

ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE

15 AUGUST 1996

SUBJECT: IMPENDING APPEAL  
HERDHILLMUIR ROAD, WESTMUIR, KIRRIEMUIR

REPORT BY DIRECTOR OF PLANNING, TRANSPORT & ECONOMIC DEVELOPMENT

**Abstract:** This report presents the changing circumstances surrounding a current appeal and considers the options open to the Committee.

1 RECOMMENDATION

It is recommended that the appeal at Herdhillmuir Road, Westmuir, be not pursued by the Council and that a new application be invited from the appellant.

2 INTRODUCTION

2.1 In 1993 Mr. McMartin was successful on appeal in receiving consent for five houses on a site at Westbank, Westmuir. This included a single house within a walled section of the site. In October 1995 it was brought to the attention of officials that work had commenced within the walled site and that four services connections had been provided, all without any detailed approval. Mr. McMartin was interviewed and apprised of the situation, advised to stop work and submit an application. The application was duly submitted and refused by the District Council's Planning Committee, the major influence being the adverse comments of the Regional Director of Roads and Transport:-

"The Scottish Office Reporter, in the previous appeal decision, was of the opinion that Herdhillmuir Road was of an "unsuitable and unsatisfactory nature" to service new development and I would concur with this view.

As such I am not in favour of the current application served from Herdhillmuir Road on the grounds of unsuitable access for vehicular and pedestrian traffic."

2.2 The Director of Roads and Transport did, however, indicate that access from Westbank would be acceptable. Although Westbank does not conform with Angus Council standards it had been upgraded by the applicant to meet the Scottish Office Reporter's requirements and it was to be expected that such an access would be acceptable in the context of any future appeal.

2.3 Accordingly the application was refused for the following reasons:-

1. That the access road/track is of an unacceptable standard and not capable of supporting further development.

2. That the proposed development would intensify vehicular use of a sub-standard access and/or road to the detriment of road traffic and pedestrian safety.
- 2.4 Subsequently meetings were held with Mr. McMartin, involving Regional Roads officials, in an effort to secure a compromise. A solution was devised involving the creation of three house plots each with an access of Herdhillmuir Road but on condition that the junction with Westbank be improved and Herdhillmuir Road surface be enhanced. Indeed an application was submitted by Mr. McMartin but was technically flawed and could not be registered. Although this technicality could easily have been resolved, Mr. McMartin chose instead to appeal the earlier refusal, since when the appeal procedures have been put in motion.

### **3 UPDATED SITUATION**

- 3.1 Notwithstanding the pending appeal, Mr. McMartin approached the Roads Department requesting precise details of the junction improvements that would be required in the context of the three house plot compromise solution.
- 3.2 The new Director of Roads for Angus Council, mindful of the Scottish Office Reporter's previous findings in setting aside Local Authority Road Standards in relation to such private roads at this location, entered into the compromise solution and although discussed on the basis of three houses, takes the position that Herdhillmuir Road, subject to agreed improvements not previously offered by the applicant, would be of a similar standard to Westbank and there would be no significant difference in it then serving 3 or 4 houses on road traffic grounds. This opinion is further supported by the fact that Herdhillmuir Road was brought up to the same standard as Westbank as part of the Region's private roads programme in 1995.
- 3.3 In the light of the above, Mr. McMartin has now approached the Scottish office and suggested that there is no longer a case for refusal.

### **4 OPTIONS**

- 4.1 There are only two options open to the Council:-
  - A) to continue the appeal to a public meeting; or
  - B) to abandon the appeal and invite a new application.
- 4.2 A) The only reasons given by the Council for refusal are roads related which as a result of the compromise process, are no longer sustainable. Clearly without his support the Council's case is seriously jeopardised. The appellant is seeking an award of expenses, as indeed is the Council, but to continue the appeal under these new circumstances the former is more likely to be successful.

- B) Could be seen as a significant reversion, especially by the three objectors, particularly so far into the appeal process (a date in October has been set for the inquiry).

## **5 FINANCIAL IMPLICATIONS**

- 5.1 There are no direct financial implications but there are a number of potential non-quantifiable implications dependent upon the option chosen. To continue the appeal would produce inquiry costs (which would have had to be met in anycase) and an award of expenses against the Council could not be ruled-out now that the Director of Roads is not supporting the reasons for refusal.
- 5.2 Neither of these costs would have to be met if the appeal is withdrawn but this does not mean that there would be no financial penalty.

## **6 CONSULTATIONS**

- 6.1 The Directors of Finance, Law and Administration and Roads have all been consulted in the preparation of this report.

## **7 CONCLUSION**

- 7.1 While in Scotland some appeals pursued on roads grounds without the support of the Director of Roads have been successful, bearing in mind the previous Scottish Office Reporter's approach to this area and the circumstances pertaining to this case, I would not be confident of the appeal being successful as far as the Council is concerned.

## **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/IAL  
6 August 1996

Alex Anderson  
Director of Planning, Transport & Economic Development

