

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 8 FEBRUARY 2022

PLANNING APPEAL DECISION: LAND AT GOWANBANK, ARBROATH ROAD, FORFAR

REPORT BY SERVICE LEAD – PLANNING & SUSTAINABLE GROWTH

Abstract:

This report presents the findings of the Reporter appointed by Scottish Ministers to determine an appeal by Ogilvie Homes Ltd against the decision of Angus Council to refuse planning permission for a residential development and associated works on land at Gowanbank, Arbroath Road, Forfar. The Reporter dismissed the appeal and refused planning permission.

1. RECOMMENDATION

It is recommended that the committee notes the outcome of the appeal.

2. INTRODUCTION

2.1 At its meeting on 20 April 2021 committee refused planning permission for a residential development on land at Gowanbank, Arbroath Road, Forfar (application [18/00340/FULM](#) refers).

2.2 The applicant, Ogilvie Homes Ltd, submitted an appeal to Scottish Ministers in relation to that decision. The appeal was dismissed and planning permission was refused. The Reporters decision is set out below.

3. REPORTER'S DECISION

Decision

I dismiss the appeal and refuse planning permission.

Preliminary

The scale and nature of this development is such that it would come within the description of development set out in Class 10 b) of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The proposed development was the subject of a screening opinion issued by Angus Council on 25 May 2018 under the aforementioned Regulations. The council decided that an Environmental Impact Assessment would not be required and I agree with this conclusion.

The appellant also confirmed during the course of this appeal that the correct site boundary is that depicted by the location plan LOC-01 which includes Rosie Road.

Reasoning

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

the TAYplan Strategic Development Plan 2017 (TAYplan) and the Angus Local Development Plan 2016 (LDP) including its supplementary guidance.

2. I am referred by the council and the appellant to Policy 2 Shaping Better Quality Spaces of TAYplan and a further five LDP policies and its supplementary guidance, Design Quality and Placemaking. I find these to be relevant to the appeal proposals and address them in more detail in my findings below.

3. The appeal site is situated on the eastern edge of Forfar and consists of a six hectare area of undulating grassland and a single dwellinghouse on Arbroath Road (to be demolished for access purposes). Housing lies to the north, south and west with a disused railway embankment marking the eastern site boundary. Beyond that there is a concrete block factory and storage yard located on a former sand and gravel quarry and, a closed landfill site operating as a waste management centre. A core path, Rosie Road, cuts diagonally across the site between Arbroath Road to the south west and Montrose Road to the north east.

4. Some of the representations express resistance to the principle of a residential development at this site however I find this is not a relevant consideration in this case as the local development plan allocates this site for housing development (F2). Although the proposed development of 81 dwellings would exceed the indicative capacity of 60 units set out in F2, the council has not indicated this leads to any conflict with the development plan in terms of an over-supply of housing land, availability of infrastructure eg education capacity, or road safety (or traffic management) matters. The council's concerns centre on the design and layout of those 81 dwellings and the associated open space.

5. I also find the appellant has demonstrated through the supporting information on noise, dust and odour that (subject to the installation of noise mitigation measures) there would be no amenity concerns arising from the erection of housing in the cordon sanitaire (a requirement of F2). The council does not raise any concerns regarding these aspects of the development and its concerns with regard to amenity are focussed on the effect of the development on existing septic tank soakaways within the site boundaries.

6. Having regard to the provisions of the development plan I therefore consider the main issues in this appeal are whether the proposed development would:-

- result in an acceptable form of development at this location; and
- whether the amenity of existing and future residents would be affected by developing over, or near to, existing septic tank soakaways.

Form of development

7. The housing allocation F2 offers some direction on how the site should be developed. The vehicular access is to be taken from Arbroath Road; and Rosie Road is to be "taken into account and incorporated into the layout of the site". There is no further direction offered by F2 in terms of how Rosie Road should be treated in landscape or housing layout terms. I therefore find that the layout of the proposed development, as it incorporates a new vehicular access onto Arbroath Road and retains Rosie Road meets these requirements of F2.

8. Although these broad requirements are met I find the other design orientated policies of the development plan still apply to this proposed development. In particular those that offer direction on the design and layout of new housing, the design of open space and the treatment of existing or new pedestrian and cycle routes. Of particular relevance in this case are the parts of those policies that place

emphasis on the importance of understanding and responding to the existing features of the site and those that offer direction on what constitutes good quality design.

