

3 APPEAL DECISION, 77 HIGH STREET (AN261-2003)

Reference is made to Article VIII (u) of the Minutes of the Development Quality Committee of 26th August 2002 wherein the above proposal was refused planning permission because the Council considered that the proposal contravened Policy S3 and Section (A) of Policy S26 of the adopted Local Plan 1998 (amusement centre within the retail core frontage of the city centre) and Section (C) of Policy S26 of the DLP (provision of an amusement centre within close proximity of 3 other amusement centres).

The decision was appealed by the applicant under the provision of Section 47 and Schedule 4 of the Town and Country Planning (Scotland) Act 1997. In summary the Reporter concluded as follows:

The appeal was determined by public inquiry held in the Queen's Hotel, Dundee on 14th and 15th January 2003. The decision was received by the Council on 28th April 2003. A copy of the decision letter can be found in the Member's Lounges.

The Reporter considered the determining issues to be whether the proposal was consistent with the provisions of the DPL and if not whether an exception is justified by other material considerations and whether it meets the requirements of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

- a although the Council in April 2002 had resolved to amend the reference in DLP Policy 26 to 'amusement centres' as opposed to 'amusement arcades referred to in the adopted policy, this did not alter the terms of the development plan. It was therefore concluded that Policy 26 was not applicable to the proposed 'amusement centre'.
- b the proposal conflicted with the detailed provisions of Policy S3. However, the policy allows for 'complementary' non retail uses (in Classes 1 and 3 eg café/restaurant which the Council considered appropriate uses for the appeal site and the adjacent property). The proposed use 'bearing in mind the lack of any significant 'deadening' or other harmful effect and the permissions for Class 3 uses at and adjoining the appeal site. It was considered that the proposed development would be an acceptable 'complementary non retail use in this part of the shopping centre'.
- c turning to other material considerations, NPPG 8 relating to town centres and retailing suggests that amusement centres are generally most appropriately located in secondary shopping areas. However, locations in primary areas are not precluded; the emerging local plan puts forward what might be considered to be a less rigid approach to the introduction of non-Class 1 uses in the retail core and that this more up to date information indicated that the proposed use would be more acceptable.

Accordingly, the appeal was **UPHELD** with conditions relating to soundproofing, window displays (content and maintenance), opening hours, restrictions on gaming, new shop front installation and servicing (Grays Close).

Commentary: This is an extremely disappointing decision and tends to indicate that amusement centres, in the view of this Reporter, are appropriate non retail uses in core retail area. The decision letter is being assessed legally to identify any case which there may be for a possible challenge to the decision in the Court of Session under the provisions of Section 237 and 239 of the Act.