

## 5 PLANNING APPEAL DECISIONS (AN248-2007)

- (a) LAND SOUTH OF STEVEN'S YARD, SHEPHERD'S LOAN, DUNDEE - ERECTION OF TWO HOUSES (APPEAL AGAINST THE FAILURE OF THE COUNCIL TO DETERMINE THE APPLICATION WITHIN THE STATUTORY PERIOD)

Reference is made to Article I of the minutes of meeting of this Committee of 20th August, 2007 wherein Members agreed to the case which it would make at this appeal based on the decision it would have reached had the application been determined (adverse impact on the setting of the Category A listed High Mill; and the applicant's failure to demonstrate that potential ground contamination could be overcome; and that the proposal was capable of being compliant with local plan design and layout criteria).

The decision was appealed by the applicant under the provisions of Section 47 and Schedule 4 of the Town & Country Planning (Scotland) Act 1997.

The appeal was determined by written representations and the decision was received by the Council on 19th September, 2007. Copies of the decision notice have already been circulated to Members by e-mail.

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

In reaching his decision the Reporter found that he agreed with the Council that the proposal did not relate well in terms of appearance, scale, design and materials to the High Mill or the traditional stone tenements on Shepherds Loan to the north. The most important view of the High Mill from the north would also be obscured. Given these findings the Reporter saw no need to deliberate on secondary issues of ground contamination, parking/footway provision and the need for HMO controls.

- (b) LAND AT 56 SEYMOUR STREET, DUNDEE DD2 1HB -  
OUTLINE APPLICATION FOR ERECTION OF HOUSE

Reference is made to Article 1(i) of the minute of meeting of this Committee of 26 February 2007 wherein the Committee refused the above planning application because the Council considered that the proposal was contrary to the provisions of Policies 1 and 15 of the Dundee Local Plan Review 2005 (likely adverse impact on occupiers of neighbouring properties through loss of privacy; inadequacy of access arrangements; inconsistency with prevailing densities in the area).

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 24th September, 2007. Copies of the decision notice have already been circulated to Members by E Mail.

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

In reaching his decision the Reporter found that although the proposal complied with the criteria set out in Policy 15 of the Dundee Local Plan Review 2005 he considered that there was likely to be significant potential for the loss of amenity by neighbouring residents which could not be properly assessed in the absence of a detailed proposal.

- (c) FORMER BLACKNESS NURSERY, PERTH ROAD, DUNDEE  
ERECTION OF 20 HOUSES

Reference is made to Article IV(c) of the minute of meeting of this Committee of 4th December, 2006 wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to the provisions of Policies 2, 4, 72 and 75 of the Dundee Local Plan Review 2005 (housing land release, non compliance with development brief, protection of trees and drainage matters).

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 public inquiry and the decision was received by the Council on 6th September, 2007. Copies of the Decision Notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission with a total of 20 conditions relating to tree protection, landscaping, management and maintenance of communal open spaces, finishing materials, boundary treatments, access road and footway details, surface water drainage details and maintenance, and restrictions in respect of permitted developments and the occupation of any of the dwellings as an HMO.

In reaching his decision the Reporter found that:

- a in evaluating the proposal against Policy 4 of the Dundee Local Plan Review 2005, the site planning brief as a material consideration could not "carry a lot of weight in the decision making process" in the light of the "inadequacy of the Council's review process" (very limited consultation and the brief not having been kept up to date);
- b non conformity with the brief was not a sufficient reason for rejecting the proposals which in other respects were consistent with the development plan;
- c the protection and maintenance of trees was a matter which could be governed by conditions in the face of the Council's concerns regarding the density of the proposed development and the likely impact on mature species within certain plots;
- d although a surface water drainage regime had not as yet been designed to comply fully with the terms of the Dundee Local Plan Review 2005 Policy 75 "there was a high probability that following drainage impact and flood assessments that a suitably designed and maintained scheme could be achieved if necessary, using up one of the proposed housing plots";
- e a Section 75 legal agreement to prevent the occupation of any of the houses as an HMO was unnecessary and that a condition would suffice.

### **Commentary**

This is a most disappointing decision. Policy 4 of the Dundee Local Plan Review, in setting out the criteria for satisfactory housing developments indicates that the existence of a site planning brief is an important consideration in judging the acceptability of housing proposals. The site planning brief for the appeal site had been approved by the Council in 2000 and used as a basis for marketing the site and as a guide to the appropriate development of the site. Although it is accepted that the brief did not carry the same statutory weight as the Dundee Local Plan Review as a whole and had not gone through the same or similar process of consultation, the Council advanced the case at the inquiry that the brief for the above reasons represented a weighty material consideration in the determination of the appeal. The Reporter's views concerning the brief are not supported. It is considered that the brief represents a thorough and highly relevant consideration of all the material planning issues impacting on this site and specified in that context an appropriate level of development. It is also considered, in reviewing the decision letter as a whole, that the Reporter's findings lack logic and are not well balanced in terms of his summary of the evidence taken. The Director of Planning and Transportation has already written to the Director of the Directorate for Planning and Environmental Appeals raising these issues.

