

### **3 PLANNING APPEAL DECISIONS (AN272-2006)**

#### **(a) BELSIZE HOUSE, BELSIZE ROAD, BROUGHTY FERRY, DUNDEE - RETROSPECTIVE CONSENT FOR REPLACEMENT WINDOWS**

Reference is made to Article 1(g) of the minutes of the Development Quality Committee of 29th August, 2005, wherein the above proposal was refused Listed Building Consent because the Council considered that the windows which had been installed detracted from the appearance of the listed building contrary to Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Memorandum of Guidance and Policy 60 of the Dundee Local Plan Review 2005.

The decision was appealed by the applicant under the provisions of Section 18 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The appeal was determined by written representations and the decision was received by the Council on 4th July, 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposal would have an adverse effect on the building its features or its setting and if so whether the reasons put forward by the appellant in support of the appeal justify the grant of listed building consent.

In summary, the Reporter concluded that the replaced windows have an adverse effect on the listed building and its features. Windows form an important and obvious features on most elevations of the building and the original windows have been replaced by windows of a design and in materials contrary to the advice contained in the Memorandum of Guidance. The Reporter found that the appellants had failed to carry out adequate checks as to the status of the building as a listed building and had failed to undertake pre-application discussions with the Council.

Accordingly the appeal was **DISMISSED**.

Commentary: In the light of this decision the Council is required to determine the course of action now to be followed in respect of the unauthorised windows which have been installed. It is recommended that the Council now takes formal enforcement action by the service of a Listed Building Enforcement Notice to achieve the replacement of all the unauthorised replacement windows with those of a design and in materials consistent with the originals which were removed all in accordance with the advice contained in the Memorandum of Guidance.

**(b) APPEAL DECISION - LAND AT FORFAR ROAD, DUNDEE - INSTALLATION OF TELECOMMUNICATIONS MAST AND ASSOCIATED EQUIPMENT.**

Reference is made to Article 1(P) of the minute of meeting of this Committee of 29th August, 2005, wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to Policy 78 of the Dundee Local plan Review 2005 and NPPG 29 due to the visual clutter which would be created given two other masts are already located 30m and 70m respectively from the proposal.

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 representation and the decision was received by the Council on 24th May, 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether:

1. the proposal is consistent with Policy 78 of the adopted local plan; and if so whether;
2. an exception to the provisions of their development plan is justified by other material considerations (non statutory Council policy, NPPG 19, PAN 62 and representations received).

In summary, the Reporter concluded that the proposals, given its location, proposed landscaping, other nearby structures (lighting columns) and the likely adverse visual impact of a shared structure did not conflict with Policy 78. Turning to the other material considerations the Reporter concluded that the proposals complied with the Council's non statutory policies and did not conflict either with NPPG 19 or PAN 62. The representations received related to health issues and the reporter followed the advice on such matters contained in NPPG 19 i.e. that this issue was not a material consideration in this appeal.

Accordingly the appeal was **UPHELD** with conditions relating to landscaping and the removal of the apparatus if it ceases to be used for the approval purpose.

**(c) APPEAL DECISION - 29 KINLOCH PARK DUNDEE - ENFORCEMENT NOTICE APPEAL: ALLEGED UNAUTHORISED CHANGE OF USE OF HOUSE TO HMO**

Reference is made to the enforcement notice issued by the Council on 6th February, 2006 relating to the alleged unauthorised change of use from a house to a house in multiple occupation at the above address. The notice had been served because the purported change of use had an adverse effect on the environmental quality enjoyed by residents as a consequence of parking, traffic movement, impact on pedestrian safety, noise and nuisance.

The decision was appealed by the applicant under the provisions of ground (a) of Section 130 (1) of the Town and Country Planning (Scotland) Act 1997 viz that planning permission ought to be granted in respect of the alleged unauthorised change of use.

The appeal was determined by written representations and the decision was received by the Council on 17th July, 2006. Copies of the decision letter can be found in the Members' Lounges.

In summary, the Reporter concluded that the determining issues were whether the grant of planning provision would accord with the provisions of the development plan and if not whether other material considerations justified an exceptional grant of permission.

The Reporter concluded that, in relation to Policies 1 and 11 of the Dundee Local Plan Review, sufficient off street and on-street car policy could be made available even if all occupants (currently 9 students) had cars. The Reporter did not consider that there were any issues of pedestrian safety, bin storage or garden size. The conclusion reached was that there was compliance with Policies 1 and 11.

The Reporter was sympathetic to the views of the appellant that the circumstances in this case were unique in that it was understandable for such a large group of foreign students to wish to live together pending the completion of their studies.

Accordingly, the appeal was **UPHELD** ie the enforcement notice was quashed and planning permission was granted with a condition specifying that when it is used as a house in multiple occupation no more than 9 residents shall occupy the house. Reason: because of the size of the house and in the interests of the amenity of neighbours.

**(d) APPEAL DECISION - 44A COURT STREET, DUNDEE - CHANGE OF USE TO HOT FOOD TAKEAWAY**

Reference is made to Article 1(P) of the minute of meeting of this Committee of 31st October, 2005 wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to Policy 53 of the Dundee Local Plan Review 2005 as there were existing residential properties within 30 metres whose existing amenity would be detrimentally affected and in particular from disturbance due to noise and anti-social behaviour. There were no material considerations which would justify departing from this policy.

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 public hearing held in Dundee on 18th July, 2006 and the decision was received by the Council on 1 August 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposal was consistent with the provisions of the adopted local plan and whether any decision not in accordance with the development plan is justified by other material considerations.

