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RDW/DC

15th July 1985

Mrs. Helen P. Fraser,
Templar Croft,
Aqunhythie,
INVERURIE,
Aberdeenshire,
AB5 9NY.

Dear Mrs. Fraser,

Ground Operations on N.W. Bennachie

Many thanks for your letter of 29th June on the above. I apologise for not having replied sooner, but we have so many issues on our plate that I do not get through work as fast as I would like. Still I have been making some enquiries on your behalf, so have not been entirely idle.

The activity you refer to has been going on in some measure for nearly two years, we believe, though you would know better than us. So far as we can find out, Mr. Harding made his money in the rag trade in London, and had a shirt factory there. He also owns Radar's in Aberdeen, and presumably the money he made in these operations is now being literally ploughed into Bennachie. It may be that he is simply unaware of the Scottish tradition of open access to hills and moorland - or more likely, doesn't want to be aware of it.

Regarding the ability of the local planning authority to control the activities, I am not so sure that they are entirely helpless. I would have thought that given the area's special designation in landscape terms, they could have taken out an order under Article 4 of the Town and Country Planning (Scotland) Act 1972 (copy of the relevant part enclosed). If the Council did take out such an order, they would have to pay Mr. Harding compensation, as the relevant part of the Act which is also enclosed, makes clear. Why not press the Council on this? It might be difficult to make such an order stick, of course. I think Mr. Harding would have right of appeal to the Secretary of State, and the present government, at least in Scotland, is not very sympathetic to conservation issues. In fact, it is almost downright hostile.

The crux of the matter, as you have discovered, is that there is little planning control over agriculture and forestry. Whether or not this is a good thing, it means that the public often has little say, in law, over what happens to land when it is a question of the public versus the private interest. I'm afraid that when an organisation such as the Baillies takes an interest in the fate of a valued piece of land such as Bennachie, it inevitably comes up against such basic issues, even though it set out to be non-political.

The only weapon in your hands I think is publicity, though much of the damage has already been done, I fear. In this, if you have other landowners on your Council, or many farmers among your members, you might feel yourselves a little constrained. If you do use publicity, which can be extremely effective in some cases, then I think you should have a clear idea of what you want to achieve in the end, before you go public, and of exactly what you want to say. This may seem obvious to you and I don't want to sound as if I was trying to "teach my granny to suck eggs" as they say, but it is surprising how often publicity goes wrong because people haven't thought that out beforehand, e.g.

- (1) Restoration of public access to the land?
- (2) Restoration of the land to its former condition? Very difficult.
- (3) Force Mr. Harding to negotiate?

You also need to prepare your ground well, and check your facts as to exactly what he is doing. It sound very bad if your opponent can show you are wrong, even in small things, as it appears to discredit the rest of what you are saying, even if it is correct.

Another lesson that we have learned is to think out exactly what lines of publicity you want to pursue, e.g.

- (1) Here is an incoming landowner who wants to ignore Scottish traditions of open access to hill and mountain land.
- (2) We are not against agriculture, but why should we have to subsidize the destruction of valued landscape features and public access to land just to provide food that we don't need. The local farming population is now very aware of conservation issues, but is not used to them landing in its lap. They would not love Mr. Harding for achieving this.
- (3) Use the "loss" to promote your general campaign for Bennachie and warn off other landowners who might harbour ideas similar to Mr. Harding. Thus you raise the whole question of what is to be the future of Bennachie. The management plan could be pushed forward with your own ideas so as to convey your vision of the future of Bennachie.
- (4) Think what general issues of wide public interest the situation can be linked to, such as the injudicious use of weedkillers, public access to hills and mountains, bulldozing of tracks in the uplands, etc. as this helps promote the publicity.

Might I be so bold as to offer a few words of caution on the use of publicity?

- (1) I would repeat, check your facts about what Mr. Harding is doing before you launch into publicity.
- (2) Avoid the use of the word "wilderness." The media love it, but it has been degraded by misuse, and is easily debunked. "Wild land" or "open hill land" might be better, but you know the area best and are better judges.

- (3) Avoid giving the impression, inadvertently, that you want to preserve the hill like a museum - you want change to reflect the public need, and to have regard for landscape and wildlife.
- (4) Think out the answers to the arguments that he will use against you before you go public, and write them down (e.g. "It's private land, and none of your business what I do on my land"). There are answers to them all.

As an associate member, you are certainly entitled to expect all the help that NEMT give you in this. We can help with provision of press lists, preparation of press releases, etc. We would also like to make a site visit next week, and will phone you about this. Since it is the Baillies' home territory, we would let you make the running in any publicity released and join in a supporting role. I and the General Secretary have put this item on the Agenda of our Exec. Comm. Meeting of 17th July.

