

3 PLANNING APPEAL DECISION (AN342-2005)

- (a) LAND SOUTH OF 22, 24 AND 26 ROSEANGLE - ERECTION OF SIX TWO STOREY TERRACED HOUSES

Reference is made to the decision of the Council on 16th July 2004 under powers delegated to the Director of Planning and Transportation, to refuse planning permission because the proposals would:

- (a) not provide a satisfactory amenity for existing and proposed residents in terms of access, parking, amenity space and the removal of walls, contrary to Policies H1, H2, BE4 and H10 of the adopted Dundee Local Plan 1998 and Policies 1, 4, 55, 60 and 61 of the Dundee Local Plan Review 2002; and
- (b) adversely affect the character and appearance of the conservation area and the adjacent listed building by the removal of distinctive boundary walls and related matters, contrary to Policies BE11 and BE17 of the adopted Dundee Local Plan 1998 and NPPG18 and the Memorandum of Guidance.

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 23rd June 2005. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be:

- (a) whether the proposal would have an adverse affect on listed buildings;
- (b) whether the proposal would preserve or enhance the character and appearance of the conservation area;
- (c) whether the proposal contravened the adopted local plan; and
- (d) if so, whether planning permission was warranted as a result of other material considerations.

In summary, the Reporter concluded that the proposals would have an adverse affect on the listed 19th Century villas at 22 to 26 Roseangle by virtue of the development's location and the loss of important boundary walls including sea wall; for this reason the character and appearance of the conservation area would be compromised. Local Plan policies would be breached and the environmental quality enjoyed by the occupiers of 22 to 26 Roseangle would be adversely affected. No other material considerations were sufficient to overturn these findings.

Accordingly, the appeal was DISMISSED.

- (b) LAND WEST OF BOWLING GREEN, BLACKNESS ROAD, BALGAY HILL, DUNDEE, DD2 1SD - INSTALLATION OF TELECOMMUNICATIONS MAST (02 (UK) LTD)

Reference is made to Article 1(c) of the minute of the Development Quality Committee of 25th October 2004 wherein the above proposal was refused planning permission because in the view of the Council the applicants had failed to satisfactorily justify the chosen location of the mast and that the proposal would be visually prominent immediately adjacent to a public park and Conservation Area (contrary to Policy BE31 of the adopted Dundee Local Plan 1998, Policy 78 of the Finalised Dundee Local Plan Review 2003 and the Council's non statutory policies relating to telecommunications developments).

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 June 2005. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposed development would conform to the relevant provisions of the adopted plan; whether it would have an adverse impact on the appearance, character or setting of the conservation area; whether it complies with national policy guidance and advice; and whether it is consistent with the finalised plan review and non statutory supplementary policies.

In summary the Reporter concluded that the proposal met all the criteria specified in adopted plan Policy BE31 and was compliant with draft plan Policy 78. He was not convinced that the proposal would adversely impact on the adjacent conservation area. He was satisfied that the operator was installing the smallest equipment available; mast sharing would not be an effective solution; the proposals could not be further disguised; there were no suitable buildings on which the equipment could be located. Accordingly, it was concluded that the proposals complied with national policy and advice and would not have a materially adverse effect on the environmental quality enjoyed by local residents.

Accordingly, the appeal was UPHELD with a condition applied relating to the removal of the equipment within six months of it ceasing to be operational.

Claims for expenses by both parties were rejected by the Reporter.

(c) 2 CHRISTIAN ROAD, DUNDEE, DD5 1NE - EXTENSION TO DWELLINGHOUSE

The applicant appealed to Scottish Ministers under Section 47(2) of the Town and Country Planning (Scotland) Act 1997 because the Council had failed to reach a decision within the statutory two month period.

The appeal was determined by written representations and the decision was received by the Council on 9th August 2005. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be:

- (a) whether the development would be consistent with development plan policies; and
- (b) and if not whether material considerations justify an exceptional approval.

In summary the Reporter concluded that:

- (a) the scale of the proposed development did not conflict with the terms of the development plan or emerging local plan review; and
- (b) the design and setting would not adversely affect the amenity of any neighbouring property to a significant degree. No special controls are in place; there is limited argument that the extension would unbalance the pair of houses; and planting can mitigate any perceived adverse design impact.

Accordingly the appeal was UPHELD with non standard conditions relating to tree protection, landscaping, landscaping management, finishing materials, glazing and details of the drainage system for the proposed swimming pool.

