



Decision by Stephen Hall, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-340-2037
- Site address: Hillview, Kinloch, Blairgowrie, Perthshire, PH10 6SD
- Appeal by Peter Brown against the enforcement notice dated 14 February 2018 served by Perth and Kinross Council
- The alleged breach of planning control: The unauthorised material change of use of the former storage building for residential occupation, and use of associated land forming its curtilage for residential purposes.
- Date of site visit by Reporter: 11 May 2018

Date of appeal decision: 24 May 2018

Decision

I dismiss the appeal and direct that the enforcement notice dated 14 February 2018 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.

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:
 - (f) The steps required by the Notice are excessive and less onerous steps would remedy the breach; and
 - (g) The time allowed to comply with the notice is too short.
2. As regards ground (f), there is no dispute that the use of the building at Hillview for residential purposes is unauthorised, and that therefore a breach in planning control has occurred. The steps required in the notice, which are to cease using the building and the associated land at the site for a residential use and for the purposes of residential occupation, would serve to remedy the breach in planning control. I consider that any lesser steps that would allow Mr Brown to continue to live at the property would not serve to remedy the breach.
3. The appellant argues that the building has no detrimental impact on environmental resources. Be that as it may, even if it were the case that the residential use of this building caused no planning harm or could be said to comply with development plan policy (which I



do not necessarily accept), it would still be the case that such a use requires planning permission, that such permission does not exist, and that the steps required by the enforcement notice are necessary to remedy this breach in planning control.

4. There is a current planning application to change the use of the building and its curtilage to business use. If this is approved, the appellant states he will then seek permission for temporary residential accommodation in the grounds of the property. The appellant argues that no enforcement action should be taken while these planning applications are under consideration because such action has the effect of denying the appellant the right to a fair hearing under Human Rights legislation.

5. I cannot agree with this argument. With regard to the current residential use of the building, a fair hearing was provided for through an earlier (refused) planning application for this use and the subsequent review of that decision by the council's local review body. As regards the council's enforcement action, a fair hearing has been provided for through the current appeal. And as regards the appellant's future aspirations for the land, a fair hearing will be provided for through the normal operation of the planning system, including its provisions for review and appeal. Unauthorised development is not rendered immune from enforcement action by the submission of planning applications for alternative developments on, or uses for, the site.

6. For the reasons stated above, I therefore conclude that the appeal under ground (f) fails.

7. As regards ground (g), the enforcement notice requires the residential use of the building to cease within 180 days of the notice taking effect. The appellant suggests the 180 days should only commence following the determination of the current application for business use and any subsequent appeal. However, even if the business use application were approved, this would not allow ongoing residential use of the site. That would depend on the outcome of any subsequent application for temporary residential accommodation. There was no duty on the planning authority to allow sufficient time for these processes to be completed, and I am not attracted by the suggestion that I substitute such an uncertain and potentially lengthy time period.

8. I appreciate the possibility that the appellant may have bought and occupied the property without knowing that the residential use was unauthorised. This possible circumstance does add to the importance of allowing a reasonable time period for compliance with the enforcement notice. However I consider that a period of 180 days is adequate to identify alternative accommodation in the Blairgowrie area and agree its purchase or lease.

9. I also note the council's evidence that the appellant was advised of the council's intention to issue an enforcement notice in December 2017, and that if I uphold the notice it will only take effect (and the 180 day period commence) on the date of my decision. The actual period between the appellant being made aware of the likelihood of enforcement action and the date on which the residential use would have to cease would therefore be in excess of 11 months. I do not consider this period unreasonable.

10. For these reasons I conclude that the appeal under ground (g) fails.

Stephen Hall
Reporter