Yours sincerely,

R. Drennan Watson

R. Drennan Watson,
(Chairman).

Encs.

396 King Street,
ABERDEEN,
AB2 3BY.

(8) In this section, "claim holding" has the same meaning as in section 126 of this Act.

DERIVATION

1954, s. 66 (1) and (2).

DEFINITIONS

"land": s. 275 (1).

"prescribed": s. 275 (1).

Calculation of value

152.—(1) In calculating value for any of the purposes of this Part of this Act—

(a) rules (2) to (4) of the rules set out in section 12 of the Land Compensation (Scotland) Act 1963 shall apply with the necessary modifications; and

(b) if the interest to be valued is subject to a heritable security, it shall be treated as if it were not subject to the security:

Provided that rule (8) of those rules shall not apply for the purposes of Schedule 14 to this Act and that the value of an interest, as calculated for the purposes of section 142 of this Act, may be a minus quantity.

DERIVATION

1954, s. 65, and 1963 (c. 51), s. 47 (1).

PART VIII

COMPENSATION FOR OTHER PLANNING RESTRICTIONS

Revocation or modification of planning permission

Compensation where planning permission revoked or modified

153.—(1) Where planning permission is revoked or modified by an order under section 42 of this Act, (other than an order which takes effect by virtue of section 43 of this Act and without being confirmed by the Secretary of State), then if, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that a person interested in the land—

(a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or

(b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the local planning authority shall pay to that person compensation in respect of that expenditure, loss or damage.

(2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out that work.

(3) Subject to subsection (2) of this section, no compensation shall be paid under this section in respect of any work carried out before the grant of the permission which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that permission.

(4) In calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted for development of the land of any class specified in Schedule 6 to this Act.

(5) In this Part of this Act any reference to an order under section 42 of this Act includes a reference to an order under the provisions of that section as applied by section 49 (2) of this Act.

DERIVATION

1947, s. 20 (1) (2) (7); 1954, s. 40, and 1969, s. 81 (7).

DEFINITIONS

"land": s. 275 (1).

"local planning authority": s. 275 (1).

"planning permission": s. 275 (1).

"prescribed": s. 275 (1).

Application of s. 153 to special cases of refusal or conditional grant of planning permission

154.—(1) The provisions of this section shall have effect where—

(a) planning permission for the development of land has been granted by a development order; and

(b) that permission is withdrawn, whether by the revocation or amendment of the order or by the issue of directions under powers in that behalf conferred by the order; and

(c) on an application made in that behalf under Part III of this Act, planning permission for that development is refused, or is granted subject to conditions other than those previously imposed by the development order.

(2) In any case falling within subsection (1) of this section, the provisions of section 153 of this Act shall apply as if the planning permission granted by the development order—

(a) had been granted by the local planning authority under Part III of this Act; and

(b) had been revoked or modified by an order under section 42 of this Act,

and the provisions of section 155 (except subsection (5) (b) thereof) and of sections 156 and 157 of this Act shall apply as if references therein to an order under section 42 of this Act were references to the planning decision whereby the planning permission in question is refused, or is granted subject to conditions other than those previously imposed by the development order.

(3) This section shall not apply in relation to planning permission for the development of operational land of statutory undertakers.

(4) No compensation shall be payable under this section in respect of the imposition of any condition to which section 69 or 80 of this Act applies.

DERIVATION

1947, s. 20 (3); 1954, s. 40 (4); 1965, s. 8 (5); 1966, s. 24 (4) (9); and 1969, s. 72 (3).

DEFINITIONS

"development": s. 275 (1).

"development order": s. 275 (1).

"land": s. 275 (1).

"local planning authority": s. 275 (1).

"operational land": s. 275 (1).

"planning permission": s. 275 (1).

"statutory undertakers": s. 275 (1).

Recording and apportionment of compensation for depreciation

155.—(1) Where compensation becomes payable under the preceding provisions of this Part of this Act, and includes compensation for

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- (b) any particular development, specified in the direction, falling within any of these classes:

Provided that in the case of the development of Class X no such direction shall have effect in relation to development authorised by any Act passed after 1st July 1948 or by any order requiring the approval of both Houses of Parliament approved after that date.

(2) Subject to the provisions of paragraph (7) of this Article a direction by a planning authority under this Article shall require the approval of the Secretary of State, and the Secretary of State may approve the direction, with or without modifications:

Provided that no such approval shall be required in the case of a direction relating only to a listed building or a building notified to the authority by the Secretary of State as a building of special architectural or historic interest, and not affecting the carrying out by statutory undertakers of any of the operations referred to in paragraph (8) of this Article.

