



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

- Enforcement notice appeal reference: ENA-340-2045
- Site address: land and buildings at Hillview, Kinloch, Blairgowrie PH10 6SD
- Appeal by Peter Brown against the enforcement notice dated 27 May 2019 served by Perth and Kinross Council
- The alleged breach of planning control: the unauthorised modification of a shed for residential occupation, the material change of use of the former storage shed to dwelling house, the introduction of sheds, caravan, and the use of associated land to form a residential curtilage
- Date of site visit by Reporter: 22 August 2019

Date of appeal decision: 30 August 2019

Decision

I dismiss the appeal and direct that the enforcement notice dated 27 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.

Reasoning

1. The appeal against the enforcement notice was made on 2 of the grounds provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997, namely;
 - 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. However, in addition to appealing on these 2 statutory grounds, the appellant also questions the reasonableness and legality of the council's actions in issuing the enforcement notice. In this regard the appellant makes reference to the European Convention on Human Rights (European Convention) and to the provisions of the Equality Act 2010. These considerations are, the appellant comments, of direct relevance as the current owner of the land and his family are members of the gypsy/traveller community. I deal with the aspects of the appellant's case which raise questions of legality, validity and reasonableness, before addressing the statutory appeals on grounds f) and g).



Background

3. The council issued a previous enforcement notice in respect of the site in February 2018. The breach of planning control described in that notice is ‘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.’ An appeal against that notice was dismissed in a decision notice dated 24 May 2018 (appeal reference ENA-340-2037), as a result of which that notice became effective. The requirement of that enforcement notice as upheld was to ‘... cease using the building and the associated land at the site for a residential use and the purposes of residential occupation’, within 180 days of the notice taking effect. As a result of the previous appeal decision dated 24 May 2018, residential occupation of the building and land was required to have ceased by the end of November 2018.

4. During my site inspection, accompanied by representatives of the appellant and the council, I was able to observe that the building was in residential use and was arranged internally, fitted out and furnished so as to be conducive to such occupation. I also noted that land around the building comprised a landscaped and planted garden to the south, also incorporating a block-paved driveway, with a gravelled area including 3 timber sheds of domestic scale to the rear (north) of the building. A shipping container, apparently in use as a further shed, and a touring caravan were stationed on part of the lower level access drive.

Legality, validity and reasonableness

5. The appellant argues that the council’s action in issuing the notice was premature and disproportionate, and thereby unreasonable and contrary to law. The appellant also maintains that the council has paid no, or insufficient, regard to the provisions of the European Convention or the duty placed on public bodies by the Equality Act. It is not open to me, as part of my consideration of this appeal, to review whether the council ought to have issued the notice in the first place. Any challenge to the lawfulness of the authority’s decision to issue the notice can only be made in the courts by way of judicial review.

6. The appellant’s argument that the occupants of the property should be permitted to remain resident there is tantamount to requesting that planning permission be granted to authorise the residential use of the former storage building. The granting of planning permission is not an outcome that can arise from my consideration of this appeal. In any case, the appellant has previously made application for planning permission for such development. That application was refused by the council, and a subsequent appeal to the local review body resulted in that decision being upheld.

7. I accept, as the appellant suggests, that it would have been open to the council to grant retrospective planning permission to authorise the residential use of the building, notwithstanding any conflicts with development plan or other policy that it may have found. However, it did not do so and it is not open to me, in this appeal, to grant planning permission in that regard. For these reasons, the arguments advanced by the appellant as to the planning merits of residential use of the building, including its situation within a cluster of dwellinghouses; the availability of services; the provision of adequate amenity space and a south-facing aspect; are not relevant to my consideration of this appeal.

8. I note that the building constructed on the site is differently sited from that referred to in the prior notification submitted to council for the construction of a storage building on the land (reference 12/00544/PN). However, I do not accept the appellant's assertion that, because the council did not choose to require demolition of the whole building, that amounts to an endorsement of the creation of a dwellinghouse at the site. Nor do I consider that the issuing of a building warrant for the previously permitted storage building, or the collection of council tax in connection with residential occupation of the building, are pertinent to my consideration of this appeal. Those are matters which arise as a result of wholly separate legislative provisions, unrelated to this appeal against the enforcement notice.

9. The extent of the site outlined in red on the plan attached to the enforcement notice encompasses, as the appellant points out, areas of land beyond that which has been laid out to give the appearance of a domestic garden. The lower-lying field parcel to the south of the access drive has the appearance of a grassed paddock, with the area to the northwest, adjacent to the nearby houses Balcairn and Cairn Laggan, being largely uncultivated and comprising rough grass, scrub vegetation and trees. Although defining a lesser area on the enforcement notice plan may have achieved the same end, the plan encompasses the land where the enforcement notice specifies the requirement in step 1 to remove the caravan and sheds from the land. The area defined on the enforcement notice plan accords with that shown on the drawing accompanying the previous prior notification submission and I am satisfied that the definition of the extent of the site to which the notice relates is not excessive or unreasonable.

