

ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE

2 MAY 1996

SUBJECT: PLANNING APPEAL DECISION  
MARYKIRK ROAD, HILLSIDE, MONTROSE  
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 refusal by Angus District Council to grant consent for a housing development at Marykirk Road, Hillside.

**1 RECOMMENDATION**

It is recommended that the Committee notes the findings of the Secretary of State's Reporter and awaits a further report once the expenses claim by the appellants, Stewart Milne Homes, has been submitted.

**2 INTRODUCTION**

2.1 With reference to Angus District Council minute 752(1)/95, the Planning and Development Committee at their meeting of 26 September 1995 refused consent for the outline erection of 58 houses at Marykirk Road, Hillside, Montrose. Application No. 01/95/1391 refers.

2.2 The applicant Stewart Milne Homes appealed against the refusal and the Inquiry Reporter's conclusions and decision are presented below.

**3 REPORTER'S DECISION**

3.1 "Sections 26 and 33 of the Act require me to have regard to the provisions of the Development Plan (so far as material to your clients' appeal), and to any other material considerations. Additionally, Section 18A states that where, in making any determination under the Planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise. Accordingly, from my reading of the submissions and representations and my inspection of the appeal site and its surroundings, I consider the determining issues in this case to be first, whether the appeal proposal complies with the provisions of the statutory development plan; second, what weight should be attached to the latest finalised but as yet unapproved Structure Plan and the unadopted 1980 Montrose Local Plan; third, whether refusal is justified by reference to the proposal's prematurity in relation to the preparation of the District Wide Local Plan; and fourth whether any other material considerations either support or militate against the proposal.

- 3.2 On the first issue, the Statutory Development Plan consists at present of part of the 1962 Angus County Development Plan and the 1988 Structure Plan. No party has made reference to the former, but its age alone means that it would be inappropriate to attach any significant weight to it in 1996. As regards the 1988 Structure Plan, I have listed in paragraphs 5.2 and 5.3 those parts to which you have referred; my attention has not been drawn to any other parts. It is not clear to me whether Hillside is seen as part of a 'major settlement'; if it is, the appeal proposal would only offend Housing Policy 1 if there was no need or if any need could not be met elsewhere. In the light of the problems with the large Brechin Road site, it seems to me that a case of need could be made out and, although the District Council believes that new housing development should be concentrated with Montrose itself, there is no information before me to suggest that sites are available to achieve that objective.
- 3.3 If Hillside is not seen as part of a 'major settlement', the Brechin Road site problem still applies, and the appeal proposal could be seen as an additional site to help satisfy demand and increase housing choice. I conclude that the appeal proposal does not offend the Statutory Development Plan.
- 3.4 However, this finding is of only slight benefit to your clients, because I believe that more weight should be attached to other material considerations in view of (a) the age of the 1962 plan; (b) the existence of the 1980 Local Plan for Montrose; (c) the existence of a new version of the Structure Plan, which not only represents the Regional Council's most recent thinking but which has also been considered by the Secretary of State (although he has not yet formally approved it); and (d) the other matters to which I refer in paragraph 3.1 above.
- 3.5 Dealing first with the 1980 Local Plan, which represents the only Local Planning Guidance currently available, the appeal site is not allocated for residential development. While your clients' proposal would not conflict with the stated aim of preserving the gap between north Montrose and Hillside and would not necessarily offend the policy which seeks to retain Hillside's separate identity and character, there is no doubt that the first reason for refusal is factually correct. However, I do not believe it appropriate to attach great weight to this Local Plan. Not only has it not been adopted, it only covers the period up to 1990, it is now 16 years old, it is based on survey information now nearly 20 years old, and during this period at least three versions of the Structure Plan have been submitted to the Secretary of State. Moreover, although no new housing (other than at Cruickshank Park) was meant to be built until there was new primary school provision, the fact that the school is still not on any capital spending programme has not prevented the District Council from approving other housing applications. The policy relating to the retention of the loose-knit character of Hillside only applies to the western part of the settlement.
- 3.6 In relation to the most recent version of the Structure Plan, it does not appear to be disputed that there is not at present a five year housing land supply in the Montrose/Brechin Planning Area or in Montrose itself. The most recent figures supplied by the District Council show that in June last year there was an effective supply of land for only 76 dwellings in Montrose, of which 13 were in Hillside. The non-effective supply continues to be dominated by the large Brechin Road site, and a site for 11 units in Hillside is also considered non-effective. In my judgement, approval of your clients' proposal would be in accordance with Housing Policies 1

