

4 PLANNING APPEAL DECISIONS (AN 98-2002)

(a) 13-27 UNION PLACE, DUNDEE- FORMATION OF 8 FLATS WITH DORMER WINDOWS

Reference is made to the minute of meeting of the Development Quality Committee of 24th September, 2001 wherein the above proposal was refused planning permission because the Committee considered the proposals to be contrary to Dundee Local Plan Policies H16 (Developments in Roofspaces and Basements) and BE11 (Design of Developments in Conservation Areas).

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 15th April, 2002. A copy of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposal complied with the Dundee Local Plan 1998 and, if not, whether material considerations justified the granting of planning permission.

In summary, the Reporter concluded that:-

- (a) the proposal would lead to increased pressure on car parking availability resulting in the interruption to the free flow of traffic and inconvenience to road users;
- (b) there would be no inconvenience to residents due to the communal open space proposed by the development; and
- (c) the proposals, by virtue of their design, would not preserve or enhance the character of the conservation area.

No material considerations outweighed the Reporter's conclusion that the development contravened the stated local plan policies.

Accordingly, the appeal was **DISMISSED**.

(b) 40 WINDSOR STREET, DUNDEE - EXTENSION TO DWELLINGHOUSE

Reference is made to the minute of meeting of the Development Quality Committee of 27th August, 2001 wherein the above proposal was refused planning permission because it was considered that the proposal was contrary to the development plan in that it would have an adverse effect on the residential amenity of neighbours by virtue of overshadowing and loss of daylight/sunlight (Policies H1 and H4) and for design reasons in relation to the conservation area (Policies BE4 and BE11).

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 April, 2002. A copy of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposal would serve to preserve or enhance the character or appearance of the conservation area, whether the proposal is consistent with development plan policy, and, if not, whether an exception to the provisions of the plan is justified by other material considerations.

In summary, the Reporter concluded that the proposal in design terms would have a neutral impact on the character and appearance of the conservation area. However, when considered in its immediate setting she found that the proposal would be out of scale and would detract from the amenity and appearance of the back of the terrace of houses and would dominate and overshadow the adjoining property.

Accordingly, the appeal was **DISMISSED**.

(c) LAND AT LINLATHEN, BY CLAYPOTTS, DUNDEE - ROADSIDE SERVICES DEVELOPMENT (OUTLINE)

Reference is made to Article II of the minute of meeting of the Development Quality Committee of 27th August, 2001 wherein the Council's proposed case in relation to this non-determination appeal inquiry was set out in detail.

The appeal was made 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 at a public local inquiry held in Broughty Ferry between 28th January and 1st February, 2002. The decision was received by the Council on 9th April. A copy of the decision letter can be found in the Members' Lounges.

The inquiry considered detail evidence by both the appellant and the Council relating to a range of national, structure plan and local plan policies (viz open space, rural developments, roadside services, retailing, roads etc).

Having considered the evidence, the Reporter found that:-

- (a) the appeal site is of open character beyond a "clear and well established urban boundary" without a similar defensible boundary to the east of the proposal site: Given the likely extent and prominence required for the development, it would be impractical to assume that measures for maintaining and improving the quality of the natural and built environment could have been put in place;
- (b) the scope of the proposal went beyond that envisaged by the development plan's roadside services policies and related to this the proposal failed to meet the tests of structure and local plan retailing policies;
- (c) the proposal, subject to suitable design considerations, would be unlikely to undermine the setting of the adjacent listed building;
- (d) on balance, there was no justification for dismissing the appeal solely on agricultural land quality grounds nor in relation to the application of Policy OS1 of the local plan;
- (e) the introduction of right turn traffic movements to and from the development on the busy A92 with a poor accident record would be likely to have an adverse effect on road safety and would be even more pronounced when likely movements by larger service vehicles are taken into account;
- (f) relating to this, the proposal would not accord with the principles of transport sustainability set out in NPPG17; and
- (g) taken together, the facilities provided at the nearby Sainsbury's development and the Ethiebeaton and the Panmurefield Village developments amount to the range normally found at roadside services type developments.

Accordingly, the appeal was **DISMISSED**.

