



Decision by Rob Huntley, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-340-2042
- Site address: Dollar Equestrian, Blairingone, Dollar, FK14 7ND
- Appeal by Charles and Charmaine McLeish against the enforcement notice dated 12 July 2018 served by Perth and Kinross Council
- The alleged breach of planning control: failure to implement landscaping details approved by local planning authority reference number 11/01839/FLL
- Date of site visit by Reporter: 25 October 2018

Date of appeal decision: 1 November 2018

Decision

I allow the appeal and direct that the enforcement notice dated 12 July 2018 be quashed.

Procedural Matter

1. In parallel with my consideration of this appeal, I have also considered an appeal against a second enforcement notice issued by the council concerning the same site. My decision on that appeal (ref: ENA-340-2041) is the subject of a separate decision notice.

Reasoning

2. The appeal against the enforcement notice is made on all 6 of the grounds provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997, namely:
- (b) that the matters which have been stated in the notice have not occurred;
 - (c) that the matters stated in the notice (if they occurred) do not constitute a breach of planning control;
 - (d) that, at the date 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) that copies of the enforcement notice were not served as required by section 127 of the 1997 Act;
 - (f) that 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;
 - (g) that the period for compliance falls short of what should reasonably be allowed.



3. By notice dated 25 April 2012 the council granted planning permission reference 11/01839/FLL for development of land which encompassed, but was more extensive than, the present appeal site. That permitted development was described in the decision notice as “erection of an indoor horse arena building for equestrian business and erection of a dwellinghouse and garage”. Condition 9 attached to the planning permission states:

“The detailed landscaping and planting scheme which is hereby approved shall be implemented as part of the site development programme within the first planting season following the commencement of any of the development on site and thereafter maintained to the satisfaction of the council as planning authority.”

4. The breach of planning control alleged in the enforcement notice is the failure to carry out landscaping at the site as referred to in condition 9.

Ground (b) - the matters stated in the notice have not occurred

5. During my site inspection I observed that a large framed building, laid out internally to provide 24 stables and an indoor arena, was present in the northwestern corner of the site. This building appeared to be in the same position as that shown on the drawings submitted in connection with application 11/01839/FLL and I am satisfied that this is part of the development permitted by that planning permission. The house and other parts of the development permitted by the planning permission were not initially carried out. However, the construction of the equestrian building had the effect of commencing the development permitted by the 2012 planning permission and triggering the operation of the attached conditions, including condition 9 concerning landscaping and planting.

6. The appellants acknowledge that landscaping and planting has not been undertaken at the site as alluded to in condition 9. The condition has therefore not been complied with. For these reasons I find that the breach of planning control referred to in the notice has occurred as a matter of fact. The appeal on ground (b) therefore fails.

Ground (c) - the matters stated in the notice do not constitute a breach of planning control

7. The matters that may amount to a breach of planning control are specified in section 123 of the Town and Country Planning (Scotland) Act 1997. Subsection 123(1)(b) provides that a breach of planning control includes failure to comply with a condition of a planning permission. The acknowledged failure to carry out landscaping at the site as referred to in condition 9 therefore amounts, in principle, to a breach of planning control.

8. However, the appellants maintain that condition 9 does not create an enforceable requirement to carry out the landscaping scheme illustrated on drawing number 12-01 referred to in paragraph 5 of the enforcement notice. Condition 1 of planning permission 11/01839/FLL requires the development to be carried out in accordance with the approved drawings. The decision notice dated 25 April 2012 includes a schedule which states “the plans relating to this decision are listed below...”. Drawing number 12-01 is not among the 15 drawings listed in that schedule, nor is that drawing identified in condition 9 of the planning permission, or mentioned elsewhere in the decision notice.

9. The wording of condition 9 refers to landscape planting shown on the drawing “hereby approved”. The council acknowledges that the landscape drawing which the

enforcement notice would require implementation of is not mentioned anywhere on the decision notice conveying the grant of planning permission. It characterises this omission as a simple administrative error and draws attention to discussions that had taken place between it and the appellants with regard to the carrying out of landscaping at the site. The council maintains that, for these reasons, the appellants must have been aware that the council's intention was that carrying out the landscaping referred to on drawing 12-01 was to be regarded as a requirement of the planning permission.

10. Any conditions or limitations subject to which a planning permission is granted must be clear from the face of the permission itself. It is not appropriate for any such requirements to be taken as implied, whether that may have arisen during the consideration of the application, or from subsequent discussions between the council and the appellants. For these reasons, I find that condition 9 of the planning permission does not contain a requirement for the landscape planting as illustrated on drawing 12-01 to be carried out in connection with the permitted development.

11. For the above reasons, I conclude that the failure to undertake landscaping as illustrated on drawing 12-01, as described in the enforcement notice, does not amount to a breach of planning control. The appeal on ground (c) therefore succeeds.

Other matters

12. I note that submitted drawing 1103/pp01 rev B (which the council identifies as plan reference 11/01839/3), is amongst those listed in the decision notice as approved for the purposes of the 2012 permission. That drawing does illustrate some landscaping proposals, albeit these are less extensive and specified in somewhat less detail than the drawing mentioned in the enforcement notice. I have considered whether it would be appropriate for me, in deciding this appeal, to vary the terms of the enforcement notice to substitute a requirement that the landscaping illustrated on drawing 1103/pp01 rev B be carried out. However, I have concluded that I could not do this without causing injustice. Had the enforcement notice required the carrying out of the landscape planting illustrated on drawing 1103/pp01 rev B, the appellants may have wished to make different points in support of their appeal. However, they would be prevented from doing this if I were to have varied the notice in that way.

13. As the appeal has succeeded on ground (c) and the notice is therefore quashed, it is not necessary for me to consider the appeals on the remaining grounds (d), (e), (f) and (g).

Rob Huntley

Reporter