9. TAYplan policy 2 Shaping Better Quality Places expects new development to be “place-led”, responding to an understanding of the place and incorporating and enhancing existing natural and historic assets. LDP policy DS3 Design Quality and Placemaking expects development to draw on aspects of landscape and townscape that contribute positively to the character or the sense of place of the area. Five key attributes are set out and they are expanded upon within the council’s Design and Placemaking Supplementary Guidance (SG). The council highlights the parts of this document that promote a perimeter block approach to the layout of housing and the natural surveillance of open space.

10. Other LDP policies deal more specifically with pedestrian and cycle connectivity. DS2, Accessible Development, expects new development to provide or enhance safe and pleasant paths for walking and cycling and to create new links between existing and new paths. Policy PV3, Access and Informal Recreation, seeks to protect the “integrity or amenity of existing recreational access opportunities” including access rights, core paths and rights of way. Existing access routes should be retained, and new development should incorporate links to green space, path networks, green networks and the wider countryside.

11. Taking into account the requirements of these policies and guidance documents I consider the key issues here are the extent to which the proposals have been ‘place-led’, to what extent the layout has addressed any important landscape or townscape features and how the formal open spaces and informal landscaped areas have been treated.

12. In making my assessment I have taken into account the various submitted plans and; the appellant’s documents explaining their design rationale as set out in the original Design and Access Statement, the addendum to that Statement, the Sustainable Development Assessment and the Settlement and Character Assessment. I have also carried out a site inspection, where I was able to walk through and around the site.

Existing landscape and townscape features

13. The site is encircled by housing which dates from different eras of the town’s expansion and as such it demonstrates a variety of designs. The only common feature being the orientation of rear or side boundaries towards the appeal site. I do not therefore find there to be any prevailing architectural style or distinctive townscape characteristics that would be an over-riding consideration at this location. However I find there to be a number of important landscape features at the appeal site that I would expect to influence the design and layout of the development. These are the route of Rosie Road through the site, the undulating nature of the open grassland, and the railway embankment to the east.

Rosie Road

14. Rosie Road is a well-used but unsurfaced pedestrian footpath passing along a fenced corridor of between 5 and 10 metres in width. The representations indicate its value to the local community and this is reflected in its designation as a core path. The retention of the footpath is clearly beneficial not just for recreational purposes within the local community but as a pedestrian link from the proposed housing development to the surrounding area. While Rosie Road is to be retained and

linkages made with the housing development, unfortunately it cannot be improved or realigned as the appellant does not control the land within the fenced corridor.

15. Vehicular connectivity and permeability are important design expectations of policy DS3 and the SG. Although Rosie Road is an asset in terms of pedestrian or cycle connectivity I find, because it cannot be altered, it places a constraint on the layout of development. Primarily because it divides the appeal site into two development areas, prevents vehicular links through the site other than the main access road and dictates the ground levels through the centre of the site. On that basis I find it is reasonable that, in retaining Rosie Road, it is necessary to accept the creation of two self-contained development areas that would have limited vehicular connections across Rosie Road.

16. Notwithstanding the above I find it is still important that the design of the two separate areas should respond positively to the qualities of the core path. I find these to be derived from its purpose as a recreational route linking the town with other countryside access paths, its predominantly open character, the way it follows the prevailing ground levels of the undulating land and, the unsurfaced and varying width of the path itself.

17. The appellant's designs have evolved to incorporate a landscaped corridor alongside Rosie Road and to increase the extent that the proposed open space areas would adjoin the existing Rosie Road corridor. Even with the introduction of these changes I find the stretch of Rosie Road enclosed by the rear or side garden boundaries of the proposed development would undermine the qualities of the route.

18. I do not consider the proposed landscape planting and the single storey house types to the south east would offset these negative impacts. In particular the need to introduce a steep embankment on the southern side would exacerbate the adverse effects of the enclosed corridor. I also find the rear gardens facing Rosie Road to offer little benefit in terms of natural surveillance. The addition of decorative trellises to the rear garden fences or their replacement with hedges would not alter this as, in my opinion, any resident here, for privacy and security reasons, would prefer a robust boundary marker next to the path.

19. Furthermore the crossing point of the new access road with Rosie Road makes no attempt to highlight the importance of the core path in the design of the crossing other than to ensure the levels of Rosie Road are aligned with the new footways.