10. The appellant rightly acknowledges that there are limitations on the right to property referred to in the European Convention but suggests that the proper course for the council to have pursued was to have required the submission of a new application for planning permission, using the provisions of s33A of the 1997 Act. However, use of the building as a dwellinghouse is expressly prohibited by the previous enforcement notice, upheld after proper process by the appeal decision notice dated 24 May 2018 (reference ENA-340-2037). The council has previously considered, and refused, an application for planning permission concerning residential use of the appeal premises. In the circumstances where the planning merits of residential use of the appeal premises have previously been considered and decided upon, I cannot conclude that there would have been any likelihood of a different outcome if the council had required a new application for planning permission to have been submitted.

11. The taking of enforcement action in respect of breaches of planning control, as well as the granting or withholding of planning permission for development, is governed by the provisions of the Town and Country Planning (Scotland) Act 1997. This provides a comprehensive code, exercised in the public interest, and includes statutory rights of appeal subject to judicial oversight. For the above reasons, I do not accept the appellant's contention that the enforcement notice amounts to interference with his property rights under the European Convention for which there is no or insufficient public interest justification. Nor do I consider that the taking of this enforcement action is suggestive of any failure by the council to have regard to its duties under the Equality Act.

Ground f) – the steps required to be taken are excessive

12. Much of the appellant's case under this statutory ground of appeal restates, albeit in a slightly different form, the considerations I have addressed above in relation to the provisions of the European Convention and other matters. I do not find the reference that the appellant makes to the abandonment of a residential use to be of relevance to my consideration of this appeal, as such a concept could only arise if that use were first permitted or lawful. That is not the case here, and residential use is explicitly prohibited by the previous enforcement notice which is in effect.

13. Both the council and the appellant have made passing reference in their submissions to steps that were apparently initiated by the council by way of prosecution for failure to comply with the previous enforcement notice requiring cessation of residential use of the building. Although alluded to in the party's submissions, I have not been provided with full details of the position adopted by the Procurator Fiscal in this regard. However, the council has explained that the notice that is the subject of this appeal was issued to ensure that the building cannot be used for residential purposes. The works specified in step 2 of the notice would have the effect of removing attributes of the building which facilitate or are conducive to residential occupation. Taken together with the requirement to cease residential use of the building, established by the previous notice, I find that the physical works required by this notice are not excessive.

Ground g) – the compliance period should be longer

14. The appellant maintains that the 150 days specified in the notice is insufficient and that a longer period for compliance should be specified. I see no reason why the removal of non-load-bearing internal walls need take any very substantial length of time to achieve. From my site inspection, I note that the windows and doors in the south elevation of the building occupy the same wall openings as illustrated on drawing 12/00544/3 referred to in the notice. Although the blocking-up of the lower part of two of these openings, together with the installation of doors, would be required, this would not necessitate structural alteration of the fabric of the building. The removal of the 6 windows and a door from the northern façade of the building would also not involve extensive structural work. I am satisfied that the blocking up of the resulting openings to accord with the details shown on the approved drawing, together with the limited work required to the south elevation, could be readily accomplished within the 5 months provided for by the notice.

15. The removal of fixtures, fittings, furniture and furnishings from the interior of the building would not involve any significantly greater time or effort than would be involved a house removal operation. No longer period than the 150 days specified in the notice in this regard would be needed. The 3 timber sheds at the rear of the building are all of modest size and capable of disassembly. The small storage container, which appears to be in use as a shed, is by its nature transportable. I am satisfied that the removal of these items from the site would not need longer than the 75 days provided as the compliance period for step 1 of the notice's requirements.

16. The effect of the operative enforcement notice as upheld in the decision notice dated 24 May 2018 (appeal reference ENA-340-2037), was to require cessation of residential occupation of the building within 180 days of that date. These provisions of the previous

notice lead me to conclude that it is not necessary to allow more time for undertaking the physical works required, than the 150 days provided for by the current notice

17. Even if I had found that a longer compliance period than the 150 days specified in the notice was justified, that would not affect the position that immediate action could be taken in response to a breach of the requirements of the previous notice. This situation supports my conclusion above that an extension of the period specified for compliance as sought by the appellant is not required.

18. I therefore conclude that the substitution of longer periods for compliance than the 75 days and 150 days specified in paragraph 5 of the notice, for steps 1 and 2 respectively, is not justified in response to this appeal. The appeal on ground (g) therefore fails.

Other matters

19. The appellant suggests that upholding the enforcement notice would interfere with his business activities operating from the site but does not give details of the ways in which this would be manifest. The enforcement notice does not require cessation of any business use at the site. Although the notice includes a requirement to remove sheds from the site, compliance with its terms would not result in the storage building, to which prior notification application 12/00544/PN refers, having to be removed. I have no detailed information on whether, or to what extent, business use may legitimately take place at the site, but removal of internal walls and other elements as required by the notice would not prevent use of the building for business purposes to the extent that this may be lawful.

20. The appellant's comment, that the council should be required to exercise its duties as housing authority if the notice is upheld, is not a matter that is relevant to my decision on this appeal. Neither is the appellant's suggestion that the council should assist in finding a suitable alternative business location of direct relevance.

21. For the above reasons, the appeals on grounds f) and g) fail and the enforcement notice is upheld. I have considered all other matters raised, but there are none which would lead me to alter my conclusions.

Rob Huntley
Reporter