Planning and Environmental Appeals Division

Scottish Government
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Mr A Brennan
Highland Council
Sent By E-mail

Our ref: ENA-270-2020
Planning Authority ref:18/00012/ENF

12 June 2018

Dear Mr Brennan

ENFORCEMENT NOTICE APPEAL: 30 ARGYLE SQUARE WICK KW1 5AL

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see https://beta.gov.scot/publications/challenging-planning-decisions-guidance/.

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We trust this information is clear. Please do not hesitate to contact us if you require any further information.

Yours sincerely

Morag Smith

MORAG SMITH
Case Officer
Planning and Environmental Appeals Division

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Appeal Decision Notice
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Decision by Elspeth Cook, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2020
- Site address: 30 Argyle Square, Wick, Caithness KW1 5AL
- Appeal by Mr Arthur Bruce against the enforcement notice dated 23rd January 2018 served by Highland Council
- The alleged breach of planning control: Erection of a shed without planning permission.
- Date of site visit by Reporter: 18th April 2018

Date of appeal decision: 12 June 2018

Decision

I uphold the enforcement notice, dated 23 January 2018, but allow the appeal to the extent that I vary the terms of the notice by deleting the word “shed” in Parts 2 and 4 of the notice and replacing it with the words “masonry outbuilding measuring 5.5 metres by 11.6 metres or thereby”. 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:

- Ground b) the matters stated in the notice to involve a breach of planning control have not occurred;
- Ground c) the matters stated in the notice (if they occurred) do not constitute a breach of planning control;
- Ground d) at the date when the notice was issued, no enforcement action could be taken in relation to the matters stated in the notice to involve a breach of planning control;
- Ground e) copies of the enforcement notice were not served as required by Section 127 of the Town and Country Planning (Scotland) Act 1997;
- Ground g) the period specified in the notice (to comply with the steps to be taken) falls short of what should reasonably be allowed.

2. The land to which the notice relates is a terraced property located within the Wick Conservation Area, currently operating as a house in multiple occupation (HMO). A planning permission of 8 December 2016 and an HMO license of 30 January 2017 refers. It is a Category B listed building within a Category A group of listed buildings relating to the planned development of Upper Pulteneytown in Wick.

Ground b) the matters stated in the notice to involve a breach of planning control have not occurred

3. At my site inspection I established that there are three outbuildings located at 30 Argyle Square. These are (a) a detached masonry garage abutting the public road, (b) a masonry outbuilding (5.5 metres by 11.6 metres or thereby) with a mono pitch roof containing a gym and a shower room and (c) a timber outbuilding (under 4 square metres) with a dual pitched roof.

4. The breach is described in the notice as "erection of a shed". The masonry garage building (a) is not referred to in any of the appeal documents and I do not consider it could be described as a 'shed'. The masonry outbuilding (b) however has been described consistently on various appeal documents as a 'shed'. I am also aware that Part 3 of the notice describes the relevant development as a "utilitarian box with a steep mono-pitch roof" and this description would apply to the masonry outbuilding (b). The word 'shed', in a residential context, is however more commonly associated with a small, timber storage building. Clearly, the small timber outbuilding (c) would meet that description.

5. The appellant has not provided any specific reason why he believes the breach of planning control has not occurred. There is however a lack of clarity in the current description, "erection of a shed", as it could apply to more than one building at this site. I sought and received confirmation from the council that they intended the masonry outbuilding (b) to be the subject of the enforcement notice. On that basis I can conclude that the matters referred to in the enforcement notice have occurred.

6. The lack of clarity in the description, however, could lead to difficulties in implementing the terms of the notice. I therefore consider it would be appropriate to vary the terms of the notice so that the word 'shed' at Part 2 is replaced with a more specific description of the breach of planning control. Both parties agreed that the alternative description "**masonry outbuilding measuring 5.5 metres by 11.6 metres or thereby"** would appropriately describe the relevant building.

Ground c) the matters stated in the notice (if they occurred) do not constitute a breach of planning control

7. Planning permission was refused on 3 April 2017 for an outbuilding (described as a shed) and the refusal was subsequently upheld by the Local Review Body. Copies of the plans relative to that refusal were submitted by the appellant. These plans are not however the same as the masonry outbuilding (b) that I viewed on site. The plans depict a structure under 3 metres in height with an almost flat roof clad in metal sheeting. The masonry outbuilding (b) has a mono pitch roof 3.85 metres in height (as measured at the appeal site inspection) clad in a replica slate tile. The refusal of planning permission therefore does not directly relate to the masonry outbuilding (b) I viewed on site.

