

ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE

10 APRIL 1997

**SUBJECT: PLANNING APPEAL DECISION
89 HIGH STREET, BRECHIN**

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 the appeal against the refusal of Angus Council to grant consent for use of premises at 89 High Street, Brechin for a hot food takeaway.

1 RECOMMENDATION

It is recommended that the Committee notes the outcome of the above appeal.

2 INTRODUCTION

- 2.1 The Development Control Committee at the meeting on 23 May 1996 refused Planning Permission for use of a former printer's workshop/shop as a hot food takeaway at 89 High Street, Brechin (application no 01/95/1819).
- 2.2 The applicant Mrs K Middleton appealed against the refusal and the Reporter's conclusions and decision are presented below.

3 REPORTER'S DECISION

- 3.1 Section 18A of the Act requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise. However, the development plan escapes mention in the written submissions and no extract is lodged of the relevant "council policy". Although the appeal questionnaire mentions the 1984 Brechin Local Plan its relevance is not expanded upon. It is impossible for me to evaluate the terms and relevance of any particular policy founded upon. I therefore take the expression "council policy" simply as an indirect reference to an established practice of resisting hot food takeaways adjacent to dwellings. This is by no means unusual, but it may be helpful if detailed development control guidelines are drawn up in near future.
- 3.2 In this light, from my reading of the written submissions and my accompanied site inspection I consider the determining issue to be whether the use would be unreasonably detrimental to living conditions in the closest dwellings.
- 3.3 From inspection I consider that breaches of parking restrictions are as likely to result from visits to any number of establishments. The front accommodation could operate as a busy Class 1 shop (eg a newsagency) generating equal or larger numbers of callers without any intervention by the Planning Authority. In my experience it is rare for a Class 1 shop so close to a historic town centre to enjoy

generous parking space, either on-street or off-street. I also note that the parking criticisms are not based on consultations with roads officials.

- 3.4 So far as cooking odours are concerned, I consider the property is well insulated from the house to the rear despite the availability of secondary access by the adjacent close. The entrance door to the premises is at the opposite end of the frontage and adjacent to the vacant building awaiting conversion to flats. Its ground floor presently retains commercial use rights and the planning permission to change this situation is precisely that - ie merely a permission, without any guarantee that it will be implemented. There is no real prospect of friction between their respective occupiers while this situation survives. Furthermore, the appeal premises occupy the only single storey building on this side of the street, while gardens lie directly opposite. Accordingly, many would probably agree that if any building in this street is suited to a Class 3 use then it is indeed this one.
- 3.5 I therefore find that none of these issues (at paragraphs 10 and 11 represents a clear cut basis for refusal. The fears of objectors and of the Planning Authority about movement and disturbance at anti-social hours are to be expected and, on the face of it, are very reasonable. Although various uses nearby generate late evening movement, their futures are not before me. Even in this part of the High Street local residents can reasonably expect some respite from movement and disturbance when the majority of businesses fall quiet in the late evening. The Appellant's (twice stated) undertaking to cease each day's trade at 6.00 pm is therefore pivotal. It is a little surprising that the Planning Authority has offered no response to this proposed limitation, but I am convinced that it satisfactorily answers the more serious criticisms.
- 3.6 As no building operations are proposed I have carefully considered whether a temporary planning permission would represent an appropriate way forward. This would allow the various conflicts with residential use to be re-evaluated when the future of the adjacent building is clarified. However, I consider that the proposed closing time represents an adequate safeguard on its own. Furthermore, it may well be that additional investment is required to provide odour filtration to a satisfactory standard and this may become unduly onerous if consent was to run only for a limited period. I thoroughly understand the irritation of neighbours and of the Planning Authority over the fact that the change of use has already been implemented. For whatever reason, the Appellant appears to have undertaken a major and ill-advised risk. I cannot condone this approach. Furthermore, I should emphasise that I have entertained this appeal without attaching weight to the fact that the use is already in place.
- 3.7 Careful account has been taken of all the other matters raised, but they do not outweigh the considerations leading me to my conclusions. Accordingly, in exercise of the powers delegated to me, I hereby allow the appeal and grant planning permission for the use of the premises as a hot food takeaway subject to the following conditions:-

- 1 The premises shall only trade between the hours of 9.00 am and 6.00 pm each weekday and they shall not trade on Sundays.
- 2 By 30 April 1997, full details of a ventilation/odour filtration scheme designed to eliminate cooking odours in adjacent properties (including gardens) and in the public street shall be submitted for approval of the Planning Authority, and an approved scheme shall be installed by 30 June 1997 unless otherwise agreed in writing by the Planning Authority.
- 3 All plant and machinery shall be so installed, maintained and operated in a manner which prevents the transmission of dust, vibration, or odours to any neighbouring dwelling or residential curtilage. No plant, machinery and equipment shall at any time generate a noise level exceeding 5 dB(A) above the ambient background level and in any case no live or amplified music shall be audible outwith the premises.

4 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications.

5 CONSULTATION

- 5.1 The Chief Executive, Director of Law and 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/SP

24 March 1997

Alex Anderson
Director of Planning, Transport & Economic Development

