

Directorate for Planning and Environmental Appeals

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Mr A Brennan
Highland Council
Sent By E-mail



Our ref: ENA-270-2011

13 May 2015

Dear Mr Brennan

ENFORCEMENT NOTICE APPEAL: LAND ADJACENT TO KEEPER'S COTTAGE STRATHSTEVEN BRORA KW9 6NL

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action.

I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

Christopher Kennedy

CHRISTOPHER KENNEDY
Case Officer
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Appeal Decision Notice

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Decision by Michael Shiel, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2011
- Site address: Land adjacent to Keeper's Cottage, Strathsteven, Brora KW9 6NL
- Appeal by Mr Graham O'Neill against the enforcement notice dated 16 December 2014, served by The Highland Council.
- The alleged breach of planning control: Failure to comply with conditions attached to planning permission ref. 14/02059/FUL, granted on 11 August 2014, for the change of use of land for business use (pony trekking centre), formation of vehicular access, and installation of a portacabin.

Date of appeal decision: 13 May 2015

Decision

I allow the appeal and direct that the enforcement notice dated 16 December 2014 be quashed.

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 alleged breach of control has not occurred;
- (c) that the matters alleged in the notice do not constitute a breach of planning control; and
- (d) that, when the enforcement notice was served, it was too late to take enforcement action.

2. The planning permission granted on 11 August 2014 for the change of use of land at the appeal site for use as a pony trekking centre, the formation of a vehicular access and the installation of a portacabin was subject to four conditions. Of these, condition 1 required, in short, the completion of all access arrangements within three months from the date of the permission. This involved a new access from the A9 trunk road, a car park, new vehicle and pedestrian bridges across the Sputie Burn, and the fencing off of a crossing on the west side of the A9 at the junction with the C1058 Doll-Kilmain road. In addition, condition 3 required that no development should be undertaken on the construction of the new bridges until full plans and details had been submitted to and approved by the planning authority.

3. The council has advised that the works required by condition 1 have not been carried out; nor have the details required by condition 3 been submitted. It has submitted photographs taken on 2 December 2014 showing that the approved access from the A9 and the car park had not been formed at that time. Enforcement notices were initially served on the occupier and owners of the land on 6 November 2014. They were subsequently withdrawn on 16 December 2014 because of problems over their wording; but at the same time new notices were served
4. The appellant states that the pony trekking business ceased trading on 31 October 2014, although the Riding Establishment Licence was valid until 15 December 2014. He has indicated that he is unable to comply with the conditions of the planning permission because the landowners have refused their consent for the necessary works.
5. The fact that the use was claimed to have ceased by the former date implies that it was being operated before that date. Indeed a letter dated 6 June 2014 from the appellant to the council indicates that the business had been operating from the site for some time before planning permission was eventually granted. Under the terms of that permission, all the works referred to in condition 1 should have been completed by 11 November 2014. In addition the details of the proposed bridges across the Sputie Burn would have needed to have been approved before that date.
6. If the pony trekking business had continued in operation beyond 31 October 2014, it would not have been in breach of condition 1 until 11 November 2014. However, if it did cease use as claimed by the appellant, by the time that the enforcement notice was served there would have been no breach of planning control.
7. In response to my request for further information, the council stated on 26 March 2015 that it is strongly of the opinion that the use has not ceased, and that the appellant is continuing with the pony trekking business without the necessary Riding Establishment Licence. It is continuing investigations in respect of this matter. I requested further information from the council for the evidential basis on which it believed that the appellant was continuing to operate a pony trekking centre from the site without complying with the conditions of the planning permission.
8. The council replied that the information I was seeking was being formulated into a report to be submitted to the Procurators Fiscal for consideration of taking proceedings against the appellant for operating a riding establishment without the necessary licence. Although this was primarily an environmental health issue, the planning authority had been working closely on the investigation. In the circumstances the council felt unable to supply the detailed information which might form the basis of criminal proceedings. I understand its position on this matter.
9. It did, however, submit material from the appellant's website (Highlands Unbridled) and from a Twitter account of someone who had undertaken one of the company's holidays in April of this year. It is evident that the company has continued to advertise and organise riding holidays throughout Scotland but this does not, in my view, demonstrate that the appellant is continuing to use the appeal site as a pony trekking centre. The website does advertise pony trekking rides around Brora, but also states: *"Due to relocation of our stables this winter, we will not be offering any pony trekking from 31st October to March 2015.*

However, we'll be open again in time for Easter and are taking bookings for rides in 2015." This is consistent with the appellant's claim that pony trekking ceased at the appeal site at the end of October 2014.

10. In his further response to the information supplied by the council, the appellant has pointed out that the holiday referred to in the Twitter account was in the Great Glen, and did not leave from the appeal site. Likewise, any other long distance rides that have been run since October 2014 have not started from these premises. Furthermore the landowner has now indicated its intention to sell Keeper's Cottage; the property which the appellant rents and ran his business from.

11. He accepts that horses are ridden out from the appeal site in order to exercise them, and that hay and feed continue to be delivered and muck to be removed, to ensure the welfare of the remaining horses kept on the site. The company is now renting new premises near Tain which have the benefit of planning permission for a pony trekking centre. The appellant has indicated that he will be moving from Keeper's Cottage in a few weeks' time.

12. I consider that continuing to advertise, organise and undertake riding holidays elsewhere in Scotland from the appeal site does not constitute the use of that site as a pony trekking centre. The fact that horses continue to be kept on the site, with the necessary activities that entails, also does not, to my mind, constitute use as a pony trekking centre. This term implies to me that customers visit the site, and rides take place from the site. Whether the keeping of horses at the site amounts to a breach in relation to the need for a Riding Establishment Licence is a separate matter, and will be for the court to determine if necessary.

13. I appreciate that there is disputed evidence in this case but consider that the appellant should be given the benefit of the doubt. He states that the use of the site as a pony trekking centre ceased on 31 October 2014 and, on balance, I consider that the evidence provided by the council does not contradict that. Consequently, by the time the enforcement notice was served on 16 December 2014, I conclude on the balance of the evidence before me that the use was no longer taking place and therefore the appeal under section 130(b) should succeed.

14. I appreciate that the situation is somewhat academic as the appellant is now intending to vacate the premises. However, planning permissions usually run with the land, and the permission for the use of this site as a pony trekking centre will continue to exist. Quashing the current enforcement notice does not imply that anyone can re-start the use without complying with the necessary conditions imposed on the planning permission.

M D Shiel

Principal Reporter