8. The appellant believes he has permission for the masonry outbuilding (b) as he adjusted the design of that building, in line with the design advice of the council's case officer, before the planning application was determined. I do not consider compliance with verbal or written advice offered by the planning authority to constitute a planning permission.

9. I have also considered the permitted development rights[1] that may apply to dwellinghouses that are listed buildings, or located within a conservation area. No such rights exist to erect domestic outbuildings without planning permission. Furthermore at the time the enforcement notice was served the appeal site was operating as an HMO and no permitted development rights are available to buildings used as such. Any outbuilding erected here would therefore have required planning permission before and after the change of use of the dwellinghouse.

10. No other information has been presented to me to indicate that the masonry outbuilding (b) has planning permission. I therefore conclude that it does constitute a breach of planning control.

Ground d) at the date when the notice was issued, no enforcement action could be taken in relation to the matters stated in the notice to involve a breach of planning control

11. The council indicates that the foundation of the masonry outbuilding (b) was in place prior to the submission of the planning application referred to in paragraph 7 above. The appeal documents also indicate that the masonry outbuilding (b) was under construction during the processing of the planning application and completed before the application was determined. I therefore conclude from the documentation that the masonry outbuilding (b) was under construction during 2016 and 2017.

12. Enforcement action relating to this form of development, an outbuilding providing ancillary facilities for the primary building at no 30 Argyle Square, can only be taken within 4 years of the matters occurring. I am satisfied that the enforcement notice, as it relates to the masonry outbuilding (b), has been served within the required 4 year period and action can be taken in relation to this breach of planning control.

Ground e) copies of the enforcement notice were not served as required by Section 127 of the Town and Country Planning (Scotland) Act 1997

13. The appeal documents confirm that the appellant is the current owner of the appeal site and was so during the processing of the planning application referred to in paragraph 7 above. The appellant's contact address is 5 Lower Dunbar Street, Wick. The appellant confirms that he received a copy of the notice on 23 January 2018. I also note that although the notice itself was addressed to the appellant at 30 Argyle Square, the council's covering letter shows it was sent to the appellant's Lower Dunbar St address.

[1] See Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended)

14. The HMO license also confirms that the appellant is the manager of the HMO business. I consider any notice served on him would therefore address both his interests as owner of the building and operator of the business.

15. The council states that “the relevant parties” were served a copy of the notice but have been unable to indicate to me that the notice was served on any ‘occupier’ of the HMO at 30 Argyle Square. Although Section 127 of the Act requires the notice to be served on the owner and occupier of the land to which the notice relates, Section 132 advises that even if a copy of the enforcement notice has not been served I can disregard this fact if the relevant parties have not been substantially prejudiced.

16. As the appellant is both the land owner and the operator of the business at the appeal site, I do not find that the absence of a notice served on any occupier of the HMO on 23 January 2018 has caused substantial prejudice. I do not therefore find this to be a sufficient reason on which to quash the notice.

Ground g) the period specified in the notice (to comply with the steps to be taken) falls short of what should reasonably be allowed

17. The appellant has not indicated why the 3 month period set out in the notice is too short. I find that the removal of the masonry outbuilding (b) could take place promptly and I see no reason to adjust the time period for compliance. The 3 month period for compliance would automatically roll forward and commence on the date of this decision.

Other Matters

Ground f) the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control stated in the notice, or to remedy any injury to amenity caused by the breach

18. The appellant has not appealed against the steps that are required. I have in any event considered this issue. I find the removal of the masonry outbuilding and the reinstatement of the land to be necessary to remedy the breach. However as indicated above the ‘steps’ can only be implemented once the appellant is able to identify which “shed” is to be removed. I therefore find it would be appropriate to vary the terms of Part 4 of the notice to reflect the description set out in paragraph 6 above to ensure there is no doubt which building is to be removed.

Conclusions

19. I find that a breach of planning control has occurred and enforcement action can be taken. In the particular circumstances pertaining to this site the notice has also been served appropriately. It does however require to be varied to ensure that it is sufficiently precise in respect of the breach of control and the steps required to remedy the breach.

Elspeth Cook
Reporter