Undulating land form

20. I accept that any housing development at this site will impact on the character of the undulating grassland but maintaining some variety in ground levels would be beneficial. The appellant has been able to retain some sense of the previous landform through the use of development platforms and the placing of open space and landscaped areas on the steeper ground albeit with the addition, in places, of new engineered embankments.

21. Nevertheless I find there are some negative effects arising from the way that the new housing would relate to the landscaped areas, open spaces and the turning areas at the end of the two cul-de-sacs on the western boundary. I consider there to be distinct visual amenity and safety benefits in providing natural surveillance of informal and formal open space including the turning areas therefore I consider it is important to follow this element of the council's design guidance.

22. Although two 'residential greens' have been created where the housing is arranged to provide natural surveillance and to offer an attractive setting for the

housing this approach is not achieved throughout the development. I find the houses mainly present a rear elevation to the larger landscaped areas and open spaces (north of plots 72 to 77, north of plots 12 to 14, north of plots 50 to 54, west of plots 61, 62, 77 and 78 and the turning areas adjacent to plots 61, 62, 77 and 78). This layout reflects a limited use of the perimeter block approach: where housing generally presents a main frontage towards a public place and where rear boundaries abut one another. This approach is advocated by the council's guidance which in turn reflects national guidance (which I return to below).

23. I therefore find the proposals have not accommodated the changing levels across the site in a way that ensures the landscaped areas, open spaces and turning areas would contribute positively to the overall form and visual amenity of the development.

Railway embankment

24. Although a manmade feature, the railway embankment offers a strong sense of enclosure for the site and assists with noise attenuation from the adjacent industrial site. However additional acoustic barriers on part of this boundary are required and the council has some concerns regarding the longevity of the timber fence element. I do not doubt the technical capabilities of this device as an acoustic barrier but I find the fence in combination with the bund or other retaining structures to adversely impact on the positive contribution the railway embankment makes to the setting of the appeal site and individual gardens.

25. The barrier north of plot 12 consists of a bund and fence and would be open to view across the open space at a point where the embankment forms a strong landscape feature. It is not clear from the levels layout (19-126-SK31) how this bund will interact with the slope of the railway embankment. I also find the acoustic barrier at plots 7 to 12, extending to four metres height and consisting of a retaining wall, embankment and fence would have an overbearing effect on the adjacent houses. It is similarly unclear how this part of the acoustic barrier would interact with the railway embankment.

26. Drawing all these design concerns together I find the proposed development would not provide and/or enhance safe and pleasant paths for walking and therefore it would compromise the amenity of an existing recreational access contrary to the requirements of LDP policies DS2 and PV3. The proposals would not achieve two of the five design requirements of Policy DS3: in particular it would not fully meet the expectations of the parts referred to as 'distinct in character and identity' and 'safe and pleasant'. It also fails to respect (or respond positively to) the various landscape features of the site contrary to LDP policy DS3 and TAYplan policy 2. A significant proportion of the proposed development would also fail to follow the perimeter block approach or provide natural surveillance of open spaces as expected by the council's Supplementary Guidance.

Private drainage systems

27. It is not disputed by the appellant that the existing soakaways from neighbouring septic tanks discharge into the appeal site but there is uncertainty over the precise location or extent of these features. Due to the proposed engineering operations close to, or over, the general location of the soakaways the appellant acknowledges that changes may need to be made if an existing soakaway is disturbed. Two solutions are presented:-

- a) the construction of new soakaways within the reserved service strips or
- b) the connection of the existing septic tank outfalls to a new public drain or sewer.

28. It would have been reassuring to both the residents and the council had these arrangements been agreed in advance of the planning application submission. The residents have now been canvassed as to their preference but unfortunately not all have responded.

29. Due to the uncertainty over the preferred arrangements the council believes the amenity of the existing and future residents may be affected. The amenity affects are not described in any detail but I consider there to be three main impacts. Firstly, if an existing soakaway is damaged the septic tank may cease to operate efficiently. Secondly, if a soakaway is retained it may discharge into the garden of a new house. Thirdly, the reserved service strip may not offer appropriate ground/soil conditions for any new soakaway to function.

30. I find these effects in isolation or in combination would impact adversely on residential amenity but, in my opinion, the risk of this occurring arises only if no attempt is made to mitigate any damage to the soakaways. In this case the appellant intends to address this issue and I find the proposed solutions would, in general terms, be capable of protecting the amenity of both existing and future residents bearing in mind the existing soakaways already lie immediately adjacent to private gardens.

