ITEM No. 3 (c)

Report No 989/97

ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE **2 OCTOBER 1997**

SUBJECT: ENFORCEMENT APPEAL DECISION DENESIDE, DOUGLASTOWN, BY 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 the appeal against the enforcement action by Angus Council at Deneside, Douglastown.

1 RECOMMENDATION

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

2 INTRODUCTION

2.1 The Development Control Committee at the meeting on 13 March 1997 sanctioned the serving of an enforcement notice to have removed unauthorised storage of building materials etc. from land at Deneside, Douglastown, by Forfar.

2.2 The applicant, R. S. Hill, appealed against the refusal and the Reporter's conclusions and decision are appended below.

3 REPORTER'S DECISION

3.1 An extract from the Reporter's findings is appended indicating his conclusions.

4 FINANCIAL IMPLICATIONS

4.1 There are no financial implications.

5 CONSULTATION

5.1 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/IAL
23 September 1997

Alex Anderson
Director of Planning, Transport & Economic Development

APPEAL CONCLUSIONS

Preliminary Matters

27. It is widely recognised that the planning unit is normally the unit of occupation. However, the Appellant appears to occupy the equestrian area as a private individual and the balance as proprietor of Messrs R S Hill, Joiners and Manufacturers (to use the words on his vehicles). On balance I therefore find that the site extends over two planning units, broadly reflecting the disposition of equestrian activities and the approved 50m x 30m car park, rather than comprising a single planning unit with dual use.

28. Nevertheless, the mutual boundary has been mobile -a fact which is not merely attributable to the process of erecting the stable block. This building lies about 1m south and about 6m east of its approved position. In addition, the eastern boundary marker of the parking/storage area lies about 6m further east than approved -creating an enclosed and

informally enlarged car park of 50m x 36m. As a result of both variations, the stable block encroaches into the south east corner of the approved car park much less than originally envisaged.

29. The foregoing variations are not necessarily controversial in themselves. However, access is more or less available between all parts of the site and the stable block presents large vehicular doors to both the enlarged parking area (with disputed storage) and to the paddocks. I therefore conclude that; (1) the boundary between the two planning units has proved weak in practice; (2) the physical separation of the two planning units remains open to abuse, and; (3) in these relatively fluid circumstances any reasonable authority would have the circumspection to draw the site boundaries fairly widely. Although there are different accounts of the former soil mounds in the east of the site, the related enforcement notice was not appealed. I therefore also find that no reasonable authority would have closed its eyes to the risk of business activity over-spilling into the area occupied for equestrian purposes. Although I recognise that the area is extensive, I agree that the site plan accompanying the enforcement notice adopts the appropriate boundaries for its purpose.

30. I find your reference to SOEND Circular 8/1992 unreasonably selective. Paragraph 36 refers to Regulation 3 of the Enforcement of Control (Scotland) Regulations 1992. This requires that enforcement notices should specify *inter alia* "the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise." and indicates that this "is best done by means of a plan attached to the notice but, where this is insufficient to identify the boundary exactly, the plan should be supplemented by a brief written description..." In these respects I conclude that the notice escapes criticism, although below I return to minor questions of precision and clarity as necessary.

The Appeal on Ground (a)

31. Section 133(4) of the Act requires that in the determination of the appeal on ground (a) regard shall be had to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations. In view of the site history and the claims made, it is first appropriate to evaluate the correct planning status of the component parts of the site. I am in no doubt that the required "removal" of materials and equipment also inevitably involves the cessation of the associated storage use and that it furthermore stands in the way of their later substitution by other materials and equipment. It is an unreasonable exercise in pure semantics to suggest the terms of the enforcement notice somehow permit the storage use to continue. I draw this conclusion from a common sense reading of the notice, but it is coincidentally supported by the presence of an appeal on ground (a), as well as the very latest application and appeal.

