

3 PLANNING AND ENFORCEMENT NOTICE APPEAL DECISIONS (AN137-2008)

(a) 82C VICTORIA ROAD, DUNDEE - CHANGE OF USE FROM 3 BED FLAT TO 4 BED HOUSE OF MULTIPLE OCCUPANCY

Reference is made to the decision of the Council on 10th July, 2007 under powers delegated to the Director of Planning and Transportation, to refuse planning permission because the Council considered that the proposal was contrary to the provisions of criteria (a), (b) and (c) of Policy 11 of the Dundee Local Plan Review 2005 (use of tenemental flat with a common stair; and inadequacy of parking, bin storage and amenity ground).

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 5th June, 2008. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter **DISMISSED** the appeal and refused planning permission.

In reaching his decision the Reporter agreed with the Council that the proposal was contrary to criteria (a), (b) and (c) of Policy 11 as the proposal clearly occupied a tenemental flat sharing a common stair; that there was no convincing argument put forward that there would be no resultant parking difficulties; and that there was likely to be an infestation in the use of the restricted shared external space which was likely to lead to a cumulative erosion of the current standards of residential amenity. There were no material considerations which persuaded the Reporter to grant planning permission contrary to the provision of the development plan.

(b) 114 HILLTOWN - CONVERSION OF FORMER MOSQUE TO EIGHT FLATS

Reference is made to the decision of the Council on 19th November, 2007 under powers delegated to the Director of Planning and Transportation, to refuse planning permission because the Council considered that the proposal was contrary to the provisions of Policies 1 and 4 of the Dundee Local Plan Review 2005 (failure to provide any associated off street car parking spaces and appropriate garden ground/drying area facilities; and failure to provide flats of a floor area greater than the minimum standard required by Appendix 1 to Policy 4. There were no material considerations that would justify the setting aside of these policies and granting approval of this application).

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 20th June, 2008. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission with a condition relating to the submission of details of materials.

In reaching his decision the Reporter agreed with the Council that the proposals were at odds with the development plan given that Policy 4 was contravened with the minimum floorspace levels of the flats being breached, the inadequacy of parking and garden ground. The Reporter indicated that it would be unfortunate in townscape terms if the building had to be cleared to accommodate an alternative proposal in place of the proposal before him. The site history justified a pragmatic approach to the level of car parking offered and to the level of garden ground which could be dedicated. The site was accessible by public transport. The two parking bays proposed were "better than none at all". In respect of external open space the Reporter accepted that in two cases the proposed balconies would be too small to provide amenity and drying space simultaneously. Although limited the external open space offered to the rear was "not unpleasant".

The Reporter saw no other realistic alternative future use for this property and was of the opinion that a less intensive conversion could only moderate these shortcomings marginally.

(c) TOP FLOOR FLAT (A/0), 91 ARBROATH ROAD, DUNDEE - CHANGE OF USE FROM 3 BEDROOM FLAT TO A 4 BEDROOM HOUSE IN MULTIPLE OCCUPATION (RETROSPECTIVE)

Reference is made to Article 1(p) of the Minutes of the Development Quality Committee of 17th September, 2007 wherein the above proposal was refused planning permission because the Council considered that the proposed development was contrary to Policy 11 - Houses in Multiple Occupation of the Dundee Local Plan Review 2005 because it is a flat with a shared entrance, outwith the city centre. There were significant parking problems in the area and as a result of this the development would have a detrimental impact on residential amenity. There were no material considerations of sufficient strength to justify the granting of planning permission contrary to the policy. For similar reasons the proposal contravened the Council's Supplemental Planning Guidance in respect of the establishment of HMOs.

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 10th July, 2008. Copies of the Decision Notice have already been circulated to members by e-mail.

The Reporter **DISMISSED** the appeal and refused planning permission.

In reaching her decision the Reporter, for similar reasons to the Council, found that the proposals contravened Policy 11 and the Non-Statutory Planning Guidance. In considering other material considerations the Reporter found no parallels with two recent appeal decisions which granted planning permission.

