

Directorate for Planning and Environmental Appeals

Appeal Decision Notice

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Decision by Dannie Onn, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-110-2234
- Site address: Land at Mill of Lyne, Dunecht, Aberdeenshire
- Appeal by Mike Stewart against the decision by Aberdeenshire Council
- Application for planning permission APP/2013/1670 dated 21 May 2013 refused by notice dated 22 September 2014
- The development proposed: formation of recycling facility and restoration of land to agriculture including installation of drainage infrastructure and associated landscaping and infrastructure
- Date of site visit by Reporter: 12 September 2014

Date of appeal decision: 20 January 2015

Decision

I dismiss the appeal and refuse planning permission.

An application for expenses was made by the appellant against the council. That is subject of a separate decision notice.

Preliminary matters

1. The planning application described the development as re-drainage of agricultural land, restoration and installation of waste transfer station. The council altered the description as shown in the heading above. The appellant accepts that this is accurate and so I have used it for the purposes of this appeal.
2. The application is made for planning permission for restoration of the site, phased over 5 years and operating only part of the time as materials become available.
3. At my site inspection I saw that the ground at the appeal site had been excavated to 4 metres or so below the field level to the north, such that it now slopes slightly to the existing bank above the burn to the south. Within this broadly flattened area, earth bunds have been formed and other material has been deposited. The excavation and bunding are more or less as shown on the application plans. At the time of my inspection, I also saw material delivered to the site by lorry and piles of it being worked by excavator. I have



therefore assessed the proposals on the basis that the use and operations have commenced.

4. The appellant says that the matters proposed do not require express planning permission because they are permitted development under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended). Class 19 under Part 6 to that Order includes that the winning and working of minerals on agricultural land reasonably necessary for agricultural purposes on that land is permitted provided they are not moved off the holding. Class 20 permits land drainage at the site. To that extent, the improvement of the land for agricultural purposes has permitted development rights. It is not clear that importing materials to improve soil depth and quality are also permitted development under the Order.

5. Furthermore, the scale of operation in this application goes beyond what one might expect from the wording of the order. The extraction of soil and subsoil undertaken and shown on the plans is below the level of the proposed drainage for a large part of the site and the proposed back-filling would not restore the original ground levels. That would leave the disjointed field less suitable for mechanised farming, as well as being likely to flood to a greater extent than if levels were restored. In my opinion, the extent of extraction and backfilling cannot be described wholly as land improvement for agricultural purposes.

6. I am told that the proposed recycling facility involves crushing and screening of imported materials on the appeal site using mobile plant. The materials are said to be inert waste from site stripping, which may include broken concrete and other building materials. This use of the land is also likely to include the export of materials from the site with consequent vehicle trips and potential impacts on the environment and amenity of the neighbourhood. As this use is not wholly for agricultural purposes it is development of the land. The recycling would be a use of the land requiring planning permission and there are no permitted development rights for it. The works proposed may include agricultural improvements, but are clearly part of a larger development including extraction and the treatment of imported material on the lowered site. The proposals for the recycling facility include for the export of stone and concrete in the form of hardcore and sub-base, as well as any other matter removed by the screening process. As this is an integral part of the proposal, I consider that the development as a whole requires planning permission.

7. The appellant also says that the recycling use is permitted development because it would take place on fewer than 28 days each year. From what I have seen and read, it seems likely that the quantity of material in this case would take considerably longer than 28 days each year to process. The council officers report refers to around 3 to 4 days each month (once noise mitigation is effective). The bunding of areas for the waste facility would of course be in place continuously, and some of the machinery may be on site even when not in use. I do not consider that the use benefits from this permitted development either.

8. Of course, this decision does not take away any permitted development rights. I merely conclude that the development proposed in this case requires express planning permission.

9. Previous works on the site have been subject of complaint locally and action by the council. Whether there has been a breach of planning control, whether other operations or uses have taken place and whether legal action by the council is appropriate are matters

beyond the scope of my decision. I deal with the application only on the basis of what is proposed in it and on its own particular merits.

Reasoning

10. I must determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the relevant provisions of the Aberdeen City and Shire Strategic Development Plan and the Aberdeenshire Local Development Plan, the main issues in this appeal are whether the land use proposed is appropriate to this location and the impacts of the proposed development on the environment and road safety.

Land use

11. The appeal site is part of an agricultural field. There is a wide and well-made access road from the narrow public road. Bunds have been built up over part of the site to enclose the proposed crushing and screening operations.

