

## Appeal Decision Notice

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

- Enforcement notice appeal reference: ENA-270-2016
- Site address: Land south of Angelshare, Abriachan, Inverness IV3 8LB
- Appeal by Mrs Ann Edwards of Camping Pod Heaven Ltd against the enforcement notice 15/00169/ENF dated 10 August 2015 served by Highland Council
- The alleged breach of planning control : Non-compliance with conditions 1, 2, 3, 4, 7, 9, 10 and 11 of planning permission 14/04549/FUL dated 29 June 2015
- Date of site visit by Reporter: 8 October 2015

Date of appeal decision: 9 November 2015

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### Decision

1. I dismiss the appeal and direct that the enforcement notice dated 10 August 2015 be upheld subject to variation of the terms by, in paragraph 4 of the notice, deleting the reference to condition No.10. 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

2. 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 that: (c) there has not been a breach of planning control and; (f) that the steps required by the notice are excessive and less onerous steps would remedy the breach. The appellant drew the council's attention to the fact that the original notice was not correctly served on Mr Colin Edwards, a Director of Camping Pod Heaven Ltd, so the council withdrew the original notice and served another notice under the same reference number. There is therefore no ground of appeal against the service of the notice.

3. The appeal site of coniferous woodland forms part of the appellant's property, Angelshare, which lies in open countryside on the hills above and to the west of Loch Ness, and in the settlement of Abriachan with the nearest properties being School House to the south and Tigh Grianach to the east. The site has been developed with 10no. camping pods, access, parking and temporary toilet/kitchen facilities partly in accordance with planning permission No.14/04549/FUL dated 29 June 2015, subject to 11 conditions of which 8 are the subject of this appeal.

### The appeal on ground (c)

4. In her appeal submission, the appellant suggests that all the above conditions have been complied with and that there is thereby no breach of planning control. However, as the conditions on the latest planning permission (14/04549/FUL dated 29 June 2015) largely echo those on the original permission (10/03513/FUL dated 11 November 2011), and its amendment also dated 29 June 2015, the subject conditions all state that “the pods and associated facilities shall not be used until...” the specified details have been submitted to and approved by the planning authority.

5. Notwithstanding the on-going negotiations between the appellant and the council to resolve the outstanding matters specified in those conditions, the appellant and her company do not dispute that the pods have been used in the intervening period and are currently in use, as was evident during my site inspection. For that reason, I have to conclude that, as the terms of the conditions had not been complied with at the time the notice was served on 11 August 2015, a breach of planning control has occurred. The appeal on ground (c) must therefore fail.

### The appeal on ground (f)

6. In considering this ground, I shall deal with each of the subject conditions in turn to determine whether: (a) they were satisfactorily complied with prior to service of the notice; (b) their terms have subsequently been met and; (c) whether, as a result, the requirements of the notice are excessive and less onerous steps would remedy the breach. I have noted that, despite similar conditions being applied on the previous planning permission (10/03513/FUL), neither the appellant nor her company appealed against them or the conditions on the appeal permission.

7. The conditions, the subject of this appeal, are:

**Condition 1.** *The pods and associated facilities hereby granted planning permission shall not be used until details of surface water drainage for the entire development including hardstanding and car parking areas have been submitted to and agreed in writing by the Planning Authority and thereafter implemented in accordance with the approved scheme. For the avoidance of doubt, the surface water drainage shall accord with principles of SEPA's best practice on SuDS.*

*Reason : In order to ensure that the site is properly and adequately drained.*

8. In the appeal statement, the appellant claims that this condition has been satisfied and refers to the plan submitted with Document CPH1, which is the Committee Report of 5 July 2011 and relates to the original planning application for 10no. camping wooden shelters (10/015313/FUL). While this shows that there had been no objection from Scottish Environmental Protection Agency (SEPA), this does not address the appeal proposal. I note that SEPA have agreed in principle to a surface water connection to the outfall from new foul water treatment plant crossing adjoining land to a drainage ditch alongside the public road, but this was not in place when the notice was served. Although I understand that this has now been completed, subject to final legal agreement, the Council's Flood Team have still to assess its likely impact on any watercourses. Only when approval for the surface water installation has been received, will the terms of the condition be met.

**Condition 2.** *The pods and associated facilities hereby granted planning permission shall not be used until the foulwater drainage system (granted under Building Warrant reference 13/01227 /ERC) has been installed and completed to the satisfaction of the Planning Authority and thereafter so maintained. In the event of any change to the submitted design, no work will commence on site unless and until such details are submitted to and approved in writing by the Planning Authority and thereafter so installed.*

*Reason : In the interests of public health.*

9. Again in CPH1, the appellant claims that this condition has been satisfied and produced emails in support. Although the new foul water treatment system and outfall across adjoining land has been approved under the Building Warrant, this was not in place at the time the notice was served. A new line of servitude has been agreed with the adjoining owners of Tigh Grianach to the east, and an overflow pipe has been laid to a drainage ditch alongside the road, and thence to a nearby water course, although the final legal arrangements have yet to be resolved. While the foul water treatment system would now appear to comply with the condition, this will not be satisfied until the Building Standards and Planning Case Officers have completed their inspection of the installation.

