

## **6 PLANNING APPEAL DECISIONS (AN115-2012)**

- (a) 56 WILLIAM FITZGERALD WAY, DUNDEE - INCREASE IN NUMBER OF NURSERY PLACEMENTS FROM 26 TO 36 PLACES

Reference is made to Article I(a) of the minute of meeting of this Committee of 20th February, 2012, wherein the above proposal was refused planning permission because the Council considered that:-

- (i) the proposed development is contrary to Policy 1 - "Vibrant and Sustainable Communities" of the Dundee Local Plan Review 2005 as the increase in placements would have an adverse impact on parking and traffic movement, would be likely to increase traffic noise and be contrary to other policies in the Plan. There are no material considerations of sufficient strength to justify the granting of planning permission contrary to the policy; and
- (ii) the proposed development is contrary to Policy 19 - "Private Day Nurseries" of the Dundee Local Plan Review 2005 as it fails to meet the criteria for outdoor play space or parking. Previous applications set aside the Local Plan criteria to grant planning permission for 26 children. There are no material considerations of sufficient strength to justify the granting of planning permission for a further 10 children in this case.

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 22nd June, 2012. Copies of the Reporter's decision letter have already been circulated to Members by e-mail.

The Reporter DISMISSED the appeal and refused planning permission.

In reaching his decision, the Reporter noted that the previous appeal decision to grant permission for this nursery in 2009 took into account the fact that the development failed to meet the outdoor play space standards in Policy 19 but considered that the quality of the internal space and the proximity of the village green justified approval subject to a restriction to 26 nursery spaces.

He observed that since then there had been no material change in planning policy or site circumstances and therefore the shortfall of open space would represent an even greater departure from the guidelines. He concluded that the off-site provision of open space and more intensive staffing of nursery operations would have to compensate for what he considered to be a significant exacerbation of the existing open space deficiencies of the appeal site. He also considered that the increased numbers would have an adverse impact on parking and traffic movement in the immediate locality contrary to Policy 1 of the Local Plan.

- (b) DUDHOPE BOWLING CLUB, ADELAIDE PLACE, DUNDEE - ERECTION OF TWO REPLICA FLAGPOLE TELECOM MASTS

Reference is made to Article I(b) of the minute of meeting of this Committee of 20th February, 2012, wherein the above proposal was refused planning permission, contrary to the Directors recommendation, because the Council considered that:-

- (i) the proposed development is contrary to Policy 1 - "Vibrant and Sustainable Communities" of the Dundee Local Plan Review 2005 as the scale and location of the proposed telecommunications masts will have an adverse effect on the visual and residential amenity of the area, including the adjacent Conservation Area and will reduce the environmental quality enjoyed by local residents, and there are no material considerations of sufficient strength to justify the granting of planning permission contrary to the policy; and
- (ii) the proposed development is contrary to Policy 2 "Residential Areas" of Dundee City Council's adopted Non-statutory Planning Policies in Relation to Telecommunications Masts and Other Apparatus as there is a general presumption against the siting of free standing masts in residential areas unless the proposal is sensitively sited and designed and, by reason of their scale and location the proposed telecommunications masts will fail to comply with this requirement and are thus contrary to the policy.

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 13th July, 2012. Copies of the Reporter's decision letter have already been circulated to Members by e-mail.

The Reporter DISMISSED the appeal and refused planning permission.

In reaching his decision, the Reporter considered that the determining issue was the effect on the visual and residential amenity of the area, including the character of the adjacent Law Terraces Conservation Area.

He recognised the need for the development and the fact that alternative sites were considered. He also accepted that the masts would be well screened from the south and west and would not be highly intrusive within the townscape in longer distance views. However, he was very concerned by the visual impact on the houses immediately to the south of Adelaide Place and on the character of the Law Terraces Conservation Area when viewed from the north.

He agreed that the visual impact of one of the new masts would be less than the previously refused shared mast but noted that there would now be 2 masts and that the western mast was in a highly exposed position and that the proposed masts would have a significant adverse impact on the character of the Conservation Area.

He sympathised with the appellants given the extensive examination of alternative sites and the difficulty in finding an appropriate site in residential areas and the need for optimum coverage for mobile phones. However, he concluded that the adverse impacts of the proposed development outweighed the general support given to telecommunications development in Scottish Planning Policy and that the appellants would need to consider alternatives, possibly including a reduced impact proposal on the appeal site.

