

**ANGUS COUNCIL****PLANNING AND TRANSPORT POLICY COMMITTEE****2 MAY 1996****SUBJECT: IMPENDING APPEAL  
WHITEFIELD, DRUMMIETERMONT FARM, LETHAM****REPORT BY DIRECTOR OF PLANNING, TRANSPORT & ECONOMIC DEVELOPMENT****Abstract: This report presents the circumstances surrounding a current appeal and highlights possible implications that the Committee will wish to consider.****1 RECOMMENDATION**

It is recommended that the appeal at Drummietermont be not pursued by the Council and that a revised approval Decision Notice be issued excluding the essential worker condition.

**2 INTRODUCTION**

- 2.1 An appeal has been lodged against a condition attached to a planning permission for reserved matters relating to the erection of a dwellinghouse at Whitefield, Drummietermont, Letham. The condition in question required the house to be occupied by an agricultural worker or forestry worker.

**3 PLANNING CONSIDERATIONS**

- 3.1 Outline planning permission was refused by the Planning Committee in August 1994 for application No. 01/94/0417 for an essential worker's house on this site, as being contrary to the policies contained in the Rural Angus Local Plan.
- 3.2 Planning permission was granted on appeal (P/PPA/TA/357) by the Secretary of State in September 1995 with only two conditions.
- 3.3 Although the Reporter made reference to policies relating to essential workers in his statement, neither of the two conditions attached covered the essential worker issue. At this time, the Council could have challenged the Secretary of State's decision at the Court of Session but chose not to.
- 3.4 Application No. 01/95/1696 was submitted for reserved matters in October 1995. The proposal was found to be unacceptable in design terms and the application was withdrawn by the applicant's agent.
- 3.5 Subsequently, application No. 01/96/0059 was submitted with an acceptable design. It is standard practice to invoke Section 50 procedures when essential worker housing is involved. However, because the essential worker aspect had not been imposed by the Reporter's previous permission, it was not possible to follow the

Section 50 process. A condition, subject of this appeal, was therefore attached to the planning permission. Condition No. 7 reads as follows:-

"That the occupation of the dwelling be limited to a person employed at Drummietermont Farm."

#### **4 THE CURRENT APPEAL**

- 4.1 The appellant's case revolves around the issue of a reserved matters application. Reserved matters applications normally follow on from outline permission and therefore any conditions attached should not change the nature of the previously approved development.
- 4.2 The appellant is therefore challenging the Council's right to materially change the outline planning permission granted by the Secretary of State by including conditions for essential workers.
- 4.3 It could be argued that condition No. 7 does materially alter the outline planning permission granted by the Secretary of State and therefore is inappropriate for a reserved matters application. If this was to be the findings of the appeal Reporter there is a genuine risk of expenses being awarded against the Council.

#### **5 FINANCIAL IMPLICATIONS**

- 5.1 There are no financial implications in accepting the recommendation not to contest the appeal but should the appeal be pursued and the Council be unsuccessful, there is a strong possibility that a claim for expenses on the part of the appellant, could be successful.

#### **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 Outline planning permission was granted on appeal with no restriction on occupation by an essential worker. The prospects of successfully defending the subsequent imposition of an occupancy condition are not favourable. Accordingly, it is considered that the appeal is not contested.

#### **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/IAL

Alex Anderson

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