

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 8 AUGUST 2017

LISTED BUILDING ENFORCEMENT APPEAL DECISION

LAND AT GAGIE FILTERS KELLAS

REPORT BY HEAD OF HOUSING, REGULATORY AND PROTECTIVE SERVICES

Abstract:

This report presents the findings of the Reporter appointed by the Scottish Ministers to determine the appeal against the decision of Angus Council to serve a Listed Building Enforcement Notice in respect of the alleged breaches of Listed Building control in the form of the attachment of a fence to the listed boundary wall of a filter bed and the reprofiling of filter bed material including the lifting and damage of clay filter blocks (Listed Building Enforcement Notice Appeal reference LBE_120_2000). The Reporter dismissed the appeal, refused to grant listed building consent and directed that the enforcement notice be upheld.

1. RECOMMENDATION

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

2. INTRODUCTION

2.1 On 30 January 2017, Angus Council served a Listed Building Enforcement Notice in respect of the alleged undertaking of unauthorised works to a listed building consisting of the unauthorised attachment of a fence to a listed filter bed structure and the reprofiling of filter bed material including the lifting and damage of clay filter blocks.

2.2 The Listed Building Enforcement Notice was to take effect on 01 March 2017 required the following actions:

1. The removal of a fence that is attached to the boundary wall of the filter bed; and
2. The levelling of the scraped back filter materials over the filter bed (filter bed 3)

The time period for compliance was 2 months from the date that the notice was to take effect.

2.3 The applicant, Stephen Mellor appealed against the enforcement notice and the Reporter's conclusions and decision are presented below.

3. REPORTER'S DECISION

Reasoning

3.1 The appeal was made on the following grounds as provided for by section 35(1) of the Listed Buildings Act:

(c) that those matters alleged in the listed building enforcement notice to constitute a contravention of listed building control (if they occurred) do not constitute such a contravention;

(d) that (i) works to the building were urgently necessary in the interests of safety or health, or for the preservation of the building; (ii) it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter; and (iii) the works carried out were limited to the minimum measures immediately necessary;

(e) that listed building consent ought to be granted for the works;

(g) except in relation to such a requirement as is mentioned in section 34(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out.

- 3.2 The appeal site of about 2.2 hectares lies in open countryside to the north of Easterton of Gagie Farm, Kellas. The site is rectangular except at the western end where the boundary follows a driveway that also serves of the adjoining property, Leyswood. Access to the site is via a farm track off Chapel Road through Easterton of Gagie Farm and then by a narrow field lane to the site entrance where the driveway rises through an area of woodland to a pair of wrought iron entrance gates. The northern and eastern boundaries of the land are formed by dry stone walls that define the extent of the former use as filter beds being part of an aqueduct system supplying water to Dundee, although the appellant claims that a similar wall along the southern boundary was demolished prior to his ownership of the site. The extent of the site prior to the appellant's purchase is shown on the council's submitted photographs dated December 2013.
- 3.3 The full extent of the appellant's holding is unclear because the notice plan does not include the woodland area at the entrance, which the appellant claims is part of his land. In connection with the linked enforcement notice appeal (ENA-120-2009), I issued a procedure notice requesting the council to provide a corrected notice plan, which was duly submitted (Plan A attached) and applies equally to this decision.
- 3.4 The Gagie Filters site comprises 3 rectangular filter beds built in Red and Staffordshire Blue engineering bricks which are set below ground level, although this may have been raised after construction. I noted at the site inspection from where Filter Bed 3 has been excavated, that they are about 2.5 metres deep and comprise a bottom layer of porous clay setts with layers of Type 2 and Type 1 aggregate, topped with washed gravel and sharp sand. Filter Beds 1 and 2 appear to be finished in layer of soil, with ramps formed to give access to the working areas. The original wall heights are defined by the step in the walls 15 courses below the coping at the filter bed level, while a course of white glazed bricks 7 courses down denotes the finished water level.
- 3.5 Gagie Well lies to the north west of Filter Bed 1 and is enclosed in a circular castellated stone wellhead with a projecting porch under a recently restored zinc roof. A narrow gauge railway line runs between the well and the filter beds and along their northern side which was primarily used for delivering and removing filtration materials to and from the filter beds. The 3 filter beds, an ashlar gate pier, wall and a further pier, together with the dry stone boundary walls and narrow gauge railway, were all Category B listed in 1991, but not the underground storage tank to the southwest of Filter Bed 1.

