

**ANGUS COUNCIL**

**DEVELOPMENT CONTROL COMMITTEE**

**18 OCTOBER 2001**

**PLANNING APPLICATION – MONTROSE ROAD, FORFAR**

**REPORT BY THE DIRECTOR OF PLANNING AND TRANSPORT**

**Abstract: This report deals with planning application No. 01/00208/FUL for the erection of 25 dwellinghouses for A & J Stephen Ltd at Montrose Road, Forfar. This application is recommended for conditional approval.**

**1 INTRODUCTION**

- 1.1 The site in question measuring 2 ha is allocated within the Angus Local Plan (adopted November 2000) for the development of around 20 houses. The site is located to the south of Montrose Road and is between the existing developments at Gowanbank and the relatively new Gowan Rigg having formed a part of the site under planning permission 01/97/1776 which created the Gowan Rigg scheme. However, because of drainage problems, this area was shown as remaining undeveloped.
- 1.2 It is proposed that 3 x 1<sup>1</sup>/<sub>2</sub> storey detached dwellinghouses and 22 single storey detached dwellinghouses be developed on the site. It is proposed that eight of these dwellings will front Montrose Road and take direct access from Montrose Road. A further 10 dwellings will have access via a new road created from Montrose Road. The remaining six dwellings will have access created from Gowan Rigg. There is no through road created to Montrose Road. The site also encompasses the public open space/play area provided in conjunction with the earlier consent and an area titled 'open space' on the plans that will be utilised for a SUDS surface water drainage scheme.

**2 APPLICANT'S CASE**

- 2.1 No supporting information was initially submitted by the applicant but see below.

**3 CONSULTATIONS**

- 3.1 NoSWA initially indicated that there are capacity problems in the public drainage system and as a result the development is within a drainage embargo area. No alternative drainage proposals have been submitted which meant the application could not be approved.
- 3.2 The Director of Roads has no objections to the development but would wish a number of conditions applied in the interest of pedestrian and traffic safety and free traffic flow.
- 3.3 No other comments have been received from consultees.

#### 4 LETTERS OF REPRESENTATION

4.1 Seven letters of objection have been received regarding this application.

4.2 The main issues arising are:-

- **The position of two of the houses affect residential amenity and pose a threat to a tree:** At approximately 25 metres window to window, the new housing is an appropriate distance from the existing development (well within policy guidelines) and an existing tree line provides added privacy. This can be protected by a condition.
- **Potential safety problems arising from the proximity of the driveway of house 1 to the existing entrance off Montrose Road:** The Roads Department have not indicated any concerns.
- **Understanding that this area was to be retained as open space:** The site has been zoned as residential development dating back to the Forfar Local Plan and remains so in the Angus Local Plan. Whilst the 1997 planning submission showed this area as remaining undeveloped, this was only pending resolution of drainage, it was never earmarked as public open space.
- **Increase in traffic as a result of development requires Montrose Road to be widened and speed limit reduced:** The Roads Department have not indicated any concerns. Indeed, increasing the width of the road would probably only encourage greater speeds.
- **Development should connect all houses in Gowanbank to mains gas and drainage:** The planning authority is not in a position to insist on this and neither is the developer obliged to do so.
- **Bad record of developer in dealing with previous neighbour drainage and other problems:** This does not represent a valid planning consideration.
- **Loss of existing trees:** This can be covered by a condition but it would be unreasonable to prohibit the removal or trimming of any tree whatsoever.

#### 5 PLANNING CONSIDERATIONS

5.1 The main issues to be considered are:-

- whether the proposal is consistent with the Development Plan;
- the comments received from NoSWA.

5.2 There are no issues arising from the Tayside Structure Plan 1993.

5.3 The Angus Local Plan (adopted 2000) zones the site for residential development. Proposal F/H2 states:-

“2 ha of land at Lilybank is allocated for a development of around 20 houses. Development proposals should taken account of the following:-

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- (a) along the northern boundary, houses should be positioned to front Montrose Road;
  - (b) the amenity area approved on this land as part of the adjacent development should be incorporated into the layout;
  - (c) vehicular access can be taken from Gowan Rigg or Montrose Road or both but no through vehicular access will be permitted.”
- 5.4 The principle of development on this site is well established. Consideration was given to its allocation through the recent consultation on the Angus Local Plan. It was agreed that around 20 houses be developed.
- 5.5 The main issue for this development is the matter of drainage from the site. Policy INF3: Private Drainage Systems provides guidance on the drainage of developments. Policy INF3 states:-
- “Development proposals involving the provision of private waste water treatment plant, biodiscs, septic tanks or similar will only be acceptable where:-
- (a) the proposed development is in accord with the policies in this Local Plan; and
  - (b) the site is outwith the public sewerage system; and
  - (c) there is no detrimental affect to a potable water supply, or supply for animals or an environmentally sensitive water course or loch; and
  - (d) the requirements of SEPA and/or The Building (Procedure) (Scotland) Regulations 1987 are met in relation to installation, e.g. proximity to buildings.”
- 5.6 NoSWA indicated that the site currently lies within a drainage embargo area. There are major capacity problems within the public drainage system within this area of Forfar. The applicant was made aware of the situation and it transpired that they endeavoured to meet with NoSWA in order to find a solution but a response was not received until relatively recently. The approach adopted by the Council is to discourage private sewage systems in areas served by a public sewage system regardless of whether or not there is capacity within the system. The proposed development is located within an area served by the public system and therefore, the officials have sought to find a solution that utilises mains drainage either immediately or with assurances, in the near future.
- 5.7 It may, for instance, have been possible to solve the drainage problem through the use of a suspensive condition. However the works which require to be undertaken to enable the capacity problem to be resolved have no timetable to be carried out. NoSWA have made neither a time or financial commitment to these works being carried out. It is not conceded that a suspensive condition should be applied in circumstances where there is no likelihood of a solution to the drainage issue or the developer has no power to carry out infrastructural works required to implement the development.

