



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

- Advertisement Enforcement Notice appeal reference: ADE-340-2003
- Site address: Dollar Equestrian, Blairingone, Dollar, FK14 7ND
- Appeal by Charles and Charmaine McLeish against the advertisement enforcement notice served by Perth and Kinross Council dated 09 May 2019
- The alleged breach of advertisement control: Without express advertisement consent, the display of an advertisement on a blue/green background picturing a bone and five dogs and the text within the bone "Dogs Run Fur Fun"
- 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 advertisement enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Regulation 25(3) of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (as amended).

Preliminary matters

A separate planning enforcement appeal at the site, lodged by the same appellants, is subject to a separate decision notice under reference ENA-340-2044. 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.

Submissions by third parties have made reference to the lack of planning permission on the site for the use to which the signage refers, and outline why the site is considered unsuitable for such a purpose. For the avoidance of doubt, my assessment must be confined solely to determining the appeal against the provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (as amended). It is beyond my remit to consider any wider planning implications.

On arrival at the site for my accompanied inspection, Mr McLeish appeared to be in the process of removing the signage which is the subject of the appeal. My remit is to consider the alleged breach of control on the date the enforcement notice was served, and the grounds of appeal cited by the appellants. It is not of any relevance to my assessment that the signage may have subsequently been removed.



Reasoning

1. The appeal against the notice is made under the following grounds:
 - (a) that the matters alleged in the notice do not constitute a display of an advertisement without a consent required by the Advertisement Regulations; and
 - (b) that the enforcement notice was not served as required.

The appeal under ground (a):

2. The appellants have asserted that the signage is a directional aid and not an advertisement as alleged by the council. In response, the council has directed me to the definition of 'advertisement' provided by the regulations.
3. I am satisfied that the signage in question does meet the definition of an advertisement as provided by the regulations, and therefore the provisions of the regulations do apply.
4. The appellants have stated that they had understood that signage of this nature could be displayed temporarily. Schedule 4 of the regulations lists specified classes of advertisements which have deemed consent. The signage does not fall within any of these classes; this includes class III which applies to "certain advertisements of a temporary nature".
5. On the basis of the above, the display of the signage constitutes an advertisement which does require express consent. The appeal under ground (a) therefore fails.

The appeal under ground (b):

6. The appellants have stated that they are neither the landowners nor the tenants of the land to which the signage relates. The appellants have identified the landowner as Embark Group Limited. The council has identified a relationship between that company and Mr McLeish based on land register information, and whilst the council has stated that the appellants had failed to disclose Embark Group Limited's interests, it does not dispute that Embark Group Limited owns the land.
7. The terms of regulation 24(2) make clear that "an enforcement notice shall be served on the owner, lessee and occupier of the land to which it relates and on any other person known to the planning authority to be displaying the advertisement without such consent...".
8. The submissions leave me in no doubt that the appellants instigated the display of the advertisement. This is substantiated both by an email from the current occupier of the site to the council, and the appellants' own submissions referring to their efforts to assist the equestrian business to diversify. I am satisfied that it was appropriate for the advertisement enforcement notice to be served on the appellants for this reason.
9. The council did not serve the enforcement notice as required by regulation 24. The requirement for the enforcement notice to have also been served on the landowner, lessee and occupier (as applicable) is not discretionary. The landowner has now been identified

as Embark Group Limited and the site is leased, or otherwise occupied, by another business. Neither of these parties were served the notice.

10. The appellants' ground of appeal relies simply on the council's failure to serve the notice on the owner and occupier. However, in determining whether this deficiency alone would justify upholding the appeal and quashing the enforcement notice, I have had careful regard to the terms of regulation 25(4)(b). In instances where a failure to serve the notice on a person as specified by regulation 24 has occurred, this failure can be disregarded when determining an appeal if neither the appellant nor that person (or persons) has been substantially prejudiced by not having been served the enforcement notice.

11. As Embark Group Limited is a private pension fund company, I consider it highly unlikely that it would have an interest in the terms of the enforcement notice relating to a single unauthorised sign on the site, with the decision to erect it having not been taken by the company but by the appellants (as discussed in paragraph 8 above). I find the landowner's position and interest in the land have not been meaningfully prejudiced as a result of not being served the enforcement notice, on this basis.

12. There is, in my opinion, more scope for the occupiers of the site (who run an equestrian business) to be prejudiced by the failure to be served the enforcement notice. This is because the appellants have asserted that the signage relates to the diversification of the occupiers' operations on the site. However, I note that in correspondence to the council, the occupiers had expressed some misgivings over the activity and this indicated that the venture was being progressed (or at least encouraged) by the appellants. For this reason, I also conclude that the occupiers to the site have not been substantially prejudiced by the failure of the council to serve them the enforcement notice.

13. The appeal under ground (b) therefore also fails. Accordingly, I dismiss the appeal and uphold the enforcement notice.

Christopher Warren
Reporter