

Appeal Decision Notice

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Decision by Ronald W Jackson, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA/110/67
- Site address: Cairntradlin, Kinellar, Aberdeenshire AB21 0SA
- Appeal by Marshall Farms against the enforcement notice dated 16 April 2009 served by Aberdeenshire Council
- The alleged breach of planning control comprises the formation of a vehicular access and the partial construction of two buildings appearing to be dwellinghouses
- Date of site visit by Reporter: 3 July 2009

Date of appeal decision: 14 July 2009

Decision

I dismiss the appeal and direct that the enforcement notice dated 16 April 2009 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.

Reasoning

1. The appeal against the enforcement notice was made on the grounds that planning permission should be granted as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997. The determining issues in this appeal are whether (1) the use of this site for two dwellings complies with the provisions of the development plan and (2) whether there are any material considerations that warrant determining the appeal otherwise than in accordance with these provisions.

2. The appeal site lies within the Countryside beyond the Green Belt as defined in the Aberdeen and Aberdeenshire Structure Plan 2001-2016 and Policy 12 of the structure plan contains a presumption against house building in the countryside, subject to a number of exceptions. In this case the relevant exception is (c), whether the new houses would be essential to the operation of an enterprise which is itself appropriate to the countryside. Policy Hou\4 of the Aberdeenshire Local Plan 2006 provides that new housing in the countryside will be approved if it is for a full time worker in an enterprise which is itself appropriate in the countryside and the presence of that worker is essential to the efficient operation of that enterprise.

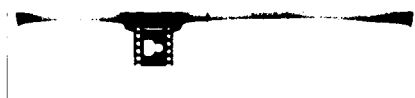


3. Outline planning permission was granted on 5 February 2003 for two agricultural workers' houses on the site (albeit in different locations) and approval of reserved matters was granted for each house on 24 April 2003. A calf rearing unit, which did not require planning permission, was also proposed for the site. In support of the outline planning application for these two houses, detailed agricultural justification was provided for locating the two houses close to the calf rearing unit. That justification was based upon the requirements of the appellants' dairy herd. The conditions attached to the planning permission for the houses show that the houses were approved on the basis that the occupants would be employed at the calf rearing unit. In particular, it was stipulated that no development would take place unless the calf rearing unit had been constructed and was fully operational.


4. In correspondence received subsequent to my site visit, the agent for the appellants has asserted that at the present time the appellants' dairying business has been "mothballed" rather than closed and that "when conditions are right", the appellants will return to dairying. It is also submitted that the appellants fully intend to erect the calf rearing unit. Other than a bold assertion to that effect and unlike the application for outline planning permission referred to in the previous paragraph, the appellants have provided no compelling evidence to demonstrate that the proposed dwellings are essential for the operation of a countryside enterprise. On the contrary, it is accepted that the dairying business has been "mothballed" and that the appellants are no longer involved in dairying, although they may be at some time (unspecified) in the future. I find that there is no agricultural justification for the two houses that are the subject of this appeal and that the erection of the houses would offend Policies 12 and Hou4 referred to in paragraph 2 above.

5. Turning to the issue of material considerations, the appellants' agent has asserted that building work on the site, involving the removal of topsoil, commenced well ahead of 7 February 2008, thereby preserving the planning permissions referred to in paragraph 3 above. No evidence has been produced to substantiate that assertion. In any event such work could only have operated to keep alive the existing planning permissions for the two houses on the original locations approved by the council. That is of no assistance in the present situation where the houses that are the subject of this appeal have not been built on the locations covered by these planning permissions.

6. The appellants cannot rely upon the terms of a letter dated 29 August 2003 from the council's planning officer confirming that the proposed repositioning of the houses from the approved locations to the current locations would appear to be acceptable since the letter makes clear that a planning application would be required. While it may be that a rearrangement of the overall site for the houses and the calf rearing unit, involving switching the positions of the houses and the calf rearing unit, would not have caused the council any difficulty, no such planning application was submitted.



7. Drawing all these matters together, I conclude that the appeal against the enforcement notice fails and that planning permission should not be granted for the proposed development.


Ronald W Jackson
Reporter

