

3 PLANNING APPEAL DECISIONS (AN117-2006)

(a) 21 MUIRFIELD ROAD, DUNDEE - FORMATION OF SINGLE STOREY REAR EXTENSION AND DORMER EXTENSION

Reference is made to the decision of the council on 20th October 2005, under powers delegated to the Director of Planning and Transportation, to refuse planning permission because the Council considered that the proposed dormer by its size, scale, bulk and massing and location would be an unsympathetic and incongruous addition to the dwellinghouse contrary to the provisions of Policy 14 of the adopted 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 13th February 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether:

- i the proposal was consistent with the relevant provisions of the development plan; and
- ii an exception to these provisions was justified by other material considerations.

In summary, the Reporter concluded that he was satisfied that the proposed rear single storey extension was acceptable and warranted the grant of planning permission. However, he agreed with the Council concerning the dormer and found that planning permission should be refused in respect of this element of the proposals.

Accordingly, the appeal was **DISMISSED** in respect of the dormer element of the proposal but **UPHELD** with the standard 5 year condition in respect of the single storey extension.

Commentary: Members should note that the Planning Act provides for Scottish Ministers on appeal to "split" decisions in this way. Such powers are not available to Councils in making original determinations.

(b) LAND NORTHWEST OF 27 CLAYPOTTS ROAD - ERECTION OF DWELLING

Reference is made to Article 1(j) of the minute of the Development Quality Committee of 29th August 2005 wherein the above proposal was refused planning permission because the Council considered that the proposal contravened Policy 64 of the adopted Dundee Local Plan Review as the proposal would have an adverse visual impact on Claypotts Castle, a scheduled ancient monument and a Category A listed building; and that the proposal contravened Policy 1 of the Review due to its potential adverse impact on the amenity of neighbours (traffic movement and access).

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 27th February 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether:

- i the proposal would affect the setting of Claypotts Castle;
- ii the proposal would accord with the relevant policies of the local plan; and
- iii there were other material considerations which would justify a decision contrary to the development plan.

In summary, the Reporter concluded that due to the location of the proposal he did not consider that the proposal would adversely affect the setting of Claypotts Castle either as a listed building or scheduled ancient monument. The loss of trees to facilitate the development would not reduce significantly the contribution to amenity which the tree group as a whole makes. The Reporter did not agree that problems would result from the proposed access arrangements, nor from the purported adverse impact of the proposal on parking arrangements and traffic movement.

Accordingly, the appeal was **UPHELD** with conditions relating to the supply of details of materials and the replacement of trees.

Claims for expenses were made by both parties. The Reporter rejected the claim submitted on behalf of the Council who had argued that the appellants had acted unreasonably in submitting their claim. In respect of the claim by the appellants a decision is still pending.

(c) LAND ADJACENT TO DERWENT AVENUE - INSTALLATION OF 12.5M TELECOMS MAST AND EQUIPMENT CABINETS

Reference is made to article I(c) of the minute of the Development Quality Committee of 26th September 2005 wherein the above proposal was refused planning permission because the Council considered that the proposal would appear prominent and incongruous in the streetscene and would be detrimental to the visual amenity of the area contrary to Policies 1 and 78 of the Dundee Local Plan Review 2005. The proposal would also prejudice the implementation of the Council's regeneration strategy for the area.

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 13 February 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether:

- i The proposal complied with the provisions of the development plan;
- ii The proposal would be likely to undermine the regeneration strategy for the area; and
- iii An exception to the provisions of the development plan is warranted by other material considerations

In summary, the Reporter concluded that in relation to the policies of the Dundee Local Plan Review 2005 he agreed with the appellants that the character of the area is suitable to assimilate the additional mast and that there would be no significant effect on visual amenity and that they had undertaken sufficient investigations into alternative possible sites. He did not agree that the proposal would adversely impact on the amenity of the area in general or, in particular, the adjacent recreation area which formed part of the regeneration works. The proposal was found to comply with the provisions of the development plan and that there were no material considerations which would lead to a contrary view being taken.

Accordingly, the appeal was **UPHELD** a condition applied relating to removal and site reinstatement should the equipment become obsolete or redundant.

(d) LAND NORTH OF BOWLING CLUB, BALGAY ROAD, DUNDEE - ERECTION OF TELECOMMUNICATIONS MAST AND APPARATUS

Reference is made to Article I(a) of the minute of the Development Quality Committee of 27th June 2005 wherein the above proposal was refused planning permission because the Council considered that the proposal contravened Policy BE 31 of (the then) adopted Dundee Local Plan 1998 and Policy 78 of (the then) Draft Dundee Local Plan Review 2005 and Policy 7 of the Council's approved non statutory policies relating to telecommunications developments. (The tree-like structure was inappropriate in design terms in such a prominent location adjoining recreational 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 9 February 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether:

- i The proposal would have an adverse impact on the appearance, character and setting of the West End Suburbs Conservation Area;
- ii The proposal is consistent with the relevant provisions of the development plan; and
- iii An exception to the provisions of the development plan is warranted by other material considerations.

In summary, the Reporter concluded that mast sharing had been validly ruled out by the appellants and that other locational options had been explored and the reasons for their rejection were accepted. Given the structure's location and design, when viewed from various viewpoints, the Reporter did not accept the argument that the proposals would be visually dominant nor add to visual clutter when the other nearby mast was taken into consideration. In relation to the location of the proposal in relation to nearby residences the Reporter found that visual impact would be adequately minimised. The Reporter was also satisfied that the applicants had met the requirements of NPPG19. The Reporter concluded that as an ICNIRP Certificate had been provided and in accordance with Government advice it was not appropriate for him to treat RF emissions as a material consideration. The proposal would have no adverse impact on the conservation area. Nor would it conflict with development plan policy.

Accordingly, the appeal was **UPHELD** with conditions relating to the removal of the installation when obsolete or redundant and the minor relocation of the compound to allow for the maintenance of the adjacent hedge.

- (e) LAND OFF THOMSON STREET, MAGDALEN YARD ROAD, DUNDEE (FORMER TAY ROPE WORKS) - ERECTION OF TWO DWELLINGHOUSES

Reference is made to Article 1(a) of the minute of the Development Quality Committee of 29th August 2005 wherein the above proposal was refused planning permission because the Council considered that the proposal was likely to adversely effect the character of the West End Lanes Conservation Area; the backland nature of the proposal; the loss of amenity for neighbours on account of visual impact, potential overshadowing, loss of privacy and road safety. (Policies 1, 4, 55 and 61 of the adopted Dundee Local Plan Review refer).

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 22 February 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether:

- i The proposals are consistent with the relevant policies of the Dundee Local Plan Review; and
- ii If not, whether material considerations justify exceptional approval.
- iii The character or appearance of the conservation area would be enhanced.
- iv Difficulties arising from the above can be addressed by planning conditions.

In summary, the Reporter concluded that the northern house offered greater compliance with the development plan and other material considerations compared to the southern house which would not relate sufficiently well to its surroundings. The Reporter was unable to apply conditions to the southern house to overcome these problems. The Reporter considered that because the two elements of the proposal were sufficiently distinct from each other he took the unusual step of granting approval for the northern house and refusing planning permission for the southern house.

Accordingly, the appeal in respect of the northern house was **DISMISSED** but **UPHELD** with appropriate conditions in relation to the southern house.

Commentary: Members should note that the Planning Act provides for Scottish Ministers on appeal to "split" decisions in this way. Such powers are not available to Councils in making original determinations.

