

APPEAL DECISION (DPEA)
Appeal Reference
PPA-110-2328
Planning Reference
APP/2016/2745
Planning Proposal
Full Planning Permission for Change of Use of Farmyard to Form Storage for Plant Machinery (In Retrospect) at Aikenshill Farm, Newburgh, Aberdeen, AB41 6AT
Summary of Decision
<p>The Reporter dismissed the appeal and refused planning permission.</p> <p>With regards to Policy R2 Housing and employment development elsewhere in the countryside, the Reporter concluded that the proposal is not small-scale development due to the quantity of non-agricultural items of plant machinery capable of being stored on the site.</p> <p>The Reporter highlighted that due to a lack of justification on the extent of the financial consequences for the farming unit caused by the AWPR, it did not allow for a safe conclusion that that proposal would play an ancillary role in relation to the main agricultural activity.</p> <p>With regards to amenity, the Reporter found that the resultant change in character of vehicle movements and consequential intensification of the use of the access road is likely to adversely impact on the amenity of the occupants of the 7 residential properties. In addition, that the properties are vulnerable to the effects of a change in the characteristics and volume of traffic.</p> <p>In conclusion, the Reporter found that the proposal was not consistent with policies P1 and R2 of the Aberdeenshire Local Development Plan 2017</p>
Policy Issues
<p>The proposal is contrary to: -</p> <p>Policy R2 Housing and employment development elsewhere in the countryside.</p>

Additional Points
Whilst the decision was upheld, the Reporter did advise that despite the Council's concerns about enforceability of a condition limiting the amount of mobile plant, equipment and machinery on site, the Reporter was satisfied that planning conditions could have been used to restrict public access to the site, regulate the number of non-agricultural vehicles and restrict deliveries to weekday, daytime hours only. A planning condition could also regulate noise from the maintenance of plant machinery at the storage site.
Actions Inform Enforcement Team of outcome.
Note Decision Refuse Full Planning Permission
Other None

Planning and Environmental Appeals Division

Appeal Decision Notice

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Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-110-2328
- Site address: Aikenshill Farm, Newburgh, Aberdeen AB41 6AT
- Appeal by J & S Duthie against the decision by Aberdeenshire Council
- Application for planning permission APP/2016/2745 dated 30 September 2016 refused by notice dated 25 January 2017
- The development proposed: change of use of farmyard to form storage for plant machinery (in retrospect)
- Date of site visit by Reporter: 3 May 2017

Date of appeal decision: 6 September 2017

Decision

I dismiss the appeal and refuse planning permission.

Preliminary Matter

The council refused planning permission on 25 January 2017 and since then the development plan context has changed. The replacement Aberdeenshire Local Development Plan was adopted by the council on 17 April 2017. In response to my first procedure notice the council provided me with the local development plan policies that supersede both those referred to in its reasons for refusal of the application and those in its report of 17 January 2017. The council has advised me that policies P1 and R2 of the 2017 local development plan are the equivalent and replacement policies for policy 3 and policy 8 of the 2012 plan and their supplementary guidance. No replacement supplementary guidance has been brought to my attention and the council's Planning Advice 01/2016 'Housing and business development in the countryside and greenbelt' has been withdrawn.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises the Aberdeen City and Shire Strategic Development Plan 2014 and the Aberdeenshire Local Development Plan 2017. Having regard to the provisions of the development plan the main issues in this appeal are whether the proposal is an appropriate form of development in the countryside and whether it would have an adverse impact on the amenity of the area. I am satisfied that the proposal does not raise issues of such strategic importance as would require any further reference to the strategic development plan.



2. In its response to my second procedure notice the council provided two policy interpretation notes (PINs), in respect of policies R2 and P1 of the local development plan that were prepared after the application was refused planning permission. These two PINs do not form part of the local development plan and they are internal guidance documents that have not been subject to public consultation. While I note the contents of the two PINs I can attach little weight to them in the determination of the appeal and I have assessed the proposal in terms of the up-to-date local development plan policies.

