

2 PLANNING APPEAL DECISIONS (AN35-2002)

(a) Land at Kings Cross Road, Dundee - Proposal - 5-A-Side Football Facility (Ref 01-25231-0)

Reference is made to Article VII(e) of the Minutes of the Development Quality Committee of 24 September 2001 wherein the above proposal was refused planning permission because the Council considered that the proposed development contravened Policy H1 of the adopted Dundee Local Plan 1998 in that the environmental amenities of residents was likely to be adversely affected by noise.

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 5 March 2002. A copy of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be as follows:

Whether the proposal complied with the provisions of the development plan; and if not

Whether an exception to the provisions of the plan were justified by material considerations.

In summary, the Reporter concluded that the proposal site lay in an area where residential uses predominate. He accepted that although the site was allocated for housing purposes, its use for an alternative purpose would have no housing supply implications.

The proposed intensive use of the site for outdoor recreation for long periods on all days of the week would "be an unwelcome neighbour" to nearby residents (floodlighting and potential loss of privacy).

On the issue of noise, he considered that the noise generated from the development would be potentially very intrusive and that the proposed noise mitigation measures would be largely ineffective. Consequently, he found that the proposal was a significant departure from Policy H1.

On the issue of the previous planning permission granted on appeal in November 1999, the Reporter found that the two schemes differed significantly in detail. In terms of layout and acoustic attenuation, the previous Reporter did not have the benefit of the acoustic consultant's report which was available in the context of this particular appeal. This report indicated that noise intrusion at the houses near the site was likely and that high barriers would be needed to alleviate the situation. In the circumstances the Reporter found that the national guidelines available for the mitigation of noise and other environmental issues relating to outdoor sporting activity could not be met in this case.

Accordingly, the appeal was DISMISSED.

Claims for Expenses : Both the appellant and the Council lodged claims for expenses against each other. The appellant claimed that the Council's decision contrary to officer recommendation was vexatious and constituted unreasonable behaviour. The Council claimed that inadequate grounds of appeal had been lodged with supporting material being irrelevant or misleading

Both claims were dismissed.

(b) Bleachfield Cottages/Stable Block, Panmurefield Road, Broughty Ferry, Dundee

Reference is made to Articles 11(b) and (e) of the Minutes of the Development Quality Committee of 25 June 2001 wherein planning applications for the above development (Ref 01/25135/D and 01/25136/D) were granted planning permission subject to the following condition:

Prior to the commencement of the development, full details of the foul water drainage system, which shall be linked to the main public sewer, shall be submitted to and approved by the Council in consultation with North of Scotland Water Authority and Scottish Environmental Protection Agency.

The decisions of the Council to impose this condition on the applications were appealed by the applicant under the provisions of Section 47 and Schedule 4 of the Town and Country Planning (Scotland) Act 1997.

The appeals were determined by written representations and the decisions were received by the Council on 14 March 2002. Copies of the decision letters can be found in the Members' Lounges.

The Reporter considered the determining issue to be whether there are compelling reasons, in the public interest why the conditions requiring the connection to the public drainage system should be retained.

The condition had been applied in response to SEPA's view that septic tank drainage in this location would be unsustainable; would risk a proliferation of private septic tanks; would not constitute best practice; and the fear of precedent. However, the Reporter found that the proposed scheme was technically competent and nor was the connection to the public sewer argued to be "essential". Whilst he agreed that whilst the Council and SEPA were concerned about the long term suitability of the drainage arrangements in this urban fringe area, he was not satisfied that the condition was necessary in terms of the tests specified in Circular 4/1998 and taking into account the distinct sets of controls available to the Council and SEPA. The additional costs of the connection to the public sewer would be considerable and it would be undesirable to add this financial burden to the costs of restoring these Listed Buildings. Whilst concluding that the conditions should be removed the Reporter confirmed that this did not convey the approval of the septic tanks themselves and any further approvals from the Council or SEPA would still be required. However, he went on to comment that the applicant, in all circumstances should consider further whether there were economic advantages to be gained by exploring the possibility of a shared connection to the public sewer.

Accordingly, the appeal was UPHELD.

Commentary: These appeals were unusual in that they related to the imposition of conditions rather than to any refusal of planning permission and also that the principal issue was the overlap of drainage responsibilities between the Council and SEPA in terms of the control of development. The Council and SEPA adopted a strategic long term view whilst the Reporter found no policy or technical justification for this approach in this instance.