

Reference No: 1997/A241

IG Ref No: 29155 37934

on an appeal to the Commission under Article 69 of the Planning (Northern Ireland) Order 1991 by Mr David Gibson against an enforcement notice alleging a breach of planning control involving the use of land for clay pigeon shooting being a material change in the use of land without the grant of planning permission required in that behalf.

The Commission has considered the attached report by Mr R S Hawthorne, the Member appointed to hear the appeal and has taken account of the representations made and evidence provided by, or on behalf of, the Department of the Environment, the appellant, interested third parties and Cookstown District Council.

The enforcement notice is dated 30th September 1997 and a copy of it was served on Mr D Gibson as owner of the land materially affected by the notice on 1st October 1997. The steps required to remedy the alleged breach of planning control were to discontinue the use of the land for clay pigeon shooting within one day of the effective date of the notice which was 29th October 1997 and to limit the use to 28 days or less in the calendar year 1998 and all subsequent calendar years. An appeal against the notice was received by the Commission on 28th October 1997.

On 31st October 1997 the Commission received a completed appeal form indicating that grounds (a) to (h) as specified in Article 69(3) of the 1991 Planning Order were being pleaded. The statement of facts in support of the appeal read "Application was duly made and obtained for planning permission and the activities conducted on the site are in accordance with the permission as granted". At the hearing grounds (b), (f), (g) and (h) were pleaded.

The Commission endorses the conclusion of the appointed Member that the appeal was lodged timeously and that it has jurisdiction to determine the appeal.

On ground (f) the Commission judges that there was no irregularity in the service of the Notice and accordingly the appeal on that ground fails.

On ground (b) the Commission agrees with the reasoning and conclusions of the appointed Member and finds that whilst the planning permission of 15th November 1994 does not expressly authorise clay pigeon shooting it implicitly authorises such a change in use of the land.

The validity of the permission of 15th November 1994 is ultimately a matter for the courts. The Commission holds the view that, neither on the ground of the consultation with the District Council being inadequate or meaningless nor on the ground that the press advertisement was misleading and inaccurate, is there sound reason for concluding that the permission is void or invalid.

The issue of estoppel was also raised at the hearing but on the evidence presented to the Commission discerns no sound basis for concluding that the Department was estopped from issuing the Enforcement Notice.

Finding the appeal on ground (b) to have succeeded, the decision of the Commission is that the Enforcement Notice, issued on 30th September 1997, be quashed.

JOHN WARKE
Deputy Chief Commissioner

1 March 1999