

<b>APPEAL DECISION (Planning and Environmental Appeals Division)</b>
<b>Appeal Reference</b>
CLUD-110-2001
<b>Planning Reference</b>
G/APP/2017/0651
<b>Planning Proposal</b>
Certificate of Lawful Use for Use of Land for Class 6 Use (Storage and Distribution) at Yard At Lochhills, Moss Belt, Dyce.
<b>Summary of Decision</b>
<p>The Planning and Environmental Appeals Division (Scottish Government) agreed with the decision made by the Planning Service to refuse a Certificate of Lawful Use and therefore the appeal was dismissed.</p> <p>The main determining issue in the appeal was whether it has been demonstrated that the land in question has been used for a period of at least ten years from the date of application. This would in effect mean that no enforcement action could be taken as prescribed in the Town and Country Planning (Scotland) Act 1997</p> <p>A number of pieces of evidence were submitted by the applicant to demonstrate that the site has been used for Use Class 6 for a period of at least ten years.</p> <p>Aberdeenshire Council agree that the site had been in use for a period exceeding ten years, however this use has recently changed and was confirmed when a site visit was carried out. A larger site, encompassing the site in question, contained a considerable number of caravans associated with accommodating workers on the AWPR. The council were of the view that the previous use of the site had ceased and a new use had been established. The current use is for a temporary period consistent with the development of the adjacent AWPR.</p> <p>The reason given by the Council for the refusal of the application for the certificate is: <i>It has not been demonstrated that the site has been in continuous use for storage and distribution use for a period of 10 years and an intervening use has commenced</i></p> <p>The reporter conducted a site visit and was in agreement with Aberdeenshire Council in terms of the current use of the site.</p>

The reporter highlighted that the site was part of a larger site which was being used for living accommodation associated with the construction of the AWPR. It was stated in the report that this use was materially different from “use for storage or as a distribution centre”.

The reporter concluded that the first part of the Councils reason for refusing to issue a certificate is incorrect and suggested the following;

*It has not been demonstrated that the site has been in continuous use for storage and distribution use for a period of 10 years up to and including the date on which the application was made .....*

The second part of the Councils reason was found to be correct and justifies the decision. The reporter states *‘this is because a materially different use has intervened. On this basis, the Council’s refusal is well-founded, and I again conclude that the certificate should not be granted.’*

**Policy Issues**

No policy issues.

**Additional Points**

None

**Actions**

No actions required given no breach of planning has taken place.

**Note Decision**

Refuse Certificate of Lawful Use

**Other**

None

## Appeal Decision Notice

T: 01324 696 400  
F: 01324 696 444  
E: [dpea@gov.scot](mailto:dpea@gov.scot)



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Decision by R W Maslin, a Reporter appointed by the Scottish Ministers

- Certificate of Lawful Use appeal reference: CLUD-110-2001
- Site address: Yard at Moss Belt, Dyce, Aberdeenshire AB21 7AS
- Appeal by Mr Andrew Macfarlane against the decision by Aberdeenshire Council
- Application for certificate of lawful use APP/2017/0651 dated 14 March 2017 refused by notice dated 5 June 2017
- The subject of the application: class 6 storage or distribution use of yard
- Date of site visit by Reporter: 25 September 2017

Date of appeal decision: 30 October 2017

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### Decision

I dismiss the appeal and decline to issue a certificate of lawful use.

A separate decision notice is being issued in response to the Appellant's claim for an award of expenses.

### Reasoning

1. The application to Aberdeenshire Council for a certificate of lawful use was made under section 150(1) of the Town and Country Planning (Scotland) Act 1997 (as amended). The Appellant contends that that the site was used for storage or distribution since at least the nineteen-seventies, and is now immune to enforcement action.
2. The evidence put forward in support of the application consists of the following.
  - (a) A letter dated 8 March 2017 from Charles Dawson stating that the yard was created "sometime during the nineteen seventies". ... "We have used the yard for storage of offsite plant and machinery since the above mentioned time and gave up occupation in 2014 when requested to do so for its use to store cars for Specialist Cars Nissan".
  - (b) A bill for payment of rates for the year 2001-2002. The bill is addressed to Charles Dawson & Son Plant Hire. The property is "Yard Moss Belt".



