



Decision by Rosie Leven, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2034
- Site address: Land at Drumblair Stores, 31 Dores Road, Inverness, IV42 4RP
- Appeal by Anne Marie Fraser against the enforcement notice dated 10 January 2020 served by Highland Council
- The alleged breach of planning control: Siting of catering trailer that is operating as a hot food takeaway without the required planning permission

Date of appeal decision: 6 April 2020

Decision

I dismiss the appeal and direct that the enforcement notice dated 10 January 2020 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 Town and Country Planning (Scotland) Act 1997, as amended ('the 1997 Act').

Reasoning

1. The appeal against the enforcement notice was made on the following grounds as provided for by section 130(1) of the 1997 Act:

- (c) the siting of the snack van does not constitute a breach of planning control;
- (f) the steps required by the notice exceed what is necessary to remedy any breach of planning control; and
- (g) the period to comply with the enforcement notice is too short.

2. Parties were advised on 30 March 2020 that, in the current circumstances, a site visit would not be carried out. I consider, however, that sufficient evidence has been submitted to allow me to determine the case without a site visit.

Ground (c): There has not been a breach of planning control



3. The appellant does not dispute the siting of a snack van at this location, but does not provide evidence on why a breach of planning control has not occurred. The council contends that the siting of the van for a period of more than 28 days would not benefit from permitted development rights under Class 15 of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 ('1992 Order').

4. To establish whether a breach of planning consent has occurred, I must assess whether or not the snack van is a building or structure for the purposes of the 1997 Act, and whether or not the use of the land for siting the snack van would constitute development.

5. Looking first at whether the snack van would be considered a building, section 277 of the 1997 Act interprets a building as 'any structure or erection, and any part of a building, as so defined...'. Case law suggests that size, attachment and permanence are key factors in determining whether a structure is a building. The snack van is a mobile structure with wheels and a tow bar, measuring approximately four metres by two metres. It is a small structure, not fixed to the ground and which could be easily moved due to the wheels and tow bar. As a result, I find that it is not a building or structure for the purposes of the 1997 Act.

6. Turning to whether the siting of the snack van on the land constitutes a material change of use, I note from the evidence that the snack van is sited on an area of tarmac, forming part of an extended pavement to the northeast of Drumblair Stores at the junction of Drumblair Crescent and Aldourie Road. There is a dropped kerb to access the area from Aldourie Road, which suggests that the area may have previously been used for parking relating to the retail unit. I note that the appellant has leased the site from the owner of Drumblair Stores, but the snack van and the retail unit are operating as two separate businesses. I note the evidence relating to combined trips, where some customers to the retail unit will also visit the snack van and vice versa. However, I consider it likely that some customers would visit the snack van without visiting the retail unit.

7. I note that the appellant has suggested siting the van in a different location. My determination is focused on the current appeal as it stands. Alternative proposals would be for further discussion with the council. Similarly, it is not for me to consider the planning merits of the current proposal (which would be for a planning application process rather than this current enforcement process, where my assessment is limited to the specified grounds of appeal). I find, however, that the siting of the snack van in this location would have impacts on residential amenity and road safety which are separate to impacts which may arise from the retail unit. As a result, I consider that the snack van is not incidental to the use of the retail unit. The Town and Country Planning (Use Classes) (Scotland) Order 1997 ('the 1997 Order') sets out the relevant use classes for planning purposes. I find that there has been a material change of use of the land on which the snack van is sited from Class 1 of the 1997 Order (relating to Shops) to the sale of hot food for consumption off the premises, which is classed as sui generis (a use which has no class). Section 26 of the 1997 Act states that a material change of use from one use class to another (in this case to a use which has no class) shall be defined as development. I therefore find that development has occurred.

8. As the evidence states that the use has been operating on the land since October 2019, it has operated for more than 28 days and would not, therefore, benefit from

permitted development rights under Class 15 of the 1992 Order. I therefore conclude that a breach of planning consent has occurred and the appeal on ground (c) fails.

Ground (f): The steps required exceed what is necessary

9. The enforcement notice states that the remedy for the breach is the removal of the catering trailer from the land in its entirety. No evidence has been submitted as to why the remedy is considered excessive or to suggest any specific lesser remedy. There is a suggestion that the operating hours have already been reduced to make the use less invasive to residents. However, as I have found that the siting of the snack van in this location is a breach of planning control, limiting its operating hours further would not prevent the breach from taking place. I therefore find that its removal is a reasonable remedy to prevent the breach from occurring and, as a result, the appeal on ground (f) fails.

Ground (g): The period to comply with the enforcement notice is too short

10. As noted above, the snack van is on wheels and has a towing hook. As a result, I find that it could be easily removed in a short timescale. I have considered the current restrictions on movement as a result of COVID-19 but given that the snack van is located in the open air and attaching it to a vehicle would not require the involvement of other parties, I do not find any additional barriers to its removal. I therefore find that the 14 day period to comply is reasonable. The appeal on ground (g) also fails.

Conclusion

11. In light of the above, I find that there has been a breach of planning consent, that the proposed remedy is reasonable and that the timescale for compliance with the enforcement notice is also reasonable. The appeal fails on all three grounds and I therefore uphold the enforcement notice.

Rosie Leven

Reporter