

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 20 APRIL 2021

ENFORCEMENT APPEAL DECISION: LAND WEST OF BOATH BURN, MUIRDRUM,
CARNOUSTIE

REPORT BY SERVICE LEADER – PLANNING & COMMUNITIES

Abstract:

This report presents the findings of the Reporter appointed by Scottish Ministers to determine an appeal by Martin Gibb against the decision of Angus Council to issue an enforcement notice on land west of Boath Burn, Muirdrum, Carnoustie requiring amongst other things the removal of the storage containers, motor vehicles, plant, machinery, machinery parts, fence and gates from the land. The Reporter upheld the enforcement notice but varied its terms.

1. RECOMMENDATION

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

2. INTRODUCTION

- 2.1 An area of land at Muirdrum as shown on the plan at Appendix 1 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 shipping containers, motor vehicles, plant, machinery and machinery parts. A fence and gates over 1m in height had also been erected on the roadside boundary.
- 2.2 Informal contact suggested that voluntary resolution of the issue was unlikely. In these circumstances, and having regard to timescales associated with enforcement action, it was considered expedient to serve an enforcement notice requiring in general terms, the removal of the storage containers, motor vehicles, plant, machinery, machinery parts, fence and gates from the land.
- 2.4 The enforcement notice was subject of appeal. The notice was upheld but its terms were varied by the reporter as detailed below.
- 2.5 The enforcement notice allows a period of 3-months for compliance with its terms. That time period runs from the 29 March 2021 which was date of the decision on the appeal.

3. REPORTER'S DECISION

Decision

I uphold the enforcement notice but allow the appeal to the extent that I vary the terms of the notice by deleting the words "1. Remove the storage containers, motor vehicles, plant machinery, machinery parts, fence and gates from the land" and replacing them with the words "1. Remove the storage containers from the land. 2. Remove the unauthorised fence and gates that are in excess of one (1) metre in height from the southern boundary of the land. 3. Remove all motor vehicles, plant machinery and machinery parts from the land that are not directly required for its agricultural management". 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:
 - (b) that those matters have not occurred;
 - (c) that those matters (if they occurred) do not constitute a breach of planning control;
 - (d) that, 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;
 - (f) that the steps required by the notice be taken, or the activities required by the notice to cease, 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; and
 - (g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.
2. I consider these grounds of appeal in turn below against each of the alleged breaches of planning control that are specified within the enforcement notice.
3. It was clear from my site inspection that storage containers, motor vehicles, plant machinery and machinery parts were situated on the site subject to the enforcement notice. I also noted that a fence and gates have been erected adjacent to the public footway on the southern boundary of the site. I am therefore satisfied that the appeal on ground (b) fails.
4. The appellant contends that the motor vehicles, plant machinery and machinery parts are directly connected with the agricultural management of the land and that the storage containers are used to store animal feed. During my site inspection, all but one of the storage containers were empty with one containing tools, likely used for the maintenance of the machinery and plant stored on the site.
5. I am satisfied that some of the equipment I observed on the site is indeed connected to the agricultural management of the land, including the tractors and associated farming plant. However, in addition to the multiple storage containers situated throughout the land, I observed large trailers, equipment and plant seemingly relating to both the forestry and construction industries.
6. The appellant has provided a receipt to demonstrate the purchase of animal feed, which he argues is stored within the shipping containers. However, the feed was purchased after the appeal was submitted and no evidence has been provided regarding purchases in the past. The appellant has submitted a bovine registration document, dated May 2019, and provided photographs of two cattle which he contends graze the land along with two horses. Although there were no animals present during my inspection, and the wet and boggy ground seemed to be challenging for animals to occupy, the appellant has advised that he also uses two other fields in the vicinity to graze the livestock.
7. Given the number of animals referenced by the appellant, I do not accept that it is necessary or appropriate for the amount of shipping containers that are

situated on the land to be used for the storage of animal feed. I am satisfied that the land is indeed being used for the storage of shipping containers and motor vehicles, plant machinery and machinery parts that do not relate to its agricultural management. Furthermore, it is clear that the height of the fence and gates is such that they would require planning permission in their present location.

8. I therefore find that, subject to an amendment to the wording of Section 5 of the enforcement notice to exclude any motor vehicles, plant and plant machinery connected to the agricultural management of the land as described below, the appeal on ground (c) fails.
9. The appellant contends that the containers have been in situ since 2015 and should therefore not require planning permission since four years have passed since the use commenced. However, the material change in the use of the land from agriculture to land used for the storage of shipping containers would only become lawful development after 10 years.
10. The appellant further contends that the fence and gates were erected on 4 October 2016. It is argued by the appellant that the effective date of the enforcement notice of 19 October is out with the four year time limit within which action should have been taken. The appellant has submitted a photograph bearing the text 'TUESDAY 04 OCT 2016 13:08' that appears to depict the bottom of a fencepost set in concrete. Additional photographs have been submitted of the fence although none bear any date or time.
11. In response to the appeal, the council has provided a series of timestamped photographs taken between March 2017 and January 2020. In addition, a screen-capture depicting a fixed view of the site, obtained through a web-based, panoramic, street-level recording system, has been submitted, which is dated October 2016. I am satisfied that the evidence provided by the council is sufficient to demonstrate that the fence was erected after March 2017 contrary to the assertions of the appellant.
12. I am satisfied that the notice was served within the time limit for enforcement action being taken in relation to both the change of use and the erection of the fence and gates. I therefore find that the appeal fails on ground (d).
13. The notice requires that, in addition to the containers, fence and gates, the motor vehicles, plant machinery and machinery parts are removed from the site. Whilst I agree that the containers and the unauthorised fence and gates must be removed to resolve the identified breaches of planning control, I am satisfied that several of the items stored on the site would be reasonably necessary for its management as agricultural land.
14. During my site inspection I noted several fences and gates within the land. Whilst I agree that the unauthorised fence and gates situated along the southern boundary of the site must be removed to remedy the breach of planning control given its height and proximity to the road, the notice does not specify that only this fence and gates must be removed.
15. I find that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and I uphold the appeal in part on ground (f). I have therefore amended the terms of the notice to require the removal of only those motor vehicles, plant machinery and machinery parts that are not necessary for the ongoing agricultural management of the land and I have clarified that only the unauthorised fence

and gates that have been erected along the southern boundary must be removed.

16. Whilst the appellant has appealed on ground (g), no reasoning for why the period of compliance specified within the notice is unreasonable has been provided and no alternative timeframe has been suggested. I am satisfied that the three month period for compliance set out within the notice is reasonable and provides sufficient time for the appellant to undertake the steps required to remedy the breach. I therefore find that the appeal on ground (g) fails.

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: 6 APRIL 2021

Appendix 1 : Location plan