

KEY INFORMATION

Ward Riverside

Proposal

Erection of 20 dwelling houses and access road

Address

Blackness Nursery
Perth Road
Dundee

Applicant

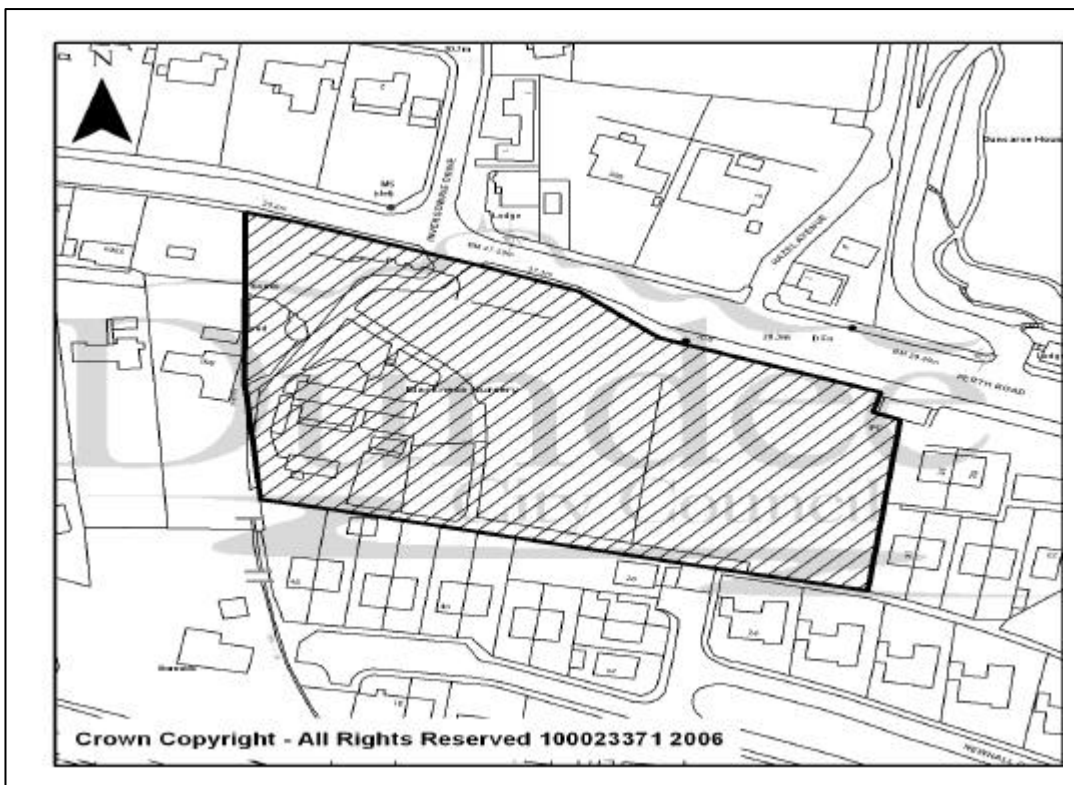
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Registered 22 Dec 2005

Case Officer Eve Jones



Proposal to Increase Number of Houses on Former Blackness Nursery

The erection of 20 dwelling houses is **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation

RECOMMENDATION

The proposed development fails to comply with the adopted Site Planning Brief and is therefore contrary to Policy 4 - Design of New Housing. It also fails to comply with Policy 72: Trees and Urban Woodland and Policy 75: Sustainable Drainage Systems. The objections are largely supported. There are no material considerations of sufficient strength to justify the granting of planning permission contrary to the policies.

Recommendation: **REFUSE**

SUMMARY OF REPORT

- Planning permission is sought for 20 dwelling houses and access road at the former Lauries Nursery site on Perth Road. They are modern in design and materials with timber and stone detailing and extensive glazing. The site is accessed from Perth Road and surface water is to be dealt with by a private soakaway. 29 trees which are subject to a Tree Preservation Order are to be removed with no plans for replacement tree planting.
- Dundee Local Plan 2005 - Policy 4: Design of New Housing; Policy 72: Trees and Urban Woodland; Policy 75: Sustainable Drainage Systems are relevant. A Site Planning Brief - Blackness Nursery : Lauries' Garden Centre was approved by Planning and Transportation Committee on 4 December 2000.
- The site has planning permissions for the erection of 5 large detached houses and an access road. None of the permissions has been commenced.
- Ten objections were received on various grounds and three objectors disagreed with the applicant's view that there was no market for large houses in this part of Dundee. The West End Community Council opposes the change from 5 to 24 dwellings and has other comments.
- The proposed development does not comply with the adopted Brief and is contrary to Policies 4, 72 and 75.