Commentary: This decision emphasises the role played by the local plan in establishing a clear and defensible boundary for the edge of the urban area which can be consistently applied in decision making and by Reporters on appeal. It also emphasises the expectation of Reporters that developments will be sustainable in transport terms and have safe access/egress.

(d) LAND AT MARCHFIELD ROAD, DUNDEE

Land at Marchfield Road, Dundee

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| Three Appeals | (a) | Renewal of Outline Planning Permission for three houses |
| | (b) | Renewal of Outline Planning Permission for one house |
| | (c) | Conditions Imposed on Grant of Listed Building Consent |

Reference is made to Article II(a) and (b) of the minute of meeting of the Development Quality Committee of 26th February, 2001 wherein the proposals for outline planning permission were refused because it was considered that these proposals would increase the vehicular traffic detrimental to traffic and pedestrian safety and thereby be contrary to Policy H1 of the adopted local plan.

Reference is also made to Article II(d) of the minute of meeting of the Development Quality Committee of the same date wherein listed building consent was granted for the demolition of a boundary wall subject to a phasing condition related to the implementation of the development of land to the north and a condition relating to the submission of materials. The imposition of both conditions were the subject of appeal.

These three 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 9th April, 2002. A copy of the combined decision letter can be found in the Members' Lounges.

Outline Planning Permission Appeals

The Reporter considered the determining issues to be whether the existing outline planning permissions dated from 1997 should be renewed and whether there had been any significant change in circumstances which would lead to a different determination, particularly in relation to development plan policies.

The Reporter concluded that the proposed access point for both of these proposals would be inadequate and a danger to vehicles and pedestrians. There was found to be a material difference between these and previous proposals in that it was no longer intended to widen the accessway due to ownership difficulties.

Accordingly, the appeals were **DISMISSED**.

Listed Building Conditions Appeal

The Reporter found that the applications for the residential development to the north were dependent on the listed building consent being in place. He also found that it was entirely appropriate, given the provisions in statute relating to the preservation of listed structures, for the Council to impose a phasing condition linking the demolition to the development of the land to which the access to be formed relates. He also considered it appropriate for the Council to seek the submission of sample materials as advised by the Memorandum of Guidance issued by Historic Scotland.

Accordingly, the appeal was **DISMISSED**.

Claims for expenses by both parties were rejected by the Reporter.

(e) 400-410 PERTH ROAD, DUNDEE - ROOFTOP TELECOMMUNICATIONS DEVELOPMENT

Reference is made to the minute of meeting of the Development Quality Committee of 3rd December, 2001 wherein the above proposal was refused planning permission because the Committee considered that the development would have an adverse impact on the setting of the Perth Road Terraces Conservation Area contrary to Policies BE1 and BE11 of the Dundee Local Plan and would set an undesirable precedent for similar structures in equally unsuitable locations.

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 representatives and the decision was received by the Council on 23rd April, 2002. A copy of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be:-

- (a) whether the proposal would serve to preserve or enhance the character and appearance of the conservation area;
- (b) whether the proposal is consistent with development plan policy; and
- (c) whether the proposal would accord with the Council's non statutory telecommunications policy.

In summary, the Reporter concluded that:-

- (a) although the site is highly visible, the proposal to conceal the equipment within replica chimney pots would be acceptable, taking into account the design of the "host" building and design features in the immediate locality and would not adversely affect the character and appearance of the conservation area sufficiently to justify the refusal of planning permission;
- (b) an operational justification exists for the proposed development;
- (c) the applicant had considered alternative locations and these have been ruled out for justifiable reasons;
- (d) sharing of facilities can be promoted by conditions;
- (e) the proposal accords with the best practice principles set advocated in NPPG19 and PAN62; and
- (f) there was no justification for departing from the national advice in relation to health concerns, the precautionary principle and the planning process (the Reporter nevertheless considered that the issue of the likely intensification of future emissions could be controlled by planning condition).

Accordingly, the appeal was **UPHELD** with conditions relating to the potential for the sharing of the cabinet facility, material samples and colour of materials, and additional/replacement apparatus complying with ICNIRP guidelines.