

## Appeal Decision Notice

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Decision by John H Martin, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2006
- Site address: Altnacardich Woodland House, Newtonmill, Lentrán, Inverness IV3 8RN
- Appeal by Bruce and Emma Mitchell against the enforcement notice dated 14 March 2013 served by the Highland Council
- The alleged breach of planning control: use of land as a caravan site
- Date of site visit by Reporter: 10 June 2013

Date of appeal decision: 26 June 2013

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### Decision

I dismiss the appeal and direct that the enforcement notice dated 14 March 2013 be upheld subject to a variation of the terms of the notice by deleting Step 1 in its entirety. 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 following grounds as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997: Ground (b) that the matters stated in the notice have not occurred; Ground (f) that the steps required by the notice exceed what is necessary to remedy any breach of planning control or injury to amenity and; Ground (g) that the period specified in the notice to comply with the notice falls short of what should reasonably be allowed.

2. The appeal site of about 1.5 hectares of woodland lies in open countryside some 6 miles west of Inverness. The surrounding rural area is defined by fields and woodlands with a number of detached dwellinghouses, some quite recent, of which two lie to the south-west of the appeal site. Access to the site is from an unclassified single track road off the A862 and an unmade track from which a field gate leads into the site. The site is covered with mature conifers for which a previous owner held a now lapsed felling licence.



### *Site History*

3. Planning permission 12/01021/FUL for the erection of a forestry workshop and static caravan was granted on 21 June 2012, which was followed on 6 September 2012 by planning permission 12/02380/FUL for the erection of a woodland house. Condition 5 on the first permission required the static caravan to be relocated as shown on the approved plan and Condition 6 required it to be removed from the site by 21 December 2012, unless a further written permission was obtained and construction work had started on the house.

4. The residential static caravan is sited in the north-west corner about 20 metres from and parallel to the south-west boundary on an excavated and levelled area, with a touring caravan nearby. On a lower level beyond, there is a small animal shed and a storage container for personal effects. Trees have been cleared from the workshop site and these have been cut into stacks of sawn timber to be used in the construction of the new house and workshop. Apart from this, the tree stumps remain in the ground and there is no evidence of setting out, levelling or excavations for the workshop. A small digger was sited in the location of the proposed woodland house but, again, I saw little evidence of commencement of work on that development.

### *The appeal on Ground (b)*

5. The stationing of a residential caravan on land is a material change of use of that land to a caravan site for which planning permission is normally required. In their statement the council draw attention to policy 28 (Sustainable Design) of the adopted Highland-wide Local Development Plan under which they claim that a caravan site, if not effectively controlled, would cause demonstrable harm in its impact on residential amenity, landscape quality and the scenery of the area.

6. The circumstances of this case are unusual in that planning permission has actually been granted for the static caravan but only while operations are being carried out, either on the approved workshop or the approved woodland house in accordance with the planning permissions.

7. While the clearance of the trees may be an essential part of the preparation of the land for building, it is not considered to be a “material operation” as defined in sections 27((2) and (4) of the Town and Country Planning (Scotland) Act 1997 (as amended). A material operation would be any work of construction in the erection of the building or the digging of a trench to contain foundations which are necessary for the commencement of operations. Although the appellants submitted an “intention to start work notice”, I was shown no evidence that any of these tasks have commenced on either of the approved developments.

8. It therefore follows that, by not complying with the essential conditions, there is no lawful reason for the occupied static caravan to be on the site except to serve the appellants’ personal needs for which they would normally need a separate planning permission. The same applies to the touring caravan which could only be permitted if it

were stationed on the land for purposes incidental to the enjoyment of the dwellinghouse as such but, as the house has yet to be built, this is also unlawfully on the land.

9. For these reasons, I find that the stationing of the static and touring caravans on the land, without complying with the conditions set out on planning permission 12/02380/FUL, amounts to use of the land as an unlawful caravan site. I conclude that the matters alleged in the notice have occurred and the appeal on ground (b) must therefore fail.

#### *The appeal on Ground (f)*

10. The appellants' case on this ground appears to hinge on the risk of them being made homeless if they have to remove the caravans, but the solution has always been in their own hands, namely to commence work on the approved developments.

11. The notice requires 4 steps to be carried out. Step 1 requires the static caravan to be relocated in the approved position. While I note that it is not sited in the position shown on the approved drawings and is thereby more obvious from the adjoining property, the loss of privacy from the main living room would have been greater had it been correctly located on the higher ground. As sited, the caravan is set down into the slope, which would not necessarily apply to the approved location, so it is probably less harmful to the neighbours' amenity, particularly as they have formed planted banking as a screen, which would not hide the caravan in the higher approved position. I can therefore see no benefit to the neighbours or the appellants in relocating the caravan in the approved position.

12. Step 2 requires the removal of the touring caravan which, I was advised at the site inspection, is not occupied but contains the appellants' toilet facilities. Although this does not justify the stationing of an unlawful caravan on the land, if the static caravan is to remain, some other toilet facility would presumably have to be provided. However, a temporary site toilet would be less obtrusive, so this requirement would give the appellants 6 weeks to provide alternative arrangements which should be more than adequate.

13. Step 3 requires the removal of the static caravan along with all storage containers, wire fencing, vehicles and plant by 6 September 2015, which I consider to be a reasonable requirement with ample time to comply. Step 4 requires the hardstanding areas associated with the caravan site to be removed and landscaped by 31 March 2016 which, again, I find reasonable and with sufficient time to comply.

14. I therefore consider that, as there would be no benefit in relocating the static caravan, the requirement in Step 1 exceeds what is necessary to remedy the breach of planning control and any injury to amenity. I therefore conclude that the appeal on ground (f) succeeds insofar as it relates to the relocation of the static caravan, but otherwise it fails. I will vary the terms of the notice accordingly.

#### *The appeal on ground (g)*

15. For the reasons stated in paragraph 11, as the static caravan is not to be relocated, the period for compliance would not apply. The notice allows the appellants 6 weeks to

remove the touring caravan or begin material operations on either of the developments which is not unreasonable. The periods for compliance to remove the static caravan and restore the land are sufficiently generous to give the appellants over 2 years to erect the approved house and workshop, after which the requirements of the notice can be met.

### *Other matters*

16. I have taken account of the concerns of nearby residents, many of which are addressed in this decision, but I stress that this only relates to the appeal against the enforcement notice.

### *Conclusions*

17. My overall conclusion is that, as no material operations on either of the planning permissions have taken place neither can be considered as having commenced. Therefore, by not complying with the conditions of planning permission 12/02380/FUL the alleged change of use to an unlawful caravan site has occurred. I conclude that the notice should be upheld, subject to a variation of the terms.

*John H Martin*

Reporter