DESCRIPTION OF PROPOSAL

Planning permission is sought for the erection of 20 dwelling houses and access road. The proposed houses are as follows:

1 x detached, 2 storey, 3 bedroom house with integral garage

2 x semi-detached 2 storey, 3 bedroom houses with integral garage

4 x semi-detached 3 storey townhouses with 3/4 bedrooms

1 x detached 3 storey townhouse with 4 bedrooms

4 x detached 2 storey, 3 bedroom houses with no garage

6 x semi-detached 2 storey, 3 bedroom houses with no garage

2 x detached 2 storey, 4 bedroom houses with integral garage.

The houses with no garage have 2 parking spaces, the others have one space in addition to the garage. The houses range in floorspace from 126 square metres to 248 square metres.

The site is accessed by a road built to adoptable standards with 11 of the houses then gaining access via areas of private road. Formation of the access road will require the construction of a retaining wall above the existing stream and pond. Surface water from the site is proposed to be dealt with by a private soakaway to be constructed in the south west corner of the site.

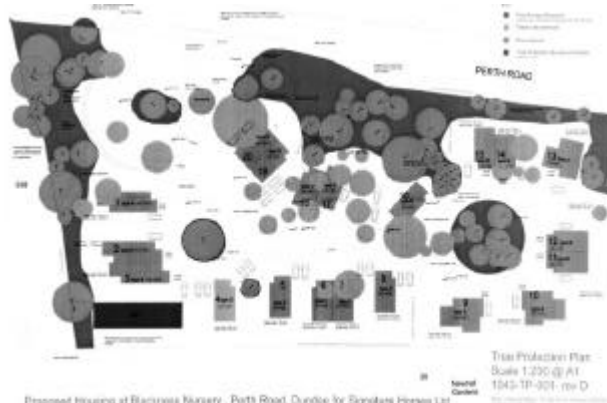
29 of the existing trees which are the subject of a Tree Preservation Order are proposed to be removed and the remainder are to be retained and protected during construction. There are no plans for any replacement tree planting.

Planning permission was originally sought for 24 houses which included a terrace of townhouses but the proposals were amended to 20 houses by the applicant. A Design Statement in support was submitted in respect of the original application for 24 houses.

SITE DESCRIPTION

The site lies on the south side of Perth Road, opposite its junctions with Invergowrie Drive and Hazel Avenue.

The site slopes down to the south and is heavily landscaped when viewed from the road. It is bounded on its east and south side by high hedges and by trees and shrubs to the west. There is a stream and pond in a deep channel at the western boundary from which the stream then runs into the adjoining site to the west. As noted, the site is heavily overgrown by both the original trees and shrubs which formed the landscaped grounds of the previous Garden Centre and by later self seeded vegetation resulting from the subsequent lack of maintenance of the



site. The surrounding residential properties vary in age, design and density with established older properties, several of which are Listed Buildings, in larger plots to the north and west and newer development on relatively smaller plots to the east and south.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

Dundee Local Plan 2005

The following policies are of relevance:

Policy 4: Design of New Housing

Policy 72: Trees and Urban Woodland

Policy 75: Sustainable Drainage Systems

Scottish Planning Policies, Planning Advice Notes and Circulars

The following are of relevance:

There are no statements of Government policy relevant to the determination of this policy.

Non Statutory Statements of Council Policy

The following policy statements are of relevance:

Site Planning Brief - Blackness Nursery: Lauries' Garden Centre approved by Planning and Transportation Committee on 4 December 2000 and approved as a material consideration in the determination of any planning applications by the Development Quality Committee on 22 January 2001.

As part of the approval of the Brief there was a remit to promote a Tree Preservation Order for the site and Tree Preservation Order No 2:2001 came into effect on 20 June 2001.

SUSTAINABILITY ISSUES

The following sustainability policy implication arises from this application:

Natural Heritage. 29 of the existing trees which are the subject of a Tree Preservation Order are proposed to be removed and the remainder are to be retained and protected during construction. There are no plans for any replacement tree planting. There is the potential for the stream which passes through the site to be affected by the proposed construction of the access road.

