

ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE

13 JUNE 1996

SUBJECT: PLANNING ENFORCEMENT APPEAL DECISION  
LAND AT FISHTOWN OF USAN, BY MONTROSE

REPORT BY DIRECTOR OF PLANNING, TRANSPORT & ECONOMIC DEVELOPMENT

**Abstract:** This report presents the findings of the Reporter appointed by the Secretary of State to determine an appeal against an Enforcement Notice served by Angus District Council to secure the removal of two storage containers on land at Fishtown of Usan, by Montrose.

**1 RECOMMENDATION**

It is recommended that the Committee notes the successful outcome of the appeal.

**2 INTRODUCTION**

- 2.1 At the District Council's Planning and Development Committee of 25 April 1994, action to remove two storage containers positioned without consent at Fishtown of Usan was requested (minute 383/94 refers).
- 2.2 An Enforcement Notice was duly served and appealed against by the applicant, Mr. D. Pullar. The Inquiry Reporter's conclusions and decision are presented below.

**3 REPORTER'S DECISION**

- 3.1 In relation to the alleged defect in the Notice, you consider it impossible to determine from the Notice what form of development is involved. I consider that there is a lack of clarity in the description of the alleged breach of planning control through the use of the word introduction. However, I believe it likely that a recipient of the Notice would still know what the alleged breach was from the description. This is particularly so when the description of the breach, the reasons for serving the Notice, and the remedial action required by the Notice are taken together. In this context, the description appears to me to adequately encompass the putting in place of two "box carriers" on site. The reason and the steps required both follow on from this. I therefore consider that the alleged form of development can satisfactorily be established from the Notice and that it is not defective in this respect. Consequently, the appeal on this basis fails.
- 3.2 With regard to the appeal under ground (c), I noted on my site inspection that the items referred to are both box trailers rather than box carriers as they have wheels and are potentially mobile. However, this notwithstanding, the box trailers are both "propped up" and, in my view, have become semi-permanent structures with no apparent attempts having been made to move them. They are positioned on the hardstanding. I acknowledge the similarities between the current wider use of the

site and the previous coastguard use, but this, of course, has to be placed in the context that the larger unit occupied by the coastguard has been sub-divided. A new chapter has therefore opened in the planning history of the appeal site and that part of the coastguard grounds occupied by your client. There is also a similarity between your client's response to the S270 Notice and the Council's view of the existing use rights of the appeal site with both making reference to private garage, garden ground and a hardstanding for parking. This matter of the wider use of the site, however, is only relevant insofar as it relates to the box trailers. They are in use as stores for vintage car parts and are not just being parked or stored on the hardstanding on site. The introduction of the box trailers has considerably extended the provision of, and potential for, storage on site. In my view, when this is combined with the scale, prominent position and semi-permanent nature of the box trailers, it means that they cannot merely be considered incidental to the existing use. They also do not relate to the previous coastguard use. In addition, I do not believe that the appeal site is part of the curtilage of a dwellinghouse as it, and the associated ground, form a self-contained unit and can be distinguished from your client's house and land to the east. As such, the box trailers would not benefit from any permitted development rights which may come from such an association. On the basis of the above I consider, in this instance, that the two box trailers are development requiring planning permission and constitute a breach of planning control. Your client's appeal on this ground therefore fails.

- 3.3 On your appeal under ground (d), you consider that the activities by your client and others have been undertaken for a period well in excess of 10 years and are therefore immune from any enforcement action. Given that the placing of the box trailers and their use on the site does not appear to have involved meaningful "building, engineering, mining or other operations", it seems to me that the "10 year rule" under S83B of the Act is appropriate. The Enforcement Notice does not concern all the activities taking place on site, but relates specifically to the introduction of the two box trailers onto the land for storage purposes. You indicated that six years ago your client acquired the site and that before this it was used in association with the coastguard presence. It is therefore likely that the box trailers would only have been moved onto the land since then. Consequently, the box trailers and their use are not immune from enforcement action. The appeal on this ground therefore fails.
- 3.4 Turning to the deemed appeal under section 85(1)(a), section 85(6) requires that the Secretary of State shall have regard to the provisions of the Development Plan, so far as material to the subject matter of the Enforcement Notice, and to any other material considerations. No part of the Development Plan has been drawn to my attention as being relevant to this case. On this basis I consider that the determining issue in relation to this ground of appeal is whether the box trailers would adversely affect the amenity of nearby residents.
- 3.5 In relation to this issue, the box trailers are positioned at right angles to the existing building on site. Their doors face away from the houses round about. I do not consider that the use of the trailers as stores is likely to have a material effect on neighbouring properties by way of noise, disturbance and other nuisance given the position of the doors. In addition, this use of the trailers is not likely to result in substantially more nuisance being associated with the use of the whole site. The

Council also raised no concerns over this aspect. However, I consider that, taken together, the two box trailers are a noticeable feature of the site. They are likely to be visible above the wall, from the access to the site and from the houses round about, including those on the opposite side of the access road. I accept the box trailers have been painted, but their box structure, finish and appearance make them unattractive and give the site the appearance of an industrial yard. While the house to the rear sits above them, it is, in my view, particularly affected as access to the property is effectively taken around the box trailers, and the windows on the south, east and north elevations overlook them. I accept that the village may not attract a lot of visitors, but given the residential nature of this small enclave, I consider that the appearance of these trailers is unacceptable and that they materially detract from the amenity of nearby residents.

- 3.6 I consider both the steps which require to be taken by the Notice and the time given for compliance to be reasonable in this instance. Although I acknowledge that an alternative store will require to be found for the vintage car parts, I see no reason why this should take in excess of six weeks.
- 3.7 I have taken account of all the other matters raised, but they do not outweigh the considerations outlined above. Accordingly, and in exercise of the powers delegated to me, I hereby dismiss the appeal, refuse to grant planning permission for the introduction of two "box carriers" for storage purposes on the appeal site, and direct that the Enforcement Notice dated 21 February 1995 be upheld, subject to the variation of the terms of the Notice by the deletion of the word "carriers" in sections 3, 4 and 5 and the substitution therefor of the word "trailers".

#### **4 FINANCIAL IMPLICATIONS**

- 4.1 There are no financial implications.

#### **5 CONSULTATION**

- 5.1 The Director of Finance and Director of Law and Administration have been consulted in the preparation of this report.

#### **NOTE**

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

AA/JJ/KW  
5 July 1996

Alex Anderson  
Director of Planning, Transport & Economic Development

