

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 15 DECEMBER 2020

ENFORCEMENT APPEAL DECISION: LAND OPPOSITE GEDHALL MAIN STREET,
BARRY

REPORT BY SERVICE LEADER – PLANNING & COMMUNITIES

Abstract:

This report presents the findings of the Reporter appointed by Scottish Ministers to determine an appeal by James Clark against the decision of Angus Council to issue an enforcement notice on land opposite Gedhall Main Street, Barry requiring amongst other things the removal of scrap material, cessation of the use of land for the storage of vehicles and materials, and restoration and maintenance of the land in a neat and tidy condition. The Reporter dismissed the appeal and upheld the terms of the enforcement notice.

1. RECOMMENDATION

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

2. INTRODUCTION

- 2.1 An area of land opposite a house known as Gedhall, Main Street, Barry has attracted complaint over a number of years due to its use and condition. It was observed that the site was being used for the storage of scrap material and as a temporary parking area and construction compound in association with the erection of a house on nearby land.
- 2.2 The condition of the land was improved voluntarily following initial contact by council officers. However, more recently further complaint was received regarding the use of the land for the storage of scrap material and the resultant adverse impact on the amenity of the area. Informal contact suggested that further informal contact would not resolve the issue.
- 2.3 In these circumstances, and having regard to timescales associated with enforcement action, it was considered expedient to serve an enforcement notice in July 2020 requiring in general terms, removal of vehicles and materials from the land, cessation of the unauthorised use, and maintenance of the land in a tidy condition.
- 2.4 The enforcement notice was subject of appeal and that appeal was dismissed. The Reporters decision is set out below.
- 2.5 The enforcement notice allows a period of 6-months for compliance with its terms. That time period runs from the 26 October 2020 which was date of the decision on the appeal.

3. REPORTER'S DECISION

Decision

I dismiss the appeal and direct that the enforcement notice dated 15 July 2020 be upheld. Subject to any application to the Court of Session, the enforcement notice

takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

Reasoning

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:

d) at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

e) copies of the enforcement notice were not served as required by section 127 of the Act;

f) the steps required by the notice to be taken (or the activities required by the notice to cease) 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; and

g) the period specified in the notice falls short of what should reasonably be allowed.

Ground d)

2. In order for a use to be immune from enforcement action, it has to have started more than 10 years prior to the issue of the enforcement notice and to have continued since then without interruption. The appellant advises that they have been using the land, subject of the enforcement notice, continuously since 1998 for the storage of agricultural vehicles and agricultural parts. The council has referred me to the enforcement case history in relation to the site. According to this enforcement case history, the site was being used in January 2011 for a new operation i.e. the storage of scrap and a variety of other materials without the necessary licence or permission. I understand that following dialogue between the council, the landowner and the appellant, the site was tidied up to such an extent that the unauthorised use as a scrap yard was considered by the council to have ceased. Following a site inspection in August 2012, the council considered the condition of the site to be acceptable and the enforcement case (ref: 11/00006/UNDV) was subsequently closed.

3. Whilst I acknowledge that the appellant has been using the site since 1998, there is nothing before me to demonstrate categorically that the use, as referred to in the enforcement notice, was established prior to July 2010 and that it has continued since then without interruption.

4. In light of the above, I conclude that there has not been a continuous use of the site, for more than 10 years, for the use referred to in the enforcement notice. The appeal on ground d) therefore fails.

Ground e)

5. Section 127(2) of the Act requires that an enforcement notice shall be served on the owner and occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. The council served the notice on the owner of the site at the same time that the notice was served on the appellant. The appellant confirmed the owner of the site in their appeal statement. The appellant also confirmed that they are the occupier of the land and that they have been using the

land since 1998. In light of the above, I am satisfied that the enforcement notice was properly served and the appeal on ground e) therefore fails.

Ground f)

6. During my site inspection, it was brought to my attention that work had recently been carried out to clear scrap and waste material from the central part of the site. That said, I noted that there were heaps of scrap, rubbish and waste material distributed around the periphery of the site including along the site frontage on Main street. The site is in a prominent location on Main Street which runs through the centre of Barry. There are residential properties in close proximity to the site including Gedhall House which is located on elevated ground, directly opposite the site. The site is also visible from the A930 road which runs to the south of the settlement.

7. Whilst acknowledging the appellant's efforts to tidy the site, subsequent to the serving of the latest enforcement notice, there are numerous items of scrap and waste material stored there without the benefit of planning permission. I consider that this scrap and waste material has an adverse effect on residential amenity and on the general amenity of the surrounding area. I am therefore satisfied that the requirements of the notice are a reasonable remedy to the breach of planning control that has occurred.

8. I understand that fly tipping has taken place at the site, much to the frustration of the appellant. I have some sympathy with the appellant in this regard, although this is not a matter that I can concern myself and it is something more appropriately addressed through complaints procedures to the council or to the police. In light of the above, the appeal on ground f) therefore fails.

Ground g)

9. The appellant considers that the time period for addressing the breach is not sufficient, primarily due to the closure of scrap yards as a result of the COVID-19 pandemic. However, I understand that the council's recycling facilities are open and that local scrap metal dealers are also operating and therefore the appellant is not restricted from clearing the site and being able to responsibly dispose of the various items and materials.

10. Given my observations during my site inspection, I am satisfied that the appellant has recently been able to make significant progress removing scrap and waste from the site. Whilst I note the personal circumstances of the appellant, I consider that this work can continue unimpeded, and certainly within a six month time period. Therefore, I do not consider that the time allowed in the notice for carrying out the works is unreasonable. The appeal on ground g) therefore fails.

11. I have taken account of all the matters raised in the submissions but find none that outweigh the considerations on which my decision is based.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from this Report.

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: 07 DECEMBER 2020

Appendix 1 : Location plan