- and 4. The District Council's calculations show that the 50% limit in Housing Policy 3 would not be breached. Of the six criteria in Recommendation 2, the appeal proposal accords with at least three of them, and I conclude that it does not conflict with the provisions of the new Structure Plan. This is an important conclusion, because - although not yet approved - this is by far the most recent relevant Development Plan.
- 3.7 On the third issue, I fully accept that it would be desirable if the appeal proposal could be considered in the light of an up-to-date Local Plan. However, all I know about the intention to produce a District Wide Local Plan is that it was started in April 1994, that you have been told at different times that a draft would be available in 1994 and then in 1995, and that a draft has still not been produced. In these circumstances, the second reason for refusal cannot be sustained. There might have been more justification for a prematurity argument if the Local Plan was at a more advanced state, but here there is not even a draft to let us know the way the District Council is thinking. The District Council claims that approval of your clients' proposal would represent ad hoc planning and that the community would be denied the opportunity to be involved in the consideration of various options. To some extent these allegations are true, but there comes a point when it is no longer reasonable to refuse permission for a development which complies with Structure Plan policies because the Planning Authority has failed to produce not just a Local Plan but even a draft version.
- 3.8 On the fourth issue, the main point is whether it is appropriate for another 58 houses to be built in Hillside. The District Council believes that Hillside has experienced adequate short-term housing development, and that efforts to find additional effective land should be concentrated in the built-up area of Montrose. I assume that this argument relates to the alleged lack of facilities in Hillside, and the desirability of the settlement being given the opportunity to settle down before having to consider the possibility of further increase. This argument might carry more weight if I could be convinced that there was even a good chance of effective sites becoming available in Montrose, but no such evidence has been provided.
- 3.9 Hillside has a population of about 1,000. In terms of facilities, I noted during my inspection a Post Office/Village Store, Primary School, Church, Hospital, Hotel and Childrens' Play Area. This is a relatively small community, and it is unreasonable to think that it should be totally self-sufficient. Clearly there is a strong connection with Montrose for shopping, leisure and other purposes. Other than the primary school, I am aware of no infrastructure deficiency that would thwart your clients' proposal. Although ideally it may be desirable to give existing residents a breathing space before adding to their number, such a consideration is not a strong argument in a situation where there is a need for more houses to be built and no information regarding the suitability of alternative sites. Again, I might have been able to attach more weight to the District Council's position if the Director of Planning had carried out an impact study as requested by his members, but in its absence I do not believe that the third reason for refusal is justified.

- 3.10 On the question of the Primary School, a replacement appears to have been on the stocks for a long time, but this has not stopped other housing proposals being approved, the capacity of the existing school has not yet been reached, the Education Department, has not formally objected, the proposed development could be phased to avoid pressure in any one year, and it may even hasten implementation of the replacement school. The information before me indicates that the fourth reason for refusal is also not justified.
- 3.11 I have also considered the other matters raised by objectors. On the basis of compliance with the points made by the Director of Roads and Transportation, I do not share the concerns relating to access and road safety. Depending on the positioning of the houses, there should be no need to fell or lop any trees, although some thinning may in fact be beneficial in some places. In that development of the appeal site would extend the built-up area of the settlement eastwards, I find it difficult to consider it an infill site, but the railway appears a very defensible boundary in this direction. There is some anecdotal evidence that houses in Hillside are taking a long time to sell, but the phenomenon is not unique to Hillside, and I have no reason to believe that houses would not soon be built on the appeal site nor that they would prove unattractive to prospective purchasers.
- 3.12 I have taken account of all other matters raised - including the current unresolved housing appeal on land to the south of Marykirk Road - but they do not outweigh the considerations outlined above which lead me to conclude that a case has been made out for approval of your clients' proposal. Accordingly, and in exercise of the powers delegated to me, I hereby allow this appeal and grant outline Planning Permission for the erection of 58 dwellings at Marykirk Road, Hillside, subject to the following conditions:-
1. This permission is subject to the time limits as specified in Section 392 of the Act, as amended by paragraph 13 of Schedule 2 to the Local Government & Planning (Scotland) Act 1982 (extract attached).
  2. Approval of the details of the siting, design and external appearance of the dwellings, the means of access thereto, and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Planning Authority. These details shall include the provision of a 1.8m wide footway along the western edge of Marykirk Road (the eastern site boundary), visibility sightlines of 4.5m x 160m on each side of the junction of the proposed access road with Marykirk Road, and proposals for disposing of foul drainage and surface water.
  3. No trees on or overhanging the site shall be felled or lopped without the prior written approval of the Planning Authority.
  4. The landscaping referred to in Condition 2 shall be completed in the planting season following the occupation of the first dwelling, unless otherwise agreed in writing with the Planning Authority. Any trees or plants which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

5. Housebuilding shall be phased in accordance with a programme to be submitted to an approved by the Planning Authority before work starts on site.

