

ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE

22 MAY 1997

SUBJECT: PLANNING APPEAL DECISION
OLD BALKELLO, BY AUCHTERHOUSE

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 the appeal against the Enforcement Notice served by Angus Council in relation the unauthorised change of use of agricultural land to a caravan site at Old Balkello, by Auchterhouse.

1 RECOMMENDATION

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

2 INTRODUCTION

- 2.1 The Development Control Committee at the meeting on 23 May 1996 refused Planning Permission for the change of use of agricultural land to a caravan site and storage of materials at Old Balkello, by Auchterhouse. In compliance with the responsibilities delegated to the Director, an Enforcement Notice was subsequently served seeking the cessation of the unauthorised uses.
- 2.2 The applicant, Mr James Muir, appealed against the Notice and the Reporter's conclusions and decision are presented below.

3 REPORTER'S DECISION

- 3.1 In regard to the appeal under ground(d), the main issue arising from the site inspection and the written submissions is whether there is persuasive evidence that the alleged unauthorised use has existed for a period of 10 years before the beginning of the formal enforcement procedures in 1996. The appropriate test is the balance of probabilities, but it is well established that in enforcement cases the burden of proof is with the recipients of a notice who attempt to rebut it under ground (d).
- 3.2 It is clear that the extended Muir family has had long association with land at Old Balkello, and reasonably clear that this has involved family members who lived in Dundee coming out for recreational visits to the land. It seems likely that ponies were for periods if not continually kept on it, but less clear to what extent caravans were kept permanently at Old Balkello or brought onto it for visits. Also, some 3 years ago much of the land was sold off, leaving only the present appeal site and apparently the smaller paddock adjoining to the south. No evidence has been provided as to the extent of the former planning unit referred to in the case for the appeal. It is not clear that caravans were continually kept anywhere within the

formerly larger areas, and, even if they had been, I am not satisfied that this would entitle an owners of any part of the sub-divided land to set up a caravan site of any kind of intensity.

- 3.3 On the evidence it appears most probable that any use of the appeal land for caravans was only intermittent and on a very small scale, and that a material change of use took place about the middle of 1995, causing some alarm and complaint among neighbours. The erection of paddock fencing and provision of the stable and feed store building seem to have taken place about then, as did the introduction of other materials or structures, not all of which are now apparent within the appeal land itself. Accordingly I am not satisfied that the use is for any reason immune from enforcement, and the appeal under ground (d) fails.
- 3.4 With regard to the 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 materials to the subject matter of the enforcement notice, and to any other material considerations. Section 18A requires the determination to be in accordance with the terms of the development plan unless material considerations indicate otherwise. Accordingly, I consider that the main determining issue in relation to this ground of appeal is whether the proposal would be in accordance with the terms of the plan. The local plan policies which the council has quoted require an assessment whether the site is well screened and whether features of the composite use enforced against would have a significantly harmful effect on local amenity, in respect of appearance, character and quality.
- 3.5 The site is at least fairly well screened from the south and east by the topography or by trees or by both. From the road to the north it is not fully screened but only glimpses can be gained, in passing. It is more open to the west, and could not be classed as well screened from houses in that direction. The only direction from which the topography exposes the site to more distant view is from the north, high on the Sidlaw escarpment, but even from there it must appear as within a largely development enclave of no special character, rather than in open countryside.
- 3.6 Apart from misgivings about the relatively unscreened western boundary and necessary caution about the effects of intensive use on the access track and the amenity of residential neighbours, I therefore do not find the site inherently unsuitable for a small number of caravans kept for the private recreational use of a cohesive extended family. It is also eminently suitable to provide a paddock for a horse or pony, with appropriate stabling and storage. The old boat and the old caravan are so weathered in appearance that they have become rather inconspicuous, though the caravan appears to be too far decayed to be of any use except for informal storage. The lorry body with the curious boarding of one side, which I take to be the 'box trailer' as described in the enforcement notice, is inoffensively tucked up against the tall hedge. The 'quantity of timber' mentioned in the notice has either disappeared through being used in construction on the appeal site, or has been moved to the paddock to the south where some wood is stored, and there is now no identifiable or defined 'storage area' within the appeal site, for a cabin cruiser and trailer, a box trailer and timber.

