

**ANGUS COUNCIL****DEVELOPMENT CONTROL COMMITTEE
11 APRIL 1996****SUBJECT: PLANNING APPEAL DECISION****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 conditions imposed on a change of use granted by the Council at 81/83 Bridge Street, Montrose.

1 RECOMMENDATION

It is recommended that the Committee notes the findings of the Secretary of State's Reporter and determines to monitor the premises over the next year or so with a view to reviewing the situation when the traders license comes up for renewal and resorting to the Police should obstruction be caused in the meantime.

2 INTRODUCTION

2.1 With reference to Angus District Council minute 230(9)/95, the Planning and Development committee at their meeting of 27 February 1995 approved, with a number of conditions, the change of use of premises at 81/83 Bridge Street, Montrose from store and office (Class 4) to shop (Class 1). Appn.No. 01/95/0033 refers.

2.2 The applicant, Mr S Mather, appealed against four of the conditions and the Inquiry Reporters' conclusion and decision is presented below.

3 REPORTERS' DECISION

Section 18A of the Act requires the determination in this case to be made in accordance with the development plan unless material circumstances indicate otherwise. No part of the development plan has been drawn to my attention as being relevant to the consideration of the 4 conditions.

Scottish Development Department Circular 18/1986, The Use of Conditions in Planning Permissions, outlines a number of tests which conditions imposed on planning permissions should satisfy. Accordingly, on the basis of the circular, the written submissions and the site inspection, I consider that the determining issue in this appeal is whether the 4 conditions are relevant, enforceable, reasonable and necessary either to protect amenity or to preserve or enhance the character or appearance of the outstanding conservation area under the terms of Section 262(8) of the Act.

On condition 3, I do not agree with you that it is invalid and does not serve a planning purpose. The condition clearly seeks to control the impact of the use on

the surrounding area. I accept that such matters as pavement displays also fall to be dealt with by Tayside Police and Tayside Regional Council Roads Department under their own powers. This does not mean that this aspect of the use cannot also be controlled for planning reasons through a condition, should it be necessary to apply for planning permission for the development. I acknowledge that being unable to establish such a display may disadvantage your client in relation to other similar businesses. In addition, these displays generally only coincide with the opening hours of the shop concerned. In this case, the pavement appears wide enough to accommodate a modest display of items in front of the premises without creating clutter. Such a modest display would be unlikely to have a significant adverse effect on pedestrian safety, amenity or the character or appearance of the conservation area. I do not consider that such a display should be spread across the entire frontage of both nos. 81 and 83 Bridge Street. This would create a substantial display and I agree with the Council that this would detract from the general amenity of the area and that of adjoining residents, as well as affecting the character and appearance of the conservation area. In my view, any such display requires to be restricted to that area immediately in front of the door at No.81. Consequently, I consider the condition relevant and enforceable, but onerous in its present form, and to this extent unreasonable, and unnecessary.

In relation to condition 4, I note that there are advantages to your business in allowing the gates to remain open. The gates, to me, do not seem particularly attractive and do not contribute greatly to the streetscene. The access into the site is relatively narrow and there is a short driveway flanked by the walls of nos.81 and 83, which limits views of the yard from Bridge Street. Given the narrowness of the driveway it seems unlikely that leaving the gates open would add to any impression of clutter in the street to the detriment of amenity or the conservation area. On safety matters I note that Tayside Regional Council, Roads Department expressed "no interest" in the proposal. I consider it likely that drivers would exercise caution in utilising this entrance. The council have indicated that they would have no objection to the entrance being used for vehicular access, including vehicles for the disabled and emergency vehicles. I am of the view that it would be difficult to differentiate between the gates being open to allow vehicular access and the gates just being general open, particularly if a vehicle associated with the use is at the premises most of the time. This could make it difficult to take enforcement action. Consequently, I consider that this condition is unnecessary, difficult to enforce and that its removal would have no material effect on safety, amenity or the conservation area.

For condition 5, I appreciate and sympathise with the council's aim of attempting to prevent the commercialisation of an area which contains many residential properties and is situated in an outstanding conservation area. However, advertisements are specifically regulated under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, as amended, which is a separate, but complementary, system of control under planning legislation. Attempts to control the display of advertisements on the premises should normally be exercised through those regulations, rather than by attempting to impose a condition on a planning permission. I can see no reason why this should not apply in this case. I therefore do not consider the condition to be relevant to planning.

