

ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE

15 AUGUST 1996

SUBJECT: ENFORCEMENT APPEAL DECISION - BALBIRNIE MILL, BRECHIN

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 the service of an Enforcement Notice by Angus District Council requiring the cessation of car repairs from a building at Balbirnie Mill near Brechin.

1 RECOMMENDATION

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

2 INTRODUCTION

- 2.1 With reference to Angus District Council minute 203/95, the Planning and Development Committee at their meeting of 27 February 1995, instructed the officials to pursue an Enforcement Notice at Stop Notice in respect of the unauthorised case of a building at Balbirnie Mill for repairing, maintaining and garaging motor vehicles.
- 2.2 The operator, Mr E Lindsay, appealed against the notice and the Inquiry Reporter's conclusion and decision are presented below.

3 REPORTER'S DECISION

- 3.1 Two preliminary matters require to be dealt with. These relate to the content of the notice and the timing of submissions. With regard to the content of the notice, I note (1) that reference is made in paragraph of S.83A(1)(b) of the Act, which concerns failure to comply with any condition or limitation subject to which planning permission has been granted; and (2) that paragraph 4(a) states "that the above breach of planning control has occurred within the last 4 years".
- 3.2 In relation to point (1), S.84AA requires that an enforcement notice shall state the paragraph of S.83A91 within which, in the opinion of the authority, the breach falls. In this case, as the breach involves the carrying out of development without the required planning permission, S.83A91(a) applies, rather than S.83A(1)(b). However, in my view your client's interests have not been prejudiced by this defect, as it is quite clear from the notice what the breach is, why it has been served and the steps required. I consider that this defect is capable of correction.
- 3.3 On point (2), the Council acknowledge in their submissions that it is not the 4 year time period which applies in this instance. Under the terms of S.83B material changes of use, with the exception of those relating to a change of use to a single

dwelling, have to be ongoing for at least 10 years, beginning with the date of the breach, before no enforcement action can be taken. I note from the submissions that the Council received no complaints about the building prior to mid 1994. Taking into account the nature of your client's use of circumstances, the breach does not meet the requirements for either the 4 year or 10 year periods. Your appeal on this ground therefore fails.

- 3.4 Turning now to the planning application deemed to have been made under S.85(7), S.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 was drawn to my attention as being relevant to this case. Accordingly, I consider that the determining issue in relation to this ground of appeal is whether the proposal would be detrimental to the amenity of nearby residents. The use is adjacent to a listed building and S.54(3) requires that I have special regard to the setting of the listed building. However, the listed building does not appear to be in a particularly good condition. In addition, the use has involved no operational development and is separate from the listed building. In my view, it therefore does not appear to have had a significant impact on the setting or architectural quality of the listed building.
- 3.5 With regard to the determining issue, the building is situated in a rural area and forms part of a small complex of buildings which currently comprise a vacant mill with outbuildings and a few dwellings. The mill was previously used as a licensed restaurant. There is a dwellinghouse which overlooks the roadway and a hardstanding immediately in front of the building. I do not consider that the use of the building itself would be likely to affect visual amenity. The Council's photographs show only 2 cars parked at the entrance, and this level of use of the area outside appears to me to be acceptable. However, should the use significantly spill over onto this area then, as a matter of fact and degree, the use would be likely to be detrimental to visual amenity. I acknowledge the previous licensed restaurant and mill uses which would have been likely to result in at least a certain degree of noise and disturbance. In the case of the licensed restaurant, cooking smells would also have been generated and residents would have been likely to be subject to the use late into the evening. While the Council do not have confidence that your client would comply with any conditions imposed on a planning permission, I consider that some conditions might reasonably be imposed, and that any breach thereof could be the subject of further enforcement action.
- 3.6 Notwithstanding the above, I am concerned at the nature and scale of your client's use. I believe that the hours of operation can be readily subject to condition, but the impact of noise from a garage can, in my experience, have a significantly adverse effect on neighbouring properties. In this case, the relationship between the houses and the building in which the use has been taking place is such that it is likely to be a particular problem. This can be seen in the statements by local residents which form part of the Council's submissions. I believe that the noise would be likely to affect residents not only in their properties, but also in the enjoyment of their gardens. In these circumstances, I consider that the use would be likely to affect residents to the material detriment of their amenity, and that planning permission should not be granted.

3.7 On your appeal under ground (f), I consider that the steps required by the notice are reasonable, both in view of my findings in paragraphs 3.2 and 3.3 and given that they deal with the environmental impact of your client's use of the property. While you have not appealed under ground (g), I consider it necessary to consider the timescales given for compliance in this instance. There are a number of cars, associated items and a range of equipment contained within the building. Step 2 requires your client to remove these within 8 weeks. I consider that it may be likely to be difficult for your client to find alternative, appropriate accommodation within this timescale. I consider that a more appropriate period for compliance would be 16 weeks.

3.8 Accordingly, in exercise of the authority delegated to me, I hereby dismiss this appeal, refuse to grant planning permission for the use of the appeal building for the repair, servicing, maintenance and garaging of motor vehicles, and direct that the enforcement notice dated 3 April 1995 be upheld, subject to the variation of the terms of the notice by:-

the deletion of the reference in paragraph 1 to "section 83A91)(b), and the substitution therefor of "section 83A(1)(a)",

the deletion of the words "four years" in paragraph 4(a) and the substitution thereof of the words "ten years", and

the deletion of the words "eight weeks" in paragraph 5, subsection 2 and the substitution therefor of the words "sixteen weeks".

4 FINANCIAL IMPLICATIONS

4.1 There are no financial implications.

5 CONSULTATION

5.1 The Director of Law & Administration and the Director of Finance 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/MR
6 August 1996

Alex Anderson
Director of Planning, Transport & Economic Development

