

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE - 08 APRIL 2008
PLANNING APPLICATION – LAND ADJACENT TO THISTLE COTTAGE, WOODVILLE,
ARBROATH

Grid Ref. No: 360602 : 743248

REPORT BY THE DIRECTOR OF INFRASTRUCTURE SERVICES

Abstract: This report deals with planning application No. 08/00122/OUT for the erection of a dwellinghouse for Mr & Mrs P Gersok at land adjacent to Thistle Cottage, Woodville, Arbroath. This application is recommended for approval.

1 INTRODUCTION

- 1.1 Members may recall that at the meeting of 11 March 2008 they resolved to grant outline planning permission in respect of the above planning application subject to confirmation of conditions and the agreement of terms for a Section 75 Legal Agreement making permission personal to the applicants during the construction phase.

2 PLANNING CONSIDERATIONS

- 2.1 In relation to Members resolution to enter into a Section 75 Legal Agreement making permission personal to the applicants during construction the following should be borne in mind.

- 2.2 Scottish Planning Policy 1 (SPP1): The Planning System states in relation to Legal Agreements that :

Planning agreements can be used to overcome obstacles to the grant of planning permission. Where possible planning authorities should rely on planning conditions rather than use a planning agreement.

- 2.3 Scottish Government Circular 12 /1996 refers specifically to the use of Planning Agreements and gives tests of reasonableness which should be applied when considering whether to enter into a Legal Agreement with a developer. Of particular relevance in this case are:

- *Is an agreement needed to enable a development to go ahead?*
- *Is the requirement in the agreement so directly related to the regulation of the proposed development that it should not be permitted without it?*
- *Will the agreement offset the loss of, or impact on, any amenity or resource which is present on the site prior to the development?*

- 2.4 In other words, where a proposed development would, if implemented, have a damaging impact on the environment or local amenity and these matters cannot be resolved through the use of planning conditions it will generally be reasonable for planning authorities to seek a planning agreement to overcome these difficulties.

- 2.5 In this instance however Members have resolved to grant planning permission as they consider that the proposed site is a gap site which is in conformity with Policy H7 of the Adopted Angus Local Plan and they further consider that the proposed development would not impact upon the rural character of the area.
- 2.6 Given that Members have indicated that they consider the proposal to conform with the relevant Local Plan policy namely Policy H7, it may be questionable whether the imposition of a Legal Agreement is reasonable when the above tests are considered.
- 2.7 Furthermore, Circular 12/1996 states that Planning Authorities should, be aware of the financial consequences of entering into a Legal Agreement for developers. Equally important is that registered planning agreements are legal documents binding against successors in title and the process of securing an agreement between the parties, checking titles, drafting, etc inevitably takes time. Negotiating and completing a planning agreement can add several months to processing a planning application.
- 2.8 With this in mind Members are asked to consider whether the imposition of a burden on the land will be justified in this case when said burden will only cover the construction phase of the development which Members have already indicated is compliant with the relevant provisions of the Development Plan.
- 2.9 In this case it is considered that the scale and form of development could be adequately restricted through the imposition of planning conditions and the proposal could if necessary be submitted for Members consideration at the Reserved Matters or detailed application stage in order to ensure that Members aspirations for the site are adhered to.
- 2.10 General terms for a Legal Agreement are however given in Section 4 below should Members still consider it necessary to enter into such an agreement.

3 HUMAN RIGHTS IMPLICATIONS

- 3.1 The recommendation in this Report for grant of outline 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. The recommended conditions constitute a justified and proportionate 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.

4 RECOMMENDATION

- 4.1 It is recommended that the application be approved subject to the following conditions:

Conditions:

1. That no development in connection with the planning permission hereby approved shall take place unless full details of the siting, design, external appearance and landscaping of the development and the means of access serving the development (hereinafter referred to as the "Reserved Matters") have been submitted to and approved by the Planning Authority.

Reason: Permission for the development has been granted in principle only and subsequent approval is required for the Reserved Matters in accordance with Sections 58 and 59 of the Town and Country Planning (Scotland) Act 1997.

2. That application for approval of reserved matters shall be made to the Planning Authority within 3 years beginning with the date of this outline planning permission.

Reason: Pursuant to Sections 58 and 59 of the Town and Country Planning (Scotland) Act 1997.

3. That the development hereby granted shall be begun on or before whichever is the latest of the following dates:

(a) The expiration of five years beginning with the date of the outline planning permission; or

(b) The expiration of two years from the final approval of the reserved matters or in the case of approval of different dates, the final approval of the last such matters to be approved.

Reason: Pursuant to Sections 58 and 59 of the Town and Country Planning (Scotland) Act 1997.

4. That no works in relation to the development hereby approved shall take place unless a scheme of hard and soft landscaping works has been submitted to and approved by the Planning Authority. Details of the scheme shall include:

(i) Existing and proposed ground levels relative to a fixed datum point;

(ii) Existing landscape features and vegetation to be retained;

(iii) The location of new trees, shrubs, hedges and grassed areas;

(iv) A schedule of plants to comprise species, plant sizes and proposed numbers and density;

(v) The location, design and materials of all hard landscaping works including walls, fences and gates

All soft landscaping proposals shall be carried out in accordance with the approved scheme and shall be completed during the planting season immediately following the commencement of development or such other date as may be agreed in writing with the Planning Authority. Any planting which, in the opinion of the Planning Authority within a period of five years from the completion of development, is dying, being severely damaged or becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted.

Reason: To ensure the implementation of a satisfactory scheme of landscaping which will help to integrate the proposed development into the local landscape in the interests of the visual amenity of the area.

5. That development within the site be restricted to single or 1.5 storey only.

Reason: In the interests of the character of the development and the amenity of the area.

6. That the number of dwelling units within the site be limited to one only.
Reason: In the interests of the character of the development and the amenity of the area.
7. That no other development in connection with the permission hereby approved shall take place and the access hereby approved shall not be brought into use unless visibility of 60 metres in both directions along the public road has been provided from a point 2.1 metres measured at right angles from the existing carriageway surface along the centre line of the approved access. Once formed, the visibility splays shall be permanently retained thereafter and no visual obstruction shall be permitted within the splays so formed.
Reason: In the interests of the free flow of traffic and traffic safety.
8. That prior to the commencement of development a verge crossing at the proposed access shall be formed and constructed in accordance with the standards of Angus Council.
Reason: In order to ensure an adequate standard of construction in the interests of road safety.
9. That a minimum of two parking spaces shall be provided within the site curtilage prior to the occupation of the dwelling hereby approved. Once formed the parking spaces shall be retained permanently thereafter as such.
Reason: In the interests of road safety and the free flow of traffic.
10. That prior to the occupation of the dwellinghouse hereby approved, a turning space shall be formed within the site curtilage which will allow vehicles to enter and leave the site in forward gear. Once formed the turning space shall be retained permanently thereafter as such.
Reason: In the interests of road safety and the free flow of traffic.
11. That no works in connection with the development hereby approved shall take place unless a detailed levels survey of the site has been submitted to and approved in writing by the planning authority. The detailed drawings shall show finished ground and floor levels of the proposed development relative to existing ground levels and a fixed ordnance datum point.
Reason: In the interests of the residential amenities of the occupiers of the existing dwellinghouses and the visual amenities of the area.

General terms for Section 75 Legal Agreement:

- That development within the site be restricted to the development of one dwellinghouse only which shall be constructed solely for the applicants, namely Mr and Mrs P Gersok.

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.

P&T/MA/IAL
24 March 2008

Eric S. Lowson
Director of Infrastructure Services