- 3.7 It therefore seems to me that with safeguards the use as seen at the site inspection need not significantly affect the interests protected by the development plan policies, and thus can properly be regarded as within the terms of the policies. The secondary issue is therefore what safeguards should and could be applied. A principal safeguard would have to be a limit of planning permission to 10 years in the first instance, to take account of the temporary character of the structures and to give the planning authority opportunity to review the caravan site use in the light of changing circumstances. It would also be in my view both essential and more robust than the council feared, to limit the number of caravans. One for each of the branches of the family that were recipients of the enforcement notice would be appropriate. It would be advisable also to limit other storage to one boat and the existing box trailer or adapted lorry body. A site so close to several houses and with an access shared with private houses would not be suitable for general commercial use and it would thus also be appropriate to make planning permission personal to the recipients of the enforcement notice and their immediate families, and for private recreational use only. I am concerned about the potential for damage to the trees within the paddock area, by a grazing horse or pony in hard weather, as well as about the sparseness of screen planting on the western side of the site. These matters could be addressed by conditions.
- 3.8 I have taken into account all the matters mentioned in the written submissions, including the fear of creating a 'precedent', but there is nothing that would lead to materially different conclusions.
- 3.9 Accordingly, in exercise of the authority delegated to me, I hereby dismiss the appeal under ground (d) but allow the appeal under ground (a) (except in regard to storage of timber on the land), direct that the enforcement notice dated 17 December 1996 be quashed, and grant planning permission for the development to which the notice relates (other than the storage of timber), subject to the following conditions:-
- (1) The persons entitled to use the land in the manner authorised by this permission shall be limited to James Muir, Norman Muir, John Muir, Robert Muir, Margaret Lyons and Williamina Robertson, and their immediate family members and successors.
 - (2) The use hereby permitted shall be limited to not more than 10 years from the date of this letter, after which all caravans, structures (other than fencing of boundaries or for the protection of trees) and moveable objects shall be removed from the site forthwith, unless the planning authority has granted an extension of planning permission for a further period.
 - (3) The maximum number of caravans and/or mobile homes of any description that may at any time be parked or kept within the site shall be 6.
 - (4) The use of the site shall be limited to private recreational purposes, and shall not extend to commercial use or letting of any description, or to occupation of caravans as residences.

- (5) Unless the planning authority has granted planning permission for any additional storage or structures, buildings and ancillary storage on the land shall be limited to the stable and feed store block as existing on 14 April 1997, the adapted box trailer or lorry body present on that date, and storage of one motor boat on a trailer.
- (6) The 10 year period of this permission shall only come into effect if, within 6 months of the date of this letter, there has been implemented a scheme, approved in writing by the planning authority, of fencing to protect trees on the boundaries of the site from grazing horses or ponies.
- (7) The 10 year period of this permission shall also only come into effect if, not later than 31 March 1998, there has been implemented a scheme, approved in writing by the planning authority, of screen planting along the western boundary of the site, including measures for protection from damage by animals.

4 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications.

5 CONSULTATION

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

6 CONCLUSION

- 6.1 Whilst accepting the Reporter's decision I must express some surprise at the conditions he has attached as they appear to contradict Government advice to Planning Authorities.
- 6.2 Local Authorities are generally discouraged from granting personal consents but a consent personal to 6 different named individuals is in my experience unprecedented.
- 6.3 In similar vein, authorities are generally discouraged from granting temporary consents "to review" the possibility of the situation changing. If used, advice is that they should be of short duration, not 10 years.
- 6.4 Finally there is concern over the ability to enforce the conditions particularly occupancy of the caravans which could only be achieved with regular monitoring. Again the use of conditions that are difficult to enforce is frowned upon.

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/SP

13 May 1997

Alex Anderson
Director of Planning, Transport & Economic Development

