

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 8 AUGUST 2017

ENFORCEMENT NOTICE 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 Angus Council's decision to serve an Enforcement Notice in respect of an alleged breach of planning control consisting of the use of the site for the storage of various items of plant, equipment, containers, caravans and other structures and materials and the unauthorised attachment of a fence to a listed filter bed structure. (Enforcement Notice Appeal reference ENA_120_2009). The Reporter dismissed the appeal 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 an Enforcement Notice in respect of an alleged breach of planning control consisting of the use of the site for the storage of various items of plant, equipment, containers, caravans and other materials and the unauthorised attachment of a fence to a listed filter bed structure.

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

1. Removal from the land of all building materials, plant, machinery and equipment, sheds, storage containers, motor vehicles, boats and caravans within 2 months of the notice becoming effective and cease the use of the land for that purpose; and
2. Removal of a timber fence that encloses and is attached to filter bed structures within 2 months of the date of the notice becoming effective.

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 against the enforcement notice was made on ground (c) as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997, namely that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. Although the appellant's submissions are seeking less onerous requirements, he did not appeal under ground (f): that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control stated in the notice, or to remedy any injury to amenity caused by that breach. I therefore issued a procedure notice seeking the views of the main parties on whether an appeal on ground (f) should be introduced to enable me to address the requirements of the notice.

3.2 Although the appellant did not respond to this procedure notice, in its letter dated 28 June 2017, the council did not object in principle to a ground (f) appeal, but felt that its introduction would not accord with section 130 of the Act because it was not made by the appellant within the permitted timescale. While recognising that any agricultural use of the land would

not require planning permission, the senior planning officer questioned whether it would be possible to separate the complex storage and hobby uses from the farming activities on the land and considered such a combination of different uses to be a *sui generis* use. He also pointed out that, although the appellant claims to be using the caravans, containers and wagon bodies for agricultural purposes, under Class 18 (2)(c) in Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended), these are not buildings, structures or works designed for the purposes of agriculture, so permitted development rights would not apply. In addition, while it is not the council's intention to thwart any genuine attempt by the appellant to establish an agricultural business on the land, it is difficult to determine the extent of the various uses on the land to clearly identify the extent of the farming activities.

- 3.3 Despite being given the opportunity, by letter dated 29 June 2017, to comment on the council's response to the procedure notice by the deadline date of 12 July 2017, the appellant did not do so, so I have no opinion from him on the possibility of introducing a ground (f) appeal. I accept the council's view that the mixed nature of the uses on the land is such that it would be best described as a *sui generis* use, or one that is not within any of the uses classes in the Town and Country Planning (Use Classes) (Scotland) Order 1997.
- 3.4 While I agree that any attempt by the appellant to establish a genuine agricultural business on the land should not be discouraged, there is insufficient evidence on site or in his submissions to support that claim, even though I accept that a start has been made with the rearing of poultry and pigs, cutting hay for bedding and feed and the growing of soft fruit, but altogether these activities do not amount to the use of the land being primarily for agriculture, while all the other unauthorised uses remain. It usually takes several years for a new farming enterprise to be able to produce a business plan with profit and loss accounts to prove its viability, but the appellant has only had a few months. For the same reason, his use of caravans, containers and wagon bodies for storage and support purposes can at best be only considered temporary while he becomes established and cannot therefore be regarded as permitted agricultural development. For the above reasons I conclude that I am unable to introduce a ground (f) appeal.
- 3.5 The appeal site of about 2.2 hectares lies in open countryside to the north of Easterton of Gagie Farm, Kellas. Within that holding, the enforcement notice site is rectangular except at the western end where the boundary follows a driveway that also serves the adjoining property, Leyswood. Access to the site is via 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 as 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.
- 3.6 The extent of the site prior to the appellant's purchase is shown on the council's submitted photographs dated December 2013. The full extent of the appellant's holding is unclear because the council suggests that the submitted Land Parcel Boundary excludes the filter beds, but this is probably for the reason that they were not considered to be part of any agricultural holding by the Rural Payments and Inspections Directorate. As the enforcement notice plan did not include the woodland area at the entrance, which the appellant claims is part of his land, I issued a procedure notice requesting the council to provide a corrected notice plan, which was duly submitted (Plan A attached).
- 3.7 Although the land may have historically been known as Gagiewell Farm Estate, the last lawful use of the appeal site was as a water treatment facility which, judging by the mature trees growing within the filter beds, ceased many years ago and the land has since been unused except for the activities alleged in the notice and the appellant's recent use for farming purposes. A concrete road runs along the north side of the filter beds and serves a large concrete hardstanding at the eastern end where sundry building materials are stored. These include stacks of sandstone blocks, mono-blocks and roof tiles that were on site prior to its purchase by the appellant, some of which are being used for the erection of a pig farrowing pen under construction along the eastern boundary.
- 3.8 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.

