

#### 4 PLANNING APPEAL DECISIONS (AN209-2008)

(a) 409 BROOK STREET, BROUGHTY FERRY, DUNDEE - ERECTION OF PIGEON LOFT

Reference is made to Article I(i) of the minute of meeting of this Committee of 19th May, 2008 wherein the above proposal was refused planning permission because the Council considered that the proposals, due to their location and scale, were detrimental to local amenity contrary to Policy 1 of the 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 determined by written representations and the decision was received by the Council on 28th October, 2008. Copies of the Decision Notice have already been circulated to Members by email.

The Reporter **ALLOWED** the appeal and determined that planning permission was not required. In addition, the Reporter dismissed both the appellants and the Council's respective claims for expenses.

In reaching his decision the Reporter turned his attention to the discrepancy which existed by the structures shown on the submitted plans and those which actually existed on site. He found that the structures on site measured 12.5m X 3.35m as opposed to 12.5m X 2.5m on the plans. In addition, a structure of 5m<sup>2</sup> existed in front of the timber building but was not described on the plans. However, the appeal determination would be based on the application drawings. The discrepancy would be a matter for further consideration by the Council.

The Reporter considered the determining issues to be whether planning permission was required and if so whether residential amenity was affected. In determining whether planning permission was required regard was paid to the provisions of the Permitted Development Order in respect of enclosures required for "a purpose incidental to the enjoyment of the dwellinghouse" (Class 3 of the GDPO). The Reporter acknowledged that the curtilage of the appeal site had been extended, having a bearing on the interpretation of Class 3 of the Order. However, the Reporter was not convinced by the argument of the Council that Class 3 does not apply to the appeal proposal because at the time the development took place it extended beyond the established curtilage of the existing dwelling. By the time the pigeon loft was built, the original boundary had already been altered.

In reaching his conclusion and taking into account the discrepancies between the drawings and the situation on the ground he found that none of the exceptions listed in Class 3(2) of the Order applied and confirmed his finding that the proposals shown **on the application drawings** do not require planning permission.

As a result of the Reporters finding the issues of amenity were not examined.

Commentary: this appeal decision is unusual in a number of respects. Firstly, the Reporter concluded that both the appeal should be allowed AND that planning permission was not required. Secondly, the finding related to the proposals shown on the drawings rather than what has actually been erected on site. Thirdly, the Reporter points to the possibility that the Council may wish to examine the situation further in the light of the above.

It is clear from the appeal decision that the entire development presently on site requires planning permission and that the applicant should be required to make his proposals consistent with the approved plans. The applicant may alternatively seek the Council's approval to retain all the structures onsite. This will require a fresh planning application. Failure to follow either of these courses of action could result in enforcement action.

(b) 20 BARNES AVENUE, DUNDEE, DD4 9AF - ERECTION OF DWELLINGHOUSE IN GARDEN GROUND

Reference is made to Article I(o) of the minute of meeting of this Committee of 21st April, 2008 wherein the above proposal was refused planning permission because the Council considered that the proposals were contrary to Policies 4, 15 and 55 of the Dundee Local Plan Review 2005 (scale, massing, design of the house; layout of the site; and the likely adverse impact on neighbouring properties).

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 30th October, 2008. Copies of the decision notice have already been circulated to Members by email.

The Reporter **DISMISSED** the appeal and refused planning permission.

In reaching his decision the Reporter considered that the proposal would increase the density of development in the area to an unacceptable degree; that the dwelling would appear incongruous when viewed in the context of the existing housing along Barnes Avenue; the design principles of the Council's urban design guide were contravened; and that to a degree overshadowing of neighbouring property would take place all in contravention of Policies 4, 15 and 55 of the local plan. There were no material considerations which indicated a contrary view.

(c) 6 STIRLING STREET, DUNDEE - CREATION OF TWO X ONE BEDROOM FLATS FROM EXISTING TWO BEDROOM UNIT

Reference is made to the decision taken by the Director of Planning and Transportation on 5th June, 2008 under powers delegated by the Council to refuse planning permission in respect of the above because it was considered that the proposal contravened Policy 4 of the Dundee Local Plan 2005 (substandard floorspace and less than two bedrooms).

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 30th October, 2008. Copies of the decision notice have already been circulated to Members by email.

The Reporter **DISMISSED** the appeal and refused planning permission.

In reaching his decision the Reporter agreed with the Council that the proposal contravened Policy 4 as the combined floorspaces of the livingroom/kitchen and the bedroom amounted to 27m<sup>2</sup> compared to a minimum standard required by the policy of 60m<sup>2</sup>. The existence of a single bedroom was not in dispute. The Reporter considered that there were no material considerations sufficient for the development plan to be set aside.

The Reporter stated "I believe that the planning authority is right to set minimum standards in relation to the provision of living accommodation and to apply these standards where there is an opportunity to do so".

(d) LISTED BUILDING ENFORCEMENT APPEAL DECISION - GROUND FLOOR, 9-11 WHITEHALL CRESCENT, DUNDEE, DD1 4AR - BREACH OF LISTED BUILDING CONTROL: UNAUTHORISED ERECTION OF SIGNAGE

Reference is made to the enforcement notices served by the Council on the owner and tenant on 30 April 2008 which required that an unauthorised sign at the above location be removed within a period of seven days from the date of the notices.

