

4 PLANNING APPEAL DECISIONS (AN104-2007)

- (a) VACANT SHOP UNIT, 152 ARBROATH ROAD - CHANGE OF USE FROM BETTING SHOP TO HOT FOOD TAKEAWAY

Reference is made to Article 1(bb) of the Minutes of the Development Quality Committee of 28th August, 2006 wherein the above proposal was refused planning permission because the Council considered that the proposal breached Policies 1 and 53 of the Dundee Local Plan 2005 (residential amenity (noise, smell, litter and traffic); and distance of licensed premises from nearby residences).

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, 2007. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be:

- (i) Whether the proposal was consistent with the provisions of the development plan; and if so
- (ii) Whether an exception to the provisions of the plan justified exceptional refusal.

In summary, the Reporter concluded that the proposal was located within 30 metres of residences and therefore failed to comply with Policy 53 but, taking into account the particular characteristics of the proposed business and the benefits of the development it was concluded that the proposal would be consistent with Policy 1. The Reporter considered that the views of local residents in objecting to the proposal were "overstated" in relation to the current proposal but some of the fears expressed by residents could emerge if the business changed hands and some other form of hot food take away were to occupy the premises without the need for planning permission for change of use. None of the material considerations before him persuaded the reporter that planning permission should be granted contrary to Policy 53 of the Plan.

Accordingly, the appeal was *DISMISSED* and planning permission refused.

(b) LAND TO SOUTH OF LODGE, CIDHMORE, 488 PERTH ROAD - ERECTION OF DWELLINGHOUSE

Reference is made to Article 1(b) of the Minutes of the Development Quality Committee of 28th August, 2006 wherein the above proposal was refused planning permission because the Council considered that the development conflicted with the Dundee Local Plan 2005 in the following respects:

- (a) Policy 15 - Development in Garden Ground (design and materials; detrimental to the character of the site; loss of mature landscaping);
- (b) Policy 4 - Design of New Housing (insufficient usable garden ground);
- (c) Policy 61 - Development in Conservation Areas (siting, design and use of materials fails to preserve and enhance the setting of the listing building and the character of the area, would lead to the loss of mature landscaping).
- (d) 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 21st February, 2007. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether:

- (a) the proposal would accord with the objective of preserving the listed building or its setting;
- (b) the proposal would preserve or enhance the character and appearance of the conservation area; and
- (c) if the development complies with the development plan provision whether an exceptional refusal is justified by other material considerations.

In summary, the Reporter concluded that he agreed with the Council in respect of the importance of the mature landscaping in relation to the preservation of the setting of the listed building. The removal of the trees would not satisfy that test. In addition the proposal would undermine the relationship between the lodge and the mansion house.

He also agreed with the Council that the site is prominent when viewed from Perth Road and the site's development would have a significant impact on the conservation area.

In terms of the design of the proposed house, the Reporter agreed with the Council that although the design in abstract had considerable merit, it was nevertheless an inappropriate design solution for the context proposed would adversely impact on the conservation area.

The Reporter therefore found that the proposal conflicted with the provisions of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Development Plan and found no material considerations to support an exceptional grant of planning permission.

Accordingly, the appeal was *DISMISSED* and planning permission refused.

(c) 69 AND 73 ANN STREET - CHANGE OF USE FROM VACANT SHOPS TO TWO MAISONNETTE FLATS

Reference is made to the decision of the Council on 22nd June, 2006, under powers delegated to the Director of Planning and Transportation, to refuse planning permission because the Council considered that the proposal conflicted with the provisions of the Dundee Local Plan 2005 in which the creation of new residential accommodation in basement and roof space areas and in particular where there is some evidence of previous such use is resisted. It was not entirely clear to the Council that the basement had been in a previous residential use. Also, at the time of the decision, the applicant had not provided sufficient evidence in respect of the availability of external space amounting to 10m² per flat in order that Council policy could be discharged. The Council was also concerned at the absence of off-street car parking and the lack of cycle storage.

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 representation and the decision was received by the Council on 26th February, 2007. Copies of the decision letter can be found in Member's Lounges.

The Reporter considered the determining issues to be whether:

- (a) the proposal conflicted with the relevant provisions of the Development Plan; and if so
- (b) whether an exception to such provisions is justified by other material considerations.

As part of their appeal submissions the appellants provided information which confirmed that the rear courtyard of the premises would be available for the occupiers of the proposed maisonettes and that its size would be sufficient to comply with Council policy and that this information ought to have been provided to the Council prior to its decision being taken. Accordingly, the Reporter was now satisfied that the development complied with the housing standards element of the Council's concerns. He also agreed with the appellant that the issue of cycle storage could now be dealt with by condition.

The Reporter appreciated the Council's approach regarding the conversion of basement premises to self contained residential accommodation and that in this case there was no absolutely clear evidence of previous use. However, the Reporter considered the premises to be in a semi basement category and that any evidence of previous use must be accepted on a low standard of evidence in such cases.

In relation to off-street car parking the Reporter considered that this matter could be dealt with flexibly and at the time of his site visit there was nothing to indicate that there was a particular problem with on street parking capacity in the locality. The lack of off-street car parking was not a sufficient basis for the refusal of planning permission.

Accordingly, the appeal was *UPHELD* with conditions relating to the detailing of materials and bike storage facilities.

(d) THE FORT HOTEL, 54-62 FORT STREET, BROUGHTY FERRY - CHANGE OF USE FROM YARD TO BEER GARDEN AND ERECTION OF CANOPY

Reference is made to Article 1(e) of the Minutes of the Development Quality Committee of 24th April, 2006 wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to Policy 1 of the Dundee Local plan Review 2005 (adverse impact on residential amenity due to potential noise disturbance).

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 15th February, 2007. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether:

- (i) The development preserved or enhanced the character or appearance of the conservation area;
- (ii) The development was consistent with the provisions of the development plan; and
- (iii) An exception to these provisions was justified by other material considerations (in this case, the proposed limitation of opening hours; existing patterns of outdoor activity associated with the public house; and the views of local residents).

In summary, the Reporter concluded that the development, subject to the imposition of appropriate conditions, would not affect the environmental quality enjoyed by residents to a significant degree. He found the development compliant with the development plan. The balance of other material considerations favoured the grant of planning permission.

Accordingly, the appeal was *UPHELD* with conditions relating to the restriction of hours of operation (9.00am - 9.00pm), the details of the alterations to the wall, gate and signage; and the prohibition of musical and vocal entertainment.