SITE HISTORY

02/00343/OUT Outline permission for 5 new houses and associated boundaries, formation of private road and removal of outbuildings, granted subject to conditions 26/08/2002.

03/00901/FUL Planning permission for formation of access road, street lighting and temporary tree protection measures granted subject to conditions 01/03/2004.

03/00902/FUL Planning permission for erection of dwelling - Plot 1 granted subject to conditions 01/03/2004.

04/00446/FUL Planning permission for erection of detached house and garage - Plot 4 granted subject to conditions 29/03/2005.

04/00899/FUL Planning permission for erection of dwelling - Plot 5 granted subject to conditions 26/01/2005.

05/00208/FUL Planning permission for erection of dwelling - Plot 2 granted subject to conditions 22/08/2005.

05/00269/FUL Planning permission for erection of dwelling - Plot 3 granted subject to conditions 23/08/2005.

PUBLIC PARTICIPATION

The application was the subject of statutory Neighbour Notification and was also advertised as a development contrary to the development plan.

Ten objections were received on grounds of failure to comply with the approved Brief; contrary to Development Plan; loss of trees and shrubs; design out of keeping; loss of privacy; objection to use of a soakaway to drain surface water; impact on the stream; poor access. Three objectors disagreed with the applicant's view that there was no market for large houses in this part of Dundee indeed two objectors had sought to buy the site under the terms of the original brief and two noted that the developer had been unwilling to sell houses to them.

Following a revision of the application from the original 24 houses to 20 houses, adjoining neighbours were re-notified and two further objections were received, one from a neighbour reiterating her objection and another disputing the lack of demand argument.

These issues will be considered further in the Observations below and copies of the correspondence are available in Members' Lounges.

CONSULTATIONS

The West End Community Council opposes the change from 5 to 24 dwellings and also does not support the materials, the design solution, the potential for HMO use and the loss of privacy to residents to the south of the site. The Community Council would prefer the site to be sold off as 5 individual plots if the developer is unable to make a success of the original brief.

The Forestry Officer has been involved in site visits and in the assessment of the submitted Tree Survey and subsequent additional information. He comments as follows:

- 1 UTILITY SERVICES - the existing plans do not indicate the location of utility services, this needs to be shown now so that they do not interfere with any trees later.
- 2 REPLACEMENT PLANTING - Very concerned that the developer has decided not to replant with any new trees. This would be against the law as the existing trees are protected and will require to be replaced, perhaps on a smaller scale at different locations but on a similar species theme.
- 3 WATERCOURSE - Very concerned at the loss of more trees in this area and the requirement for artificial bunding which will affect the soil and water levels to the existing trees.
- 4 TREES AT PROPOSED CIRCLE - Concerned regarding the lack of detail regarding the retention with regard to the trees to be contained within the new circle. Notwithstanding the potential root damage, the trees will be left high and dry due to the natural water levels being changed and the trees will die off during periods of drought.

It is recommended that the application is not to be supported due to the number of trees to be removed and not replaced and to the longer term damage to retained trees.

OBSERVATIONS

In accordance with the provisions of Section 25 of the Act the Committee is required to consider

- a whether the proposals are consistent with the provisions of the development plan; and if not
- b whether an exception to the provisions of the development plan is justified by other material considerations

The Development Plan

The provisions of the development plan relevant to the determination of

this application are specified in the Policy background section above.

Policy 4: Design Of New Housing states:

"The design and layout of all new housing in Dundee should be of a high quality. As a basis for achieving this, new development will be required to conform to the Design Standards contained in Appendix 1 of this Local Plan unless:

- a the City Council, through either site allocation in the Local Plan or site planning briefs, considers it appropriate to vary the standards to reflect the constraints or opportunities offered by the development of a particular site; or
- b the proposal is within an established low density residential area, in which case the density of the new development should reflect this and more generous external space standards will be required.

New housing development should also have regard to the principles of the City Council's Urban Design Guide.

In addition, new housing development should meet "Secured by Design" standards. New residential streets should be designed to promote low vehicle speeds of 20 mph or less. New housing should have regard to opportunities to maximise energy efficiency and promote sustainable waste management".