32. With this adventurous argument on one side, I find that the 50m x 30m area at the west end has an authorised use merely as a car park. Most of the balance has an authorised use for private equestrian purposes. No permission covers the 6m (approx) bare strip on the east side of the approved car park. This has become enclosed and decisively abstracted from grazing use -as explained in paragraph 28- and from the available evidence I conclude that this has no planning status. In identifying what little development is already permitted, this paragraph thus sets the proper benchmark against which matters alleged in the notice are fairly examined.

33. In this light, from the exchange of written submissions and my accompanied site inspection I consider the determining issues in the appeal on ground (a) to be;

1. Whether the matters alleged in the enforcement notice conform to the development plan and, if necessary, whether they conform to any other approved policy guidance of obvious relevance.

2. Whether the matters alleged in the enforcement notice are unacceptable on amenity grounds, and whether any serious shortcomings can be satisfactorily addressed by planning conditions.

and, if not;

3. Whether there is nevertheless a sound basis for exceptional approval, such as over-riding employment implications.

34. On the first issue, the relevant policy of the recently approved Structure Plan (RD.2) simply requires development to be of an appropriate scale and design, and I find this general guidance of limited practical value in this case. No adopted local plan has been mentioned. Accordingly, for the most relevant policy guidance I turn to the (draft) 1991 Rural Angus Local Plan; despite its age there has been no suggestion that it is no longer relevant here. This discourages all but infill development at Douglastown and presumes against development on any part of the appeal site. Although the approved car park and stable block demonstrate some flexibility on the part of the Planning Authority, there clearly exists a policy presumption against new development here. In my interpretation, this strikes at expanded vehicle parking and at the creation of a storage use anywhere within the appeal site.

35. On the second issue (i.e. amenity) I consider that there is a major difference between the environmental impact of the approved car park and that caused by the storage of building materials and equipment. The loading and unloading of heavy materials and the large quantities of scaffolding and metal safety fencing which I observed are likely to be very significant sources of intrusive noise, and I agree that the closest residents are bound to find this unreasonable. Although parking may itself create modest and occasional noise, the movement of large HGVs delivering and uplifting equipment such as scaffolding and materials such as pallets of concrete slabs and blocks etc., plus the associated movement of a fork lift, are likely to generate unreasonable disturbance for residents a just few metres away. They are entitled to far greater consideration, especially when one considers the protection for these listed cottages (and their setting) which was in prospect when the draft local plan was published in 1991.

36. In relation to possible planning conditions, I find that height limitations would have negligible bearing on noise generated. Limits on hours of operation, which have not incidentally been volunteered, would be unreasonably difficult to enforce in the case of a dual use on an enclosed site. Your client has already enjoyed practical benefits equivalent to those of a temporary permission. I am satisfied from the long and complex history that such an expedient is no longer appropriate. I note your point that the setting has changed over recent years, but consider that your client's business presence east of the lane has been a major

influence in this. I remind myself that the approved business presence here is fairly benign - merely a car park - and I find no inconsistency in the stand being taken by the council against more serious conflicts of use. I conclude that the matters alleged in the notice are unacceptably detrimental to amenity and that conditions would not satisfactorily address this shortcoming.

37. On the third issue, the implied case for exceptional approval is based on the possible employment consequences and the associated need for a further interval while an alternative site is secured. However, no clear evidence has been lodged to show precisely what would be the employment consequences of merely removing builders' materials and equipment, i.e. ceasing this storage use, and confining parking to the approved 50m x 30m area. I therefore suspect that the real consequences would be fairly limited. The question of additional time is more appropriately considered in relation to ground (f) as I have already disposed of the case for a temporary permission. For the reasons explained in this and the foregoing paragraphs, the appeal on ground (a) fails.