3.13 For the avoidance of doubt, this permission does not encompass the proposed layout plan 1042/02A, which I have taken as being indicative of the sort of development proposed by your clients. It seems to me for example that, despite the report by your clients' landscape architect, some of the proposed houses shown alongside the south west boundary may be too close to that boundary to permit the continued existence of existing natural screening there. However, I see no reason why it should not still be possible to provide 58 dwellings on the site, and the permission therefore relates to the terms of your clients' application."

#### 4 CLAIM FOR AWARD OF EXPENSES

4.1 The appellants lodged a claim for award of expenses to which the Reporter responded:-

"You submitted that an award was justified due to four aspects of unreasonable behaviour by Angus District Council:-

- Refusing the application on the grounds that it did not accord with the provisions of the Local Plan for the area, without having regard to the Structure Plan, National Planning Guidance or other material considerations. It is unreasonable that such a heavy reliance was placed on the unadopted Montrose Local Plan of June 1980 (based on a Survey Report of 1977) without having regard to the relevant and up-to-date strategic and National Planning Guidance. Proper consideration should have been given to the merits of the application, the age of the unadopted Local Plan and the relevant change in circumstances since 1980, particularly the long-standing shortage of effective housing land in the Montrose area.
- Reaching its decision on the basis that the proposal was premature, given that a new Local Plan was under preparation. Since 5 October 1993 your clients have expressed an interest in developing the appeal site, and since then the intimation has been that a Local Plan would be forthcoming in the near future. However, no draft Local Plan has yet been prepared, and nor has a report on the development of Hillside, despite it being requested by the Council in February 1995. In the absence of Local Planning Guidance, your clients have taken account of relevant statements of Government and Strategic Policy and Planning Guidance, with which the proposal accords.
- Reaching its decision without reasonable planning grounds for asserting that the proposal would result in the influx of an additional 140-180 residents into Hillside following a period when growth and other approved developments have resulted in a high level of growth with no attendant expansion in facilities, and all to the detriment of the village and the residents' amenity. Hillside is close to Montrose and is reasonably provided with a Village Store/Post Office, Leisure Facilities and Bus Service. Although there is no direct correlation between population and

facility provision, any increase in the settlement's population would certainly sustain existing facilities, and could well lead to the provision of new facilities

- Reaching its decision without reasonable planning grounds by failing to substantiate its claim that the proposal was premature in relation to Primary School provision. The Regional Council's Director of Education has never objected to the proposal and has stated that it would maintain the roll of the existing Primary School.

4.2 There has been no response to the claim from the District Council.

#### Conclusions:-

4.3 As noted in paragraph 4 of SDD Circular 6/1990, parties are normally expected to meet their own expenses. In planning appeals, awards of expenses do not follow the decision on the planning merits but are made only in respect of unreasonable behaviour. Your claim for an award of expenses was made at the appropriate stage in the proceedings.

4.4 Your claim is in effect that each of the District Council's four reasons for refusal are unreasonable, and that the case should not have had to come before the Secretary of State for determination.

4.5 I agree that the District Council should not have attached such weight to its 16 year old unadopted Local Plan, which is clearly out-of-date. I also agree that - in the light of the fact that there is no indication when even a draft of the replacement of the Local Plan might become available - the second reason for refusal is not justified. As regards the fourth reason for refusal, I also believe that it was unreasonable to use the Primary School as a reason for refusal when the Director of Education did not oppose the development, and an acceptable solution (in the form of phasing) was available. Although the matter might have been clear if an impact study had been carried out by the Director of Planning, I do not, however, believe that the third reason for refusal represented unreasonable behaviour.

4.6 No other matters outweigh these considerations. Accordingly, and in exercise of the powers delegated to me, I award 75% of the costs incurred by your clients in connection with this appeal against Angus District Council in favour of your clients."

## 5 FINANCIAL IMPLICATIONS

5.1 Until Stewart Milne Homes formally submit their claim, the financial implications are unknown but the costs may well be substantial. Members should note that no provision was made within the disaggregated budget for the department in respect of such costs. Accordingly it may not be possible to contain the costs within the budget.

**6 CONSULTATION**

- 6.1 The Director of Finance and the Director of Law and Administration have been consulted in the preparation of this report.

**7 CONCLUSION**

- 7.1 This decision highlights the problem which can arise in the absence of an up to date Local Plan. An assessment of the form, content and timescale for the production of an Angus Wide Local Plan is underway and will be reported to the Planning and Transport Policy Committee on 6 June 1996.

**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/KW  
22 April 1996

Alex Anderson  
Director of Planning, Transport & Economic Development

