

ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE

11 JULY 2002

PLANNING APPLICATION – LAND TO NORTH-EAST OF RIVER SOUTH ESK,
GLEN CLOVA

REPORT BY THE DIRECTOR OF PLANNING AND TRANSPORT

Abstract: This report deals with planning application No. 00/01092/FUL for the formation of a reservoir for H. Niven on land to north-east of River South Esk, Glen Clova. This application is recommended for approval.

1 INTRODUCTION

- 1.1 Retrospective planning consent is sought for the creation of a reservoir. The reservoir is located a short distance south east of Milton of Clova village (approximately one mile), immediately to the north of the Clova to Gella Bridge road. The ground now occupied by the reservoir was previously rough grazing.
- 1.2 The works comprise excavating land in an existing hollow and the creation of an earth bund (or dam) behind which water from a number of small burns and ditches would be entrapped to form the reservoir. Water capacity was claimed to amount to 21,539 cubic metres. Above 25,000 cubic metres the works would have fallen under the scope of the Reservoirs Act 1975. It is not possible to confirm or refute the alleged capacity, however, two calculations have been made by different consultants appointed by the applicant and came close to the same figure.
- 1.3 The width of the bund is around four metres, the waterside slope is 1 in 3 and the landside slope 1 in 2.5. These figures comply with MAFF guidelines. The width of the reservoir formed varies from 40 metres to 80 metres (an island having been created at the widest section) and is approximately 250 metres long. The maximum depth of the water is around two metres.
- 1.4 Members will be aware of some of the history attached to this proposal which dates back to September 2000 when extensive earthworks at the location were brought to the attention of officials. The applicant was informed of the necessity to seek planning permission and was advised to stop work. Work nevertheless continued on-site leading to the formation of the reservoir. An application was not initially submitted, the agent for the applicant arguing permitted development rights. This argument was not accepted by officials leading to the submission of a Planning Enforcement Report to the Committee. Committee agreed that if a planning application was not submitted, enforcement action was to be pursued.
- 1.5 In December 2000 an application was received, however, by then the Director of Roads had closed-off the public road due to possible risk of flooding should the bund holding back the water fail. The planning application was short on technical and safety information and it has taken almost two years for sufficient information to have been provided in order to present the application to Committee. During this time the

applicant has undertaken additional works in an endeavour to satisfy some of the concerns of the Director of Roads.

2 APPLICANT'S CASE

- 2.1 Over the period a considerable amount of information has been submitted by consultants engaged by the applicant in responding to concerns primarily from the Director of Roads. The earliest submission, from Gemmell Hammond Partners (consulting Civil and Structural Engineers) provided a risk assessment and other information concluding that the reservoir met MAFF criteria and that there was no risk to property in the event of failure. However, a number of recommendations for additional stabilisation works were indicated.
- 2.2 Terrenus Consulting Ltd. were engaged to undertake a stability analysis of the embankment structure. Following investigation and analysis of soil samples, again recommendations were made to make the landside face of the embankment safe.
- 2.3 Terrenus was again engaged (February 2002) to confirm adequate factors of safety in respect of foundation strength, embankment stability and piping. Their findings generally confirmed this but recommended monitoring of water seepage from beneath the dam.
- 2.4 In February 2002, Gemmell Hammond submitted a Final Design Certificate of Safety.

3 CONSULTATIONS

- 3.1 The Director of Roads initially expressed major concerns with respect to safety elements of the retrospective application. Over the period of time that the application has been live, much of the information required to address those concerns has been provided, additional works carried out and, subject to the imposition of a number of conditions, he now supports the recommendation of approval.
- 3.2 SEPA welcomed the habitat value the development could create but also raised a number of points:-
- issues of water quality if insufficient aeration or water movement in the absence of information on inlet out outlet flows;
 - construction stability and safety;
 - impact on flood risk if any.

There are sufficient water inlets and outlets to avoid any aeration problems. As long as the construction works are deemed safe (a major consideration in respect of this application), there is no flood risk.

