

### 3 PLANNING APPEAL DECISIONS (AN125-2010)

The Committee is asked to note the undernoted Planning Appeal decisions:-

- (a) 44 GRAY STREET, LOCHEE, DUNDEE - S42 APPLICATION TO VARY CONDITION 1 OF PERMISSION 08/00124/FUL TO EXTEND THE TIME PERIOD TO IMPLEMENT THE CONSENT UNTIL 30TH JUNE, 2012

Reference is made to Article I(a) of the minutes of the meeting of the Development Quality Committee of 17th May, 2010 wherein the above proposal was refused planning permission.

The Council considered that the proposal was contrary to the Development Plan and the Lochee Physical Regeneration Framework, that the restricted time period would allow the supply of housing land to be managed with demand focussed on areas that would benefit most from new development. It also considered that this site was unlikely to be brought forward for development in the near future.

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 15th September, 2010. Copies of the Reporter's decision letter have already been circulated to Members by email.

The Reporter **ALLOWED** the appeal and granted planning permission with a condition requiring the development to commence before 30th September, 2012.

In reaching his decision the Reporter rejected the Council's legal submission that the S42 appeal was time barred and he considered that the only requirement was that the application should be made prior to the expiration of the original consent which was the case here.

He felt this application should only be refused if there had been a material change in planning circumstances since it was first granted or there was likely to be continued failure to implement the consent. He found no evidence that this proposal has had any impact on the Housing Investment Focus Areas identified in the Plan. He accepted that the recession was the likely reason for the delay in commencing development and did not see evidence that the site would not be brought forward for development in the near future. Finally, he saw benefit in securing the redevelopment of an obsolescent and unsightly industrial site which would not be achieved if permission was refused.

- (b) 11 FREDERICK STREET, DUNDEE - CHANGE OF USE TO A MIXED USE FAMILY DWELLINGHOUSE AND CHILDREN'S NURSERY FOR UP TO 12 CHILDREN

This agenda note relates to the decision on four similar appeals (each owner and operator appealed separately) under Section 182 of the Town and Country Planning (Scotland) Act 1997 against Enforcement Notices served by the Council which required the owners and operators to reduce the number of children being looked after at the dwelling to six.

The appeal was determined by written representations and the decision was received by the Council on 15th September, 2010. Copies of the decision notice have already been circulated to Members by email.

The Reporter **DISMISSED** the ground of appeal that the steps required by the Notice exceeded that which was necessary to remedy the breach of planning control or any injury to amenity caused by the breach but **UPHELD** the ground of appeal relating to the period for compliance and replaced the 90 days suggested by the Council with a period of six months.

In reaching his decision the Reporter did not take into account the planning merits of the case (this is no longer a ground of appeal with the repeal of S130(a) of the 1997 Act) and noted that a planning application had been submitted for retrospective consent for the nursery use. He agreed that the steps suggested by the Council to remedy the breach were not excessive but allowed a longer period for compliance to avoid short term difficulties and potential hardship for families with children at the nursery.