- 3.9 Gagie Well lies to the north west of Filter Bed 1 and is enclosed in a circular stone castellated 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)

- 3.10 To succeed on this ground, it has to be shown that the alleged operations or uses, if they have occurred, do not amount to a breach of planning control. There is no dispute that the schedule of items in paragraph 3(1) of the enforcement notice are being stored on the land, and the same applies to the timber fence in paragraph 3(2) erected around the north and west sides of Filter Bed 1. The two part allegation therefore alleges an unauthorised material change of use of the land from water filter beds to the storage of the itemised materials and equipment together with the unauthorised erection of a fence. For the sake of clarity, as the appellant is now using the site partly for agricultural purposes, under section 26(e) of the Town and Country Planning (Scotland) Act 1997 this does not involve development of the land, so his use for this purpose is a material change of use for which planning permission is not required.
- 3.11 The appellant's response to the first allegation is that he has established a small farm business on the site breeding poultry for pullets and eggs, a pig farm for rare breed pork for speculation and slaughter, racing pigeon breeding and bee keeping with sheep, pigs and horse livery and a small berry cane plot near the entrance gates, together with woodland management and a private interest in the breeding of guinea pigs. During the site inspection there was no evidence of bee keeping or sheep or horses in livery, although I was advised that some of the pigs present were owned by others. The grassed areas within the holding are mown for hay for bedding and animal feed, some of which is stored in one of the containers, but not at the time of the inspection.
- 3.12. From the council's submitted photographs of December 2013, the previous owner had clearly excavated Filter Bed 3 and been using the land for the storage of building materials, plant and machinery, sheds and caravans etc. which, without planning permission, would have been unauthorised, but there has been no claim that these activities have been continuously in use for over 10 years to make them immune from enforcement action. As a result, with the purchase of the land, the appellant has inherited the unauthorised uses and, even though some individual elements may have been put to use in support of his new farm business, the change of use of the land has still occurred.
- 3.13 Although the change to agricultural use does not amount to development and that the sheds in Filter Bed 1 appear to be used for agricultural purposes, the notice is primarily directed at the alleged unauthorised storage elsewhere in the site and in Filter Bed 3 in particular. Here the ground level has been excavated presumably to minimise the visual impact of the caravans, vehicles, boat and materials stored therein. The filtration materials have been scraped away to form a ramp down and an overgrown mound on the east side, covering the listed eastern wall of the filter bed. Although I appreciate that most of the alleged items being stored were on site when it was purchased, this does not make them acceptable in this rural location. Even though the appellant is seeking to establish himself as a small farmer, I understand that he was formerly a builder which could explain the concerns of the council and the adjoining owners that the builder's yard use might continue.
- 3.14 While some of the plant such as the tractor, bowser, mowers, trailers, mini-digger and even a storage container might be acceptable to serve the farm use, this would not apply to the stacks of building materials, scrap timber, window frames, pipes and scaffolding all of which suggest its use as a builder's yard, more extensive than that required to serve the modest building operations to the wellhead turret and the new farrowing pen. While the use of caravans for workshop, office, welfare and veterinary purposes may be acceptable to serve the farm use, they can only be for the short term while the enterprise becomes established at

which time more permanent arrangements will need to be agreed with the council. I therefore conclude that, on balance, the storage use alleged in the notice has occurred and constitutes a breach of planning control.

- 3.15 Bearing in mind the duty under section 59 (1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, to 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, I also conclude that the current use of the Category B listed Filter Bed 3 for storage seriously detracts from its character as a building of special architectural and historic interest, while the casual storage of materials, vehicles, plant and equipment and the siting of a caravan, shed and a storage container elsewhere within the site also detracts from the setting of the listed buildings.
- 3.16 Turning to the second allegation, there is no doubt that a crude timber fence has been erected along the north and west sides of Filter Bed 1, which the appellant states is protection for staff on the site and has only been fixed into the mortar joints of the listed walls, but it also detracts from the listed building. It has therefore occurred and, because it involves development within the curtilage of and to a wall being part of a listed building, it cannot be considered permitted development under Schedule 1, Part 2, Class 7(2)(d) Minor Operations in the Town and Country Planning (Permitted Development) Order 1992 (as amended) (GPDO) so, as planning permission has not been granted for the fence, it represents a breach of planning control. For these reasons I conclude that the matters alleged in the enforcement notice have occurred and constitute a breach of planning control and the appeal on ground (c) must fail.

Other matters

- 3.17 I have noted the concerns of the adjoining owner over the storage of building materials etc. on the land and the increase in traffic that now passes the front of his property. He supports the enforcement notice because of the visual impact on the rural area and the effect on the listed buildings. He raises doubts over the size of the appellant's farm holding and whether all the activities claimed can be accommodated, and draws attention to the inability of the access track to cope with the extra traffic and the lack of infrastructure on the site which requires water to be brought to site for the animals, which I find surprising on a site with its own well. Although these issues may be relevant to this case, I find that they go beyond the scope of the enforcement notice.
- 3.18 Although I am unable to consider an appeal on ground (f), I recognise the appellant's attempt to establish a genuine farming business on the land which, at 2.2 hectares, is large enough for the type of enterprise he has in mind. However, while the unauthorised storage of building materials and other items remain the site, it can only be described as being in a mixed use, much of which cannot be regarded permitted agricultural development. For this reason he would need to discuss his intentions with the council and agree a way forward for his farming activities on the land, but that is not before me in this appeal.

Conclusion

- 3.19 My overall conclusion is that the matters alleged in the enforcement notice have occurred and represent a breach of planning control, so I dismiss the appeal and uphold the 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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DATE: 28 JULY 2017

PLAN A REFERRED TO