As noted above, the City Council approved a Planning Brief for this site on 4 December 2000. The Brief states, "In this suburban location the anticipated capacity of the site is 5 units. This site is suited to low density, large houses on a prime site for executive housing therefore all units should have at least 4 but preferably more bedrooms" The Brief also included a notional layout of 5 plots and later refers to "the sub-division to 5 plots". The document then goes on to define certain design parameters. With regard to drainage, the Brief states; "Surface water will not be permitted to the foul system however it may drain to the water course along the west boundary or drain into the garden area to achieve sustainable drainage." Following adoption of the Brief, the site was offered for sale by the City Council in September 2001.

As noted in the Site History detailed above, the first planning application was approved in August 2002 and by 23/08/2005, full planning permission had been granted for the formation of an access road and the erection of 5 individually designed houses in compliance with the requirements of the Planning Brief. These planning consents are all valid and within time and development could be carried out at any time provided the planning conditions are complied with. To date there has been no submission of details in compliance with conditions and no construction has been undertaken.

The terms of Policy 4 are very clear. If a Brief has been approved, the design standards in the Brief are the determining criteria, not the general criteria listed in Appendix 1 to Policy 4. The proposed erection of 20 houses on this site fails to comply with the approved Brief and is therefore contrary to Policy 4.

Policy 72: Trees and Urban Woodland states:

"New developments must have regard to existing healthy mature trees, the survival and retention of which will be strongly encouraged through sensitive site layouts and both during and after construction. Where appropriate, development proposals must be accompanied by a tree planting and landscaping scheme which includes a supporting justification and sufficient map based material to document existing planting within the application site, as well as new planting and maintenance arrangements. The Council will promote Tree Preservation Orders to protect individual trees or entire planting schemes where expedient to do so".

Tree Preservation Order No 2:2001 came into effect on 20 June 2001. The tree survey undertaken by the applicant's consultant identifies 90 trees on site. They have been assessed according to standard criteria and graded for their health, condition, future life expectancy as well as amenity and landscape value and suitability for retention within the proposed development. The survey notes that the site had been a commercial plant nursery for many years and contains a wide range of species including several rather unusual ornamental varieties. It also notes that the site has been abandoned for a number of years and has become

neglected and very overgrown. 29 of the trees (32%) are classed as A High Category, retention most desirable and 45 (50%) are classed as B, Moderate category, retention desirable. Only 16 trees (18%) are classed as C and D, Low category and Unsuitable for retention. 3 trees are recommended for immediate removal, pruning is required for 7 and management of the site including removal of ivy is strongly recommended.

A total of 29 of the existing trees (32%) which are the subject of the TPO are proposed to be removed to enable the development to proceed and the remainder are to be retained and protected during construction. There are no plans for any replacement tree planting.

Other than several rare species which will be retained in isolation, the remaining trees to be retained are along the west and northern boundaries with a small "island" of trees in the road layout at the eastern end of the site. The trees in the central part of the site are removed as is the high conifer hedge on the south boundary which is to be replaced by a 1.8 metre high post and horizontal rail fence.

There are earthworks associated with the construction of the proposed road which are likely to have an additional impact on trees which are proposed to be retained as noted in the Forestry Officers comments in Consultations above. There are concerns that the requirement for a retaining wall will affect the soil and water levels to the existing trees at north west corner of the site. The isolation of a group of trees by the access road at the east of the site has the potential to cause root damage but in the longer term, the degree of construction on surrounding land and the consequential changes to the natural water levels will be likely to result in the trees dying off during periods of drought.

It is recommended that the application is not to be supported due to the number of trees to be removed and not replaced and to the longer term damage to retained trees.

It is considered that the scale of tree removal and the lack of any replacement tree planting to compensate for the loss of 32% of the protected trees does not comply with Policy 72.

Policy 75: Sustainable Drainage Systems

"All appropriate development proposals must be accompanied by a Sustainable Drainage scheme at the time of submitting a planning application. This must be supplemented by a Drainage Impact Assessment that shows the impact of a 1 in 200-year rainstorm event. SUDS schemes should be designed accordingly so that if this event occurs, flooding will not be higher than 300 mm below floor level. In addition, proposals will be encouraged to adopt an ecological approach to surface water management and exploit opportunities for habitat creation or enhancement by forming wetlands or ponds, for example".

