

5 APPEAL DECISIONS (AN108-2003)

(a) LAND TO THE EAST OF 1 CLAVERHOUSE OLD ROAD - PROPOSED ERECTION OF TWO DETACHED DWELLINGS

Reference is made to Article II(g) of the minute of meeting of this Committee of 25th March 2002 wherein the above proposal was refused planning permission because:

- (i) the proposal contravened Policy H10 of the adopted Local Plan by reason of inadequacy of the private garden areas; and
- (ii) the proposal by reason of design would detract from the setting of the adjoining listed buildings and the character and appearance of the conservation area contrary to Policy BE11 of the adopted Local Plan and the statutory duties of the Council under the provisions of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The decision was appealed by the applicant under the provisions of Section 47 and Schedule 4 of the Town and Country Planning (Scotland) Act 1997.

The appeal was determined by written representations and the decision was received by the Council on 14th January 2003. A copy of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposal complied with:

- (i) the provisions of the development plan as detailed in the Council's reasons for refusal;
- (ii) Sections 59(1) and 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; and if so
- (iii) whether there were any material considerations justifying a grant of planning permission.

The Reporter agreed with the Council in its assessment of the proposal and found that there were no material considerations which would justify the grant of planning permission contrary to the Local Plan and the provisions of the 1997 Act.

Accordingly, the appeal was DISMISSED.

(b) LAND AT STANNERGATE, DUNDEE - ALLEGED UNAUTHORISED DEPOSITORY AND STORAGE OF WASTE MATERIAL

Reference is made to the enforcement notice served on Forth Properties Limited on 13th June 2002 under powers delegated to the Director of Planning and Transportation. The notice related to the alleged unauthorised depositing and storage of waste material on land at Stannergate Road, Dundee.

The decision was appealed by the applicant under the provisions of Section 130 and Schedule 4 of the Town and Country Planning (Scotland) Act 1997.

The appeal was determined by written representations and the decision was received by the Council on 9th January 2003. A copy of the decision letter can be found in the Members' Lounges.

The notice alleged that unauthorised development had occurred on the site within the last four years. In the Council's view, the operations that had been undertaken were deemed to be unacceptable in planning terms due to their detrimental impact on visual amenity. The notice indicated that planning permission should not be granted for these operations because the Council did not consider that planning conditions could overcome the objections regarding the impact of the development on amenity. The notice required that the depositing of waste materials on the land affected should cease and that all the waste material that is higher than 6.5m above sea level should be removed from the site. The time stated for compliance is 60 days after the enforcement notice took effect.

The Report concluded as follows:

- (i) the works involved did constitute development under the definition contained in the Act;

- (ii) Port of Dundee Limited as statutory successor to Dundee Port Authority is a “statutory undertaker” for the purposes of enjoying permitted development rights under Class 35 of the Permitted Development Order;
- (iii) the area the subject of the notice, because of its location and characteristics should be taken as “operational land” for permitted development purposes;
- (iv) the deposit and storage of soil and other materials on the site could be considered to relate to works associated with the development of the dock facilities. There was no clear evidence to indicate otherwise; and
- (v) any adverse impact on local residents is likely to be an issue in the short term.

Accordingly the appeal was UPHELD and the enforcement notice quashed.