(d) 39 BALDOVAN TERRACE - SUBDIVISION OF FLAT TO REINSTATE ORIGINAL TWO FLATS

Reference is made to the decision of the Council on 10th August, 2007 under powers delegated to the Director of Planning and Transportation to refuse planning permission because the Council considered that the proposal was contrary to the provisions of Policy 4 of the Dundee Local Plan Review 2005. The proposed subdivision would result in the provision of a small single bed roomed flat at this location which would contravene local plan policy. The aim of the Council, through the consistent application of this policy, is to ensure that larger flats with a good standard of residential accommodation are achieved by new developments both internally and externally. It was the Council's opinion that there were no material planning considerations that would justify the approval of this application contrary to the provisions of the development plan.

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 6th June, 2008. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission.

In reaching his decision the Reporter agreed with the Council that the proposal did not comply with the criteria on the Appendix of the plan which required new flats in the inner city to have a minimum internal floor area of 60m² (the proposal would provide one flat of 56m² and another of 40m²). However, the Reporter acknowledged that the proposal would return the existing flat into a divided layout which had existed historically and would be similar to neighbouring flats. He did not consider that the proposal would undermine the aim of the Council to improve the overall housing stock nor its ability to apply this policy in other situations. These material considerations were, in the Reporter's view, sufficient in this instance to allow him to grant planning permission contrary to the provisions of the development plan.

(e) 137A BROUGHTY FERRY ROAD, DUNDEE - ERECTION OF TWO STOREY RESTAURANT AND CAR PARK

Reference is made to Article I(n) of the Development Quality Committee of 18th June, 2007 wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to the provisions of Policies 1 and 53 of the adopted Dundee Local Plan Review 2005 (proximity to nearby houses; the adverse impact of vehicle turning movements at this location; and noise and disturbance from the development). There were no material considerations that justified approving the application contrary to the provisions of the Development Plan.

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 a hearing held on 17th March, 2008 and the decision was received by the Council on 10th June, 2008. Copies of the Decision Notice have already been circulated to Members by e-mail.

The Reporter **DISMISSED** the appeal and refused planning permission.

In reaching his decision the Reporter agreed with the Council that the proposal failed to comply with Policy 1 of the Dundee Local Plan Review in view of the likely disturbance to residences as a result of noise disturbance at times when Broughty Ferry Road was quiet. He also agreed with the Council that the design of the proposal was satisfactory and that odour emissions could be controlled by a condition. However, the Reporter considered that access concerns could be overcome by the installation of a central reservation on Broughty Ferry Road and that this could be achieved by way of a condition if the appeal was upheld. The Reporter also agreed with the Council that the proposal was contrary to Policy 53 of the plan as the proposal would be located within 45 metres of housing.

None of the material considerations raised by the appellant were sufficient to persuade him that planning permission should be granted in the face of the contravention of development plan policies.

(f) FLAT 1/0, 12 CLEGHORN STREET, DUNDEE - CHANGE OF USE FROM 3 BEDROOM FLAT TO A 4 BEDROOM HOUSE IN MULTIPLE OCCUPATION (RETROSPECTIVE)

Reference is made to the decision of the Council on 12th September, 2007 under powers delegated to the Director of Planning and Transportation to refuse planning permission because the Council considered the proposed development was contrary to Policy 11 - Houses in Multiple Occupation of the Dundee Local Plan Review 2005 because it is a flat with a shared entrance, outwith the city centre where there were significant parking problems in the area and as a result of this the development would have a detrimental impact on residential amenity. There were no material considerations of sufficient strength to justify the granting of planning permission contrary to the policy. For similar reasons, the proposal contravened the Council's Supplementary Planning Guidance in respect of the establishment of HMOs.

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 10th July, 2008. Copies of the Decision Notice have already been circulated to Members by e-mail.

The Reporter **DISMISSED** the appeal and refused planning permission.

In reaching her decision the Reporter, for similar reasons to the Council, found that the proposals contravened Policy 11 and the Non-Statutory Planning Guidance. In considering other material considerations the Reporter found no parallels with two recent appeal decisions which granted planning permission. Had the Reporter granted this appeal the percentage of HMOs within the Census Output Area concerned would have raised the concentration level of HMOs to 20%, a level which, in the Reporter's opinion would be detrimental to the character of the area.