Development in the countryside

3. As a consequence of the construction of the Aberdeen Western Peripheral Road (AWPR) the appellants wish to diversify Aikenshill Farm, Newburgh using a recently surfaced area of farmyard for the temporary storage of plant machinery whilst it is off-hire. Local development plan policy R2 'Housing and employment development elsewhere in the countryside' sets out three criteria which allows small-scale employment proposals in the countryside to proceed. The appeal proposal does not involve the refurbishment or replacement of an existing house or disused building. Nor has it been argued that the site requires remediation and the appellants have confirmed that it remains in use for agricultural purposes. Accordingly, to comply with policy R2 the proposal must be both small-scale and comprise the type of development which is appropriate in the greenbelt, as set out in local development plan policy R1 'Special rural areas'. Neither the council nor the appellants have commented on whether the proposal is small-scale, in terms of policy R2. Policy R2 also confirms that the siting and design of any new development is a primary consideration.

4. During my site inspection I observed that five trailers were parked in two locations on the site and a row of seven cars, a horsebox and palletised materials were on its southern boundary. With this inventory of items present on the site I estimate that between 60% and 70% of the surfaced area remained vacant. An individual row with an east-west alignment could accommodate between seven and eight trailers of the type I saw and, allowing for manoeuvring space, the site could have a capacity of around three to four rows. I find that the site would therefore facilitate the storage of a significant number of items of plant machinery awaiting hire.

5. In its response to my first procedure notice the council advised me that it does not believe there is a need to impose a condition limiting the amount of mobile plant, equipment and machinery on the site. To the council this is because the quantity of off-hire items would be determined by the site's physical capacity, allowing for safe internal access. In any event I consider that a planning condition restricting the extent of the site that would be used for storage purposes, or the amount of equipment which could be stored, could be unreasonable and unduly restrictive as it would effectively nullify the benefit of the permission. I am mindful of the definition of 'small-scale' development in the non-statutory policy interpretation note on local development plan policy R2. I nevertheless find, because of the quantity of non-agricultural items of plant machinery capable of being stored on the site awaiting hire, and the dimensions of the 0.397-hectare site, served by the 480-metre-long access road, that the proposal is not small-scale development.

6. Policy R1 contains 9 bullet points which set out the types of development that would be permitted in the greenbelt and thereby accord with policy R2. To the appellants the land

is a brownfield site which was previously developed and remains in use. As such it is averred that the principle policy basis against which the appeal must be assessed is the council's former supplementary guidance 'SG Rural Development 1: Housing and Business Development in the Countryside'. The appellants point to criterion 1 of this guidance, now repeated in bullet point 1 of policy R1 of the local development plan, and which allows a use that is ancillary to the main use. The council in identifying this criterion differentiates between agricultural and non-agricultural plant machinery and sees the appeal proposal as not being ancillary to the operation of a farm. The appeal proposal is unrelated to the other 8 bullet points in policy R1.

7. It is a matter of fact that the appeal site is of a lesser dimension when compared with the wider farm unit. Additionally, the appellants state that the proposed use would provide direct support for the operation of the farm unit, it being a valuable supplement to the farm income which 'clearly and undeniably' supports the continued operation of agricultural activities at Aikenshill Farm. However, the extent of the financial consequences for the farming unit caused by the building of the AWPR, during its construction and when it is operational, and the scale of the ensuing benefits that could be forthcoming from ground rent, has not been argued. Consequently, this does not allow me to safely conclude that the appeal proposal would play an ancillary role in relation to the main agricultural activity at Aikenshill Farm, particularly when the appellants submit that the viability of Aikenshill Farm has been "decimated" and "significantly compromised" by the AWPR.

8. In any event, even if it could be argued that the proposal is ancillary to the main agricultural use at Aikenshill Farm, I find that the appeal proposal does not constitute small-scale development and therefore does not accord with the opening sentence of policy R2 of the local development plan. Nor is it the type of development included in the three categories of development that are permissible in the countryside area outwith the Aberdeen greenbelt and the coastal zone, as set out in policy R2.

9. It is a material consideration in the determination of the appeal that the construction of the AWPR has led to the loss of agricultural land at Aikenshill Farm and, additionally, it cuts the farm unit into two parts, restricting connectivity. To the appellants the construction of the AWPR has, as a direct result, caused operational difficulties which have adversely impacted on the viability of their business and hence there is a need for diversification of the farm unit. However, taking into account the financial effects of the construction of the AWPR, I nevertheless find that when assessed policy R2 the appellants' wish to diversify the farm unit does not outweigh the development plan presumption against the appeal proposal of this scale.

10. Drawing these strands together I conclude that the proposal does not comply with policy R2 of the local development plan.

