

**ANGUS COUNCIL**

**DEVELOPMENT STANDARDS COMMITTEE – 16 SEPTEMBER 2014**

**PLANNING APPEAL DECISION  
FIELD 300M EAST OF CARLOGIE HOTEL, CARLOGIE, CARNOUSTIE**

**REPORT BY HEAD OF PLANNING AND PLACE**

**Abstract:**

This report presents the findings of the Reporter appointed by the Scottish Ministers to determine a deemed refusal appeal in relation to a planning application for the Formation of an Employment Area Comprising Class 4 (Business), Class 5 (General Industry) and Class 6 (Storage And Distribution) Uses and Realignment of Carlogie Road for Angus Estates (Carnoustie) LLP. The appeal was allowed and planning permission in principle granted subject to conditions and the advisory note appended.

**1. RECOMMENDATION**

It is recommended that the Committee notes the outcome of the above appeal and has regard to the Reporters findings in so far as they are material to the determination of other planning applications.

**2. INTRODUCTION**

2.1 Planning application reference 14/00043/PPPM for the Formation of an Employment Area Comprising Class 4 (Business), Class 5 (General Industry) and Class 6 (Storage and Distribution) Uses and Realignment of Carlogie Road for Angus Estates (Carnoustie) LLP was reported to the Development Standards Committee on 13 May 2014 (Report 209/14 refers). Committee decided to defer consideration of the application.

2.3 The applicant, Angus Estates (Carnoustie) LLP subsequently lodged appeal as the Council failed to determine the application within the statutory timescale. The Reporter's conclusions and decision are presented below.

**3. REPORTER'S DECISION**

**Reasoning**

3.1 I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.

3.2 Having regard to the provisions of the development plan the main issues in this appeal are:

- the principle of whether this use is acceptable in this location; and
- whether the proposed development is capable of being or likely to be delivered.

3.3 The development plan for this site consists of the TAYplan Strategic Development Plan and the Angus Local Plan Review. The policies of most relevance to the appeal are contained in the local plan. Policy C7 of the local plan allocates the appeal site as employment land for classes 4, 5 and 6. The policy states that proposals must be in accordance with a development brief which should incorporate various requirements including the construction of a realigned Carlogie Road. The principle of employment use being acceptable at this location is therefore established in the development plan. No development brief accompanies the application, but I accept the view set out in the council's committee report that, given that this is an application for planning permission in principle, the details required in Policy C7 are not necessarily required at this stage. What would be necessary would be for these matters to be addressed in due course at the approval of matters specified in conditions stage. I therefore conclude that the proposal accords with the development plan.

- 3.4 Turning to other material considerations, I note that although this is an appeal against non-determination, the council has stated that should I conclude that deferral is not appropriate, that I should refuse the application due to the development's non-delivery to date, the potential for competing sites to emerge through the new local development plan, and the stage this plan has reached. The council has commenced the process of replacing the local plan and has published a main issues report ahead of issuing a proposed local development plan. The main issues report presents as a preferred option the development of a site to the north-west of Carnoustie for uses including business, and the de-allocation of the land at Carlogie Road. The Carlogie Road site is presented as a reasonable alternative option.
- 3.5 A number of representees have suggested, for various reasons, that Carlogie Road is not a good location for employment development at all. The council and some third parties argue that the merits of the two sites at Carlogie Road and Upper Victoria should be considered alongside each other, most obviously through the local development plan process. I agree that the development plan process is generally the best forum for making comparative assessments between competing sites. I note that such an assessment formed a part of the most recent review of the Angus Local Plan and featured as an issue in the public local inquiry into that plan. The inquiry considered land north of Pitskelly Farm, in the same general vicinity as the Upper Victoria site promoted through the main issues report, and concluded that the Carlogie Road site was preferable, and should be allocated for employment use. This conclusion was accepted by the council.
- 3.6 Certainty and confidence in the planning system is not served by revisiting decisions that have already been made through due process, unless circumstances have clearly changed. Unless such changes can be demonstrated, I do not therefore consider it necessary or helpful for me to reconsider the principle of whether employment is an appropriate use for this land. Nor do I consider it necessary to delay the determination of this application in order to revisit the comparative exercise of selecting the most appropriate site for employment land in Carnoustie.
- 3.7 Paragraph 34 of Scottish Planning Policy states that it may be appropriate in some circumstances to consider whether granting planning permission would prejudice the emerging plan. I consider that there would need to be very special new material considerations for such circumstances to extend to withholding permission for sites that are allocated in the current development plan. Paragraph 34 also states that prematurity will be a more relevant consideration the closer the plan is to adoption. In this case, Angus Council is at an early stage in the process, and adoption is still a long way off. I therefore give the main issues report little weight in my decision. However I do note the council's concerns, expressed at paragraph 26 of the Carnoustie section of the main issues report, that the cost of realigning Carlogie Road could render development at this location unviable.
- 3.8 Regarding viability and deliverability, it is not necessarily essential for a developer to demonstrate that a proposal is financially viable in order for permission to be granted. In this case, if the development economics do not ultimately allow the development to proceed, the land will presumably remain in agricultural use and the status quo will continue. However it is likely to be easier to secure funding for a proposal once some form of planning permission is in place. It might cause more confusion to local people for sites to be identified for development in the development plan which have little prospect of being delivered. I therefore consider viability to be a more significant factor when considering development plan allocations than planning applications.
- 3.9 In any event, the absence of development on this site over the five years since the adoption of the Angus Local Plan Review does not in itself demonstrate that the site is not viable. The last five years have seen particularly unusual economic conditions, during which many sites that one would expect to have seen developed in normal circumstances have stalled. The appellant's evidence is that they have a new development partner, and that jointly they are willing and able to progress the proposal even if financial support from the council is not forthcoming. A detailed financial appraisal has not been submitted to describe the costs of the various elements of the scheme or to demonstrate how these will be funded. Equally no compelling or detailed evidence has been submitted to show that the scheme is not financially viable. Because the section 75 agreement relating to the earlier application was never signed, no planning permission ever existed to allow development to proceed until now. In summary, I do not believe that the absence of development over the past five years constitutes sufficient evidence to demonstrate that development is not viable now that the general economic situation has improved and the development partner has changed. I therefore conclude that

