2011. This photograph also shows the new fence and security gates that now divide the site from the touring caravan site to the west, and open ground to the east. On this basis, I agree that there has been a long established residential use of much of the application site, but that the number of dwellings (huts) was no more than about 49 at the beginning of the 10 year period, reducing to around 40 by 2011 and now stands at zero.

- 3.11 Thus I consider that the determining issue in this appeal is whether the progressive reduction in the number of huts, and their replacement by the park homes, constitutes a material change of use (as argued by the council), or alternatively a continuation of the established residential use, which would be immune to planning enforcement for at least some of the park homes.
- 3.12 I note that the appellant considers that the installation of the park homes does not require planning permission because they are moveable and do not involve building operations. Park homes are a well established component of the caravan industry, regarded as static mobile homes suitable for long term occupation. The manufacturer's invoice (appeal document 1.09) states that the park homes that have been supplied are 20 feet in width, so that they are twin-unit caravans as provided for in section 13(1) of the Caravan Sites Act 1968. These are transported to the site in two pieces and then fixed together to form a park home. For all these reasons, I am satisfied that the park homes that have been installed at the appeal site are caravans within the meaning of the Caravans and Control of Development Act 1960 as read with the Caravan Sites Act 1968. As the park homes are not houses, they do not come within the definition of class 9 of the Use Classes Order.
- 3.13. On this basis, I agree with the council that the use of the hut site for park homes has resulted in the formation of a caravan site. Accordingly I find that the evidence that has been supplied is sufficient to show that the residential use that existed during the hutting period has not continued during the whole of the 10 year period preceding the date of the application for the certificate, and that the installation of numerous park homes on the site constitutes a material change of use to a caravan site. The council's decision to refuse to issue the certificate is thus well founded. The appeal therefore fails.

#### **4. FINANCIAL IMPLICATIONS**

There are no financial implications.

#### **5. OTHER IMPLICATIONS**

##### **Risk**

There are no risks associated with the recommendations contained in this report.

##### **Human Rights Implications**

There are no Human Rights implications.

##### **Equalities Implications**

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

**VIVIEN SMITH  
HEAD OF PLANNING AND PLACE**

**NOTE:** No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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