The appeal on ground (b)

38. I note that the occurrence of the matters alleged in the notice was recorded by the previous Reporter. It is not disputed that the western part of the site contained stored building materials as far back as 1991. I note that the stable block was only approved in 1996, and has now been completed. The car park features large quantities of equipment and materials not credibly connected with the construction of the stable block. Their association with other properties is admitted. The eastern margin of the informally enlarged car park was cleared only in recent weeks, i.e. shortly before my inspection, as admitted. Independently of any conceivable confusion over remedial steps, the enforcement notice clearly relates to the full 2 ha area including the 50m x 30m car park. It is therefore very clear that the alleged storage use has occurred, and it is unnecessary to show that it has occurred in every single part of the site. Although up to date evidence of unauthorised parking overspill is at first sight less clear cut, there has been no suggestion that the previous Reporter was somehow mistaken when he included this activity in his observations from his visit of March 1995, a full year before the stable block was approved. It is very clear that both matters have occurred. Accordingly, the appeal on ground (b) fails.

The appeal on ground (c)

39. As for whether these matters represent breaches of planning control, I am being asked to regard several years of storage use as "temporary" to the extent of being *de minimis* and I find this is stretching a point. Much of the storage which persists -e.g. a large metal lorry container and the storage bins- is well removed from the stable block and I have already found it not convincingly related to its construction. I find that this briefly expressed appeal does not review the previous Reporter's findings on this matter, e.g. by introducing fresh evidence. I am certain that the matters in the notice require planning permission. After all, they go beyond the scope of all the permissions summarised in paragraph 9 above. Accordingly both the storage of materials and equipment (anywhere within the 2 ha appeal site) and the overspill of parking (anywhere within the 2 ha site beyond the approved 50m x 30m area) represent breaches of planning control. The appeal on ground (c) fails.

The appeal on ground (d)

40. This particular appeal consists of irrelevancies (summarised at paragraph 21, and disposed of at paragraph 31). The sole issue is whether enforcement action is time-barred. The time limit for an enforcement notice against a change of use is specified in Section 124(3) of the Act. There is no doubt from the well recorded history that the matters alleged have been challenged well within the requisite 10 years. Therefore the appeal on ground (d) fails.

The appeal on ground (f)

41. In relation to remedial steps, I have already commented on the relatively benign nature of what is merely an approved car park. It is an exaggeration to imply that this represents such an expansion or intensification of business activity that; (1) storage of builders' materials and equipment to a limited height would be no more injurious to amenity, and that; (2) there is no longer any point in resisting its extension for overspill parking. On the first point I am being asked to reverse my firm conclusions on ground (a). On the second, it is admitted in your letter of 1 July 1997 that additional parking space is not required. I have seen no fresh arguments or evidence to support conclusions different from those of the previous Reporter. He found that the "steps required...to restore the site to a car park [as defined by permission 01/91/0253] are necessary and justifiable". Nevertheless, the car park is a permanent feature with permission of unlimited duration and I have seen no argument why it is essential to remove the surface concrete apron after the storage bins upon it have been removed. Subject to this limited modification in favour of your client, the appeal on ground (f) also fails.

42. Before leaving ground (f) I should add that I understand how the particular presentation of the remedial steps and the way in which the breaches of control are expressed have fuelled some of the arguments. At paragraph 45 below I therefore return to the minor questions of precision to which these points give rise.

The appeal on ground (g)

43. Turning to whether more time should be allowed for compliance, I appreciate why this is criticised as a delaying tactic. After all, I have seen no substantive evidence of other sites having been pursued, merely declarations to this effect. The reference to site-finding being complicated by the slow emergence of a local plan has not been explained in any detail (although I find such an attachment to plan-led development very refreshing). From inspection, I consider the remedial steps need take no more than 3 or 4 days. On the other hand the earlier notice allowed 84 days, although I recognise that those remedial steps also included the "demolition of partially constructed buildings" and a wall which would have taken a little more time. While mounting impatience is understandable as the procedure is repeated, this shorter time scale should have been more fully justified by the Planning Authority. No specific alternative periods have been canvassed and argued through by either side. In these circumstances something close to 84 days would be more appropriate. However, simply for conspicuous clarity all round, I see a marginal advantage in a modest further extension to 1 January 1998. To this limited extent the appeal on ground (g) succeeds.

