

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 18 MAY 2021

ENFORCEMENT APPEAL DECISION: SLATEFORD COTTAGE, SLATEFORD ROAD,
EDZELL

REPORT BY SERVICE LEADER – PLANNING & COMMUNITIES

Abstract:

This report presents the findings of the Reporter appointed by Scottish Ministers to determine an appeal by Andy Outhwaite against the decision of Angus Council to issue an enforcement notice on Slateford Cottage, Slateford Road, Edzell requiring the permanent cessation of the vehicle and machinery repair, servicing and associated sales business from the property. The Reporter dismissed the appeal and upheld the enforcement notice.

1. RECOMMENDATION

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

2. INTRODUCTION

- 2.1 The residential property at Slateford Cottage, Slateford Road, Edzell as identified on the plan at Appendix 1 has attracted complaint over a period of time regarding its use for the operation of a vehicle and machinery repair, servicing and sales business.
- 2.2 Officers investigated the matter and were provided with evidence to demonstrate the operation of a business from the premises and a level of activity that constituted a material change in the use of the land and buildings. No planning permission had been granted for the use and third party representation indicated that the activity was harmful to the residential amenity of the area.
- 2.3 In these circumstances, and having regard to timescales associated with enforcement action, it was considered expedient to serve an enforcement notice requiring cessation of the business activity.
- 2.4 The enforcement notice was subject of appeal but the appeal was dismissed and the terms of the notice upheld.
- 2.5 The enforcement notice allows a period of 1-month for compliance with its terms. That time period runs from the 4 May 2021 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 01 December 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.

Preliminary

1. Insofar as the determining issues in the appeal required me to consider the nature of the site at all, there was sufficient information in the submissions of the appellant and the council about the nature of the appeal site, and about the activities taking place in alleged breach of planning control, that it was unnecessary to undertake a physical site inspection.

Reasoning

2. 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) the matters stated in the notice to involve a breach of planning control have not occurred; and

c) the matters stated in the notice (if they occurred) do not constitute a breach of planning control.

Ground b)

3. The council has provided evidence that an automotive repair centre, 'AMS Vauxhall', was advertised as operating from the appeal site at the time the enforcement notice was served. I note that the online pages for the company include reviews from customers, hours of operation and a list of services available with their associated costs. The appellant contends that all commercial activities at the premises ceased following a telephone conversation with the council during September 2020 and that the company is no longer trading.
4. The appellant further states, however, that he continues to repair vehicles at the premises because it is his hobby. The repair of motor vehicles at a residential property can be incidental to the enjoyment of the dwellinghouse. Whether or not a change of use has taken place depends upon the scale and nature of the activity and its impact on the character of the premises.
5. The council has provided a log of vehicles that were observed at the appeal site between 21 October 2020 and 3 November 2020. During the two week period, 22 vehicles were recorded at the premises. The appellant does not dispute the accuracy of the evidence although he contends that the majority of the vehicles belong to friends and family, with the remainder either belonging to tradespersons undertaking work at the property or being in his own ownership.
6. The appellant has provided information regarding the relationship between himself and each vehicle owner and has stated whether any repairs or servicing have been carried out. Of the vehicles observed during the two week window, it was stated that some form of repair work or maintenance had been undertaken to more than half of the total number. Whilst the appellant contends that the commercial activity has ceased at the premises, he has confirmed that he accepts payment-in-kind or 'tradeswap' by undertaking repairs in exchange for tradespersons carrying out work at his property.
7. The appellant has stated that there are five vehicles in his ownership that are kept at the property on a permanent basis, three of which are used regularly by the appellant and his wife whilst the other two are hobby projects. The appellant has advised that his hobby involves undertaking repairs to his own vehicles and to those of his friends and uploading videos of the work to his Youtube channel.

8. The primary and permitted use of the appeal site is that of a dwellinghouse with associated outbuildings and garden ground. The semi-detached dwelling is located within a suburban area and is served by a modest, domestic-scale road network. I am satisfied that the level of vehicle repair and maintenance activities that are being undertaken at the appeal site exceeds that which is incidental to the enjoyment of a dwellinghouse in this particular location.
9. I find that the volume of vehicles that are stored on the appeal site for hobby and day to day use, in addition to the regular coming and going of vehicles that are repaired on the premises, exceeds what could be reasonably be expected for a semi-detached property in a suburban neighbourhood. I am satisfied that the activity has resulted in the character of the primary use having been altered to the extent that a material change of use has taken place.
10. I therefore find that the appeal on ground b) fails.

Ground c)

11. There is no element of planning law that would permit such a material change of use without an application being made for planning permission and no evidence has been provided to indicate that the breach of planning control has been continuous for sufficiently long that it has become lawful through the passage of time.
12. I therefore find that the appeal on ground c) 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 MAY 2021

Appendix 1 : Location plan