

3 PLANNING APPEAL DECISIONS (AN33-2004)

(a) Land to South East of Multi Storey Car Park, Gellatly Street, Dundee Application for the approval of reserved matters in respect of a planning permission in outline for residential development granted by the Council in August 1998

Reference is made to Article VII(c) of the Minutes of the Development Quality Committee of 30 September 2002 wherein the above proposal was refused planning permission. The Council considered that the proposal did not achieve a sufficiently high standard of design for such a prominent site within the outstanding City Centre conservation area, contrary to Policy BE11 of the Dundee Local Plan 1998. In addition, privacy and security of residents would be likely to be compromised by the proximity of balconies and windows to pavements.

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 Council received the decision on 8th December 2003. A copy of the decision letter can be found in the Members' Lounges.

The Reporter, in a comprehensive report concluded as follows:

- a On balance the proposals would harm the character and appearance of the conservation area and would neither preserve nor enhance it, contrary to Structure Plan Environmental Resources Policies 5A and 6 and Policy BE11 of the adopted Dundee Local Plan.
- b The setting of those listed buildings in the surrounding area which are inter-visible with the appeal site would be adversely affected by the proposals.
- c Architectural amendments to overcome the Council's concerns about privacy and security, although feasible, would be unlikely to result in an overall improvement of the design of the proposal.
- d Turning to other material considerations, the proposals failed to conform to Policy 61 of the emerging local plan, which reflects the requirements of Policy BE11 of the adopted plan.

Accordingly, the appeal was **DISMISSED**.

(b) Land at 17 Camperdown Street, Broughty Ferry, Dundee Proposed erection of 1.5 or 2 storey house (Outline application)

Reference is made to Article VIII(e) of the Minutes of the Development Quality Committee of 27th May 2003 wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to Policies H10, BE4 and BE11 of the adopted Dundee Local Plan; and Policies 4, 15 and 61 of the Finalised Dundee Local Plan Review concerning matters of density and design standards.

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 17th November 2003. A copy of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposal was consistent with the provisions of the development plan and, if not, whether an exception to such provisions is justified by material considerations. He also took into account statutory duties under separate legislation dealing with proposals in conservation areas ie the special consideration which must be given to the effects of development on the character and appearance of the Grove Conservation Area.

In summary, the Reporter concluded that, set against the provisions of the development plan, there was a lack of adequate ground to accommodate a house with the appropriate standard of amenity. This was likely to result in a lack of significant outlook and solar gain through windows and was likely to impinge on the privacy of neighbours. There would be an unacceptable breach to a boundary wall

which contributes significantly to the street scene. The proposed materials to be used were not appropriate for the conservation area setting.

Accordingly, the appeal was **DISMISSED**.

(c) Claims for Award of Expenses
Hazardous Substances Appeal: South of Stannergate Road, Dundee

Reference is made to Article 1(b) of the Minutes of the Development Quality Committee of 27th October 2003 wherein the Committee noted that the appeal in respect of a proposal to store up to 5000 tonnes of ammonium nitrate fertiliser on land south of Stannergate Road was dismissed and that both parties to the appeal submitted claims for the award of expenses.

The Council received the decisions of the Reporter in respect of each claim on 1st December 2003 and copies of the decision letters can be found in the Members' Lounges.

The appellants had claimed that an award was justified because of the Council's unreasonable behaviour in its failure to come to a decision, independent of HSE and that there had been unreasonable delay in the determination of the application as a consequence. The soundness of HSE advice or the Council's reliance on it had not been confirmed in evidence. No serious consideration was given to a conditional approval. The Reporter considered that the Council's reasoning had been sound in the determination of the application taking account of the development plan and other material considerations and, in particular, the advice in Circular 5/1993 that the views of HSE should not be overridden without the most careful consideration.

The Council claimed that the appeal had been pursued with no reasonable prospect of success given that the strong views of HSE were known to the appellant and that HSE are a principal advisor to Council and Scottish Ministers in applications of this nature. The Reporter considered that it was not unreasonable for the appellant to consider that the appeal had a reasonable prospect of being successful. This depended on the weight the Council as decision-maker chose to place on material considerations, including the views of HSE and the imposition of any conditions capable of overcoming concerns of safety.

Accordingly, both claims for expenses were **DISMISSED**.