

3 PLANNING APPEAL DECISIONS (AN140-2010)

(a) 309 STRATHMARTINE ROAD, DUNDEE - CHANGE OF USE TO A MIXED USE FAMILY DWELLINGHOUSE AND CHILDREN'S NURSERY FOR UP TO 12 CHILDREN

It is reported that two similar appeals were lodged in respect of the above (each owner appealed separately) under Section 180 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 29th 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.

The Committee is asked to note the above.

(b) 9 CHEVALIERS PEND, DUNDEE - APPLICATION FOR CONSENT TO FELL AN ASH TREE SUBJECT TO TPO 04/2003

This agenda note relates to the decision on an appeal under Section 47 of the Town and Country Planning (Scotland) Act 1997 against the Council's decision to permit the felling of a mature ash tree subject to appropriate replanting. The ash tree is protected by Tree Preservation Order 04/2003 but is diseased and the Council agreed to its felling subject to its replacement with a semi mature tree. The applicant was unwilling to replant a semi mature tree within his own property and suggested the tree be planted elsewhere or that he be permitted to plant a small ornamental tree on his property.

The appeal was determined by written representations and the decision was received by the Council on 20th October, 2010. Copies of the decision notice have already been circulated to Members by email.

The Reporter dismissed the appeal.

In reaching his decision the Reporter concluded that the loss of the ash tree without replacement would leave a significant gap, would decrease the screening between residential and commercial areas and would adversely affect the amenity of the area.

He considered that there was no way of ensuring that the proposal to plant a tree in an area not owned by the applicant or the Council would happen. He agreed with the Council that planting a small ornamental tree would not provide an adequate substitute for the diseased ash. Finally, he considered that there was sufficient space in the applicant's garden to plant an appropriate tree without causing amenity problems.