

ITEM No. 8 (e)

Report No 592/96

ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE

15 AUGUST 1996

**SUBJECT: PLANNING APPEAL DECISION
KINNABER 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 the erection of a storage shed for agricultural vehicles at Kinnaber Road, Hillside.

1 RECOMMENDATION

It is recommended that the Committee notes the successful outcome of this appeal, agrees to pursue enforcement action to secure removal of the unauthorised use and notes that Mr. Will has been offered assistance through the Economic Development Unit, in finding alternative accommodation.

2 INTRODUCTION

- 2.1 With reference to Angus District Council minute 886(1)/95, the Planning and Development Committee at their meeting of 20 November 1995 refused consent for the erection of a storage shed for agricultural vehicles on land at Kinnaber Road, Hillside (01/95/1691).
- 2.2 The applicant, Mr. N. Will, appealed against the refusal and the Inquiry Reporter's conclusions and decision are presented below.

3 REPORTER'S DECISION

- 3.1 The Act requires the determination of your appeal to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. The Montrose Local Plan, despite being approved by the former Council in 1981 has not been adopted and therefore does not have determinative status within the terms of Section 18A of the Act. None of the provisions of the structure plan have been drawn to my attention as being relevant. The determination therefore falls to be made having regard to other material considerations. In my judgement, based on the written submissions and my inspection of the appeal site and the surroundings, the issues to be determined are whether the principle of this development within the countryside is appropriate when considered in terms of relevant national and local policy; and whether, even if not appropriate, the operation may be regulated by planning conditions so as to fall within limits which are consistent with the location.

- 3.2 It is a long standing principle of the policy which operates at both national and local level that development within the countryside should be restricted to that which has an operational need arising from the land on which it is proposed. I note the terms of the planning application, supported by submissions, that the proposed development involves the storage and hire of agricultural vehicles. It is, however, clear both from your submissions and those of Mr. Will, that the plant would also be used for general building purposes in addition to any use in agriculture. There is no evidence that any agricultural holding is associated with the proposal and I find no evidence of an agricultural need. I do not therefore accept that the proposal amounts to an agricultural land use. In consequence, I do not find a justification, as an exception to established policy, for locating an industrial operation of this type in the countryside. Similarly, the appearance of the proposed building as an agricultural shed does not justify its erection in this location and use as the operating base for a plant hire business. Consequently, I find that the principle of this development is not justified within the terms of the policies appropriate to development within the countryside.
- 3.3 Despite that assessment, I have considered the scope, within the terms of SDD Circular 18/1986, "The Use of Conditions in Planning Permissions", for an exceptional grant of outline planning permission. I find that such conditions would have to establish controls to ensure the absence of an adverse impact on residential and visual amenity in the wider area. Clearly your client does not propose a temporary development and I find that without permanent works it would not be possible to institute a trial run. I do not therefore consider that a temporary permission could be justified because it would be unreasonable to expect permanent works to the necessary standard when these could have a life of only 12 months. The proposed shed would be within 60m of the nearest house and the planning unit to which the permission would relate would extend to the mutual boundary with that property. I note the support of that householder but find, both as a matter of fact and degree and as a result of my site inspection, that it would be essential to impose several conditions. These would limit the permitted operating hours to those appropriate to such a location; restrict the proportion of the site to be used; restrict operations and storage in the open outside the building; limit the number of vehicles and items of plant to be operated from the site; and in addition, require an altogether more effective scheme of screen planting than that presently undertaken. I find, on balance, that such conditions would be both necessary and relevant to the development to be permitted but would be unreasonable in other respects because their effect would be so onerous as to be likely to remove the benefit of the permission. In these circumstances, I do not find scope for regulating the potential consequences of this development by planning conditions.
- 3.4 I note your client's success relative to the Government's policy of encouraging new business ventures. However, I find no inconsistency between the Council's approach, which involved suggesting a location on allocated and available industrial land where there could be neither the possibility of conflict with adjoining land uses nor of restrictions on the day to day operation of your client's plant hire business, and the policy contained in NPPG 2 "Business and Industry".
- 3.5 Accordingly, in exercise of the authority delegated to me, I hereby dismiss this appeal and refuse to grant outline planning permission. I have taken account of all

the other matters raised in the submissions but these do not outweigh the considerations on which my decision is based.

4 COMMENT

- 4.1 Due to the press coverage that Mr. Will has sought and secured since the appeal decision was intimated, some background information for the Committee members is felt to be necessary.
- 4.2 In 1992 an application to erect a house on the appeal site (applicant Mr. Duthie) was recommended for refusal but was withdrawn prior to the Committee meeting.
- 4.3 In June of 1995, Mr. Will wrote requesting an informal opinion on the likelihood of receiving planning permission for plant storage on the site. It was intimated that the proposal was less acceptable than the house which had been recommended for refusal and, therefore, his proposal would also attract a similar recommendation.
- 4.4 Despite obtaining this response, it appears that Mr. Will proceeded to acquire the site and move his plant, materials, etc. onto it. In effect the site is being used as a builder's yard and is certainly not confined to agricultural vehicles. Although advised that the Council could probably assist him to find a site on an industrial area, he has shown no interest in pursuing this route.
- 4.5 In the circumstances, a planning application was requested, submitted (but only after the threat of enforcement action) and duly refused leading to the appeal and the Council's decision being supported by the Reporter.

5 FINANCIAL IMPLICATIONS

- 5.1 There are no financial implications.

6 CONSULTATION

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

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
6 August 1996

Alex Anderson
Director of Planning, Transport & Economic Development