- (c) Scottish Assessors' Association record showing "yard" at Moss Belt, Parkhill, Dyce, Aberdeen AB21 7AS, proprietor Charles Dawson & Son Plant Hire Contractors, effective date 1 April 2005.
- (d) Scottish Assessors' Association record showing "yard" at Moss Belt, Parkhill, Dyce, Aberdeen AB21 7AS, effective date 1 April 2010.
- (e) Letter dated 2 February 2017 from Specialist Cars Nissan stating that they rented and paid for storage facilities at Lochhills and Lochgreen Farm from 1 January 2014 to 12 July 2014.
- (f) Scottish Assessors' Association record showing Moss Belt, Parkhill, Dyce, Aberdeen AB21 7AS, description "caravans", tenant P Flannery Plant Hire Oval Limited, effective date 1 August 2015.
- (g) A licence to occupy, being an agreement between, on the one hand, the Appellant and his spouse and, on the other hand, P Flannery Plant Hire Oval Limited whereby the latter was permitted to occupy the site and use it as "a contractors' compound for a storage area of plant, workers office/welfare units, and temporary accommodation units and associated parking in connection with the works on the adjacent road scheme". [Reporter's explanatory note: the licence site included the site to which the present appeal relates and also included additional land. The "adjacent road scheme" is construction of the Aberdeen City Western Peripheral Route.] Date of entry is stated as 27 April 2015. The licence was to endure until 26 October 2016, but could be extended for a period of up to twelve months.
- (h) An aerial photograph of the site and surrounding area.
- (i) An aerial photograph, schedule of land parcels and plan entitled "Lochgreen and Lochhills Field Names".

3. The reason given by the Council for the refusal of the application for the certificate is:

It has not been demonstrated that the site has been in continuous use for storage and distribution use for a period of 10 years and an intervening use has commenced.

4. I note that section 124(3) of the Act specifies that no enforcement action can be taken in respect of an unauthorised change of use (other than use as a single dwellinghouse) after the end of a period of 10 years beginning with the date of the breach.

5. In relation to an application for a certificate of lawfulness of existing use, I note that section 150(1)(a) refers to any existing use of land (my emphasis).

6. At my inspection of the site on 25 September 2017, I noted that the site at that time was part of a larger site. The size of the larger site was about 95 metres (north to south) by 170 metres (west to east). Within the larger site there were, very approximately, 50

caravans and 30 transportable residential units. Part of the larger site was laid out apparently for the siting of more transportable residential units. In the northeast corner of the larger site, three heavy plant vehicles were parked.

7. This use of the larger site provides accommodation for persons employed on construction of the Aberdeen Western Peripheral Route.

8. The size of the appeal site is about 50 metres (north to south) by 25 metres (west to east). At my inspection, I noted that the appeal site occupied the south-west corner of the larger site. Access to the larger site was taken across the southern part of the appeal site. Much of the western part of the appeal site was occupied by a two metres high bund. This bund was part of a bund that extended along the west and north sides of the larger site. What appeared to be a storage container was placed close to the south boundary of the appeal site. The remainder of the appeal site was in use for car parking. This parking, and car parking on the adjacent part of the larger site, appeared to be associated with the caravans. There was no feature on the ground to demarcate the north and east boundaries of the appeal site.

9. From the above, I find that the appeal site at the time of my inspection was part of a larger site that was being used for living accommodation. I note the Appellant's point that caravans are not located on the appeal site. I find that, at the time of my inspection, the appeal site was part of, and not distinguishable from, the larger site. For this reason, the use of the appeal site at the time of my inspection was use for living accommodation.

10. The Appellant says that the appeal site remains in use for the storage of plant and machinery. As indicated above, at the time of my inspection three heavy plant vehicles were parked in the northeast corner of the larger site. This part of the larger site is remote from the appeal site, but, more importantly, the vehicles were occupying only a very small proportion of the larger site. The site was overwhelmingly in use for living accommodation, and I find that this is the use which should be ascribed to the whole of the larger site.

11. On 27 September 2017, on my instruction, procedure notices requesting further information were sent to the Appellant and to the Council. The notices contained my description of the appeal site and of the larger site, as observed at my inspection. The notices asked whether there was any difference between the use of the site as seen by me during my inspection and the use of the site at the time of the application on 14 March 2017.

