



Decision by Christopher Warren, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-340-2044
- Site address: Dollar Equestrian, Blairingone, Dollar, FK14 7ND
- Appeal by Charles and Charmaine McLeish against the enforcement notice dated 09 May 2019 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 and that the development is substantially complete insofar as it relates to the breach
- Date of site visit by Reporter: 17 July 2019

Date of appeal decision: 24 July 2019

Decision

I dismiss the appeal and direct that the enforcement notice dated 09 May 2019 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 matters

A separate advertisement enforcement appeal at the site, lodged by the same appellants, is subject to a separate decision notice under reference ADE-340-2003.

Whilst my accompanied site inspection was in respect of both appeals, the appeals are independent from each other. I have determined the appeals separately having regard to the different regulations which apply to the respective cases.

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:

- (c) There has not been a breach of planning control.
- (e) The notice was not properly served on everyone with an interest in the land.
- (f) The steps required by the notice are excessive and less onerous steps would remedy the breach, or would remedy any injury to amenity.



The appeal under ground (c):

2. Planning permission was granted on 25 April 2012 for the erection of an indoor horse arena building and a dwellinghouse and garage on the appeal site, under application number 11/01839/FLL. Condition 9 of that planning permission required the “approved” detailed landscaping and planting scheme to be implemented within the first planting season following the commencement of any development, and thereafter maintained.
3. It is the appellants’ contention that despite the terms of condition 9 of the planning permission, no landscaping drawings were approved by the council. The appellants state that this deficiency was identified in a previous enforcement appeal decision (reference ENA-340-2042), and therefore no breach of planning control can have occurred because the site plan referred to by the council was not offered as a landscaping and planting scheme.
4. The council has provided a copy of the previous enforcement notice appeal decision, dated 01 November 2018, which related to the same alleged breach of planning control. In that case, the council was seeking to require landscaping to be implemented in accordance with a drawing which was not referred to on the decision notice. The appeal was upheld on that basis.
5. The previous reporter did however remark (in paragraph 12 of the decision notice) that, in his view, drawing number 11/0189/3 (council reference) does illustrate some landscaping proposals, and noted that this drawing was also listed on the council’s decision notice. The reporter did not vary the terms of the enforcement notice to refer to that drawing, as he concluded that this could be prejudicial to the appellants. The current enforcement notice which is the subject of this appeal does refer to the alternative drawing contemplated by the previous reporter.
6. Whilst I accept the appellants’ position that the drawing is a ‘site plan’, it does not necessarily follow that this somehow limits the extent to which the information contained on that drawing may be relied upon. I can see no basis for dismissing the information on that drawing as simply illustrative, as it clearly identified landscaping as part of the proposed development. It was one of several drawings formally submitted as part of the application, and which was expressly referred to on the decision notice. Not only does the drawing identify the position of a proposed landscaping strip along the site boundary (which is annotated as well as illustrated), it also specifies the species to be used and a maintenance programme for the proposed planting.
7. On the basis of the above, I am satisfied that the drawing referred to by the enforcement notice can reasonably be cited by the council in relation to the requirements of condition 9 of the planning permission. From my site inspection, and from the submissions before me, there is no question over whether the development is otherwise substantially complete. It was also immediately apparent during my site inspection that none of the landscaping shown on the site plan drawing has been undertaken, with the exception of planting along the southern side of the dwelling, now in separate ownership (and excluded from the area identified by the enforcement notice), and some limited individual specimens to the east side of the arena building. Therefore, the terms of condition 9 have not been satisfied and a breach of planning control has occurred. The appeal under ground (c) fails.

The appeal under ground (e):

8. The appellants have confirmed that they do not own the site, and have identified the landowner as Embark Group Limited. There are also tenants who are occupying the site for the purposes of operating an equestrian business.

9. I find that the appellants are correct to assert that the enforcement notice was not served as required by section 127(2)(a) of the Act, which states that it shall be served on the owner and occupier of the land. The enforcement notice was served solely on the appellants, who would qualify as persons with a material interest in the land under section 127(2)(b). Section 127 has not been fully complied with by the council.