(d) LAND TO SOUTH OF DUNDEE ROAD WEST/EAST OF BROUGHTY FERRY ROAD, DUNDEE - OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT

Reference is made to Article 1(e) of the Minutes of the Development Quality Committee of 28th February 2005 wherein the above proposal was refused planning permission because the proposal conflicted with Policy H10 of the adopted Dundee Local Plan 1998 and Policies 2 and 4 of the Finalised Dundee Local Plan Review (housing design and location).

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 9th August 2005. A copy of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be:

- (a) whether the development conflicted with adopted Plan Policy H10; and
- (b) and if so was the grant of planning permission warranted by material considerations.

In summary the Reporter concluded that:

- (a) the proposal did not accord with Policy H10 as it was clear that the design and layout could not bear a positive relationship with the surrounding residential area to the north, the adjacent road network or the non residential uses to the south and east;
- (b) exceptional approval was not justified by Policies 2 or 4 of the Local Plan Review;
- (c) night time noise nor future noise emissions from the port area could not be ruled out and accordingly a satisfactory residential environment was unlikely to be achieved; and
- (d) he was not convinced that the continuation of an employment use on the site was unrealistic.

Accordingly the appeal was DISMISSED.

- (e) 3B ELLIESLEA ROAD, BROUGHTY FERRY, DUNDEE - CHANGE OF USE FROM OFFICE TO OFFICE AND CHILDREN'S DAY CARE NURSERY

Reference is made to Article 1(d) of the minute of the Development Quality Committee of 25th October 2004 wherein the above proposal was refused planning permission because the Council considered that the proposal would increase levels of traffic using the private driveway to the property; would increase demands on restricted parking facilities; and would intensify noise levels, all adversely affecting residential amenity contrary to the provisions of the adopted Dundee Local Plan 1998 (Policy H1). In addition the Council considered that the proposals would adversely affect traffic and pedestrian safety on Ellieslea Road due to the narrowness and restricted forward visibility available at the private driveway junction.

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 16th June 2005. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposals met development plan policy and if not whether there are any material considerations which indicate that an alternative decision might be more appropriate in the circumstances.

In summary the Reporter concluded that:

- (a) severe congestion was likely to occur on the driveway at drop off and pick up times due to its narrowness and the likely parking of vehicles along the driveway;
- (b) there was likely to be an adverse effect on the amenity of adjacent residences due to operational noise arising from the nursery, contrary to Policy H1 of the adopted local plan; and
- (c) there were no material considerations which weighed in favour of departing from the development plan in this instance.

Accordingly the appeal was DISMISSED.

(f) UNIT 6B, 3 WHITEHALL STREET, DUNDEE, DD1 4AA - CHANGE OF USE FROM SHOP UNIT TO BETTING OFFICE

Reference is made to Article 1(i) of the minute of the Development Quality Committee of 28th February 2005 wherein the above proposal was refused planning permission because the proposal conflicted with Policy 34 of the Finalised Dundee Local Plan which provides for the resistance of unacceptable Class 2 uses in the retail core 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/public inquiry and the decision was received by the Council on 9th August 2005. A copy of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be as follows:

- (a) whether the proposal was consistent with adopted local plan policies;
- (b) whether material considerations justified a decision contrary to the provisions of the development plan; and
- (c) whether the development would help preserve the character and appearance of the conservation area.

In summary the Reporter concluded that:

- (a) the change of use would be entirely consistent with Policy S5 of the adopted Dundee Local Plan wherein the area was designated as a secondary retailing area where the proposed use was acceptable. The proposal therefore complied with the terms of the development plan;
- (b) Policy 34 of the Finalised Dundee Local Plan Review, in which the area is redesignated as Retail Core, does not favour the loss of ground floor premises in Class 1 retail use to Class 2 uses such as the one proposed. Nevertheless it is argued that the current proposal would be a step forward from the "site's present dead state" in an area where the planning history of other units points "a convincing picture of a major city centre building searching for a role". Policy 34 as a material consideration carried insufficient weight to counteract the proposal's compliance with the development plan and
- (c) the proposal "marginally" favoured the granting of permission in relation to its positive impact on the conservation area.

Accordingly the appeal was UPHELD with a non standard condition applied concerning the submission of window display details for approval.

Commentary : This is a disappointing decision in that at the time of lodging the appeal the Dundee Local Plan Review was at an extremely advanced stage leading to adoption and there was every reason to have expected the reporter to have afforded it greater weight in reaching his decision. In addition the wording of the condition he has applied offers limited scope for the Council to ensure that an appropriate window display is present at all times.