The applicant indicates that surface water is to be dealt with by use of a private soakaway in the south west corner of the site. There is no indication of an access to the soakaway for maintenance as it is surrounded by private gardens and driveways. No details of the construction of the soakaway have been provided and there is no supporting information regarding the suitability of the sub soil to deal with the water. A brief email has been submitted by the applicant which refers to private soakaways to a dwelling. There is no indication that Scottish Water considers that 20 houses can drain to a single soakaway as proposed at this site.

The site is proposed to be served by an adopted road. Under the terms of the Roads (Scotland) Act 1984, adopted roads are required to have 'safe and effective drainage'. The layout drawing does not indicate if the drainage is to cover only road drainage or take house curtilage water as well. This has implications for the effective draining of the adopted road. If, as in this case, the proposal is for a private system of drainage, this may not comply with the Act. There would be issues of proper maintenance and ongoing liabilities that would require third party factoring and may ultimately involve the City Council. A private road is not an option due to the number of houses.

Scottish Water has confirmed that under the Sewerage (Scotland) Act 1968, more than two properties connected to one sewer means the sewer is public under the Act.

The proposed development fails to comply with the requirements of Policy 75 and the applicant has failed to demonstrate that the drainage proposed is acceptable and will comply with the relevant legislation as administered by other sections of the Department of Planning and Transportation.

It is concluded from the foregoing that the proposal does not comply with the provisions of the development plan.

Other Material Considerations

The other material considerations to be taken into account are as follows:

Design Statement. The statement was submitted in support of the original proposal for 24 houses and has not been amended. The applicant contends that the Planning Brief is a non-statutory document and is for guidance only. The supporting statement states that the Brief is out of date and many things have changed since it was approved. The statement goes on to conclude that the proposed development is in accordance with the adopted Dundee Local Plan 1998 and adheres to the Finalised Dundee Local Plan 2003.

The application was lodged on 22 December 2005 and the Dundee Local Plan Review was approved in August 2005. Therefore the supporting statement is out of date, and refers to the old local plan which had been superseded by the Dundee Local Plan Review 2005.

The development is considered against the policies in the current Development Plan as detailed in the supporting statement.

Policy 1 - Vibrant and Sustainable Communities. It is considered that the proposed development is for housing rather than "an appropriate range of services and facilities" as defined by the policy. However it is considered that the development would have a detrimental effect on the environmental qualities enjoyed by local residents by reason of:

- 1 Design and layout resulting in loss of privacy. The proposed development includes the removal of the high hedge to the south and east boundaries and its replacement by a 1.8 metre fence. The houses along the south side of the site are two storey with extensive glazing on

the south elevation, overlooking the neighbouring gardens to the south. The two houses on the east side of the site are 3 storey townhouses which will also overlook adjoining properties.

- 2 Design and layout resulting in loss of environmental quality as 32% of the trees are proposed to be removed and there are no replanting proposals.

It is considered that the impact on residents in the immediate area will not be negligible as the applicant contends and that the development will not comply with Policy 1.

Policy 2 - Housing Land Release.

The proposal does not comply with this policy as it does not comply with other policies in the Plan; there is no reference to tenure mix in the proposals and very high quality developments elsewhere in the City have been very attractive to the buy to let market; and does not comply with the Planning Brief approved by the City Council.

Policy 4

As noted, the development fails to comply with the adopted Brief. Policy 4 also states that new development will be required to conform to Appendix 1 unless "b) the proposal is within an established low density residential area, in which case the density of new development should reflect this and more generous external space standards will be required." This is considered to be an area of low density where these more generous standards will apply.

The provision of parking and garaging complies exactly with the Appendix 1 standards on a number of plots. The usable garden ground provision identified on the layout plan includes large parts of some of the gardens which are heavily treed or overgrown or sloping and therefore cannot be regarded as usable. A number of gardens are also between 128 and 139 square metres where the minimum is defined as 120. It is considered that the development does not provide more generous standards in this low density area.

It is concluded that the Design Statement justification on planning policy grounds is not supported.

Objections

The grounds of objection are noted above and this report has addressed the issues of the failure to comply with the approved Brief; development being contrary to Development Plan; loss of trees and shrubs; use of a soakaway to drain surface water. The other grounds are as follows:

Design: the design of the houses and the philosophy behind the layout and the form of the development is considered to be in accordance with many of the objectives of the Local Plan. They would be appropriate in other, more urban locations of the City, closer to the City Centre but for this particular unique, high quality site, the proposals are not acceptable for the reasons given above.

