

# ITEM No. 4 (b)

Report No 718/96

## ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE

5 SEPTEMBER 1996

SUBJECT: PLANNING APPEAL DECISION  
267 HIGH STREET, ARBROATH

REPORT BY DIRECTOR OF PLANNING, TRANSPORT & ECONOMIC DEVELOPMENT

**Abstract: The 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 change of use from a shop to office at 267 High Street, Arbroath**

### 1 RECOMMENDATION

It is recommended that the Committee notes the findings of the Secretary of State's Reporter.

### 2 INTRODUCTION

- 2.1 With reference to Angus District Council minute 98(1)/96 the Planning and Development Committee at their meeting of 19 February 1996, refused consent for the change of use of a shop to a financial services office at 267 High Street, Arbroath (01/95/1853).
- 2.2 The applicant, Dumbarrie & Co Ltd, appealed against the refusal and the Inquiry Reporter's conclusions and decision are presented below.

### 3 REPORTER'S DECISION

- 3.1 It is accepted by parties that the appeal is contrary to Policy 5.2.14(a) of the Arbroath Local Plan. Consequently, taking account of Section 18(A) of the 1972 Act and having given careful consideration to the submissions and the site inspection, I am of the opinion that the determining issue in this case is whether there are any material considerations which would justify a departure from the relevant policy in the development plan.
- 3.2 In considering Policy 5.2.14(a) I find some difficulty in interpreting its terms in the context of the 1989 Use Classes Order. The policy appears to differentiate between "shop premises" and "non-retail business (offices, surgeries etc)", while the Appendix refers to "non-retail uses defined as shops" in Class 1 of the 1973 Use Classes Order. All the uses included in "non-retail" are either in classes other than Class 1 in the 1989 Order or do not fall within the Order's ambit. Uses excluded from "non-retail" in the appendix are all now in Class 1 of the 1989 Order.

- 3.3 While restaurants and cafes are accepted as complementary to the retail uses, in the appendix, they are clearly non-retail and appear to take some undefined role, perhaps indicating that applications for change of use from Class 1 to Class 3 within the prime shopping area would be considered more favourably than changes to Class 2 or any other use. However that may be, for the purposes of this appeal I consider that all uses falling into Class 1 of the 1989 Order should be regarded as "shop premises" and all other uses as "non-retail" in terms of the policy. On this basis, the 2 hairdressers in the section of High Street between Lordburn and Guthrie port should be regarded as shop premises (Class1)(f). While the lawful use of No 281 High Street may be as a shop, for planning purposes its use should count as non-retail in the light of the permission granted for its change of use to a Citizens Advice Bureau. However, the appeal premises at No 267 High Street was still in use as a shop at the time of the site inspection, and should therefore count as "shop premises". Thus, of the 20 units surveyed in January 1996, only 4, the cafe, insurance broker, public house and No 281, are "non-retail" in terms of the policy. This is exactly 20% of the total premises in this section of the street.
- 3.4 The reason given in the local plan for applying the 20% proportion of the non-retail uses was the Council's attempt to introduce more flexibility in the light of renewed pressure and planning applications. When applied to a sample of 20 units, this criterion becomes a very blunt instrument for controlling the relationship between shop and non-retail uses, where a change of one unit creates a 5% change in proportion.
- 3.5 The Department of Environment's Development Control Policy Note No 11 of 1985 often referred to in Scotland, states in paragraph 12:
- "It will be a matter of judgement for the local planning authority whether or when the overall number of service outlets can reach or has reached a level at which further changes from retail shop use should be resisted. This judgement should not be made solely by reference to numbers of outlets, proportions of floor space or lengths of frontages, and should always take account of the type of shopping centre, the trends and usage of that centre and the views, as far as they may be known, of both those who trade and those who shop there.....".
- This indicates that the proportion of allowable non-retail outlets would be lower than 20% taking the overall number of units in the prime shopping area into account. This contrasts with the statement in an appeal decision of August 1994, where a change of use from shop to betting office was allowed at 155-159 High Street, Arbroath, that "experience shows that the character of a shopping street only begins to be lost when the share of non-shop uses reaches 35%-40% and that recent reviews of shopping policy in Falkirk and Glasgow indicate a move to accepting proportions such as 30% in primary core or retail areas and 50% in secondary areas."
- 3.6 The decision to sub-divide the primary shopping area into a core area where changes out of shop use will be resisted and the 2 peripheral areas where some will be allowed is an acknowledgement of the different types of shopping in these areas, a view reinforced by the Director of Planning's recognition of the primary shopping