12. The development applied for aims primarily to improve the agricultural growing medium and drainage. It involves the import of soil and inert materials, reshaping the land and installation of drainage. The recycling element is for the purpose of crushing and screening of materials to prepare imported materials for land improvement using mobile plant. I am told that the recycling facility would be used for other land reclamation areas at the farm. I have found that the use of the land for this form of recycling goes beyond an agricultural use. The recycling element is effectively a waste management facility and a business development for the purposes of the development plan.

13. Policy 3 of the local development plan deals with development in the countryside. It includes that how development in rural areas will be managed will be set out in supplementary guidance. Supplementary guidance *SG Safeguarding 8: Areas of search for waste facilities* expects waste management facilities to meet a number of criteria, including that they are located in an area of search identified for such purposes or otherwise minimise transport of waste from its source. Policy 14 confirms that specific areas of search for waste management facilities have been defined. The appeal site is not within such an area and has not been identified for employment use.

14. I am told that material for the recycling facility in this case would come from construction sites across Aberdeenshire. The distance from these will vary widely. Other sites could be better or worse for any particular load. However, it is likely that development sites from which materials are sourced will be closer to existing settlements and areas of growth, which would be closer to areas of search and other suitable places for waste facilities. Further, the transport of material for sorting on-site means that more material will be transported than is needed for the agricultural restoration, with consequent disposal off-site adding to the longer-than-necessary journeys. I consider that it has not been demonstrated that the on-site recycling would minimise the transport of waste from its source or that more suitable and accessible sites are not available in the areas of search.

15. One of the purposes of policy 14 of the local development plan is to give local communities a certain amount of reassurance that they will not unexpectedly find themselves living next door to developments such as waste management facilities. In this case, the facility would be temporary, in intermittent use using mobile plant and where there

are few neighbours. Nevertheless, I attach some weight to the disturbance it would cause to the local community from its operation and the coming and going of large vehicles.

16. I conclude on this issue that the location of the recycling facility, even for a temporary period, does not accord with the development plan.

Environmental impacts

17. The functional flood plain would be increased by the lowered ground (compared to the original level). This is acceptable to SEPA in terms of flood risk. The proposed development would not increase the risk of flooding and would thus accord with policy SG LSD8 of the local development plan.

18. Otter and other ecology interests alongside the Bethlin Burn would be protected by the proposed buffer (which is currently somewhat less than the 10 metres proposed). The appellant has submitted a survey, which concludes that specified avoidance measures would be sufficient to protect the species. I have no reason to disagree with this conclusion, provided that those measures were carried out. The development would then accord with *Policy 11 Natural heritage* in the local development plan.

19. Water pollution could affect the watercourse and borehole supplies at local property. However, as only inert materials would be permitted, and a construction method statement would be required, it is unlikely that there will be any significant pollution of the water. There is no outstanding objection from SEPA, subject to conditions.

20. In terms of noise, I note that there are dwellings and businesses in the local area, but that none is closer than 150 metres or so from the appeal site. The appellant provided a noise survey with the application and various mitigation measures are sought by the council's environmental health service to protect residential amenity. These would require noise surveys, physical barriers to noise and limitations on the operation of equipment. The physical barriers are in the form of bunds which I saw on my site inspection. It seems to me that with these restrictions in place, the proposed recycling use would not cause undue noise or increase the likelihood of noise complaints.

21. Other environmental impacts of the proposal are likely to be acceptable or could be made so by the use of conditions. I therefore find no harm or conflict with the development plan on this issue. This does not, however, outweigh the inappropriateness of the site for the recycling facility, in my opinion.

Road safety

22. The appeal site is accessed from a minor road between the B9119 Ballater-Aberdeen and the A944 Alford-Aberdeen roads. The minor road is narrow with passing places. I note from my visit to the area that it is lightly trafficked but used by large commercial vehicles other than those visiting the appeal site. I saw such vehicles travelling in both directions along the road.

23. The import of material for crushing, screening and filling involves and will continue to involve lorries arriving by the minor public road. Up to 10 lorry movements per day are anticipated, although there could be more due to the unpredictable supply and there would be many days when fewer or no lorries would go to or leave the site. The council's report to the planning committee includes that the Infrastructure Services (Roads Development) consultation advised that on the basis of 15 lorries in and 15 lorries out each day, the



existing public road network can comfortably cope. In terms of the capacity of the road, the proposed development would be acceptable in my view.

24. However, I note that the mobile plant is likely to come and go from time to time in addition to the lorry movements. On such a narrow road, even with passing places and professional drivers, I consider that there is an increased risk of conflict and collision with the use of these larger vehicles. In my view that should be minimised wherever possible, even if the capacity of the roads for additional traffic is deemed acceptable. I do not consider that it would be appropriate to increase traffic by allowing this industrial use of the appeal site, even for a limited period. This adds weight to the conflict I have found with the development plan under the land use issue.

