APPEAL DECISION (DPEA)

Appeal Reference

ENA-110-2022

Enforcement Reference

COMP/2018/0017

Enforcement Proposal

Cease the unauthorised processing of materials/minerals within the northern half of Haddo Quarry, Tarves, Ellon, AB51 7NB

Summary of Decision

Appeal dismissed. Enforcement notice upheld in full. The notice came into effect on the date of Reporter's decision – 18 June 2018. It requires the subject to cease processing materials or minerals immediately after the notice takes effect and any plant machinery used for processing materials/minerals is to be removed within 14 days after the notice takes effect.

The Notice was appealed on two grounds

1) That the matters stated in the notice (i.e. processing of materials) have not occurred and;
2) That those matters, if they have occurred, don't constitute a breach of planning control

1st Grounds of Appeal

The Reporter concurred with the Councils position and concluded that, based on photographs and the appellants own submissions, the evidence plainly showed that processing of materials had occurred on site.

Accordingly the first grounds for appeal failed.

2nd Grounds of Appeal

For the second grounds of appeal the appellant argued that the processing works were not only permitted development for agricultural and forestry purposes but also that the restoration condition of the last extant planning approval for the quarry permitted restoration of the quarry and by extension processing. The Council contended that these permitted development classes by definition could not apply to a quarry and that any restoration works in the quarry required new planning approval as the permission relied on by the appellant had expired in 2012 as had the restoration condition contained therein.

The reporter concluded that firstly, the appeal site was a quarry and therefore a separate/distinct planning unit that did not fall into the definitions of agriculture or forestry as set out in the permitted development regulations. The appeal site could not therefore be said to benefit from those specific permitted development rights. In any case the agriculture/forestry permitted development classes relied on by the appellant did not include any reference to processing of materials.

Secondly, while the reporter agreed that the restoration condition of the last extant planning approval did not place any time restrictions on restoration she concluded that it was not within her remit to determine if a fresh planning approval was required for the restoration of the quarry. The reporter did note however that in any case the terms of the expired restoration condition do not allow for the processing of materials.

The Reporter finally concluded that all works constituting “development” require planning permission unless specifically listed as benefiting from permitted development rights. In this case there is neither planning approval nor permitted development rights allowing for processing to take place.

Accordingly the second grounds for appeal failed.

Note: Both the council and the appellant agreed that previously stockpiled materials could be removed under class 65 of the PD regulations. The Reporter concurred with this conclusion. As such the appellant can continue to simply remove any stockpiled material from the quarry. Any activity to do so will not be a breach of the notice or planning control.

Policy Issues

The Councils Planning Service was guided by the policies and supplementary guidance in the Local Development Plan (LDP):

- Policy P1 Layout, Siting and Design
- Policy R2 Housing and Employment Development Elsewhere in the Countryside
- Policy R3 Minerals and Hill Tracks
- Policy PR1 Protecting Important Resources

The carrying out of any industrial processing of materials/minerals on said land would require to comply with the above policy as contained in the Aberdeenshire Local Development Plan 2017.

Additional Points

N/A

Actions

Enforcement to revisit the site at the end of the compliance period of the notice to ensure it has been complied with.

Planning and Environmental Appeals Division

Appeal Decision Notice

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Decision by Lorna McCallum, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-110-2022
- Site address: Haddo Quarry, Tarves, Ellon, AB51 7NB
- Appeal by PTM Plant Ltd against the enforcement notice dated 22 January 2018 served by Aberdeenshire Council
- The alleged breach of planning control : the processing of materials or minerals
- Date of site visit by Reporter: 17 April 2018

Date of appeal decision: 18 June 2018

Decision

I dismiss the appeal and direct that the enforcement notice dated 22 January 2018 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 Act.

The appellants have submitted a claim for expenses; my decision on that matter is issued separately.