Turning to condition 9, I am of the view that the planning authority is entitled to impose different hours of opening from those that may have been granted under the terms of a licence, provided they have sound planning reasons for doing so based on appropriate material considerations. In this case the condition has been imposed because of concern over the impact on amenity of nearby occupied premises. I note that the area contains not only many residential properties, but also a number of other commercial uses. In addition, Bridge Street is a main route into Montrose and is therefore likely to experience activity until late in the evening. Your client operates the premises as a shop. It is my experience that such uses do not generate excessive levels of noise and disturbance. They are also frequently found in close proximity to housing. I acknowledge that there is housing on either side and that the premises are unusual in that they comprise several buildings, including a portable one, and an open yard which is overlooked by housing. However, given the nature of the use, I do not believe that it is likely to generate noise or activity to a level which would materially affect the amenity of adjoining residents. Consequently, I consider the condition to be both unreasonable and unnecessary.

In conclusion, I find on the basis of the above that all 4 conditions in their present form fail at least one of the tests outlined in SDD Circular 18/1986, and are consequently inappropriate. However, condition 3 only fails insofar as it requires to be substituted in a modified form to ensure that the amenity of the area and the character and appearance of the conservation area are preserved. I have considered all the matters raised, but none of these outweigh the considerations upon which my conclusions are based. Accordingly, in exercise of the authority delegated to me, I hereby allow your client's appeal to the extent that conditions 4, 5 and 9 are deleted and condition 3 is substituted by the following:-

Goods displayed outwith that part of the premises fronting onto Bridge Street shall be restricted to that area immediately in front of the door at 81 Bridge Street and shall not extend beyond this. Any display of items shall not project more than 40 centimetres in front of the garage door.

4 COMMENT

- 4.1 It is disappointing for the planning authority after only granting consent for a change of use due to the ability to impose protective conditions, to then have no less than four of those conditions removed on appeal.
- 4.2 The most curious, however, is the Reporter's variation to condition No.3 which allowed for no goods to be displayed outwith the premises and is now replaced with:

"Goods displayed outwith that part of the premises fronting onto Bridge Street shall be restricted to that area immediately in front of the door at 81 Bridge Street and shall not extend beyond this. Any display of items shall not project more than 40 centimetres in front of the garage door."
- 4.3 Section 129(2) and (a) of the Roads (Scotland) Act 1984, however, creates specific offences for the obstruction of roads and footways. accordingly, it would seem that the Reporter is encouraging the appellant to break the law.

4.4 The Director of Law and Administration has been consulted and has raised a number of interesting points such as "will what has been approved actually represent an obstruction?". Particularly given the 40 centimetres restriction. There is also a question mark over whether or not the Reporter is sanctioning a breach of the law. For instance, planning authorities will sometimes place conditions on a consent which may also require to comply with or complement other Legislation. Compliance then becomes a problem for the applicant to resolve and the same interpretation could apply here.

4.5 The options open to the Council are to take no action; appeal to the Quarter Session on a point of law; or consider imposing conditions on the second-hand trader license.

5 FINANCIAL IMPLICATIONS

5.1 An appeal to the Quarter Session would certainly run into several thousand pounds, other options have nil or minimal financial involvement.

6 CONSULTATION

6.1 The Director of Law and Administration has been consulted in the preparation of this Report.

7 CONCLUSION

7.1 The area of footway on which a display can be mounted is not so extensive as to cause an obvious obstruction. The Director of Law and Administration also has reservations as to whether or not there is enough substance on which to loose a case on a point of law. Given these conclusions and the likely cost of such an action, an appeal to the Court of Quarter Session cannot be recommended.

7.2 The second-hand traders licence for the operator was only recently been renewed and, therefore, action through this source (eg imposition of conditions) cannot be contemplated for almost a full year.

7.3 A combination of actions therefore seem most appropriate:

- a) monitor the premises;
- b) if appropriate report the operator to the Police for obstruction; and
- c) if a genuine problem persists, consider imposing conditions on the license when it comes up for renewal.

AA/

Alex Anderson

Director of Planning, Transport & Economic Development

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.