

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 9 APRIL 2019

ENFORCEMENT ACTION – FORESTERS CROFT, OATHLAW

REPORT BY SERVICE LEADER – PLANNING & COMMUNITIES

Abstract:

This report advises Committee on the circumstances relative to a breach of planning control involving the formation of a game bird rearing facility on land at Foresters Croft, Oathlaw.

1. RECOMMENDATION

It is recommended that Committee: -

- (i) authorise the service of a planning enforcement notice requiring the cessation of the use of the land for the rearing of game birds for sporting purposes and the siting and storage of associated buildings, caravans, structures, pens and its clearance of other related equipment and materials, and return to agricultural use, all by the 30 April 2019;
- (ii) notify the recipients of the enforcement notice that the period for compliance will be extended until 30 September 2019 subject to the approval, implementation and ongoing compliance with measures to control odour, noise, pollution, waste and vermin emanating from the site in the interests the residential amenity and environment of the area. Such measures shall include but not be limited to the provision of a 100m buffer between any game bird rearing activity and the curtilage of any neighbouring residential property that is not in the ownership and occupation of the operator of the business.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

- Safe, secure, vibrant and sustainable communities
- An enhanced, protected and enjoyed natural and built environment

3. INTRODUCTION

3.1 In June 2018 a planning application was submitted for the erection of a poultry shed on land at Foresters Croft, Oathlaw. That application was invalid at time of receipt as the required application fee had not been provided. The fee was subsequently submitted and the application validated on 29 January 2019. A site visit in February 2019 identified some works taking place at the site.

3.2 In March 2019 observations were received by the Planning Service that further works were being undertaken on the land. Subsequent investigation identified that preliminary works were taking place associated with the formation of a game bird rearing facility. These works included improvement to access tracks, the erection of huts and the laying out of runs for the birds. Discussion with the land owner/ operator indicated that the facility was to be used for the rearing of around 50,000 game birds for the restocking of sporting estates. It was indicated that the site would operate between May to September within two fields that are separated by an area of woodland.

- 3.3 Officers have previously researched the planning status of game rearing facilities. There appears to be little doubt that the rearing of game birds for direct supply to the food chain constitutes an agricultural use. However, there is less certainty regarding the rearing of game birds for sporting purposes. Notwithstanding that, there are a number of appeal decisions that indicate the rearing of birds for sporting purposes does not constitute an agricultural use. In particular a very recent planning enforcement notice appeal decision (March 2017 - ENA-340-2031) in Perth & Kinross supported the opinion that the rearing of game birds for sporting purposes is not an agricultural use, and further, that the use of agricultural land for such a purpose constitutes a material change of use.
- 3.4 On the basis of this research officers have determined that the operation at Foresters Croft requires planning permission. That position has been conveyed to the land owner/ operator and they have responded in a positive manner confirming that further operations will not be undertaken at the site in advance of consideration of this report by Committee.
- 3.5 The planning application for erection of the poultry shed has been found to be invalid and has been returned. However, the land owner/ operator has indicated an intention to submit a new application for the erection of the shed and the establishment of the game bird rearing facility.
- 3.6 At this stage full details of the proposed application have not been provided but it is possible that it could constitute a major development. An application for major development requires statutory pre-application consultation with communities and the submission of a proposal of application notice. A planning application cannot be submitted for a period of 3-months following submission of the requisite proposal of application notice. The statutory timescale for determination of a major planning application is 4-months. A proposal of application notice has yet to be submitted but even if submitted within the next few weeks the earliest an application for major development could be submitted would be June/ July 2019.

4. CURRENT POSITION

- 4.1 There are currently no birds on the site but some preliminary works have been undertaken to erect the associated structures, including huts and netted pens. Some works have also been undertaken to improve tracks.
- 4.2 Recent appeal decisions support the opinion that the use of agricultural land for the establishment of a game rearing facility for the supply of birds for sporting purposes constitutes a material change of use. That position does not appear to have been tested or confirmed by the Courts in relation to planning legislation. Therefore that position, and the materiality of any difference between rearing birds for agricultural purposes and rearing game birds for sporting purposes, is one that could be challenged through the Courts.
- 4.3 Notwithstanding that, it is considered that appeal decisions support the opinion that the use instigated at Foresters Croft and the associated siting of structures constitutes development that requires planning permission. That position has not been disputed by the land owner/ operator. That position is also consistent with the approach taken by Angus Council in relation to similar development on land at Keithock, Stracathro ([Report 408/17](#) refers).
- 4.4 The land owner/ operator has indicated that birds have been ordered and are due to be delivered to the site in May 2019. They have indicated that immediate cessation, without an alternative site for relocation, would have a significant impact on the business.
- 4.5 Against this background, officers have also been in dialogue with members of the public who live close to or own property in the vicinity of the site. Those parties have raised concern regarding the unauthorised development that has taken place to date.

