



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

- Enforcement notice appeal reference: ENA-270-2026
- Site address: Land 100 metres south-west of River Coe Lodge, Glencoe
- Appeal by Mr Paul Moores against the enforcement notice dated 30 October 2018 served by The Highland Council
- The alleged breach of planning control: Unauthorised engineering works and siting of a caravan (timber structure with deck on the front) on land without the required planning permission.
- Date of site visit by Reporter: 5 February 2019

Date of appeal decision: 12 February 2019

Decision

I dismiss the appeal and direct that the enforcement notice dated 30 October 2018 be upheld, subject to the variation of the terms of the notice by deleting the words “and should be completed by 10th March 2019” in section 4. 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 (“the Planning Act”):

- (b) that the matters alleged in the enforcement notice have not occurred;
- (c) that, if those matters have occurred, they do not constitute a breach of planning control: and
- (f) the steps required by the notice exceed what is necessary to remedy the breach of control.

There is some conflation in the appellant’s case between grounds (b) and (c), but I have dealt with them separately to follow his line of argument.

Appeal on ground (b)

2. The appeal on this ground relates to the “caravan” that has been sited on the land. This is not a conventional caravan, but a timber structure that appears to have been erected *in situ* on a metal chassis. According to the council, its dimensions are 9.9 metres



long (including an integral timber deck) and 4.9 metres high, with a maximum height of 2.8 metres to an almost flat roof. The caravan is supported on a number of blockwork piers.

3. The council has accepted that this structure meets the definition of a “caravan” in the Caravan Sites and Control of Development Act 1960, as amended by the Caravan Sites Act 1968. I see no reason to disagree with that view. Its overall dimensions do not exceed those set out in the latter legislation, and it appears to be, at least theoretically, capable of being moved from one place to another.

4. The siting of a caravan on land is generally held not to constitute the carrying out of building, engineering, mining or other operations in, on, over or under land for the purposes of Section 26(1) of the Planning Act. It, may, however, constitute a material change of use of the land.

5. In this case, it is argued for the appellant that, as the caravan is not intended for occupation, the land does not constitute a “caravan site” within the meaning of the Caravan Sites and Control of Development Act 1960, and no caravan site licence is required. The caravan is merely being stored on the site and such storage has not reached the scale where a material change of use of the land has occurred.

6. I do not accept that argument. I acknowledge that there may be circumstances where the siting or storage of a caravan is ancillary to an existing use of land (including, for example, within the curtilage of a dwellinghouse). In this case, however, the appeal site appears to have had no use immediately prior to the works alleged in the Enforcement Notice. It was used at some time in the past for the storage of plant and materials for road improvements and repairs, but the appellant states that that use ceased “decades ago”. There is a suggestion that, in the intervening years, the land may have been used for horticultural and agricultural purposes, but there is no direct evidence of such uses. Photographs taken by the appellant’s agent in April 2012 show the flat part of the appeal site at least partially covered in rough vegetation, with scattered piles of material. A similar picture is presented by photographs submitted by the council, dated April 2013.

7. I am satisfied that, on the balance of the available evidence, before the works alleged in the notice were carried out, which appears to have been in 2016, the appeal site was effectively unused. Consequently I find that the storage of even a single caravan on the site is not ancillary to any existing use, and that a material change of use of the land has occurred for which planning permission has not been granted. The appeal under the terms of ground (b) therefore fails.

Appeal on ground (c)

8. The appellant’s arguments under this ground of appeal relate to the alleged unauthorised engineering works on the site. For the council it is stated that in 2013 the site was mainly woodland and wet pasture, with open ground on the north-eastern side; many saplings, semi-mature and mature trees outside that clearing; and a gentle slope towards the road. In 2016 work was carried out to excavate the ground level and extend the area of hardstanding to approximately 150 metres long by 40 metres wide, covered with slate. An earth bund was formed, and an open drainage channel created around the margins of the site.

9. In contrast, it is argued for the appellant that the only work undertaken was a minor adjustment to the cut at the foot of the rising ground to the west of the site; scraping away of the sparse vegetation from the pre-existing hardstanding that dated from when the site was used as a roads depot; and dressing off of that material to create an L-shaped bund approximately 20 metres long and 1.5 metres at its maximum height on the eastern part of the site. All work was restricted to the position of the former hardstanding, and the area affected measures at most 37.3 by 18.6 metres. No trees were removed in the course of the groundworks, and no material was brought onto the site. Ground levels were not materially altered. The total quantity of material moved was about 60 cubic metres.

