

**REPORT TO: DEVELOPMENT QUALITY COMMITTEE – 27 JANUARY 2003**

**REPORT ON: APPEAL DECISION – OLD POLICE STATION, FINTRY, DUNDEE**

**REPORT BY: DIRECTOR OF PLANNING AND TRANSPORTATION**

**REPORT NO: 82-2003**

## **1 PURPOSE OF REPORT**

1.1 To make members aware of the outcome of the above appeal.

## **2 RECOMMENDATIONS**

2.1 That the Committee authorises the Director of Support Services to draw the statements made by the Reporter to the Scottish Executive Inquiry Reporters Unit seeking an explanation for the inclusion in his report remarks concerning the Council's alleged attitude to the potential use of CPO powers.

## **3 FINANCIAL IMPLICATIONS**

3.1 There are no financial implications arising from this report.

## **4 LOCAL AGENDA 21 IMPLICATIONS**

4.1 There are no Local Agenda 21 implications.

## **5 EQUAL OPPORTUNITIES IMPLICATIONS**

5.1 There are no Equal Opportunities implications.

## **6 BACKGROUND**

6.1 An appeal was made to Scottish Ministers under the provisions of Section 47 and Schedule 4 of the Town and Country Planning (Scotland) Act 1997 because of the failure of the City Council to issue a decision on a planning application for an extension to an approved betting shop (Class 2) at the above location within the period prescribed in the Act.

6.2 The appeal was determined by written representations and the decision was received by the Council on 21 November 2002. A copy of the decision letter can be found in the Members' Lounges.

6.3 The Reporter considered the determining issues to be as follows:

- a Whether the approval of the proposal would be premature pending further consideration of the proposal to extend the village square;
- b Whether the proposal would detract from the amenity of the existing village square;

- c Whether traffic and car parking generated by the development would be detrimental to road safety; and
  - d Whether noise disturbance would reduce the amenity of nearby neighbours.
- 6.4 In summary, the Reporter concluded on each of the material considerations as follows:
- a In relation to the village square proposal, the Reporter concluded that this application should be determined on its own merits and not on whether it might be more or less acceptable than a different proposal.
  - b The principle of the use had previously been established on appeal in 1998. The Reporter found that the proposed extension would improve the appearance of the site in view of its appearance adjacent the village square. It would also bring into use a vacant building.
  - c The Reporter concluded that the proposal would result in a negligible increase in traffic generation, the site is served by public transport and the minor increase in the use of the existing car park would be unlikely to impede pedestrians.
  - d The resultant increases in noise and disturbance in the locality would be negligible.
- 6.5 In conclusion, the Reporter found that none of the material considerations had sufficient substance to warrant the refusal of planning permission.
- 6.6 Accordingly, the appeal was **UPHELD** with conditions relating to the time period for the commencement of the development (5 years) and the submission of samples of materials for approval.
- 6.7 This appeal decision raises issues in respect of the remarks which the Reporter made in his report concerning the proposals for the extension to the village square. The Reporter states (Para 9) that..."As the Fintry Community Safety Panel has no powers of compulsory purchase, and the planning authority has given no indication that it would attempt to use its powers of compulsory purchase to promote the village square scheme, there seems little prospect that the village square scheme, as envisaged, could proceed".
- 6.8 In its evidence to the Reporter the Council did not indicate that it would not use compulsory purchase powers. Indeed, from time to time the Council has been prepared to use its powers of compulsory purchase to achieve the proper planning of its area. The Reporter took evidence from the Fintry Community Safety Panel that a funding package for phase 2 of the project had been assembled. Also he was aware that a Site Planning Brief for the Square was under preparation, that it was likely to go to an early Council Committee for consideration and that a planning application for phase 3 of the village square had been submitted. In addition, he was aware from the Council's evidence that the appeal application had been withdrawn from an earlier Committee agenda because of the need for further information to be assembled viz the village square proposals. Accordingly, it must be assumed that the Reporter's conclusion that there seemed little prospect that the village square as envisaged could proceed, came from the appellant's evidence alone.

- 6.9 The statement that the Council expressed some concern about the feasibility of the village square project is also not borne out by any of the evidence submitted to the Council. As outlined above the Reporter was aware in evidence that funding was in place and that a planning application awaited consideration and that a brief by the Council was at an advanced stage of preparation. Indeed it was the Council's recommendation that the appeal be dismissed as premature, pending its consideration of the village square proposals. It must again be assumed that the Reporter's conclusions were based solely on evidence from the appellant without weighing the Council's evidence in the balance.
- 6.10 However, the Reporter (Para 9) indicates, regardless of the above, that "the determination of the subject application should be carried out on the basis of whether it is acceptable on its own merits, and not on whether it might be more or less acceptable than a different proposal".
- 6.11 The Director of Support Services has been consulted and has concluded that a challenge of the decision in the Courts is not justified in this case. However, it is recommended that the Council authorises the Director of Support Services to draw the statements made by the Reporter to the Scottish Executive Inquiry Reporters Unit seeking an explanation for the inclusion of remarks in his report concerning the Council's alleged attitude to the potential use of CPO powers.

## **7 CONSULTATIONS**

- 7.1 The Chief Executive, Director of Finance, Director of Support Services, Director of Corporate Planning, and , have been consulted and are in agreement with the contents of this report.

## **8 BACKGROUND PAPERS**

- 8.1 Appeal Decision Report dated 19 November 2002.

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Mike Galloway  
Director of Planning & Transportation

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Ian Mudie  
Building Quality Manager

IGSM/IAR/MS

10 January 2003

Dundee City Council  
Tayside House  
Dundee