10. This deficiency does not, however, necessarily require the appeal to be upheld. The test set by section 132(4) of the Act is that in these circumstances, where a person required to be served the enforcement notice was not served, this may be disregarded if neither the appellant nor the person(s) who should have been served the notice have been substantially prejudiced.

11. At the time when Embark Group Limited acquired the site in August 2018, the terms of the planning permission were already clear. This is unaffected by the enforcement notice, which simply seeks to ensure compliance with a condition attached to that planning permission. It is reasonable to assume that the requirements of the planning permission were understood by the landowner, and those requirements are not altered by the enforcement notice.

12. Despite Embark Group Limited having owned the site since August 2018, Mr McLeish has continued to directly enter into correspondence with the council over matters relating to compliance with condition 9. It is apparent on the basis of the email trail between the appellants and the council (and the dates of this correspondence) that the appellants have maintained day-to-day control over the land. I am satisfied that this adequately demonstrates that it remains within the appellants' gift to implement the planting scheme as required by condition 9.

13. Submissions made by the council identify Embark Group Limited as a private pension fund company, with which Mr McLeish is linked by land register information. The landowner's interest in the land is therefore likely to be predominantly (if not entirely) financial. The terms of the enforcement notice would not have any effect on the value of the land. Noting again also that the implementation of a landscaping scheme was already an explicit requirement of condition 9 of the planning permission for the site's development, I find no basis to conclude that the interests of the landowner are in any way prejudiced by not having been served the enforcement notice.

14. In regard to the occupiers of the land, who are running an equestrian business, the terms of the enforcement notice would not reduce or otherwise impede the operational areas of the site, which I observed during my site inspection. This is because the required landscaping affects only the perimeter of the site, and existing access points into surrounding land would be maintained. I can see no reason why there would be any financial or operational implications for the occupiers, and so in the circumstances of this case I am also satisfied that no prejudice has been caused to the occupiers by not having

been served the enforcement notice.

15. The appellants have not indicated that they themselves consider to have been prejudiced by the failure to serve the notice on the owner and occupier. Nor have they suggested that the owner and/or occupier have been prejudiced. All told, I find no basis to conclude that any parties have been substantially prejudiced by the failure, and therefore where the appeal would otherwise be dismissed, I am able to disregard the shortcomings in the service of the enforcement notice.

The appeal under ground (f):

16. In support of this ground of appeal, the appellants have referred me to negotiations that have been taking place with the council, the focus of which has been the appellants' aim to agree a less extensive landscaping scheme to that shown on the approved drawing 11/0189/3. The appellants have (to date, unsuccessfully) sought the council's agreement to limiting the planting required by condition 9 to the southeast corner of the site.

17. The council is under no obligation to agree a lesser scheme than that shown and approved on drawing 11/0189/3. The approved drawing identifies a landscaping strip along all boundaries to the site. As condition 9 of the planning permission requires the approved landscaping and planting scheme to be implemented (and I have already concluded above that drawing 11/0189/3 can reasonably be referred to for this purpose), a more limited landscaping strip would not fully address the breach of planning control. For this reason, I conclude that there is no lesser action than that specified by the notice which would remedy the breach of planning control.

18. As no lesser action would remedy the breach of planning control, it is not appropriate for me to consider whether any lesser action other than that specified by the enforcement notice could remedy any current injury to amenity. In these circumstances I do not have the discretion to agree any scheme which would not fully address the breach of planning control. Such discretion rests entirely with the council. The appeal under ground (f) therefore fails.

Conclusions:

19. Section 132(4) of the Act states that a failure to serve all required persons can be disregarded if no substantial prejudice would be caused and if there would be no other basis to uphold the appeal. In light of my findings in respect of the appeal under grounds (c) and (f) above, against which the appeal fails, the provisions of section 132(4) are fully engaged. Based on my findings above in regard to ground (e), I consider it reasonable in this case to disregard the fact that the council did not serve the enforcement notice on the owner or occupier of the land. The appeal under ground (e) also fails on this basis, and therefore I dismiss the appeal and uphold the enforcement notice.

Christopher Warren
Reporter