5. DISCUSSION

- 5.1 This case is similar to the Perth & Kinross appeal case and the planning enforcement case at Keithock, Stracathro, both referenced above. [Report 408/17](#) which dealt with the Keithock case set out in some detail the potential enforcement options and the benefits and limitations associated with each approach. It also considered the impact of different enforcement options on the business and on those residing in the vicinity of the site.
- 5.2 In this case there are a number of residential properties that are close to the site, including those in the village of Oathlaw which sits around 260 metres to the east. There is also a

reasonably sizeable concentration of residential properties located to the north, including two that are within around 25 metres. Two cottages lie to the southwest of the site but one of those is in the ownership of the site operator.

- 5.3 The land owner/ operator has indicated that the operation would involve around 50,000 birds but has indicated that the number on site over any season could be greater. They have indicated that the birds would be raised over a six to seven week period but they have also indicated that the operation would take place between May and September which provides a period significantly greater than the six to seven weeks suggested. It is relevant to note that setup works associated with the operation appear to have commenced around February.
- 5.4 Experience at other sites indicates that operations of this nature have potential to give rise to fairly significant amenity and environmental impacts. At this stage no information has been provided to demonstrate that this operation could be undertaken at this site in a manner that would not result in unacceptable impacts on those that reside in the area. Information regarding potential noise, odour, pollution and other potential impacts would be required in association with any planning application that sought to regularise the use.
- 5.5 The approach adopted by the council at Keithock sought to strike a balance between the needs of the business and the necessity to safeguard the amenity and environment of the area. It involved the service of an enforcement notice with a reasonably short timescale for compliance. It required cessation of use before the site was populated with birds. However, it also indicated that the council would be prepared to extend the compliance period until the end of the forthcoming bird rearing season provided the operator agreed to implement approved mitigation measures in advance of the facility being restocked. That gave similar effect to the approach adopted by the DPEA Reporter in the Perth & Kinross case but with the benefit that the council could ensure appropriate mitigation was provided for the extended period of operation. It ensured limited risk to the business as compliance with any agreed mitigation would be within its control. The approach also provided nearby residents with some comfort that the business would be required to operate in accordance with approved mitigation. It is relevant to note that at Keithock it was indicated by the land owner/ operator that the extended period of time would allow for the business to relocate to a less sensitive location.
- 5.6 In this case the land owner/ operator has advised an intention to pursue an application for the use and development of this site as a game bird rearing facility. As indicated above, given the nature of the use and the number and proximity of houses in the surrounding area considerable supporting information will be required in association with any planning application. In the absence of that information and full consultation with the community and relevant bodies it is not possible to confirm whether this is an acceptable location for the facility. There is at least a possibility that a planning application may be refused. In that circumstance the business would need to cease game bird rearing activity at this location.
- 5.7 The circumstances in this case are similar to those experienced at Keithock. The business has ordered birds for delivery in the very near future. There can be little doubt that requiring the use to cease immediately could have significant adverse impact on that business. Equally, allowing the business to continue operation in an unregulated manner could have significant adverse impacts on the environment and on the amenity of those living in the area.
- 5.8 Adopting a similar approach to that taken at Keithock is considered appropriate in this case. An enforcement notice could be served that requires cessation of use and clearance of the site by 31 April 2019. However, the recipients of that notice could be advised that the compliance period would be extended until 30 September 2019 provided that mitigation proposals addressing the undernoted are submitted, approved, implemented and maintained at all times when birds are present on the site. The mitigation measures required are: -
- All game bird rearing activity to be sited a minimum of 100 metres from the curtilage of any neighbouring residential property that is not in the ownership and occupation of the operator of the business;
 - An odour and waste management plan, including measures for the management and disposal of waste;
 - A noise management plan;

- A pollution management plan, including measures for the management and disposal of waste;
- A vermin and pest control plan.

5.9 The recipients of the enforcement notice would have a right of appeal to the DPEA and that process and the outcome of any appeal could affect timescales for resolution.

5.10 However, the approach advocated allows for business continuity whilst at the same time securing some mitigation of impacts on the amenity of neighbours and the environment. It also allows opportunity for the land owner/ operator to submit a planning application for the use and for such application to be considered in advance of the next rearing season. If such an application was approved the enforcement notice could be withdrawn. If an application is not submitted, is not submitted in sufficient time or with adequate supporting information to allow timely determination, or if it was refused, the terms of the enforcement notice would prevent the use of the facility for game rearing activity beyond 30 September 2019.

6. OTHER IMPLICATIONS

HUMAN RIGHTS

The recommendation to take enforcement action in relation to a breach of planning control has potential implications for the subject of the enforcement action in terms of the proprietors entitlement to free enjoyment of their possessions (First Protocol, Article 1) and/or in terms of alleged interference with home or family life (Article 8). It is considered that any such actual or potential infringement of such Convention rights is justified. Any actual or alleged infringement is in accordance with the Council's legal powers under the Planning Acts and is necessary in the general interest for the proper control of land use and development in Angus. It is also necessary for the protection of the right and freedom of others to freely enjoy their property without the restriction of their enjoyment and detriment of their amenity caused by the present breach of planning control. The interference is also proportionate given that the breach of planning control is, on the information available, not considered to be one which would attract the granting of planning permission. Further, the interference will be the minimum required to achieve the objective of remedying the breach of planning control in question.

EQUALITIES

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

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 any material extent in preparing the above Report.

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APPENDIX 1: LOCATION PLAN