Other matters

25. The council seeks restoration of the site to agricultural use as soon as possible. The council's officers supported the application to facilitate restoration of the land. Much has been extracted from the site and the appellant says that this has now ceased, leaving only the restoration to be completed. Nevertheless, it would not be appropriate to grant a planning permission for a recycling use which could operate beyond what would be necessary to restore the land for agricultural use.

26. The employment provided by the appeal proposals would equally be available by siting the recycling facility elsewhere. It is not appropriate to site any facility in the wrong place to justify haulage jobs, particularly where the additional distance travelled would make that a less sustainable option.

27. The appellant makes many comments on the behaviour of the council and others in relation to the history of activity at Mill of Lyne Farm. These matters are beyond the scope of this appeal and do not influence my decision. The extent that the council's behaviour is relevant to this appeal is dealt with in my expenses decision notice.

Conclusions

28. I therefore conclude, for the reasons set out above that the proposed development would not accord with the development plan and that there are no material considerations which would still justify planning permission. I have considered all the other matters raised, but find that these do not lead me to alter my conclusions overall.

Dannie Onn

Reporter

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

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Decision by Dannie Onn, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-110-2234
- Site address: Land at Mill of Lyne, Dunecht, Aberdeenshire
- Claim for expenses by Mike Stewart against Aberdeenshire Council

Date of decision: 20 January 2015

Decision

I find that the council have 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. The claim was made at the appropriate stage of the proceedings.
2. The appellant seeks a full award of expenses on the grounds that the appeal should not have been necessary because the council behaved unreasonably in:
 - Initially advertising the proposal as full planning permission for a waste management facility
 - Requiring an application where permitted development rights apply
 - Failing to properly consider the development plan and all material considerations.
3. The application was made for: “re-drainage of agricultural land, restoration and installation of waste transfer station”. The council initially advertised the application as “full planning permission for a waste management facility”. Following a response from the applicant, the description was changed to: “formation of recycling facility and restoration of land to agriculture including installation of drainage infrastructure and associated landscaping and infrastructure”. The description of development is of utmost importance in planning permissions. In this case, the description was amended so that both parties were happy with the wording. This is an acceptable way of resolving any misunderstanding.
4. The appellant points to the higher number of objections when the application was advertised as a waste transfer station. However, detailed plans were submitted with the application, supplemented by surveys and a supporting statement. For those wishing to comment on the application, there should have been no doubt about what was intended. In deciding the application, the council understood the nature of the proposal and gave relevant reasons for refusal. In my opinion, the way the council dealt with the application



would not have been different with either description. I therefore find no unreasonable behaviour on this matter.

5. In my appeal decision, I have found that the development applied for is not permitted development under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended. This effectively agrees with the position adopted by the council. I do not therefore consider it unreasonable that they required an application.

6. According to the Planning Act, when making their decision on an application, the council must determine in accordance with the development plan unless material considerations indicate otherwise. The council members are entitled to disagree with the recommendations of their planning officers provided they have proper planning reasons for doing so. That said, the reasons for refusal set out on the decision notice do not refer to the relevant policies of the development plan. The failure to do this is unreasonable behaviour by the council.

7. However, and as I have found in my appeal decision, the council's reasons deal with proper planning issues and find harm in relation to the land use, the environment and road safety. These are matters where relevant development plan policies apply. Furthermore, the minute of the committee meeting lists relevant policies, indicating to me that members were mindful of the statutory duty when the decision was reached. It is therefore likely that, even if the reasons had been set out properly in the decision notice, an appeal would have been necessary anyway.

8. The appellant says that the council's decision appears to be a punishment for what they perceive to have been past illegal activity. I note that the committee minutes show that the history of activity on the site formed part of the discussion at the meeting, but there is nothing there to indicate that the decision was made as a punishment. Rather, the minutes show that the members were keen that the land be restored to agricultural use as soon as possible.

9. The appellant also says that the council took an inordinate time to put the application before the committee for determination. Whilst that might be unreasonable and contrary to the Scottish Government's drive for an efficient planning service, the remedy for delays in the consideration of a planning application is to appeal against non-determination. The appellant chose not to appeal on that basis.

10. I therefore find that although the council has behaved unreasonably in part, there has been no unnecessary expense because an appeal would still have been necessary. Therefore, I decline to make an award.

Dannie Onn
Reporter