**Condition 3.** *The pods and associated facilities hereby granted planning permission shall not be used until a Tree Protection Plan, a Tree Planting Plan and a Maintenance Programme have been submitted to, and approved in writing by, the Planning Authority. No further development shall be undertaken until the measures identified in the Tree Protection Plan have been implemented and are retained on site for the duration of the construction period. The approved Tree Planting Plan shall be implemented in full during the first planting season following commencement of development, or as otherwise approved in writing by the Planning Authority, with maintenance thereafter being carried out in accordance with the approved Maintenance Programme.*

*Reason : In the interests of the amenity of the area.*

10. The appellant refers to the Tree Retention Plan submitted and approved on 29 June 2015, before the notice was served, which the council have accepted as partly meeting the terms of the condition, primarily because the work had been carried out, rendering the Tree Protection Plan unnecessary. However, the condition also required a Tree Planting Plan to be approved but, while some sporadic planting has taken place, the condition will not be satisfied until this has been approved by the Council's Forestry Officer.

**Condition 4.** *The pods and associated facilities hereby granted planning permission shall not be used until details of any site construction and materials compound together with details of the location and storage of any top soil have been submitted to and agreed in writing by the [www.highland.gov.uk/planningenforcement](http://www.highland.gov.uk/planningenforcement) Page 2 of 14 Planning Authority and thereafter implemented in accordance with the approved layout.*

*Reason: In the interests of residential amenity.*

11. While no such layout had been submitted at the time the notice was served, and the works to the pods have essentially been completed, with the exception of the new pods on Plots 1 & 2 which are currently sited on the car park, this condition is now redundant in terms of the pods. However, the condition also applies to the new Kitchen, Toilets and Shower Block, when it is erected after the current permission for the temporary facilities expires in 2017, so it should remain on the permission until that time.

**Condition 7.** *The use of the pods and associated facilities hereby granted planning permission shall not be implemented unless details of the alterations to the junction of the access track with the public road are submitted to and agreed in writing by the Planning Authority and thereafter implemented and completed in accordance with the approved scheme. The improvements include the access junction onto the C1072 public road to be altered in accordance with Drawing no. SDB 2 of the Council's Access to Single Houses and Small Housing Developments booklet or alternatively to a 5.5m wide bellmouth with 6m radii and surfaced over the first 3m from the edge of the public road. Unless otherwise approved in writing by the Planning Authority, the C1072 shall be re-surfaced over its full width along the frontage of the access.*

*Reason : In the interests of road traffic safety.*

12. Although the appellant's company started works to improve the access track junction with the C1072 public road, prior to the service of the notice, the landowner stopped the work and is unlikely to agree to any upgrading of the track. While the condition was reasonably imposed with the best intentions for the development and other users of the access, this has proved difficult to achieve. However, in the absence of an appeal against the condition itself, I have no powers to vary its terms in this enforcement appeal and the condition remains in force until the planning authority is satisfied that it has been met.

**Condition 9.** *The pods and associated facilities hereby granted planning permission shall not be used until details of a covered and secure communal bicycle storage/racking system for 2 cycles per camping pod have been submitted to, and approved in writing by, the Planning Authority and thereafter installed in accordance with the approved details.*

*Reason: To comply with Council policy on the provision of cycle facilities within developments.*

13. Even though the appellant did not appeal against Condition 12 on planning permission 10/03513/FUL, the number of covered cycle racks remains in dispute, so the terms of this condition were not resolved before the notice was served. I saw no cycle racks on site at the time of the site inspection so this condition remains in force.

**Condition 10.** *The pods and associated facilities hereby granted planning permission shall not be used until details of the proposed method of storage and collection of refuse have been submitted to and agreed in writing by the Planning Authority and thereafter implemented in accordance with the approved scheme.*

*Reason: In the interests of public health and to meet the Supplementary Guidance for Managing Waste in New Developments.*

14. At the time the notice was served, refuse storage and collection arrangements did not meet the requirements of the council's Supplementary Guidance for Waste Management in New Developments. However, at the site inspection I noted the refuse storage compound with 2 wheelie bins for general waste and separate bins for recycled waste have been provided to the satisfaction of the council, which meet the terms of the condition and it can be deleted.

**Condition 11.** *The pods and associated facilities hereby granted planning permission shall not be used until details of the car park layout have been submitted to and agreed in writing by the [www.highland.gov.uk/planningenforcement](http://www.highland.gov.uk/planningenforcement) Page 3 of 14 Planning Authority and*

*thereafter installed in accordance with the approved details. For the avoidance of doubt a further 3 spaces shall be provided with all spaces set back a minimum distance of 10 metres from the access track to aid vehicle manoeuvring.*

*Reason: In the interests of road traffic safety.*

15. Although the council point out that the Roads Consultation response of 13 May 2011 on application No.10/03513/FUL refers to parking provision of 2-3 spaces for operational purposes, no such condition was applied to that permission. Condition 11 is therefore new and requires a further 3 spaces be provided over and above the 11 spaces shown on the approved plan. Although the site operators live in the adjoining house with parking of its own, which might make the additional parking spaces seem unnecessary, this only applies while the appellant's company operates the site, so I am not able to vary the terms of this condition.

16. I therefore conclude that the appeal on ground (f) succeeds in part only, namely on conditions nos.7 and 10 that have been complied with to the council's satisfaction and can be deleted. I shall therefore vary the terms of notice by, in paragraph 3, deleting those conditions, while the other conditions remain in force.

#### *Third Party submissions*

17. I have taken account of the representations received from interested persons but, although their comments provide a useful background to the manner in which the development has progressed, the scope of this appeal is limited to whether or not the appellant has complied with the conditions attached to the planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

#### *Conclusions*

18. My overall conclusions are that, as the pods were occupied before the matters specified in the subject conditions had been approved, the appeal on ground (c) fails, while the appeal on ground (f) succeeds only insofar as the appellant has subsequently resolved some of the outstanding matters to the satisfaction of the planning authority.

*John H Martin*

Reporter