Minor Clarification of the Notice

44. I now return to the clarity with which the alleged breaches of control are expressed in paragraph 3 of the notice, and to the clarity with which the remedial steps are expressed in paragraph 5 of the notice. On balance, I understand how two meanings can be taken from the words used in paragraph 3 to describe the alleged breach of control, but I do not find it credible that this can have confused the Appellant. In my reading the words "together with" separate what amount to two distinct breaches.

45. The first breach is clearly "the storage of building material and associated equipment" and I believe most readers would take this to relate to the entire site, or any part of it where this has occurred, there being no previous storage permission justifying different levels of intervention in different parts of the site. The second breach (after the words "together with") is the "provision of private and commercial vehicle parking outwith the 50 x 30 metre area for which planning permission dated 1 July 1991 under reference 01/91/0253 was granted to form a car park for private and commercial parking." It is self evident that this can only relate to parking over-spilling from this approved area. I therefore reject the argument that the Appellant is effectively being accused of storing material and equipment in parts of the site where this has not occurred and am basically satisfied with the clarity of paragraph 3. Nevertheless, this can be marginally improved by listing these breaches as Nos 1 and 2. This is but a minor refinement, a re-description which cannot possibly cause prejudice to either principal party, and it lies well within my powers of correction and variation provided by Section 132(2) of the Act.

46. Turning to the clarity of the remedial steps in paragraph 5 of the notice, in my reading the word "and" separates two distinct steps. In summary, the first is "remove from the land all building material and equipment, plant and structures including a concrete surface storage area" with bins etc. It is self evident what is required here, and that this includes the cessation of this storage use. The second step is "cease private and commercial vehicle parking thereon [i.e. on the land and wherever this activity has taken place] outwith the 50 x 30 metre area" etc. I find the confusion expressed on behalf of the Appellant implausible, and consider that the remedial steps are expressed with sufficient clarity. On reflection I would nevertheless have expressed them a little differently, in a list of two, in order to eliminate all scope for far-fetched arguments. This minor clarification cannot possibly cause prejudice to either principal party and also lies well within my powers of correction and variation provided by Section 132(2).

APPEAL DECISION

47. 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 dismiss the appeal and refuse to grant planning permission for the development to which the enforcement notice relates. I hereby direct that the enforcement notice dated 15 April 1997 be upheld, subject to the variation of its terms in the following respects;

1. The deletion (after its heading) of paragraph 3 which describes the "Breach of Control Alleged" and the substitution therefor of the following;

"Without planning permission; (1) creating a yard for the storage of building material and associated equipment, and (2) providing private and commercial vehicle parking outwith the 50m x 30m area for which planning permission 01/91/0253 was granted on 1 July 1991 to from a car park."

2. The deletion (after its heading) of paragraph 5 (first part) which specifies "What You Area Required To Do" (i.e. the remedial steps) and the substitution therefor of the following;

"(1) Remove from the land all building materials and associated equipment, plant and structures including those up-standing breeze block walls, which form storage bins, from upon their concrete hard-standing, and; (2) cease private and commercial vehicle parking so far as this occurs outwith the 50m x 30m area covered by planning permission 01.91/0523 dated 1 July 1991 to form a car park."

3. The deletion from the second part of paragraph 5 of the words;

"56 days after this notice takes effect"

.... and the substitution therefor of the words "by 1 January 1998".

48. The foregoing decision is final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks from the date hereof as conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1992 or of any orders, regulations or rules made under these Acts.

49. Subject to any such application to the Court of Session, this enforcement notice takes effect on the date of this letter, which constitutes the Secretary of State's determination of the appeal for the purpose of Section 131(3) of the Act.