10. The appellant's argument is, in effect, that the engineering works carried out were of such limited scale as to be *de minimis* from a planning point of view, and therefore not such as to constitute development for which planning permission was required. In support of that contention, an appeal case is cited from elsewhere within The Highland Council's area where extensive excavations to form a large pond and remodel ground levels were held to be landscaping works, insufficient in scale to constitute engineering operations. I have no details of the extent or circumstances of that case, which dates back to 1999; and, in any event, each case requires to be considered on its individual merits. The question of whether works carried out constitute engineering operations for which planning permission is needed is essentially one of fact and degree.

11. In this case I have only the photographs submitted by the parties to indicate the condition of the site prior to the works being carried out. They show a generally level area on the northern part of the site, alongside the eastern boundary fence. It appears to be covered in a fairly sparse rough vegetation, but there is no sign of any trees within this area. I have no evidence as to the nature of the ground beneath the vegetation, but there are piles of material lying on the ground. West of the level area the land starts to rise and the land to the west and north is heavily wooded.

12. From my site inspection I find that the northern part of the site has been levelled off and covered in slate chippings and rubble, forming a distinct area of hardstanding, measuring some 35 metres long at its maximum and 12 metres wide (excluding the access into the site). These dimensions are generally in accord with those supplied by the appellant, rather than the council. As the appellant states that no material has been imported onto the site, I presume that the covering of this hardstanding was from the piles of materials already on the site. A bund has been formed on the eastern side of the site. There is clear evidence of some excavation into the steeper slope on the western side of the site, and of the creation or re-opening of a drainage ditch along that side.

13. I am satisfied that the works carried out on the site constitute engineering operations. As to whether they are of a sufficient scale to constitute development within the meaning of section 26(1), I find that they are. However limited the changes in ground level may have been, the works were carried out with the express purpose of creating a level surface for the siting of the caravan, and have significantly changed the appearance of that part of the site where they have been undertaken. The fact that there was once some form of hardstanding on this site, when it was used for the storage of roads equipment and material, is, in my view, immaterial. There is no evidence before me as to the extent or surfacing of that hardstanding. In the period since the road depot existed the site has, as I

have indicated above, effectively been unused and any previous hardstanding has been re-vegetated.

14. I therefore find that the engineering operations carried out on the site did require planning permission, and that no such permission has been granted. They therefore constitute a breach of planning control, and the appeal in terms of ground (c) fails.

Appeal on ground (f)

15. It is argued for the appellant that, if his case under grounds (b) and (c) fails, the works required by the Enforcement Notice are excessive. The caravan and groundworks are considered to be barely visible during fleeting glimpses from the adjoining A82 road, and removal of the bund and existing vegetation which has grown on it would open up the site to view and therefore create a short-term adverse visual impact. It is suggested that the terms of the notice are seeking to re-naturalise the site to a condition before it was used as a roads depot.

16. I have concluded that the storage of a caravan on the site, even if not occupied, constitutes a material change of use of the land, for which planning permission has not been granted. The planning issues raised by siting a caravan on this land are not a matter for debate in an enforcement notice appeal, although I note that the council has twice refused planning permission for the change of use of the land for siting a caravan for holiday use. Given that a change of use has occurred which represents a breach of planning control, the only effective remedy is the complete removal of the caravan, as required by the notice.

17. Similarly the engineering works carried out on the site constitute a breach of planning control. From my site inspection and photographs taken in 2017 I note that there is a significant growth of mature vegetation along the eastern fence line, which helps to screen the flat part of the site. The removal of the bund and the re-spreading of the material over the site would not, therefore, significantly open up the view of the site from the road. I do not agree that the requirements of the notice are seeking to return the site to a wholly natural condition. Rather, they will create a situation where the site, over time, may naturally become re-vegetated; a situation that had occurred before the unauthorised works were carried out.

18. I therefore find that the works required by the notice are necessary to remedy the breaches in planning control, and that the appeal under the terms of ground (f) also fails.

19. No appeal has been lodged in respect of the period allowed for compliance with the terms of the Enforcement Notice, and I consider that, given the relatively limited amount of work needed, a period of three months is adequate. The notice also states, however, that the work should be completed by 10 March 2019, and I have therefore amended it to remove that requirement.

M D Shiel

Reporter