(3) Notice of any direction made or approved by the Secretary of State and of any such direction as is referred to in the proviso to paragraph (2) of this Article specifying any particular area given under paragraph (1)(a) of this Article shall be published by the planning authority concerned in one or more newspapers, circulating in the locality in which the area is situated, and on the same or a subsequent date in the Edinburgh Gazette, and such notice shall contain a concise statement of the effect of the direction and name a place or places where a copy thereof and of a map defining the area to which it relates may be seen at all reasonable hours; and any such direction shall come into force on the date on which notice thereof is first published:

Provided that where the Secretary of State thinks fit he may publish notice in accordance with this paragraph of any direction given under paragraph (1)(a) of this Article, in which case the planning authority shall not require to publish such notice.

(4) Notice of any direction specifying any particular development given under paragraph (1)(b) of this Article shall be served by the planning authority concerned on the owner and occupier of the land affected, and any such direction shall come into force on the date on which notice thereof is served on the occupier, or if there is no occupier, on the owner:

Provided that where the Secretary of State thinks fit he may serve notice in accordance with this paragraph of any direction given under paragraph (1)(b) of this Article in which case the planning authority shall not require to serve notice.

(5) A district planning authority shall notify the regional planning authority of their region, on submitting to the Secretary of State a direction under this Article and shall send to them a copy of any notice published or served by them in accordance with paragraph (3) or (4) of this Article.

(6) Any direction under Article 4 of the Town and Country Planning (General Development) (Scotland) Order 1950(a) and Article 4 of the Town and Country Planning (General Development) (Scotland) Order 1975(b) which is in force immediately before the coming into operation of this order shall, in so far as it relates to development permitted by this order, continue in force and have effect as if it were a direction given under this Article, of which notice had been duly published or served, as the case may be.

(7) Any direction made by a planning authority under this Article may be cancelled by a subsequent direction by that authority, which if limited to that purpose shall not require the approval of the Secretary of State. Notice of such a direction shall be given in the same manner as notice of the direction which is being cancelled would be given in accordance with the provisions of paragraphs (2) to (5) of this Article.

(8) No direction given or having effect under this Article shall have effect in relation to the carrying out in case of emergency of any development of any Class of Schedule 1 or, unless such direction specifically so provides, to the carrying out by statutory undertakers of any of the following operations:—

- (a) maintenance of bridges, buildings and railway stations;
- (b) alteration and maintenance of railway track, and provision and maintenance of track equipment, including signal boxes, signalling apparatus and other appliances and works required in connection with the movement of traffic by rail;
- (c) maintenance of docks, harbours, quays, wharves, canals and towing paths;
- (d) provision and maintenance of mechanical apparatus or appliances (including signalling equipment) required for the purposes of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, quay, harbour, bank, wharf or basin;
- (e) any development required in connection with the improvement, maintenance or repair of watercourses or drainage works;
- (f) maintenance of buildings, runways, taxiways, or aprons at an aerodrome;
- (g) provision, alteration and maintenance of equipment, apparatus and works at an aerodrome, required in connection with the movement of traffic by air (but excepting buildings, the construction, erection, reconstruction or alteration of which is permitted by paragraph H of Class XV of Schedule 1).

Notices under section 23

5.—(1) The following classes of development are designated for the purposes of section 23 of the Act:—

- (a) construction of buildings for use as a public convenience;
- (b) construction of buildings or other operations, or use of land, for the disposal of refuse or waste materials, or for the storage or recovery of re-usable metal;
- (c) construction of buildings or other operations (other than the laying of sewers, the construction of pumphouses in a line of sewers, the construction of septic tanks and cesspools serving single dwelling-houses, or single buildings in which not more than 10 people will normally reside, work or congregate and works ancillary thereto) or use of land for the retention, treatment or disposal of sewage, trade-waste, or effluent;
- (d) construction of buildings or other operations or use of land as a scrap yard or coal yard, or for the winning or working of minerals;
- (e) construction of buildings or use of land for the purposes of a slaughterhouse or knacker's yard; or for the killing or plucking of poultry;
- (f) construction of buildings and use of buildings for any of the following purposes, namely as a theatre, cinema, music hall, dance hall, fun fair,

"painting" includes any application of colour;

"post office" does not include any building used primarily for the sorting or preparation for delivery of mail or for the purposes of Post Office administration;

"private street" means any street which is not maintainable at the public expense;

"private way" means a road or footpath which is not maintainable at the public expense;