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:

(b) that the matters which have been stated in the notice have not occurred

(c) that those matters, if they occurred, do not constitute a breach of planning control

The appeal on ground (b)

2. The matters stated in the council's enforcement notice as constituting the alleged breach of planning control are the 'processing of materials or minerals'. The appellants clearly state in their submissions that the processing of material, including crushing of rock and screening of a spoil heap, has occurred on site. They also state that they have never attempted to deny that processing has taken place on the site. It is specifically noted that

processing occurred in the winters of 2016/2017 and 2017/2018. The appellants' submissions include photograph No 1 annotated as 'showing newly processed material' and photograph 2 'rock awaiting to be crushed'. The appellants argue that the processing was of previously extracted and stockpiled material, that it was not for commercial purposes and that the works constituted permitted development. I shall examine these matters under the appeal on ground (c), however, I am satisfied that the evidence plainly shows that processing has taken place on the site. The disagreement between the appellants and the council regarding the scale and extent of the processing and whether the materials have been taken off site are not relevant to my conclusion on whether it has taken place or not. Having concluded that processing of materials has occurred I reject the appeal on ground (b).

The appeal on ground (c)

3. The appellants accept that the works undertaken are 'development' but argue that the processing works undertaken do not constitute a breach of planning control as they benefit from permitted development rights. They state that the works were undertaken to provide materials for the maintenance of an existing private access serving the forestry plantations and agricultural fields owned by the appellants.

4. I am satisfied that the processing of materials and minerals, constitutes development. I have considered which classes of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) may apply to the works specified in the enforcement notice. I have taken account of the submissions from both parties on this matter.

5. Under Class 18 (1) (c) of the Order the 'carrying out on agricultural land comprised in an agricultural unit' of any excavation or engineering operations required for the purposes of agriculture within that unit is permitted development. The Order defines agricultural land as land which, before development permitted is carried out, is in use for agriculture. The appeal site may be part of the land owner's larger land holding which includes agricultural and forestry use. However the site to which the enforcement notice relates is an unrestored quarry and I consider that it does not fit the aforementioned definition of agricultural land. I concur with the council's view that it is a separate planning unit. I therefore find that the works may not be regarded as reasonably necessary for the purposes of agriculture.

6. Class 22 (1) permits the maintenance of private ways on land used for the purposes of forestry. It also allows operations on that land or on land held or occupied with that land, to obtain the materials required for such maintenance.

7. The appellants also argue that the operations on site have been directed at the intention to restore the site to forestry use The submissions indicate that the land owner had entered into an agreement with the appellants who are actively researching the options to restore the land. It is also mentioned that the existing site profile does not lend itself to forestry restoration without further re-profiling or infilling; at the very least importation of topsoil would be required to allow the future planting of trees.

8. At my site inspection I saw no evidence on site of any partially restored areas and no such works were pointed out to me by any of the parties present. There is evidence of

some limited use of materials to fill holes in the surface of an access from the former quarry past Craigmuir House. That private access runs through an area of established forestry but there was no obvious evidence of active felling or thinning. In their submissions the appellants make no mention of any active woodland management. The submissions do not provide any substantive basis for me to conclude that the works to the access were justified as reasonably necessary for forestry purposes. Furthermore I do not consider that the permitted development rights for works to obtain the materials required for maintenance of a private way includes the processing of such material; I shall go on to discuss this later.

9. The appellants also refer to Classes 53 and 57 which allow temporary operations. Class 53 relates to mineral exploration and Class 57 to the maintenance or safety of a mine or disused mine. I am satisfied that neither of these Classes apply in this case.

10. The parties agree that the removal of stockpiled minerals is permitted development under Class 65 and I concur with that conclusion. However I do not agree that 'removal' of materials permits the processing of such materials.

11. The processing or minerals or materials is not stated in any of the aforementioned classes of permitted development. The appellants contend that that the absence of any reference to processing confers permitted development rights to such activities whether they relate to works to a private way or not. I do not accept that interpretation. All operations or works falling within the statutory definition of 'development' require planning permission unless specifically listed as benefitting from permitted development rights. I therefore do not consider that the processing of minerals or materials benefits from permitted development rights.

12. The appellants argue that the conditions on the last extant planning permission allow them to restore the quarry. I agree that the wording of the conditions do not place any time limit on the completion of the restoration works. It is not within my remit to determine whether a fresh planning application is required for the proposed restoration of the site. However, I do not accept that the terms of the planning permissions allows for the processing of materials as part of the restoration of the site.

13. I conclude that the works specified in the notice constitute a breach of planning control, therefore the appeal fails on ground (c).

Lorna McCallum
Reporter