

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 29 AUGUST 2017

ENFORCEMENT NOTICE APPEAL DECISION

LAND AT FIELD NORTH OF THE BOTHY GANNOCHY EDZELL DD9 7UX

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 depositing rubble, spoil and other building material in a field and clearing an area of top soil to form an area of hard standing and track within the field to the north of The Bothy, Gannochy, Edzell (Enforcement Notice Appeal reference ENA_120_2008). The Reporter 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 7 November 2016, Angus Council served an Enforcement Notice in respect of an alleged breach of planning control consisting of deposition of rubble, spoil and other building material in a field and clearance of an area of top soil to form an area of hard standing and track within the field to the north of The Bothy, Gannochy, Edzell.
- 2.2 The land owner, Ms Josiphine Riley appealed against the enforcement notice and the Reporter's conclusions and decision are presented below. The Reporter varied the terms of the Notice but upheld its substantive requirements.

3. REPORTER'S DECISION

Reasoning

- 3.1 The appeal against the enforcement notice was made on the following grounds as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997:
- (c) that the matters referred to in the enforcement notice do not constitute a breach of planning control;
 - (e) that copies of the enforcement notice were not served as required by section 127;
 - (f) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
 - (g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.

Ground (c)

- 3.2 The alleged breach of control in this appeal relates to the deposit of rubble, spoil and other building material in the field to the northwest of The Bothy, as well as the clearance of an area of top soil and the formation of an area of hard standing and track in the same field. In support of its case the council has submitted photographic evidence comprising two aerial photographs (taken in 1988 and 2013), as well as photographs of the activities on site. The latter record the deposits of rubble, spoil and other building material (April and August 2016); clearance of an area of top soil and the presence of crushing and grading equipment (October 2016); and mounds of crushed material, further topsoil clearance, an area of hard standing and a track (November and December 2016). At the site inspection I observed the area of

hard standing, the track, and two large mounds of material. It appeared to me that much of the field's topsoil has either been removed or churned up by heavy machinery and that, in some areas, the field has been reprofiled through the spreading of material over the surface.

- 3.3 A breach of planning control is defined in section 123(1)(a) of the Town and Country Planning (Scotland) Act 1997 as the carrying out of development without the required planning permission. Section 26(1) of the Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. I consider that the described activities constitute development: the deposition of material, clearance of top soil and formation of hard standing and track constitute engineering operations and in my view result in a change of use of the field.
- 3.4 However, I must also consider whether any of these matters fall within any permitted development rights. In my view Class 18 of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) does not apply, as the engineering operations are not requisite for the purposes of agriculture within the field. In any event prior notification would have been required prior to the works being undertaken, in terms of alteration of the private access.
- 3.5 The appellant has argued that the deposited material has resulted from building development, which has planning permission, adjacent to the appeal site and that the storage is temporary in nature. Under Class 14 of the Order, the temporary use of land in connection with adjacent building works is permitted development, but only for the duration of those authorised building operations. My understanding from the written submissions is that the two dwelling houses (The Bothy and The Wee Bothy) are now complete. Following completion of these houses, Class 14 requires the adjacent site to be reinstated as soon as is reasonably practicable. Given the time that has passed since the completion of the houses, I consider that the continued use of the appeal site for the storage of associated waste material could not reasonably be considered as permitted development.
- 3.6 The appellant has also argued that the material may be re-used in another building operation, the Station House (for which she was then awaiting planning permission), but the site in question is not adjacent to the appeal site and so I consider that no permitted development rights apply.
- 3.7 The council and the appellant have been engaged in informal negotiations, in line with the advice in Circular 10/2009 on planning enforcement, and the appellant contends that (apart from the initial deposit of material) the works were necessary to bring about the desired removal of the material from the appeal site and have been agreed by the council in the course of these discussions. However, the written submissions indicate that, in the course of the afore-mentioned informal negotiations, the council has consistently advised the appellant of requirements to apply for planning permission for these operations. There is no evidence before me that suggests that the appellant's actions have been with the agreement of the council. In any case, whether or not the activities are the subject of negotiation with the council, in lieu of the serving of an enforcement notice, they still constitute breaches of planning control.
- 3.8 Drawing all of the above together, I conclude that the described activities constitute development, as they involve both engineering operations and a change of use of the field. For the reasons set out in paragraphs 4, 5 and 6, permitted development rights do not apply or no longer apply. The appeal on ground (c) therefore fails.