any uncertainty over the deliverability of the site does not constitute a strong enough material consideration to overturn the clear development plan position.

3.10 I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

3.11 The council has suggested a number of conditions to be imposed if permission in principle is granted. I have adopted those conditions with some minor rewording, being satisfied that they meet the tests contained in Circular 4/1998: The Use of Conditions in Planning Permissions.

#### **4. FINANCIAL IMPLICATIONS**

There are no financial implications.

#### **5. OTHER IMPLICATIONS**

##### **Risk**

There are no risks associated with the recommendations contained in this report.

##### **Human Rights Implications**

There are no Human Rights implications.

##### **Equalities Implications**

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

**VIVIEN SMITH  
HEAD OF PLANNING AND PLACE**

**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 a material extent in preparing the above report.

**P&P/IM/AH/IAL  
3 September 2014**

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Appendix 1: Conditions and advisory notes attached to permission by appeal Reporter

## Appendix 1

### Conditions and advisory notes attached to permission by appeal Reporter

#### Conditions

1. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.
  - (a) the overall layout of the site, including the distribution of uses and the provision of strategic landscaping;
  - (b) road layout, including detail of the realignment of the A930 and provision for pedestrian and cyclist access between the existing and realigned A930 roads;
  - (c) the means of foul and surface water drainage. For the avoidance of doubt all foul drainage from the development shall be directed to the public sewer and no development shall commence until evidence is provided to the planning authority to demonstrate that the public sewer has capacity to accommodate development of the entire site. Surface water shall be directed to a Sustainable Urban Drainage System (SUDS) and full details of a SUDS for the entire site along with details of phasing, maintenance and management shall be provided. All water retention/ detention features shall be designed to minimise danger to the public and shall be fully landscaped and fenced where necessary to achieve this purpose;
  - (d) the landscaping of the site including:
    - A detailed levels survey of the site and cross sections showing existing and
    - proposed finished ground levels relative to a fixed ordnance datum point;
    - Boundary treatments and strategic planting, including details of the phasing,
    - maintenance and management of all landscaped areas;
    - Cycle and pedestrian linkages;
    - Provision of a landscape buffer zone to the north of the application site.
  - (e) a scheme for the phasing of the entire development and for the delivery of the of the access requirements identified in condition 3;

Thereafter there shall be no development or use of any plot or plots until the written approval of the authority has been given for the following matters: -

- (f) the layout of that plot, the means of access, drainage, landscaping, design and external appearance of the building(s) and detail of the car parking within that plot curtilage;
- (g) a detailed levels survey of the site and cross sections showing existing and proposed finished ground levels relative to a fixed ordnance datum point;

The measures that are approved shall be implemented in their approved form unless otherwise detailed in conditions attached to this permission or in a subsequent approval of matters specified in conditions.

*Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.*

2. That any application for approval of matters specified in condition 1 (a) – (e) above shall be accompanied by the following:-
  - (i) A Design and Access Statement in accordance with the requirements of Part 3 Regulation 13 (5) of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013;
  - (ii) A Transport Statement;
  - (iii) A lighting assessment, in accordance with a method statement approved in writing by the planning authority;
  - (iv) A Development Brief, to include: -
    - an overall design concept for buildings within the site taking account of building orientation, building height, use of materials, and a palate of colours and textures to be used in the construction of buildings;

- provision of access by pedestrian, cycle and public transport;
- a strategy for the drainage of foul and surface water;
- site layout and design to accommodate a range of business uses;
- details of structure planting and landscaping within and around the site which shall take place at an early stage and will require to be to a high standard.

*Reason: To enable the planning authority to consider the matters detailed in condition 1, in the interests of visual amenity, road safety, drainage, safeguarding amenity of light sensitive properties and landscaping, and given the gateway location of the site.*

3. Vehicular and pedestrian access and public transport facilities at the site shall be provided in accordance with the following requirements:-

- The carriageway of the A930 Carnoustie - Muirdrum road shall be widened to 7.3 metres in accordance with the standards of Angus Council extending from the northern site boundary in a northerly direction to a point where it meets the existing cycle track to the east of the carriageway;
- A 2.5 metre wide cycle track shall be provided on the east side of the carriageway widening detailed above in accordance with the standards of Angus Council;
- Provision of bus lay-bys (one on each side of the re-aligned Carlogie Road) at locations and to a specification approved in writing by the Planning Authority;
- 2 x 3 bay enclosed glazed roof bus shelters and associated infrastructure, (one on each side of the re-aligned Carlogie Road) at locations and to a specification approved in writing by the Planning Authority;
- Two bus stop poles at the northern section of the application site at location(s) and specification approved in writing by the Planning Authority;
- The provision of a new pedestrian link from the housing to the west of the application site to the public transport infrastructure at a location and specification approved in writing by the Planning Authority;
- All details relating to access, road layout, design and specification; including provision of street lighting and surface water drainage shall be completed in accordance with the standards of Angus Council;
- All parking provision shall be in accordance with the standards of Angus Council.

Thereafter the works shall be undertaken in accordance with the details of the phasing under condition 1 of this permission.

*Reason: In the interests of traffic safety and free traffic flow and to ensure adequate provision for pedestrians and public transport.*

4. That all proposed and conditional alterations to the existing public road network shall be completed to the standards of Angus Council prior to the commencement of development. Specifically, no other works shall take place until the realignment and upgrading of the A930 has been completed in accordance with the approved details.

*Reason: In order to provide a satisfactory standard of access in the interests of traffic safety and free traffic flow in a timely manner.*

5. Prior to the commencement of any development comprising a Class 5 or 6 Use as defined by the Town and Country Planning (Use Classes) (Scotland) Order 1997 (or any subsequent amendment, revision or re-enactment) a noise impact assessment shall be submitted to and approved in writing by the Planning Authority. Prior to the submission of the aforementioned noise impact assessment a method statement detailing how this will be carried out shall be submitted to and approved in writing by the Planning Authority. Thereafter the assessment shall be undertaken in accordance with the approved method statement unless otherwise agreed in writing with the Planning Authority.

*Reason: In order to safeguard the amenity of occupants of noise sensitive property located close to the development.*

6. Prior to the commencement of any development comprising of any of the following activities, namely food manufacture, waste management, shot blasting or coating processes, an air quality impact assessment including odour assessment shall be submitted to and approved in writing by the Planning Authority. Prior to the submission of

the aforementioned air quality impact assessment a method statement detailing how this will be carried out shall be submitted to and approved in writing by the Planning Authority. Thereafter the assessment shall be undertaken in accordance with the approved method statement unless otherwise agreed in writing with the Planning Authority.

*Reason: In order that any residential amenity impacts associated with food manufacture, waste management, shot blasting or coating processes can be considered and mitigated.*

7. That notwithstanding the details shown on the submitted drawings the permission hereby approved only provides for the in-principle development of 15 hectares of Class 4, 5 and 6 uses as indicated by Policy C7 of the Angus Local Plan Review. This permission makes no provision for the use of any specific area of land for any specific use and none of the submitted layouts are therefore approved as part of this permission.

*Reason: For clarification purposes and for the avoidance of any possible misunderstanding as the overall layout of the site and location of uses will be considered through the submission of a further application or applications for matters specified in conditions.*

### **Advisory notes**

1. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

2. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)

3. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.)