- 3.3 Scottish Natural Heritage expressed no objection to the development as long as the works are deemed safe. They did also express concerns in respect of any impact on water quality of the River South Esk and in this context recommended consultation with SEPA. Like SEPA, they were concerned at the possible damage, to the river habitat, in the event of a failure of the bund and the resultant "flash flood".

4 LETTERS OF REPRESENTATION

4.1 No letters of representation have been received.

5 PLANNING CONSIDERATIONS

5.1 The determining issues in this case are whether the proposal:-

- complies with Development Plan policies;
- is visually acceptable;
- meets public safety standards.

5.2 The Tayside Structure Plan 1993 includes the following policy:-

Rural Development Policy 2 – “To support non-residential development in the countryside which:-

- (i) does not prejudice the environmental policies of the Plan;
- (ii) does not unnecessarily involve irreversible development of prime agricultural land;
- (iii) is of a scale and standard of design appropriate to its location;
- (iv) does not involve an unjustified need for additional services expenditure;
- (v) does not prejudice the safety of the local road network.”

In respect of (i) the Structure Plan includes other policies that generally require the character and features of the landscape/countryside to be respected, preserved or enhanced. Whether this development does or does not achieve this is considered below. Criteria (ii), (iii) and (iv) raise no issues in respect of this development but (v) does and this too is dealt with below.

5.3 Various policies from the Angus Local Plan relate to developments in the countryside, usually in the context of conserving or enhancing landscape character but primarily in respect of built developments, e.g. ENV1 (Environmental Quality); ENV6 (Development in the Countryside); ENV8 (Conservation of Landscape Character) and ENV54 (Angus Glens). No policies relate directly to the formation of reservoirs.

5.4 The Committee must determine, in the context of the above general policies, if indeed the development maintains or enhances the landscape quality of Glen Clova. It is my view that whilst the holding embankment appears less than natural, the reservoir itself does add interest to the rural scene at this part of the Glen. The banks are generally natural in appearance and I would find it difficult to produce a case for refusal based on unacceptable visual impact, subject to some minor landscaping treatments.

5.5 A major point of concern in respect of the development has related to public safety in respect of users of the Glen road alongside. Whilst this has primarily involved the Director of Roads, in the absence of any other legislation available to achieve a satisfactory resolution, it has been appropriate to seek public safety solutions through the planning system.

- 5.6 The concern related to the capacity of the embankment to hold back the water in both the short-term and longer-term and it has been the pursuance of solutions to this issue that has taken the time – 19 months since submission of the application. The short-term concern was so acute that the road had to be closed to public use for many months until the water level in the reservoir was considerably reduced, a spillway constructed and additional earthworks carried out to improve the strength and stability of the embankment.
- 5.7 Following receipt of the Engineer's Design Certificate, the Director of Roads is now prepared to withdraw objections to the granting of consents subject to a number of conditions. Various aspects of the safety concerns, investigations conducted, information sought and provided, etc. have been intimated above and it is not necessary for the determination of the planning application for the Committee to have to consider further technical information in such detail. The conditions, which include ongoing safety monitoring arrangements, should help to ensure the safety of the reservoir in both the short-term and longer-term.

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. 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 approved with conditions.
1. That a safety monitoring and maintenance regime for the development infrastructure including the earth dam, spillway and outlet routes acceptable to the Director of Planning & Transport in consultation with the Director of Roads be submitted within two months of the date of this grant of consent.
 2. That the volume of water contained within the reservoir does not exceed 20,000 cubic metres.
 3. That the crest and downstream face of the dam be graded to a smooth profile devoid of ruts and be grassed over and then maintained in a condition that allows for ready and effective visual inspection.
 4. That the crest of the dam be maintained at all times at a height such as to provide a minimum of one metre freeboard above the spillway outfall level.
 5. That all areas of bare ground in the vicinity of the embankment and spillway be planted with wild grass seed before the end of 2002.

Reasons:

1. In the interests of public safety and convenience.
2. In the interests of public safety and convenience.
3. In the interests of road safety and visual amenity.
4. In the interests of public safety and convenience.
5. In the interests of visual amenity.

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/KW
3 July 2002

Alex Anderson
Director of Planning and Transport