

**ANGUS COUNCIL**

**DEVELOPMENT CONTROL COMMITTEE**

**15 AUGUST 1996**

**SUBJECT: PLANNING APPEAL DECISION  
UNIT 5, ORCHARDBANK, FORFAR**

**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 by Angus District Council on a consent to utilise a factory unit for shotblasting./spraypainting at Orchardbank, Forfar.

**1 RECOMMENDATION**

It is recommended that the Committee notes the findings and decision (part dismissed/part sustained) of the Secretary of State's Reporter.

**2 INTRODUCTION**

- 2.1 With reference to Angus District Council minute 637/95, the Planning and Development Committee at their meeting of 21 August 1995 approved a change of use of factory Unit 5 at the Orchardbank Industrial Estate, Forfar from car sales to shotblasting and paintspraying. Conditions were attached to the consent (01/95/1306) including restrictions on the hours of operation and control of noise.
- 2.2 The applicant, Mr. Archer, appealed against the above conditions and the Inquiry Reporter's conclusions and decision are presented below.

**3 REPORTER'S DECISION**

- 3.1 Section 18A of the Act requires the determinations, in these cases, to be made in accordance with the development plan unless material considerations indicate otherwise. The site lies within the area covered by the Forfar Local Plan (adopted 1984). In the plan the site is in an area identified for industrial purposes. The plan recommended that further industrial units should be provided at this location and a number of units have now been built. The area predominantly comprises an industrial estate containing a broad mix of industrial uses. There is no reference in the local plan to any restrictions being placed or required in respect of these industrial uses. In these circumstances, it should not normally be necessary to impose conditions controlling the hours of operation or the noise levels of an industrial use. Accordingly, on the basis of the written submissions and the site inspections, I consider that the determining issue in these appeals is whether there are circumstances which justify such conditions.
- 3.2 On this issue, I note that the unit is situated close to residential accommodation lying to the north east and that the residents have experienced problems with the use.

- There are windows on the south facing elevation of the accommodation which face the premises. A use as shot blasting and paint spraying can give rise to adverse environmental effects, such as noise, fumes and dust, which would be likely to detract from the amenity of nearby residents. In such circumstances, I believe that it is reasonable for the planning authority to impose conditions on the planning permission which restrict the use and protect amenity. While these matters may also be covered by other regulations, there is often a degree of overlap between different control regimes.
- 3.3 The relevant conditions restrict the hours of operation to between 8.00 a.m. and 10.00 p.m. on all days and require that noise levels, emanating from the premises, should not exceed 5dBa above ambient as measured at the front of the nearest occupied residential property. The major benefits of such conditions would be likely to be the reduction of noise and activity associated with the premises, and their complete removal at night. This, of course, would not necessarily eliminate noise and activity for nearby residents, as the premises are located on an industrial estate where other uses appear to operate on a 24 hour basis.
- 3.4 The decision notice granting planning permission contained a number of other conditions restricting the use. These were also concerned with protecting amenity. The conditions limit shot blasting, paint spraying, repair and maintenance operations to within the confines of the building; and a further condition controls storage and disposal of empty or discarded cans or dust, etc. No appeal has been lodged against these conditions. If conditions 01 and 08 were removed from the planning permission, these other conditions would still apply and reduce the impact of the use to a certain degree. The Environmental Health Department have lodged no specific objection to the operations. They also have their own statutory powers to deal with problems of noise and other pollution. Given these circumstances, and taking account of the predominantly industrial location, it seems to me unnecessary to impose a condition which completely prohibits night operations. Such a condition, in my view, fails the tests laid out in SDD circular 18/1986, The Use of Conditions in Planning Permissions. However, if the noise condition was also removed, I would be concerned about the impact the use would be likely to have on nearby residents, particularly at night. The presence of the compressors in the open, combined with other noise from the unit, would be likely, in my view, to give rise to an unacceptable degree of disturbance for nearby residents, even taking account of the location on an industrial estate. I therefore consider that the circumstances justify imposing a condition controlling the level of noise associated with the use.
- 3.5 In conclusion I find that a condition restricting the hours of operation is inappropriate. However, a condition controlling noise levels is warranted to protect the amenity of nearby residents. I have considered all the matters raised, but none of these outweighs the considerations upon which my conclusion is based. Accordingly, in exercise of the authority hereby delegated to me, I hereby (1) allow your client's appeal concerning condition 01, and delete that condition from planning permission 01/95/1306 COU, dated 12 September 1995; and (2) dismiss your client's appeal concerning condition 08, which consequently remains in place on the planning permission.

**4 FINANCIAL IMPLICATIONS**

4.1 There are no financial implications.

**5 CONSULTATION**

5.1 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

