



---

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

- Enforcement notice appeal reference: ENA-340-2046
- Site address: land and buildings at Valleyfield Farm, Errol PH2 7ST
- Appeal by Morris Leslie Ltd against the enforcement notice dated 22 May 2019 served by Perth and Kinross Council
- The alleged breach of planning control: the failure to comply with planning condition 3 of Planning Permission reference 06/00877/FUL dated 19 June 2006, granted by Perth & Kinross Council
- Date of site visit by Reporter: 22 August 2019

Date of appeal decision: 23 August 2019

---

## Decision

I allow the appeal and vary the terms of the notice by deleting “30 days” as the time for compliance specified in paragraph 5 of the notice and substituting “60 days”. 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 is made only on ground g), as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997. The appellant maintains that the 30 days specified in the notice is insufficient and that the period for compliance should be extended to 6 months. No appeal is made on any of the other statutory grounds specified in section 130(1) of the 1997 Act (grounds b) to f) inclusive), and I have therefore confined my consideration of this appeal to whether the compliance period specified in the notice is reasonable in the light of the evidence put before me and of the current circumstances, or whether a longer period should be substituted.

2. Planning permission reference 06/00877/FUL, granted by the council in June 2006 authorised a change of use of the appeal premises from agricultural use to light industry/storage and distribution (class 4). Condition 3 of that permission provides that: ‘No industrial uses or storage of materials shall take place outwith the existing buildings and the site shall be maintained in a clean and tidy condition all to the satisfaction of the Council as Planning Authority.’



3. The enforcement notice alleges that a breach of condition 3 of the 2006 permission has taken place, involving the storage of various items within the external yard areas of the site. The items referred to in the notice are described as 'goods, buses, materials, lighting, trolleys, pallets, plant and equipment'.

4. During my site inspection I observed the presence on the site of two double-decker busses, several skips, a pile of concrete slabs, a quantity of what appeared to be drainage pipes, as well as other items at various locations within the site, outside the buildings. I observed that the busses and drainage pipes, together with some other items, were located within a fenced compound in the eastern part of the site, bounded by tall metal palisade fencing, with other items being located elsewhere on the site, close to the buildings. Some, at least, of these items would be encompassed by the word 'materials' used in condition 3 of planning permission 06/00877/FUL. I appreciate that my on-site inspection, which represents a snapshot on a single occasion, is not necessarily reflective of the nature or extent of any storage that may have been taking place at the date of the enforcement notice. However, I note that the appellant has not argued that storage contrary to the provisions of the condition has not taken place, and I have no reason to come to any different conclusion in this regard, in view of the absence of any appeal on grounds b) or c).

5. The appellant suggests that the nature of the storage being undertaken at the appeal site, and the importance of this to the businesses operating from the site, is such that more time is required for compliance with the requirements of the notice. This, the appellant maintains, is necessary to enable working patterns to be changed or other options for providing storage space found, so as to avoid what the appellant describes as 'immediate and significant operational and financial implications' for the companies operating at the premises.

6. The council draws attention to external storage facilities apparently available at Errol airfield nearby. This site, it says, is under the control of the appellant and could accommodate external storage that compliance with the notice might displace from the appeal site. The appellant comments that Errol airfield is some 3 miles away from the appeal site and that its use by the existing businesses would therefore not be convenient. The appellant also comments that the Errol airfield site is to be redeveloped for other purposes and could not therefore offer a long-term solution to storage requirements arising at the appeal premises.

7. I have not been provided with full details of the suitability or availability of the Errol airfield site, and nor I have been provided with details of any particular operational or financial implications for existing occupiers which would lead me to conclude that it would be essential for alternative off-site provision to be made for storage. I note the opposing views of the parties on this aspect, but I do not give significant weight to these, either way. On balance I conclude that a significant extension to the compliance period, as the appellant suggests, is neither necessary nor justified.

8. I also note that a previous enforcement notice was issued by the council in 2010, alleging a breach of the same condition 3 of the 2006 planning permission involving external storage at the site. The council has confirmed that the previous notice was not the subject of any appeal at the time and that it has not been withdrawn. It therefore remains in

effect. The council has indicated that this new notice was issued, and served on different recipients, to reflect changes in occupation at the site that have taken place since the issue of the previous enforcement notice. However, the provisions of an operative enforcement notice run with the land and continue to have effect notwithstanding changes in the occupation of some of the units comprising the enforcement site that may have taken place.

9. Even if I had found that the nature of the storage now being undertaken, or the effects on the relevant businesses, were such as to justify a longer 6-month compliance period as the appellant seeks, that would not affect the position that more immediate action could be taken in response to any breach of the requirements of the previous notice. In any event, whatever the scale of storage that may have been taking place at the site at the date of the notice, the relatively small scale storage I observed during my site inspection would be capable of being readily relocated, or accommodated within the buildings, within a short period of time. These considerations support my conclusion above that that an extension of the period specified for compliance to the 6 months sought by the appellant is not necessary or justified.

10. However, it is appropriate for the period for compliance to take account of the provisions of sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997. This provides a 6-week time limit for any appeal to the Court of Session. Practical difficulties could arise if compliance with the requirements of the notice had to be achieved by a date earlier than that by which any application to the Court could legitimately be made. I therefore conclude that the compliance period should be extended from the 30 days specified in the notice as issued, to 60 days. This would encompass the 6-week period mentioned above, with the addition of a modest further margin. This period would also be consistent with the compliance period specified in the 2010 notice previously issued.

11. The appeal on ground g) therefore succeeds, but to a more limited degree than sought by the appellant. The period for compliance specified in paragraph 5 of the notice is extended to 60 days from the 30 days specified in the notice as issued. The notice as varied is upheld and will come into effect as stated in the Decision paragraph at the beginning of this decision notice.

*Rob Huntley*

Reporter