"public vehicle" means a public service vehicle, as defined in section 2 of the Transport Act 1980(a);

"reserved matters" in relation to an outline planning permission or an application for such permission, means any matters in respect of which details have not been given in the application and which concern the siting, design or external appearance of any building to which the planning permission or the application relates, or the means of access to such building, or the landscaping of the site in respect of which the application was made;

"river purification authority" means a river purification board established under section 135 of the Local Government (Scotland) Act 1973(b) or an islands council;

"road" and "trunk road" respectively have the meanings assigned by the Roads (Scotland) Act 1970(c); and in relation to a trunk road the reference to a proposed road in the definition of road shall include a reference to the site of a proposed road shown in a development plan as likely to be the subject of an order under section 1 of the Trunk Roads Act 1946(d) that the road shall become a trunk road;

"shop" means a building used for the carrying on of any retail trade or retail business wherein the primary purpose is the selling of goods by retail, and without prejudice to the generality of the foregoing, includes a building to be used for the purposes of a hairdresser, undertaker, travel agency, ticket agency or post office, or for the reception of goods to be washed, cleaned or repaired, but, does not include a building used as a fun fair, amusement arcade, casino, pin-table saloon, garage, launderette, petrol filling station, betting office, office, hotel, restaurant, snack bar or cafe, or premises licensed for the sale of alcoholic liquor for consumption on the premises;

"special road" has the same meaning as in the Special Roads Act 1949(e);

"terrace house" means a dwelling-house—

- (i) situated in a row of three or more buildings used, or designed for use, as single dwelling-houses;

and

- (ii) sharing a party wall with, or having a main wall adjoining the main wall of, the dwelling-house (or building designed for use as a dwelling-house) on either side of it,

but includes the dwelling-houses at each end of such a row of buildings as is referred to;

"unclassified road" means a road other than a trunk, special or classified road;

and other expressions have the same meaning for the purpose of this order as they have for the purpose of the Act or, as the case may be, for the purpose of Part IX (planning functions) of the Local Government (Scotland) Act 1973.

(a) 1980 c. 34.
(d) 1946 c. 30.

(b) 1973 c. 65.
(e) 1949 c. 32.

(c) 1970 c. 20.

(2) Any reference in this order to the height of a building shall be construed as a reference to the height of that building when measured from ground level.

(3) For the purposes of paragraph (2) of this Article, "ground level" means the level of the surface of the ground immediately adjacent to the building in question or, where the level of the surface of the ground on which the building is erected or is to be erected, as the case may be, is not uniform, the level of the highest part of the surface of the ground adjacent to the building.

(4) Any reference to a numbered Article or to a numbered Schedule is, unless otherwise expressly provided or the context otherwise requires, a reference to the Article or, as the case may be, the Schedule bearing that number in this order.

Permitted development

3.—(1) Subject to the provisions of this order, planning permission is granted by this order for development of any class specified in column (1) of Part 1 of Schedule 1 and such development may be undertaken upon land to which this order applies, without the permission of any planning authority or of the Secretary of State:

Provided that the permission granted by this order in respect of any such development shall be subject to any limitations and conditions imposed in column (1) and to any condition imposed in column (2) of that part of that Schedule 1 in respect of the class to which the development relates, and any reference in that column to standard condition 1 or 2 is a reference to the condition bearing that number and specified respectively in paragraphs 1 and 2, of Part II of Schedule 1.

(2) Nothing in this Article or in Schedule 1 shall operate so as to permit any development contrary to a condition imposed in any permission granted or deemed to be granted under Part III of the Act otherwise than by this order.

(3) Any development of Class X of Schedule 1 authorised by an Act or order subject to the grant of any consent or approval shall not be deemed for the purposes of this order to be so authorised unless and until that consent or approval is obtained; and in relation to any development of Class X authorised by an Act passed or order made after 1st July 1948, the foregoing provisions of this Article shall have effect subject to any provision to the contrary contained in the Act or order.

Directions restricting permitted development

4.—(1) If in relation to any area the Secretary of State or, in relation to the district of a general planning authority, that general planning authority, or in relation to the district of a district planning authority, that district planning authority is satisfied that it is expedient that all or any development of all or any of the Classes of Schedule 1 should not be carried out in that area or, as the case may be, that district or any particular part thereof, or that any particular development of any of those Classes should not be carried out in such area or district or part, unless permission or approval is granted on an application in that behalf, the Secretary of State or the planning authority concerned may direct that the permission granted by Article 3 shall not apply to:—

- (a) all or any development of all or any of those classes in any particular area specified in the direction; or