Ground (e)

- 3.9 Section 127(2) of the Act states that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates. Section 271(1)(b) states that a notice may be served by leaving it at the usual or last known place of abode of the person on whom it is to be served.
- 3.10 My understanding is that the notice was served on 7 November 2016 by posting it through the door at The Bothy, Gannochy, Edzell, DD9 7UX, this being the last known address of the appellant held by the council. The council subsequently emailed the enforcement notice to the appellant on 11 November 2016, who replied on the same day, noting the email and its contents.

- 3.11 The appellant contends that the notice was not properly served, given that she had moved out of The Bothy. However, although the appellant states that she informed the council of this at their site meeting in August 2016, there is no evidence before me to suggest that she had provided them with her new postal address. I consider that the council acted reasonably by serving the notice at the last known place of abode and, indeed, were diligent in attempting to ensure that she had received it, as evidenced by their email of 11 November. In my view the appellant has not been substantially prejudiced by receiving the enforcement notice by email. The appeal on ground (e) therefore fails.

Ground (f)

- 3.12 In regard to ground (f), the enforcement notice requires that the rubble, spoil and other building material be removed from the site, and that the area of hard standing and track that has been formed at the field be removed and the land reinstated to a greenfield condition suitable for agricultural use.
- 3.13 The appellant considers that the enforcement notice goes beyond that which is reasonably necessary. However, her argument that the material can beneficially be reused in the Station House development is predicated on obtaining planning permission for this site. Given the uncertainty around this, and the length of time that the material has been on site, I do not consider that this argument can be relied on.
- 3.14 The appellant has also argued that the track is more usable in its current condition, which would be negated by removal of the material and its reinstatement to a greenfield condition. The question here is not the condition of the track, but whether its formation is a breach of planning control.
- 3.15 Finally, the appellant contends that the requirement to reinstate the land to a greenfield condition suitable for agricultural use should not apply. There is some dispute as to whether the field was in agricultural use before the material was deposited. The aerial photograph from 2013 shows sheep on the field, presumably grazing. However, the appellant has argued that the field was not in use as agricultural land but was a meadow.
- 3.16 In determining an appeal under ground (f), I can only consider whether the steps required to be taken by the notice exceed what is necessary to remedy the alleged breach or to remedy any injury to amenity. As I have concluded that a breach of planning control has taken place, that breach can only be remedied by removal of the deposited material, the area of hard standing and the track. However, the notice cannot require any more than that the land is restored to its condition before the breach took place. I have no certainty that the land was suitable for agricultural use, although there is photographic evidence that it was green field and used at that point for grazing. In terms of addressing the injury to amenity I consider the requirement should be to restore it to its previous condition, prior to the described breach occurring, as a green field. Consequently I consider the notice should be varied accordingly. To that extent, then, the appeal on ground (f) succeeds.

Ground (g)

- 3.17 Under this ground of appeal I am required to consider whether the time allowed for compliance is too short. The enforcement notice allows a period of one month for the removal of the rubble, spoil and other building material from the appeal site. There is a six week period within which an aggrieved party may lodge a court challenge to this decision: the one month required does not allow for this. In addition, the removal of the materials from the site is likely to require the use of heavy plant and vehicles and enough time should be allowed to enable the work to be specified, organised and undertaken. In these circumstances I agree that one month is too short a time period, and I consider that it should be extended to three months.
- 3.18 The enforcement notice allows three months for the removal of the area of hard standing and track and its reinstatement to a greenfield condition suitable for agricultural use. Logistically speaking, these works would need to take place after the removal of the material from the rest of the field. The three month period required will allow for such removal and still leave enough time to carry out the remaining removal and reinstatement work. In coming to this view, I have assumed that the machinery needed to remove the material from the field will also be used for this works. I therefore consider that the time period of three months is sufficient.
- 3.19 In light of my findings on the time allowed for the removal of material from the field, the appeal on ground (g) succeeds.

Other matters

- 3.20 The appellant has argued that the appeal should consider the overall benefits of the works undertaken in Gannochy overall. As these are not relevant to the appeal I have been unable to give them any weight in my considerations.

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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