

3 APPEAL DECISIONS (AN274-2005)

(a) UNIT 1, BLOCK 5, NOBEL ROAD, DUNDEE - ALLEGED UNAUTHORISED CHANGE OF USE FROM WHOLESALE TO RETAIL USE (CLASS 1) AT THE ABOVE ADDRESS

On 25th October, 2004, the Council served an Enforcement Notice in respect of alleged unauthorised change of use from wholesale to retail use (Class 1) at the above address. The Council contended that the alleged unauthorised use was in contravention of the relevant policies of the adopted local plan (Policies EU2, EU3 and S20) relating to employment, land protection and retailing outwith established centres; equivalent policies of the Finalised Dundee Local Plan Review (Policies 24 and 45); and National Planning Policy 8 in respect of the application of the sequential test in retail site selection. A planning application for change of use had been submitted in March 2004 and subsequently refused.

The Enforcement Notice required that the trading as retail premises should cease within 30 days of the Notice taking effect.

The appellant contended that the larger volume of goods (stationary and associated goods) was still sold to business customers and consequently that a material change of use had not occurred. As a result, the appellant contended that other policies of the development plan supported the nature of the wholesaling activity which was taking place.

The Notice was appealed by the applicant under the provisions of Section 130 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 18th May, 2005. A copy of the decision letter can be found in the Members' Lounges.

In summary the Reporter concluded that:-

- 1 Over time the nature of retailing on the premises had changed from that largely of wholesaling to that of retail and that the balance towards general retail was such that it could not be considered to be ancillary to the main wholesale operation. A material change of use requiring planning permission had occurred;
- 2 The retailing of goods from this site would be contrary to the provisions of the adopted development plan;
- 3 The retailing goods from this site would be contrary to the provisions of the Finalised Dundee Local Plan Review; and
- 4 There were no other material considerations which lead to the grant of planning permission contrary to the provisions of the development plan.

Accordingly, the appeal was **DISMISSED** and the terms of the Enforcement Notice dated 25th October 2004 be upheld.

(b) LAND AT 534B STRATHMARTINE ROAD - ERECTION OF 14.5 MONOPOLE TELECOMMUNICATIONS MAST

Reference is made to Article 1(m) of the minutes of the Development Quality Committee of 27th September, 2004, wherein the above proposal was refused planning permission because the Council considered that the proposal contravened Policy H1 of the adopted Dundee Local Plan 1998 in that the mast was to be located within 32 metres of an existing mast and the cumulative impact would lead to a loss of environmental quality enjoyed by local residents. The decision was made contrary to recommendation.

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 May, 2005. A copy of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposals complied with the provisions of the development plan and if not whether, exceptionally, planning permission should be granted contrary to the plan.

In summary the Reporter concluded that:-

- 1 The proposal complied with Policy BE 31 of the adopted plan. There was an identified gap in the operator's signal coverage for the area; alternative sites had been investigated and found unsuitable; and that mast sharing with the adjacent mast would lead to a structure likely to be substantially taller and bulkier having greater visual impact than the appeal proposal;
- 2 The proposal complied with Policy H1 of the adopted plan. The appeal site although located in a predominantly residential area is within a complex of industrial buildings and would not be unduly prominent in that context;
- 3 Turning to other material considerations, the proposal did not violate NPPG19 or PAN62 as expressions of Scottish Executive policy guidance and best practice respectively. In respect of the concerns of local residents relating to health matters the Report concluded as follows:-

"I note the planning application was supported by an ICNIRP certificate in accordance with national guidance and I am bound to take into account the unambiguous statement in NPPG 19 that it is not necessary for planning authorities to treat radio frequency emissions as a material consideration".

Accordingly, the appeal was **UPHELD** with conditions specifying that the development should be commenced within five years of the date of the permission (standard statutory condition) and that in the event of the equipment becoming obsolete or redundant it shall be removed and the site reinstated to the satisfaction of the Council.