12. The reply dated 3 October 2017 from the Appellant's agent indicated that there had been no change in the use of the site between 14 March 2017 and 25 September 2017. The reply dated 11 October 2017 from the Council said that "the current use of the site is broadly similar to what was recorded when the application was received".

13. From the above, I find that the appeal site at the time of the application on 14 March 2017 was part of a larger site that was being used for living accommodation. I find that this use is materially different from "use for storage or as a distribution centre", which is the description of class 6 use in the Town and Country Planning (Use Classes) (Scotland) Order 1997, as amended. From this, I find that the use which the Appellant sought to have

declared lawful in his application dated 14 March 2017 was not the existing use of the site at that time. For this reason, I conclude that the application does not conform to the requirement that an application be for an existing use (section 150(1)(a) of the Act).

14. Evidence, including the terms of the licence to occupy described in paragraph 2(g) above, indicates that the present use of the larger site is a temporary one. I also assume, from the fact that the Appellant made application for a certificate of lawful use, that the Appellant has had an intention to resume class 6 use of the appeal site at some time in the future. I have considered whether these circumstances alter the conclusion in the preceding paragraph, but find that they do not: the wording of section 150(1)(a) is clear and paramount.

15. I note that section 154(3)(a) of the Act requires a certificate to be issued on appeal if the appeal decision-maker is satisfied that the authority's refusal is not well-founded. I acknowledge the point made by the Appellant, that evidence does point to there having been a ten-year period during which the appeal site was in continuous use for storage and distribution. I note that the Council has not disputed this.

16. I find that the first part of the Council's reason for refusing to issue a certificate is incorrect. A more appropriately worded reason would have begun as follows:

It has not been demonstrated that the site has been in continuous use for storage and distribution use for a period of 10 years up to and including the date on which the application was made .....

I find that the second part of the Council's reason is correct and justifies the decision. This is because a materially different use has intervened. On this basis, the Council's refusal is well-founded, and I again conclude that the certificate should not be granted.

*R W Maslin*  
Reporter

Planning and Environmental Appeals Division  
Claim for an Award of Expenses Decision Notice



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

T: 01324 696 400  
F: 01324 696 444  
E: dpea@gov.scot

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Decision by R W Maslin, a Reporter appointed by the Scottish Ministers

- Appeal reference: CLUD-110-2001-EXP
- Site address: Yard at Moss Belt, Dyce, Aberdeenshire AB21 7AS
- Claim for expenses by Mr Andrew Macfarlane, Appellant, against Aberdeenshire Council

Date of decision: 30 October 2017

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## Decision

I find that the Council has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

## Reasoning

1. Scottish Executive Circular 6/1990: *Awards and Expenses in Appeals and Other Planning Proceedings and in Compulsory Purchase Order Inquiries* provides advice on how the power to award expenses should be used. Normally, for an award to be made three conditions will have to be met:

- (a) application for an award is made at the appropriate stage of the proceedings;
- (b) the party against whom the claim is made has acted unreasonably; and
- (c) as a result of the unreasonable conduct, the party making the claim has incurred expense that otherwise would have been unnecessary.

2. In the present case, the application for an award was made at the appropriate stage of the proceedings.

3. The Appellant contends that the Council has acted unreasonably because it failed to recognise the continuing use of the appeal site for storage and distribution. This failure arose because the Council was seeking to avoid setting a precedent in relation to other sites used in association with construction of the Aberdeen Western Peripheral Route. The “intervening use” on which the application was refused is not an intervening use, but a continuation of the existing established use.



4. I find nothing in the evidence before me to substantiate the contention that the Council had an ulterior motive in refusing the Appellant's application. In any event, as is apparent from my appeal decision notice, I do not accept that the use of the appeal site at the time when the application was made was a continuation of the use that had been made of the appeal site prior to its incorporation into a much larger site used for living accommodation. For these reasons, I find that the Council has not acted unreasonably.

5. My finding that the Council has not acted unreasonably means that there is no need for me to consider condition (c) in paragraph 1 above.

6. As the Appellant's claim does not meet all of the three conditions laid down in Circular 6/1990, my conclusion is that the claim fails.

*R W Maslin*  
Reporter