The decision was appealed by the applicant under the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The appeal was determined by written representations and the decision was received by the Council on 30th October, 2008. Copies of the decision notice have already been circulated to Members by email.

The Reporter **DISMISSED** the appeal, refused to grant listed building consent for the matters covered in the listed building enforcement notices and directed that the notices are upheld with the notices coming into force on the date of his decision (30th October, 2008).

In reaching his decision the Reporter considered that all the appellant's chosen grounds of appeal failed and agreed with the Council that the sign does not have a traditional appearance and that the steel supports are particularly incongruous on the front elevation of the category B listed building. The design of the sign and its location combined, in the view of the Reporter, to produce a significantly adverse visual effect on the character of the building including its features of architectural interest contrary to Policy 60 of the Dundee Local Plan Review 2005.

(e) LAND WEST OF RICHMOND TERRACE - ERECTION OF ONE DWELLINGHOUSE

Reference is made to Article I(k) of the minute of meeting of this Committee of 21 April 2008 wherein the above proposal was refused planning permission because the Council considered that the proposal breached a number of local plan policies (Policy 61 - adverse impact of the proposed new house and of proposed tree felling on the West End Suburbs Conservation Area; Policy 55 - inappropriate design of the proposal in the context of the local environment). The Council was also concerned at the potential for the development to displace bat roosts.

The decision was taken contrary to the recommendation of the Director of Planning and Transportation.

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 16th October 2008. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission subject to a range of six conditions (finishing materials; landscaping; tree retention; potential site contamination and the repetition of the stage two bat survey).

In reaching his decision the Reporter considered that the proposed house design was modern and to a very high standard using quality materials and that it would be compatible with its setting within the conservation area. Accordingly, Policies 4, Appendix 1 and Policy 55 of the Dundee Local Plan Review 2005 were complied with. The Reporter acceded that, due to their condition, several trees would require to be felled but that there was sufficient woodland and other open space within the immediate vicinity coupled with the management of retained woodland and new planting proposals to ensure that the proposal would not detract from the character of the immediate locality and the conservation area in general. The proposal therefore did not conflict with Policy 61 of the Plan. The Reporter found that the design of the proposal would ensure that there would be no significant loss of privacy, disturbance or overshadowing in relation to existing houses. No significant increase in traffic would occur. The proposal was therefore complying with Policy 1 of the Plan.

Turning to the issue of bats, the Reporter concluded that there would be no adverse impact on this European protected species although he did recommend, through a condition, that the bat survey already undertaken be repeated prior to the felling of any trees on the site.

The Reporter further concluded that the imposition of a Section 75 Agreement to cover HMO usage was not warranted.

(f) LAND ON LINLATHEN ESTATE, LINLATHEN ROAD, DUNDEE

Reference is made to Article I(d) of the minute of meeting of this Committee of 17 September 2007 wherein members resolved to grant conditional planning permission for the above proposal subject to the application being referred to Scottish Ministers in accordance with the provisions of the Town & Country Planning (Notification of Applications (Scotland) Direction 2007. This was because the Council has an interest in the land in circumstances where it proposed to grant permission contrary to the provisions of the Development Plan. In addition, a statutory consultee, Historic Scotland, had objected to the application. On 14 January 2008 Scottish Ministers directed that the Council refer the application to them for determination.

The application was subsequently considered at a hearing held on 14 May 2008. The Reporter submitted his report to Scottish Ministers on 8 August 2008 recommending that planning permission be refused. Scottish Ministers accepted the reasoning and recommendation of the Reporter and issued the decision to **REFUSE** planning permission on 8 October 2008. Copies of the Ministerial decision letter and Reporter's findings have already been circulated to Members by e-mail.

In reaching their decision Ministers concurred with the Reporter that:

- (i) there was conflict between the proposal and several policies of the Structure Plan, namely Transport Policy 7 (accessibility); and Environmental Resources Policy 7 (prime agricultural land); and
- (ii) the proposal conflicted with the provisions of the adopted Local Plan, namely Policy 74 (new development in the countryside); Policy 74 (no support for a crematorium and public house/restaurant); Policy 71 (no reasonable public transport access and the presence of 2 Scheduled Ancient Monuments); Policy 64 (Adverse effect on the setting of a Scheduled Ancient Monument); Policy 65 (lack of evaluation of potential archaeological remains).

It was therefore concluded that the proposals as a whole were not consistent with the Development Plan.

Turning to other material considerations the Reporter and Ministers concluded that:

- (i) the proposal would contravene the terms of NPPG5 and PAN42 which deal with matters of national policy in respect of archaeology; and
- (ii) the Council had not undertaken a comprehensive search for and evaluation of potential sites that demonstrated that this was the only suitable location. In addition, no over-riding case had been made for the crematorium and public house/restaurant elements of the proposals.

Accordingly, Ministers found that there were no material considerations of sufficient weight to warrant the granting of outline planning permission contrary to the provisions of the Development Plan.