Amenity

11. Policy P1: 'Layout, siting and design' of the local development plan states that the council would only approve development designs, whether on allocated sites or elsewhere, using a process that includes appropriate public consultation and which demonstrates six qualities of successful places. The second such criteria in policy P1 identifies the need for development to protect amenity. Policy R2 provides that the siting and design of any new

development will be a primary consideration. The appeal site is located around 100 metres north of the closest house at Aikenshill Cottages and is accessed by an unmetalled farm track which is also the sole access serving these residential properties. Even though the appellants state that they have no intention to take plant on and off the site on a daily basis or allow the public access, the appeal proposal would give rise to an indeterminate number of two-way vehicle trips past the seven houses in order to deliver and return the hired items.

12. No houses directly overlook the site of the proposed storage area and I agree with the appellants that, in visual terms, its use would not have a demonstrably adverse effect on the appearance of the area, when viewed from within the residential properties.

13. I note however that the west facing front gardens of the northern group of cottages are set back by around only a metre from the mutual access road. Windows of habitable rooms from each of these five residential properties look directly onto the road. The two residential properties in the southern group, which are around two metres from the access road, also face on to the road despite being separated by low vegetation. For the purposes of policies P1 and R2 of the local development plan it is therefore necessary to assess whether the proposed storage facility would give rise to environmental impacts that are not compatible with the amenity of the houses that adjoin the site's access road.

14. The appellants argue that as a consequence of the relatively infrequent, albeit unquantified, nature of trips associated with the proposed development there would be no loss of amenity caused by traffic movements. However, given the potential capacity of the storage area I conclude that there is very likely to be an intensification in the number and frequency of vehicle movements on the access road, whether or not this occurs on a daily basis. The combined frequency of agricultural vehicles and vehicles and trailers associated with the appeal proposal would be greater than that from the previous use of the land if it were used solely for agricultural purposes. Despite the council's concerns about enforceability, I am satisfied that planning conditions could restrict public access to the site, regulate the number of non-agricultural vehicles and restrict deliveries to weekday, daytime hours only. A planning condition could also regulate noise from the maintenance of plant machinery at the storage site. Nevertheless, I find that the siting of the proposal, the resultant change in character of vehicle movements and consequential intensification of the use of the access road is likely to adversely impact on the amenity of the occupants of the seven residential properties.

15. Specifically, I find that the occupants of the seven houses are vulnerable to the effects of a change in the characteristics and volume of traffic that would use this sole, unmetalled access road to their houses. This would lead to increased dust propagation, vehicle noise and vibration from passing vehicles and trailers, all exacerbated by the unbound surface of the road. There could also be visual disruption and light pollution during the winter months, even with restrictions on night time usage. Notwithstanding the views contained in the council's environmental health consultation, which was based upon the intentions of the appellants in terms of daily movements and public access, I conclude that the increased usage of the road, even if it was limited to daytime hours on weekdays, is nevertheless likely to lead to a change in the frequency and character of vehicular movements. This would be to the detriment of residents' amenity and contrary to policy P1 and R2 of the local development plan.

16. I have set out above my findings on the effect on the amenity of the seven houses that face the mutual access road. A planning condition could address road safety concerns by requiring the selective widening of the road or the formation of passing places as it is in the appellants' control. Matters relating to the ownership and maintenance of the access road, neighbour notification, speculation about future uses of the appeal site and other land and buildings within the farm unit are not material planning considerations in the determination of this appeal.

17. Finally, the council refers to Scottish Planning Policy (SPP) in its report on the planning application. SPP introduces a presumption in favour of development that contributes to sustainable development and bullet point 79 requires development plans to promote economic activity and farm diversification. However, bullet point 108 requires that proposals for employment uses should take account of surrounding sensitive uses and local amenity. SPP is clear, that the aim is to achieve the right development in the right place and not to allow development at any cost.

18. In summary, because of the intensification of its use and the close proximity of the access road to seven houses I find that there is conflict between the appeal proposal and the requirements of the local development plan. Specifically, policy P1 requires development to protect amenity and policy R2 also sees the siting and design of any new development to be a primary consideration. As such I find that because of the location of the access road and the effects on amenity the proposal is contrary to policy P1 and policy R2 of the local development plan.

Conclusions

19. Taking all of the above into account, I find that the proposal is not consistent with policies P1 and R2 of the local development plan, the Aberdeenshire Local Development Plan 2017. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Chris Norman
Reporter