The appeal on ground (c)

- 3.6 To succeed on this ground it has to be shown that the alleged contraventions, if they have occurred, do not constitute such a contravention. There is no dispute that the timber fence has been erected along the north and west walls of Filter Bed 1 and that it has been attached to the walls by fixings in the mortar joints. Similarly the appellant does not claim that the filter bed material in Filter Bed 3 has not been re-profiled and the clay filter blocks damaged. It therefore follows that allegations set out in paragraph 3(1) and (2) have occurred. Other works to pointing and lead flashings to the roof of the wellhead tower, referred to in the planning contravention response, are essentially repairs to the listed structures and would not be contraventions.
- 3.7 Section 6 of the LBCA states that no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised, usually by the grant of listed building consent. As both operations have involved alterations to the listed structures of Filter Beds 1 and 3 without listed building consent, the works constitute a contravention of listed building control and as such, the appeal on ground (c) must fail.

The appeal on ground (d)

- 3.8 Taking each section in order: (i) In his grounds of appeal the appellant refers only to the need for the fence to provide safety for operatives working on the stow work, but does not suggest that the re-profiling of Filter Bed 3 was for health and safety reasons, nor were the listed filter

beds in disrepair. Although he no doubt urgently required the fence for the health and safety of his staff, this was not due to the condition of or for the preservation of the listed building. (ii) As none of the listed structures were in danger of collapse there was also no need to secure safety or health or the preservation of the building by works of repair or works for affording temporary support or shelter. (iii) While it might be claimed that the fence works carried out were limited to the minimum measures immediately necessary, this was to serve the appellant's employees and not the listed building. For these reason I find that the appeal on ground (d) also fails.

The appeal on ground (e)

- 3.9 When considering whether to grant listed building consent under this ground of appeal, I shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses as required by section 14(2) of the LB&CA.
- 3.10 The erection of a crude timber fence along the inside faces of the north and west listed walls to Filter Bed 1 is an inappropriate alteration to the Category B listed structure. Although it may only be fixed into the mortar joints of the walls, it still represents an attachment for which listed building consent is required but, as it pays no respect to the architectural or historic character of the finely engineered brick walls, listed building consent should not be granted for its retention.
- 3.11 Similarly, the excavation of the layers of filter material and damage to the clay filter blocks in Filter Bed 3 has totally changed the character of the original structure and allowed the reduced levels to be used for the storage of building materials, plant, machinery and equipment, sheds, storage containers, motor vehicles, trailers, boats and caravans to the detriment of the listed structure by exposing the lower levels of its enclosing walls, and to its setting by forming a ramp down and mounding the excavated material over the eastern wall. These works do nothing to preserve the listed building and in fact detract from it, so listed building consent should not be granted for them. For those reasons the appeal on ground (e) also fails.

The appeal on ground (g)

- 3.12 Under section 32(2)(a) of the LB&CA a listed building enforcement notice requires steps to be specified that will restore the building to its former state. The requirement to remove the fence attached to the walls on Filter Bed 1 would restore the listed structure to its former state so does not exceed what is necessary for restoring the building to its condition before the works were carried out.
- 3.13 I appreciate that the appellant was not responsible for the excavation works in Filter Bed 3 but he inherited this contravention when he purchased the land and there is no time limit for listed building enforcement proceedings. Looking at the council's photographs from December 2013, the redundant filter beds were filled up to the level of the step in the walls some 15 courses below coping level as they still are for most of Filter Beds 1 and 2. The notice simply requires the excavated filter material to be replaced and the level restored to match that in the adjoining filter beds, which would also have the benefit of exposing the original eastern edge of the listed filter bed wall. These steps are the minimum necessary to restore the listed structures to their former state, so it cannot be regarded as excessive. I therefore find that the appeal on ground (g) also fails.

Other matters

- 3.14 I have taken account of the concerns of the adjoining owner that have been largely addressed in the enforcement notice appeal. While I note from the submitted photographs that the appellant appears to have erected block walls against the listed dry stone wall on the eastern side causing it to lean outwards, the appellant counter claims that the original, and possibly listed, stone wall along the southern boundary was unlawfully demolished by the same neighbour. I note that the appellant is unable to gain access to the outside of the listed dry stone wall, but that should not prevent him from rebuilding it from his side, so such access should not be required. However, these claims are not before me in this appeal, except to point out that any works that affect the character of the listed dry stone walls, such as erecting the farrowing pen against it, would require Listed Building Consent.

- 3.15 Although I have noted the works of repair to the well head tower roof and pointing of the stone and brickwork which indicates the appellant's desire to respect the listed structures on the land, should he require alterations and extensions such as a safety rails around the filter beds this could only be achieved by discussing his requirements with the council and submitting an application for Listed Building Consent.

Conclusion

- 3.16 My overall conclusions are that the works alleged in the listed building enforcement notice have occurred and amount to contraventions of listed building control; that the works were not urgently necessary interests of safety or health; that listed building consent should not be granted for the unauthorised works; and that the requirements of the notice do not exceed what is necessary for restoring the building to its former state. As a result I dismiss the appeal and uphold the listed building enforcement notice.

5. FINANCIAL IMPLICATIONS

There are no financial implications.

6. 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.

**STEWART BALL
HEAD OF HOUSING, REGULATORY AND PROTECTIVE SERVICES**

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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