31. As part of the appeal submissions the council presents a condition that would suspend the commencement of development until the final arrangements for the soakaways or sewer/drain connections were approved. I consider this approach to be a reasonable one bearing in mind the current lack of accurate survey information or full agreement with all the affected residents. It would also allow the appellant to demonstrate that the proposed drainage infrastructure was able to meet any technical or environmental standards. The appellant is agreeable to this general approach.

32. The council and the appellant however are unable to agree the exact wording of the condition but drawing from both parties' proposed versions I consider it would be possible to draft a condition capable of addressing this issue. If the condition a) requires the council's approval of the final foul drainage arrangements for the affected properties (including engineering designs) before any work starts on site; b) ensures no soakaway is located within the curtilage of any new house; and c) compels the appellant to complete the work as approved, I am satisfied the amenity of both existing and future residents would be protected. On that basis, I do not find any conflict with the parts of LDP policies DS4 Amenity and TC2 Residential Development that seek to protect the amenity of existing and future residents.

Other development plan matters

33. Due to the separation distances between of the new and existing housing I do not consider the amenity of the neighbouring housing would be directly affected by the loss of privacy. However the demolition of the house on Arbroath Road to form the new access would result in vehicular and pedestrian movements along the side boundaries of the two neighbouring houses. The main private garden space of these houses is located to the rear rather than the side and would be partially screened by established boundary walls and outbuildings. In these circumstances I do not consider the changes arising from the new access road would result in a significant loss of amenity for these houses. Consequently in this respect I find the development would comply with policy DS4, Amenity.

34. Setting aside the concerns relating to Rosie Road, the other proposed pedestrian and vehicular access arrangements would, subject to the provision of bus infrastructure, be able to comply with policy DS2 Accessible Development. It is also

clear from the appellant's specialist reports and consultation responses that surface water drainage or flooding concerns can be addressed in accordance with LDP policy PV12, Managing Flood Risk. Affordable housing is also proposed at a rate that accords with LDP policy TC3, Affordable Housing, and the expectations of LDP policy PV1, Energy Efficiency can be met.

Overall compliance with the development plan

35. While I am satisfied the layout of the development has addressed the broad requirements of the LDP housing allocation F2 it has done so in a way that conflicts with other policies of the development plan. Especially those policies that seek to achieve a good quality development that at the same time protects and enhances key landscape features and important access routes at the site. Consequently I find the proposed development would be contrary to the development plan overall.

Material considerations

36. The representations in so far as they refer to design, the treatment of Rosie Road and the private drainage systems have been considered in my findings above. Any concerns regarding the construction process I consider could be addressed by planning conditions. I do not find the loss of on-street parking arising from the creation of the new access on Arbroath Road to be significant as there are no parking restrictions on this route, the existing houses on Arbroath Road have off-street parking and opportunities for visitor parking will remain in the vicinity. I note that the initial concerns expressed relating to the storey heights of the proposed houses have been largely addressed by amendments to the house types so that single storey dwellings lie adjacent to the houses to the south.

37. For the reasons set out above I find there is some tension with the six qualities of a successful place set out in Designing Streets and the Placemaking section of Scottish Planning Policy 2014 (SPP). In particular under the 'Distinctive' quality I find the proposals have not complemented local features and under the 'Safe and Pleasant' quality I find there is insufficient natural surveillance offered to open spaces and paths.

38. Although this is an allocated housing site I have considered the SPP presumption in favour of development contributing to sustainable development. The appellant's Sustainable Development Assessment addresses the 13 criteria set out in paragraph 29 of SPP and I agree with the conclusions given in all but one aspect. The third criterion relates to "supporting good design and the six qualities of successful places" and for the above reasons I find there is conflict with two important elements of this criterion. The design and layout of the proposed development is a key consideration in this appeal and the development would not, in my opinion, meet the expectations of SPP in this regard. I do not therefore consider the SPP 'presumption' should set aside the requirements of the development plan in this case.

39. I find the advice at paragraph 28 of SPP to be pertinent here. It states "The aim is to achieve the right development in the right place; it is not to allow development at any cost". I do not doubt that this is the right place for development but I am not convinced that the proposals before me constitute the 'right development'.

Overall conclusion

40. Taking into account the particular landscape characteristics of this site and the importance of Rosie Road as a core path I consider the protection of the amenity and characteristics of the route and the landscape features of the site are important considerations. I therefore conclude, for the reasons set out above, that the proposed

development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from 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 a material extent in preparing the above report.

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