- 5.8 However, latterly meetings have been held with all the interested parties and a compromise solution as emerged. The original Gowan Rigg planning consent (01/97/1776) was for 146 houses but ultimately only 131 were accommodated on the site. In framing the drainage embargo, NoSWA made allowance for the 146 houses. As only 131 have been built, NoSWA is prepared to transfer 15 of the “allowance” to the current application and accommodate them in the mains drainage. Under these circumstances, I am prepared to grant consent but suspending 10 of the houses until they too can be accommodated at some later date.
- 5.9 The principle of development on this site is accepted and the area is zoned in the Local Plan. Other issues relating to amenity etc. have been addressed in Section 4 and the Director of Roads is satisfied with the access and traffic implications. With the recent agreement with NoSWA, there is now no justification for not granting conditional consent.

## **6 HUMAN RIGHTS IMPLICATIONS**

- 6.1 The recommendation in this report for grant of planning permission, subject to conditions, has potential implications for neighbours in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying this recommendation in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. Any actual or alleged infringement of neighbours’ rights to peaceful enjoyment of their property and/or interference with their privacy/home/family life arising from grant of this application is in accordance with the Council’s legal duties under the Planning Acts to determine planning applications such as the present one and the grant of planning permission is justified and necessary in the public interest on the basis that any such actual or alleged infringement is not significant or material as balanced against the applicant’s freedom to carry out reasonable development and/or activities over his property as supported by the Development Plan, and other material considerations which, as referred to in the report, are supportive of the proposed development. The conditions constitute a justified and proportional control of the use of the property in accordance with the general interest and have regard to the necessary balance of the applicant’s freedom to enjoy his property against the public interest and the freedom of others to enjoy neighbouring property/home life/privacy without undue interference.

## **7 RECOMMENDATION**

- 7.1 It is recommended that the application be conditionally approved.
1. That the development be constructed in two phases of 15 houses (Phase 1) and 10 houses (Phase 2) as indicated on drawing No. P8140/58. Development of the second phase shall not commence until confirmation has been obtained by the planning authority in writing from NoSWA that a connection to the public sewer for the houses within Phase 2 will be made available.
  2. That none of the existing trees within the site be felled, topped, lopped or otherwise interfered with without advance discussion with and without the prior written consent of the Director of Planning & Transport.

3. That no development takes place until there has been submitted to and approved by the planning authority, a scheme of landscaping, including, where appropriate, an indication of all existing trees and hedgerows on the land and details of these to be retained and cleared, together with the measures for their protection in the course of development.
4. That the planting be carried out prior to completion of Phase 1 and any trees which within a period of five years from the commencement of the use die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species.
5. That visibility splays of 4.5 metres x 90 metres be provided in each direction at the junction of the proposed access or development road with the public road.
6. That no structure, wall, etc. or planting in excess of 1050mm in height be introduced into the sightline areas.
7. That no walls or fences be erected in the nominal two metre wide service/overhang strips which shall be laid out in grass and permanently delineated by the applicant to the satisfaction of the Director of Roads.
8. That all matters relating to access, road layout and off-street car parking be to the standards required by the Director of Roads, to the satisfaction of the planning authority.
9. That the roof covering matches the materials on the existing building.
10. That the external wall finishes be agreed in consultation with and be to the satisfaction of the Director of Planning & Transport prior to the commencement of work.
11. That prior to commencement of construction on Plots 24 to 26, cross-sections indicating existing and proposed ground levels and proposed house floor levels be submitted for the approval of the Director of Planning & Transport.
12. That the surface water (SUDS) disposal arrangements be to the satisfaction of the planning authority in consultation with SEPA, NoSWA and the Director of Roads.
13. That the 'clipped' roofline above the window of Bedroom 2 on the front elevation of the house proposed for Plot 25 be deleted and replaced by a full traditional gable wall.

**Reasons:**

1. In order that the planning authority is assured that the drainage arrangement to serve the site is satisfactory.
2. In order that the general amenity of the area shall not be affected.

3. In order to ensure that the landscaping proposals necessary to enhance the amenity of the proposal/development are satisfactory and acceptable to the Council.
4. In order to comply with the landscaping requirements of the local planning authority and ensure subsequent maintenance.
5. In the interests of road traffic and/or pedestrian safety.
6. In the interests of road traffic and/or pedestrian safety.
7. In order to ensure proper provision and/or protection for the siting of essential public utilities.
8. In the interests of road traffic and/or pedestrian safety.
9. In the interests of road traffic and/or pedestrian safety.
10. In order that the Council may verify the acceptability of the proposals on amenity grounds.
11. In order that the Council may verify the acceptability of the proposals on amenity grounds.
12. In order that the drainage arrangements to serve the site are to the satisfaction of this Authority.
13. In order to enhance the architectural appearance of the building.

**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/SC/IAL  
10 October 2001

Alex Anderson  
Director of Planning and Transport