area as "over-sized". While the Lordburn/Guthrie Port section may not be classified as secondary shopping like the West Port area, it clearly has less importance than the central section, in terms of both types of use represented and the level of pedestrian activity noted at the site inspection.

- 3.7 The policy of resisting changes of use of Class 1 in the central section of High Street is reasonable in light of the need to support the investment made in 1991 in environmental improvements and to protect the retail heart of the centre which is essential to its survival. However, the existence of some vacant units in that section is an indication that there is room for new shop business to establish there without being affected by changes of use in the 2 non-core sections. For these reasons I consider that, with reference to National Planning Policy Guideline 1, paragraph 40, policy 5.2.14(a) is somewhat out of date. More recent guidance is given in NPPG 8 on "Retailing", issued in April 1996. In paragraph 34 it states:

".....in exercising their planning powers, local authorities should therefore encourage diversification of uses in the town centre as a whole. The appropriate mix of uses will depend on the nature and size of the town. As part of this mix, uses such as restaurants and eating places, banks and building societies provide a variety of essential services in town centres.....".

Class 2 uses are clearly regarded as of value in maintaining the vitality and viability of town centres. It follows that a positive rather than a restrictive approach is required.

- 3.8 The restrictive approach may also have a detrimental effect if an existing shop becomes vacant and creates a form of "dead" frontage. "Dead frontage" is also defined in the Development Control Policy Note No 11 as uses which attract few callers or facades which do not consist of original shop windows with displays. In my view the appellant's intention to establish an office offering financial services to the public is likely to be a vitiated if it fails to attract more than a few callers and the question of retaining a traditional shop window display can be covered by a condition attached to a grant of permission. Furthermore reversion to a Class 1 use is made easier by the permitted development rights afforded by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (Schedule 1, Part 3, Class 10).
- 3.9 Taking all the above considerations together, I find that there are sufficient material considerations to indicate that the decision in this appeal need not be made strictly in accordance with the terms of the development plan. I find that the 20% flexibility is a crude method of controlling changes out of Class 1 use within the section of the prime shopping area to which it applies. With vacant shop premises in High Street and the already over-sized primary shopping area, I consider that the terms of Policy 5.2.14(a) may be moderately relaxed in favour of encouraging the vitality and viability of the town centre as a whole. I find that the proposed change of use would not prejudice the maintenance of retailing as the primary activity in the High Street and that no precedent would be set which would undermine the Council's policy

objectives. No other matters raised outweigh the considerations leading me to conclude that planning permission should be granted, subject to conditions.

- 3.10 Therefore, in exercise of the authority delegated to me, I hereby allow the appeal and grant planning permission for the change of use at No 267 High Street, Arbroath, to a financial services office, in accordance with application No 01/95/1853 dated 20 December 1995, subject to the following conditions:

1. The development shall be begun within 5 years of the date of this letter; and
2. The existing shop front shall be maintained with a display of information on the services offered by the occupier.

#### **4 COMMENT**

- 4.1 It is considered that this appeal decision has implications for the present policies on non-retail uses as contained in the Arbroath Local Plan. The preparation of a new Local Plan for Angus provides an opportunity to review the policy but in the meantime it is considered that future applications for non-retail uses should be considered in the light of this appeal decision.

#### **5 FINANCIAL IMPLICATIONS**

- 5.1 There are no financial implications.

#### **6 CONSULTATION**

- 6.1 The Chief Executive, Director of Law & Administration and 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/MR

21 August 1996

Alex Anderson  
Director of Planning, Transport & Economic Development