Loss of privacy: as noted above the hedge along the south and east boundaries which currently provides screening is to be removed and replaced by a 1.8 metre fence. This will allow overlooking from two and three storey housing into the gardens of adjacent properties but there are no facing windows of habitable rooms within the normal 18metre restriction as defined by the Brief. However the Brief does state that neighbouring gardens must not be overlooked from the windows of habitable rooms and therefore this objection is supported.

Impact on the stream: the plans now show that there are no changes proposed to the stream which runs through the site. However, a retaining wall is proposed immediately adjacent to the stream in order to support the construction of the access road. It is unlikely that such construction of that scale can be undertaken without some detrimental impact to the stream. If the application was to be recommended for approval, a fully detailed works management programme would be required to be agreed, after consultation with SEPA, to ensure that there was no pollution to the stream.

Poor access: an acceptable access point which complies with the Councils standards has been agreed.

Three objectors disagreed with the applicant's view that there was no market for large houses in this part of Dundee indeed two had sought to buy the site under the terms of the original brief and two state that the developer had been unwilling to sell houses to

them. One of these objectors notes that the applicant's Annual Return for the financial year ending 31 August 2004 confirms that " Four of these (5) plots have already been reserved and building work will start once planning approval is received". As noted in the Site History, planning permission has been granted to this applicant for the erection of 5 houses in accordance with the adopted Brief. All of these permissions are still in time and valid. 4 of the plots were approved in 2005 to designs which were drawn up in consultation with specific clients and plot reservation fees were lodged. The objector notes that the developer unilaterally decided to end negotiations and look for another purchaser.

One objector, a developer with a current planning application to build housing in another part of the City has advised that sales could be achieved for 5 substantial dwelling houses and they would be happy to build the houses already approved.

The West End Community Council makes the same point and notes the lack of large houses currently available in the West End.

It is concluded that the objections are largely supported for the reasons stated.

It is concluded from the foregoing that insufficient weight can be accorded to any of the material considerations such as to justify the grant of planning permission contrary to the provisions of the development plan. It is therefore recommended that planning permission be refused.

Design

The design of the houses and the philosophy behind the layout and the form of the development is considered to be in accordance with many of the objectives of the Local Plan but for this particular unique, high quality site, the proposals are not acceptable for the reasons given above.

CONCLUSION

It is concluded that the Planning Brief is still the adopted policy of the Council in accordance with Policy 4. Development of the site for 5 large, individually designed houses within large plots will take maximum advantage of the location, the landscape setting and the aspect of the site and will add to the range of

housing required for the City. 5 houses will allow the site to be drained in accordance with acceptable Sustainable Urban Drainage standards; will allow the site to be served by a private road to retain the character of the site; will allow many of the protected trees to be retained with sufficient space to continue to flourish and will allow space for substantial new planting to be carried out to replace those trees which are permitted to be removed.

It is concluded that the proposed development constitutes overdevelopment of this site contrary to the terms of the Development Plan; the objections are largely supported and the design statement is not accepted. Accordingly the application is Recommended for REFUSAL.

RECOMMENDATION

It is recommended that consent be REFUSED for the following reasons:-

Reasons

- 1 The proposed development is contrary to Policy 4 of the Dundee Local Plan Review 2005 as it fails to comply with the Site Planning Brief which was approved by the City Council in December 2000 and there are no material considerations of sufficient strength to justify the granting of planning permission contrary to the terms of the adopted Brief.
- 2 The proposed development is contrary to Policy 72 Trees and Urban Woodland of the Dundee Local Plan Review 2005 as it fails to have regard to the survival and retention of existing healthy mature trees which are the subject of a Tree Preservation Order by the use of a sensitive site layout and fails to propose a tree planting and landscaping scheme for the replacement of any trees which are proposed to be removed. There are no material considerations of sufficient strength to justify the granting of planning permission contrary to the terms of the Policy.
- 3 The proposed development is contrary to Policy 75 Sustainable Drainage Systems of the Dundee Local Plan Review

2005 as it does not justify the principles and the design of the proposed drainage system and does not include a Drainage Impact Assessment to demonstrate that the proposed soakaway will not have a detrimental impact on surrounding residents. There are no material considerations of sufficient strength to justify the granting of planning permission contrary to the terms of the Policy.