In summary, the Reporter concluded that the proposal is not compliant with criteria (a) of Policy 53 ie the site lies within 30 metres of housing. The appellants proposed hours of operation did not comply with the opening hours specified in the policy and neither did the proposed method of cooking.

Turning to other material considerations, the Reporter considered that there would likely be a "slight" increase in noise as a result of customers visiting the premises through vehicle noise, the opening and closing of doors and entering/leaving the premises. Also of concern to the Reporter was the potential for anti-social behaviour. However, based on the evidence of the appellant the Reporter was of the view that the majority of customers would be local, arriving on foot and would not necessarily be generated by public houses in the area. There are other commercial premises nearby despite the appeal site being in a mainly residential street. If the premises were only open till 1900 hours he considered that additional noise and anti-social behaviour was likely to be limited and the adverse impact on residential amenity would be minimal.

The Report did not consider that there was a strong evidence of need for such a use in this area.

Although he found that the proposal was not consistent with the specific provisions of local plan Policy 53 given the flexibility contained in the policy and the "lack of any material detriment to residential amenity" on balance the appeal should be allowed.

Accordingly, the appeal was **UPHELD** with a condition restricting the opening hours to 0700 to 1900 hrs on every day of the week.

**(e) APPEAL DECISION - 229-235 BROOK STREET, BROUGHTY FERRY, DUNDEE - PROPOSED EXTENSION TO EXISTING SHOP AND CHANGE OF USE OF FIRST FLOOR TO OFFICES.**

Reference is made to the decision of the Council on 9th December, 2005, under powers delegated to the Director of Planning and Transportation, to refuse planning permission because the Council considered that the proposal would prevent the possibility of a pedestrian access being formed to serve the backland area adjacent to the railway line and to create better linkages to the car park at Queen Street all as set out in the Broughty Ferry Study approved by the Council in December 2000.

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 public hearing on 27th June, 2006 and the decision was received by the Council on 18th July, 2006. Copies of the decision letter can be found in the Members' Lounges.

In summary the Reporter concluded that the proposals complied with the provisions of the Dundee Local Plan Review 2005. There was no dispute between parties on this issue. He also concluded that there were not issues of conflict with national planning policy or advice. Turning to the Broughty Ferry Study, the Reporter found on balance that it would be regrettable if the achievement of its objectives in respect of promoting backland development in this location were frustrated or restricted in extent at some time in the future through lack of acceptable pedestrian access. In addition, he found that land should be reserved within the appeal site to allow for the provision of a footway (with a minimum width of 2.0 metres) linking to a possible footbridge over the railway line to the Queen Street car park.

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

**(f) APPEAL DECISION - GALA CASINO EARL GREY PLACE, DUNDEE - SCREEN WALL TO FORM A COURTYARD**

Reference is made to the decision of the Council on 3rd March, 2006, under powers delegated to the Director of Planning and Transportation, to refuse planning permission because the Council considered that the wall would adversely affect the rectangular design of the building with similar effects on the visual amenity of the area and would adversely affect the amenity of the Green Circular Route to the rear which is an integral part of the National Cycle Network.

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 24th July, 2006. Copies of the decision letter can be found in the Members' Lounges.

Given that no evidence was led which disputed the proposal's compliance with the development plan the Reporter considered that the sole determining issue was whether there are visual impacts to the rear of the building and if any such impacts were serious and where there was a powerful overriding justification for refusing planning permission.

The Reporter appreciated the importance of the Ambassador Routes initiative and the imaginative plans which there were for the Waterfront as a whole. However, he concluded, taking into account the design of the building and the surrounding maturing landscaping, that the proposals that the visual impact of the proposals would be negligible.

The Reporter went on to comment as follows "I assume that the proposal is your client's response to the ban on smoking in enclosed public places. Had other matters been finely balanced I may well have attached a certain amount of weight to this secondary point. It is academic in the circumstances."

Accordingly, the appeal was **UPHELD** with conditions relating to matching materials, protection, retention and replacement of trees.

**(g) CLATTO WATER TREATMENT WORKS, DALMAHOY DRIVE, DUNDEE - ERECTION OF A 29 METRE TELECOMMUNICATIONS MONOPOLE, ANTENNAE AND ASSOCIATED EQUIPMENT**

Reference is made to Article 1(b) of the minute of meeting of this Committee of 5th December, 2005 wherein the above proposal was refused planning permission because the Council considered that the proposal would have a detrimental effect on the visual amenity of the surrounding 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 17th July, 2006. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposal is consistent with the provisions of the development plan (Policies 1 and 78 of the Dundee Local Plan Review 2005) and, if so, whether an exemption to these provisions is justified by other material considerations. (In this case the Council's non statutory planning policies; the presence of a similarly mast within the treatment works yard and the provisions of NPPG 19 and PAN 62.

In summary, the Reporter concluded that she was satisfied that mast sharing with the adjacent Vodaphone mast would only be possible if a much more substantial lattice mast were erected leading to a greater visual impact compared to the cumulative impact of the proposal and other pole structures on the site.

The Reporter concluded that the proposal's location in an area bearing industrial characteristics would not be detrimental to visual amenity.

The proposal was consistent with the policy content of NPPG19 and the advice offered in PAN62.

Accordingly, the appeal was **UPHELD** with a condition relating to the removal of the apparatus when obsolete and the making good of the lighting column for that purpose in order to minimise the level of visual intrusion and to ensure reinstatement to a satisfactory standard.