

8 PLANNING APPEAL DECISIONS (AN387-2006)

- (a) BROUGHTY FERRY BOWLING CLUB, 36 ALBERT ROAD, BROUGHTY FERRY, DUNDEE - ERECTION OF 14.2 METRE TELECOMS MONOPOLE (DISGUISED AS A FLAGPOLE)

Reference is made to Article 1(a) of the minute of meeting of this Committee of 23rd January, 2006 wherein the above proposal was refused planning permission because the Council considered that:

- a there was no justification for the proposal in this residential area and close to sensitive land uses contrary to Policy 78 of the Dundee Local Plan review 2005; and
- b due to its height and location the mast would detract from the visual amenity of the conservation area contrary to Policy 61 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 23rd October, 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether

- i the development would be consistent with the policies of the development plan;
- ii would help preserve or enhance the character or appearance of the Grove Conservation Area; and
- iii in the event of any contravention of the development plan, exceptional planning permission is warranted.

In summary the Reporter concluded that the development plan was not offended; that the effect on the character or appearance of the conservation area was neutral and that there were no material considerations which led to an exceptional grant of planning permission. The Reporter, in reaching his conclusions agreed with the way in which officers had dealt with the health issues especially in relation to vulnerable parts of the population.

Accordingly the appeal was **UPHELD** with a non standard condition relating to the removal of the installation would it be come redundant in future.

- (b) LAND AT CORNER OF LAW CRESCENT AND KINPURNIE PLACE, DUNDEE - ERECTION OF 18 DWELLINGHOUSES

Reference is made to Article I(i) of the minute of meeting of this Committee of 24th April, 2006 wherein the above proposal was refused planning permission (contrary to the recommendations of the Director of Planning and Transportation) because the Council considered that:-

- i the adjacent roads of Kenmore Terrace and Killin Avenue were narrow and that existing parking and access difficulties would be made worse (Policy 1 of the Dundee Local Plan Review 2005); and
- ii such a high density of development would be inconsistent within this area of relatively low density housing (Part B of Policy 4 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 25th October, 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether

- i Policy 1 of the local plan was contravened - The reporter found that there was no serious friction with this policy on the grounds of parking, access or traffic movement. Reason for Refusal 1 was found to be unsupportable;
- ii Policy 4 of the local plan was contravened - The Reporter found that the Council had wrongly interpreted Policy 4 by relying on the second element of the policy relating to density instead

- of applying the first element relating to compliance with design standards contained in Appendix 1 of the plan;
- iii Policy 66B of the local plan was contravened - The Council led evidence which was not reflected in any of the reasons for refusal. The Reporter nevertheless gave consideration to this matter and found that no particular weight could be placed on this policy in the circumstances of the case as the site never had a credible long term future as open space given the Council's decision to dispose of the site for development;
 - iv Other material considerations carried sufficient weight to counterbalance the proposals' compliance with the development plan. Issues of density, contribution to the housing land supply and objections by residents were considered but none of these individually or together were sufficient to convince the Reporter that exceptional planning permission should be granted.

Accordingly the appeal was **UPHELD** with a range of conditions relating to landscaping, materials, samples, enclosures, refuse storage, management of construction traffic and the investigation of potential ground contamination.

The appellant claimed an award for expenses against the Council and was successful. Copies of the Reporter's decision letter on the expenses claim can be found in the Members' Lounges. The claim was considered by the Reporter against the tests set out in Circular 6/1990 and found that:

- i The claim had been made at the appropriate time;
- ii The Council had produced no evidence in support of their reasons for refusal;
- iii Policy 66B had no foundations in the Council's Reasons for Refusal and there was severe doubt as to whether it represented a coherent corporate position;
- iv The Council misconstrued the meaning of policy 4 as density aspects should not have been relied on when the criteria of Appendix 1 of the plan were met;
- v The Council led no numerical evidence in respect of its density assertions;
- vi There was no sound basis for the Council preferring the views of residents to the professional advice it had received.

It is the view of the Depute Chief Executive (Support Services) that the Reporter may have erred in several respects as regards his findings on expenses. A letter of complaint requesting a review has been sent to the Scottish Executive.

(c) LAND TO EAST OF KINGS CROSS ROAD, DUNDEE
ALLEGED UNAUTHORISED INSTALLATION OF LIGHTING COLUMNS, ACCESS ROAD
AND CAR PARKING AND EARTH BUNDING

On 27th April, 2005 the Council served an Enforcement Notice relating to the above alleged unauthorised works.

The decision was appealed by the applicant under the provisions of Grounds (a) and (c) Section 130(1) of the Town and Country Planning (Scotland) Act 1997, namely that planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged and that those matters (if they occurred) did not constitute a breach of planning control.

The planning and appeal history of this site is complex and is summarised by the Reporter. However the main elements are that in November 1999 an appeal against the refusal by the Council of an all weather soccer facility, licensed pavilion and car park was granted conditional planning permission on appeal. A subsequent marginally smaller but similar application was refused by the Council but an appeal against that refusal was subsequently dismissed. In July 2004 the applicant's agents confirmed that work had commenced on site and in September 2004 the enforcement notice the subject of this current appeal was served. The applicants confirmed that the intention was to use the land for the purpose which was approved on appeal in 1999. The Council contended that the work being undertaken was in breach of the conditions imposed by the previous Reporter on appeal and that they did not constitute a material operation capable of commencing the development for the purposes of preventing the expiry of the planning permission.

The applicant challenged this assertion in the current appeal.

The Enforcement Notice appeal was determined by written representations and the decision was received by the Council on 8th November, 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter agreed with the terms of the Council's case and found that the works had been carried out before the submission of the required details and therefore that the works did not have the benefit of planning permission and considering the planning history was satisfied that the proposal for which planning permission was being sought was contrary to the development plan and that there were no material considerations which led him to grant planning permission.

Accordingly the appeal was **DISMISSED** and the terms (unaltered) of the Enforcement Notice which required the removal of the lighting columns and services; removal of the earth bunding and reinstatement of levels and reseeded; and the removal of the partly constructed access road and parking area together with reinstatement and reseeded. The timescale for compliance is 90 days from the date of the appeal decision.