(d) 105 CHARLESTON DRIVE, DUNDEE  
ADVERTISING ENFORCEMENT NOTICE APPEAL (UNAUTHORISED  
ILLUMINATED FASCIA BOX SIGN)

Reference is made to an advertisement enforcement notice served by the Council on 16th May, 2007 in respect of the display of an illuminated fascia box sign at the above location.

The decision was appealed by the applicant under the provisions of the Town & Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

The appeal was determined by written representations and the decision was received by the Council on 11th September, 2007. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter **DISMISSED** the appeal and directed that the advertisement enforcement notice be upheld subject to the period of compliance being extended from 30 days as specified in the notice to 2 calendar months from the date of the appeal decision.

In reaching his decision the Reporter agreed with the Council that the sign had neither express nor deemed consent and as a consequence the enforcement notice was upheld (the appeals process could not grant consent for the sign, taking into account amenity and public safety considerations even if such consent had been merited).

(e) LAND NORTH AND SOUTH OF DONALDS LANE, DUNDEE  
RESIDENTIAL DEVELOPMENT OF 33 DWELLINGS

Reference is made to Article 1(e) of the minute of meeting of this Committee of 19th June, 2006 wherein the Committee refused the above planning application because the Council considered that the proposal was contrary to the provisions of Policy 72 of the Dundee Local Plan Review 2005 (the proposal would involve the removal of healthy mature trees subject to the protection of a TPO).

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 a public inquiry held on 10th May, 2007 and the decision was received by the Council on 24th September, 2007. Copies of the decision notice 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 all the evidence led by the Council. In summary he found that

- a the trees were healthy, worthy of the protection afforded them by the adopted local plan review and the TPO;
- b the trees made an important contribution to local and wider amenity;
- c the tree survey submitted by the appellants fell short of the full arboricultural impact statement justifiably required by the Council;
- d the Pitalpin Village Site Planning Brief approved by the Council in 2004 following public consultation, and which provided for the protection of the trees, to be an important material consideration;
- e the views of third parties (residents) which supported the Council's stance was considered to be an important material consideration;
- f the protection of the trees and their visual importance to the area did not preclude a degree of new housing designed in such a way as not to significantly prejudice the amenity of the area;
- g it was unfortunate that the applicant felt unable to meet and discuss with the Council whether a proposal could be devised with the objective of retaining more of the trees.

(f) HALLEYS BAR, 22 STRATHMARTINE ROAD, DUNDEE  
ERECTION OF CANOPY AND SECURITY FENCING

Reference is made to the decision of the Council on 28th February, 2007, under powers delegated to the Director of Planning and Transportation, to refuse planning permission because the Council considered that the proposal was contrary to the provisions of Policy 1 of the Dundee Local Plan Review 2005 (detrimental impact on the amenity of local residents by virtue of noise and smell).

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 11th September, 2007. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission with conditions relating to the submission of details of the CCTV and self-closing door mechanism; and the prohibition of amplified music or vocals in the well area.

In reaching his decision the Reporter found that all the proposals apart from the canopy were already in place. A well area to the rear of the public house with a level 2.8 metres below the level of the curtilage is accessed from the bar. With the other improvements already installed (lighting, security fencing and refuse bin storage) the Reporter considered that the addition of a canopy was unlikely to make any material difference to the nature and volume of use. However, as a security safeguard the Reporter imposed a condition requiring the installation of a CCTV system and a self closing mechanism on the rear door of the appeal property. The Reporter agreed with the Council that restrictions should be placed on amplified music and vocals.

(g) HIGH MILL, HIGH MILL COURT, DUNDEE  
CHANGE OF USE AND LISTED BUILDING CONSENT APPLICATIONS FOR THE  
ALTERATION OF LOWER GROUND FLOOR SHELL UNITS TO FORM FOUR  
FLATS

Reference is made to Articles 1(f) and (g) of the minute of meeting of this Committee of 26th February, 2007 wherein the above proposals were refused planning permission and Listed Building Consent because the Council considered that the proposal was contrary to the provisions of Policies 1, 4 and 60 of the Dundee Local Plan Review 2005 and the provisions of Sections 14 and 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (lack of off street car parking, overlooking, noise, location of flues, adverse impact on a Category A listed building due to the introduction of additional openings).

