

4 PLANNING APPEAL DECISIONS (AN163-2009)

(a) THE BOARS ROCK, 168 ARBROATH ROAD - ERECTION OF MOBILE CANOPY

Reference is made to Article I(t) of the minute of meeting of this Committee of 17th November, 2008, wherein the above proposal was refused planning permission because the Council considered that regardless of the applicant's stated intentions for this structure, the proposal to retain this canopy would encourage patrons to continue to congregate at this location, resulting in increased noise disturbance for local residents, particularly late in the evening, to the detriment of their amenity. For this reason the proposal is contrary to Policy 1 of the adopted Dundee Local Plan Review 2005.

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 processed under the written representations procedure and a site visit was undertaken. Following this visit, the Reporter invited representations from the appellants and the Council as to whether the canopy constituted development in accordance with the definition set out in Section 26 of the Act.

The Reporter then wrote to both parties stating that he intended to decline to determine the appeal and this letter was received by the Council on 13th July, 2009. Copies of the Reporter's letter have already been circulated to members by e-mail.

The Reporter concluded that **PLANNING PERMISSION WAS NOT REQUIRED.**

In reaching his decision, the Reporter considered that in the particular circumstances of this case, the canopy was a minor lightweight structure of modest proportions that could easily be moved and had no strong degree of attachment to the building. He also concluded that the use of the canopy, whether for parking disabled scooters or for smoking, did not constitute a change of use. Finally, he concluded that planning permission might be required in the future if alterations were undertaken to the canopy.

Members should note that the Reporter's opinion that planning permission was not required in this instance relates to his interpretation of the particular facts of this case. A different person looking at the same facts could have come to the reasonable conclusion that planning permission was required. For this reason, the Council will continue to consider that this type of smoking shelter is likely to require permission. The Reporter himself acknowledged that a different type of canopy might require planning permission.

Given the conclusion that planning permission is not required in this case, the direct action to remove this canopy authorised by Committee on 18th May, 2009 will no longer be pursued.

(b) 2 ALBERT ROAD, BROUGHTY FERRY - CONVERSION OF ATTIC SPACE TO FORM LOUNGE, BATHROOM AND PATIO AREA

Reference is made to Article I(g) of the minute of meeting of this Committee of 19th January, 2009, wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to the provisions the Dundee Local Plan Review 2005 in the following respects:-

1. The first floor patio area would unacceptably overlook the neighbouring properties (Policy 14 (b)).
2. The appearance of the roof alterations would detract from the streetscape of Albert Road (Policies 14(a) and (d)).

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 8th June, 2009. 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 agreed with the Council that the truncation of the roof would be visually disruptive and intrusive to the streetscene and would overlook neighbouring gardens to an unacceptable degree contrary to Policy 14 of the Local Plan. Even though there were other examples of roof alterations in the area, he found none resembling the proposed development and did not consider that there was a justification for the proposed development.

(c) 73 CAMPHILL ROAD, BROUGHTY FERRY - CHANGE OF USE OF A SINGLE DWELLINGHOUSE TO FORM 2 DWELLINGHOUSES

This Agenda Note relates to the decision on an appeal under the Town and Country Planning (Scotland) Act 1997 against an Enforcement Notice served by the Council which required the reinstatement of the premises to a single dwellinghouse.

The appeal was determined by written representations and the decision was received by the Council on 8th June, 2009. Copies of the decision notice have already been circulated to members by e-mail.

The Reporter UPHELD the appeal and quashed the Enforcement Notice, but refused to grant planning permission for the development.

In reaching his decision, the Reporter concluded that based on the evidence submitted by the appellant that on the balance of probabilities the breach of planning control occurred more than four years prior to the service of the Enforcement Notice and the Council was therefore time barred from taking action. He acknowledged that this was despite the fact that the Council has no record of separate Council Tax payments having been made for two addresses at this location and that no Building Warrant for sub-division has been granted.

Having decided that the development was immune from enforcement action, he went on to consider whether planning permission should be granted. He concluded that the sub-division of the property failed to provide an adequate standard of privacy and amenity for the residents contrary to Policy 12 of the Local Plan. He therefore declined to grant planning permission for the development.

(d) 437A KING STREET, BROUGHTY FERRY - S179 AMENITY NOTICE

This Agenda Note relates to the decision on an appeal under the Town and Country Planning (Scotland) Act 1997 against an Amenity Notice served by the Council which required the replacement of rotten timber on the building, the painting of the walls and roof and the removal of bushes and shrubs on the site.

The appeal was determined by written representations and the decision was received by the Council on 1st July, 2009. Copies of the decision notice have already been circulated to members by e-mail.

The Reporter DISMISSED the appeal.

In reaching his decision, the Reporter concluded that the condition of the building detracted from the character and appearance of the conservation area and agreed with the requirements to replace rotten timber and to paint the walls and roof. However, he did not agree with the requirement to remove overgrown vegetation on the site, feeling that it was adequately screened by trees and shrubs and he extended the time period for compliance with the notice from 28 to 90 days.

The Council sought an award of expenses based on the fact that it was unreasonable to appeal the notice given that there had been no maintenance of the building in the seven years since works had been carried out in accordance with a previous appeal decision concerning the condition of the premises. The Reporter concluded that since the previous decision did not contain any requirement for continuing maintenance of the building, it was not unreasonable for the owner to appeal the current notice and he therefore declined to award expenses in this case.