(c) FORMER LARCHFIELD WORKS, LARCH STREET, DUNDEE - DISCHARGE OF S75 PLANNING OBLIGATION RESTRICTING THE USE OF EIGHT DWELLINGS AS HOUSES IN MULTIPLE OCCUPATION

Reference is made to Article 1 of the minute of meeting of this Committee of 23rd January, 2012, wherein the Council refused to discharge this planning obligation. The Council questioned the competency of the application and considered that even if it were competent it should be refused as the restriction on HMO's in this case was consistent with the Council's aims to control HMO's in the area and the use of these dwellings as HMO's would further erode the Council's objectives to retain new residential properties for occupation by families.

The decision was appealed by the applicant under the provisions of Section 75B 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 16th July, 2012. Copies of the Reporter's decision letter have already been circulated to Members by e-mail.

The Reporter DISMISSED the appeal and refused to discharge the planning obligation.

In reaching his decision, the Reporter considered that the appellants had a right to appeal. He considered that the original obligation met the necessary tests set out in Circular 1/2010, being necessary, serving a planning purpose (supporting the objectives of the Development Plan and the accompanying supplementary planning guidance on HMO's), relating to the development and being proportionate (it has implications for the viability of the development but not to such an extent as to make it unviable).

In terms of it being reasonable (both now and in the future) he did not agree that there was no demand for family housing in the area and noted that the properties were occupied and felt that any current under occupancy was not a problem. He felt that if the obligation was discharged it was unlikely that any of the houses would be occupied by families and that therefore the Council's attempts to interfere with the new building residential market in the area were justified.

He concluded that the Council has a clear policy in place restricting new build residential accommodation being used as HMO's and that even though this predates the current recession this does not detract from the underlying justification of the policy which remains as strong today as it did when it was adopted. He therefore concluded that the benefits to the appellant in having the obligation discharged did not outweigh the disbenefits of the loss of these dwellings to family occupation contrary to the Councils adopted guidance on HMO's.

The appellants also made a claim for an award of expenses stating that the Council had not given proper consideration to the merits of the proposal, that the obligation was not necessary and that they incurred unnecessary expense in making a third application because the Council had considered a second application invalid. The reporter dismissed this claim considering that the Council had given proper consideration to the merits of the case and that the obligation was necessary. He stated that he could not consider the conduct of the Council in connection with the second application as it did not result in an appeal.

(d) UNIT G NORTH TAY COMPLEX, BALFIELD ROAD, DUNDEE - METAL RECYCLING/END OF LIFE VEHICLE SITE GLASS PLASTIC RECYCLING

Reference is made to Article 1(e) of the minute of meeting of this Committee of 20th February, 2012, wherein the above proposal was refused planning permission, contrary to the Directors recommendation, because the Council considered that:-

- (i) the proposed end of life vehicle, metal, plastic and glass recycling facility at Unit G, North Tay Complex, Balfield Road, Dundee would generate instances of significant noise disturbance and smell nuisance to the detriment of local residential amenity and, therefore, fails to satisfy the requirements of Criteria (a) of Policy 26 (General Development Areas) of the Dundee Local Plan Review 2005; and
- (ii) the proposed end of life vehicle, metal, plastic and glass recycling facility at Unit G, North Tay Complex, Balfield Road, Dundee would generate instances of airborne and water-based pollution that would adversely affect the health of neighbouring residents as well as the level of environmental quality afforded to the area surrounding the application site and there are no material considerations that would justify approval of planning permission.

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 13th July, 2012. Copies of the Reporter's decision letter have already been circulated to Members by e-mail.

The Reporter ALLOWED the appeal and granted planning permission.

In reaching his decision, the Reporter considered that the determining issue was whether the proposal would generate unacceptable levels of noise, smell or other pollution to the detriment of the health and amenity of the neighbouring residents or the surrounding area in general.

He noted the general character of the industrial area, the fact that the appeal premises comprise a motor vehicle workshop and that to the south there were premises specialising in site clearance and associated waste recycling. He observed that the flats to the east were separated from the site by a steeply banked boundary and noted that the proposals included provision for a two metre buffer area and additional boundary screening (construction of which was almost complete). He therefore felt that these houses already faced industrial operations but that the buffer zone proposals would mean that the operational uses on the appeal site would be set back further from the common boundary than they have been to date.

He considered that no evidence had been produced to support assertions that there would be airborne and water-based pollution affecting neighbours and was satisfied that the processes on site would not be unduly noisy and that any issues of noise and smell were satisfactorily addressed by the appellants proposals, including the enhanced buffer proposals. With additional planning conditions covering the height of storage of materials and hours of operation he considered that the development would not

have a detrimental impact on residential amenity and that the proposals would therefore comply with the Development Plan.