The decisions were appealed by the applicant under the provisions of Section 47 and Schedule 4 of the Town and Country Planning (Scotland) Act 1997 and Section 18 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The appeals were determined by written representations and the decisions were received by the Council on 20th September, 2007. Copies of the decision notices have already been circulated to Members by E Mail.

The Reporter **UPHELD** both the appeals and granted planning permission and Listed Building Consent (except in respect of the gas boiler flues and ventilation grilles) with conditions relating to the submission of a scheme relating to the treatment of potential contamination; samples of materials including glazing; the installation of non opening windows; and refuse storage and recycling).

In reaching his decision the Reporter was satisfied that the proposals would accord overall with the relevant provisions of the development plan and that the proposals would not have a significant adverse impact on the preservation of the building or any of its features which were of special architectural or historic interest. The Reporter conceded that the introduction of the windows "could result in a potentially severe loss of amenity for the occupiers" of adjacent houses. However opaque glazing and the fact that the windows would be permanently closed (both as proposed) could be secured by condition. The Reporter accepted that a "perception of overlooking and loss of privacy

could remain even if it did not exist" but considered that "the possibility of unfounded misconceptions would not justify refusing to grant planning permission" or listed building consent.

The Reporter also considered that it was unnecessary to impose a condition or Section 75 agreement to control the use of the flats as HMOs as a separate planning application and license would be required. The issues of installing, maintaining and cleaning the windows which required access to neighbouring property were legal matters to be addressed separately by the parties involved. The Reporter also considered that there was no justification for specifically relating car parking spaces to the flats by the imposition of a condition.

- (h) LAND NORTH OF REID SQUARE, DUNDEE  
THE ERECTION OF 10 FLATS AND ASSOCIATED ACCOMMODATION FOR SUPPORT STAFF (DESCRIPTION OF DEVELOPMENT AMENDED DURING COURSE OF THE PUBLIC INQUIRY)

Reference is made to Article I(f) of the minute of meeting of this Committee of 22nd January, 2007 wherein consideration of the above application was deferred to allow the applicants the opportunity to appear as a deputation before the Committee. The report by the Director of Planning and Transportation to that Committee recommended approval of the application with conditions.

An appeal under the provisions of Section 47 and Schedule 4 was lodged against the failure of the Council to issue a decision within the prescribed period.

The appeal was determined by public inquiry and the decision was received by the Council on 10th September, 2007. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission for the erection of 10 flats and associated accommodation for support staff. The permission was limited to 10 flats to provide temporary accommodation for homeless families and associated accommodation for support staff to ensure that given the nature of the facilities, including the level of car parking provision, the development remains in non mainstream residential use in accordance with Policy 10 of the Dundee Local Plan Review 2005. Conditions were applied relating to finishing materials, landscaping, tree protection, site contamination, waste recycling and security measures.

In reaching his decision the Reporter found that the use proposed fell into the category of non mainstream housing defined in Paragraph 15.1 of the Dundee Local Plan Review 2005 and was governed by the criteria set out in Policy 10. The Reporter considered that a good quality of residential environment would be provided for the intended occupants, that no adverse impact was considered likely from the design, that there were no overlooking or overshadowing issues, that the site would be accessible to local facilities and that amenity space and car parking were considered to be adequate.

The Reporter, in reaching his decision, found no reason to believe that the occupants would be any more likely to behave in an anti social manner than if the site were to be developed for mainstream social rented housing and that in this regard the fears of the local community were, although genuinely held, somewhat overstated.

- (i) LAND SOUTH OF RIVERSIDE DRIVE, DUNDEE  
APPEAL AGAINST THE IMPOSITION OF CONDITION 3 ON PLANNING PERMISSION 06/01086/FUL IN RESPECT OF A HOTEL AND RESTAURANT DEVELOPMENT

Reference is made to Article I(i) of the minute of meeting of this Committee of 26th March, 2007 wherein the above proposal was granted planning permission subject to a condition to the effect that the development should be carried out only in strict conformity with the details shown in the approved plans (Condition 3). The reason for the condition was to ensure that the building maintained a quality design appropriate to the site and the surrounding area.

The imposition of the condition 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 5th September, 2007. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and varied the planning permission by deleting Condition 3.

In reaching his decision the Reporter applied the tests set out in Circular 4/1998: "The use of conditions in planning permissions". In applying the test of reasonableness, the Reporter found Condition 3 to be unnecessary as it re-iterated the formal position that the development which was granted planning permission was that shown on the docketed plans approved. The Reporter confirmed, for the avoidance of doubt, that the deletion of Condition 3 would not allow the erection of a building which differed from the approved plans without first obtaining the approval of the planning authority either by way of a fresh application or an application to vary the approved drawings.