(g) FLAT 3/0, 12 CLEGHORN STREET, DUNDEE - CHANGE OF USE FROM A 3 BEDROOM FLAT TO A 4 BEDROOM HOUSE IN MULTIPLE OCCUPATION

Reference is made to the decision of the Council on 12th September, 2007 under powers delegated to the Director of Planning and Transportation, to refuse planning permission because the Council considered that the proposed development was contrary to Policy 11 Houses in Multiple Occupation of the Dundee Local Plan review 2005 because it is a flat with a shared entrance, outwith the City Centre where there were significant parking problems in the area and as a result of this the development would have a detrimental impact on residential amenity. There were no material considerations of sufficient strength to justify the granting of planning permission contrary to the policy. For similar reasons the proposal contravened the Council's Supplementary Planning Guidance in respect of the establishment of HMOs.

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 10th July, 2008. Copies of the Decision Notice have already been circulated to Members by e-mail.

The Reporter **DISMISSED** the appeal and refused planning permission.

In reaching her decision the Reporter, for similar reasons to the Council, found that the proposals contravened Policy 11 and the Non-Statutory Planning Guidance. In considering other material considerations, the Reporter found no parallels with two recent appeal decisions which granted planning permission. Had the Reporter granted this appeal, the percentage of HMOs within the Census Output Area concerned would have raised the concentration level of HMOs to 20% a level which, in the Reporter's opinion, would be detrimental to the character of the area.

(h) 77 HIGH STREET, DUNDEE - CONSTRUCTION OF EXTERNAL CANOPY AND CONSTRUCTION OF EXTERNAL SMOKING CANOPY CONTAINING AMUSEMENT MACHINES

Reference is made to Articles I(a-d) of the Minutes of the Development Quality Committee of 18th June, 2007 wherein the above proposals were both refused planning permission and listed building consent because the Council considered that the proposed developments would detract from the setting of the Category A listed buildings at 77-78 High Street to the east and 75-76 High Street to the west by reason of its design and finishing materials, contrary to Policies 55 and 60 of the adopted Dundee Local Plan Review 2005 and the statutory duty set out in Sections 14 and 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to have special regard to the desirability of preserving the setting of listed buildings. There were no material considerations that would justify the approval of the applications contrary to the provisions of the development plan.

The proposals had been implemented and therefore the applications were retrospective.

The decisions on all four applications were appealed by the applicant under the provisions of Section 47 and Schedule 4 of the Town and Country Planning (Scotland) Act 1997 and Section 18 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The appeals were determined by a hearing held on 8th May, 2008 and the decisions were received by the Council on 24th June, 2008. Copies of the joint decision letter have already been circulated to Members by e-mail.

The Reporter **DISMISSED** all the appeals and refused planning permission and Listed Building Consent.

In reaching his decision the Reporter considered that the design of the canopy was discordant with the character of the listed building and would adversely affect the setting of the adjacent building. It also failed to preserve the listed building or preserve the setting of the adjacent building. At the hearing the appellant had no firm proposals either to remove the canopy or to replace it with a more appropriately designed structure. However the Reporter considered that due to the development's location to the side of the existing building up Campbell's Close, the proposals would preserve the character and appearance of the Central Area Conservation Area. Overall the proposals were contrary to the

Development Plan (viz Policy 60 of the Dundee Local Plan Review 2005). The Reporter also considered that the addition of the three gaming machines within the canopy would serve to worsen the discordant impact of the proposals on the character and setting of the listed buildings.

The Reporter found no other material considerations which would lead him to alter his conclusions as to the unacceptability of the proposed development.

The Council under powers delegated to the Director of Planning and Transportation has taken enforcement action to require the removal of the unauthorised canopy and gaming machines.

(i) FLAT 4, 14 THOMSON STREET, DUNDEE - CHANGE OF USE FROM A 3 BEDROOM FLAT TO A 4 BEDROOM HOUSE IN MULTIPLE OCCUPATION

Reference is made to Article I(t) of the Minutes of the Development Quality Committee of 17th September, 2007 wherein the above proposal was refused planning permission because the Council considered that the proposed development was contrary to Policy 11 Houses in Multiple Occupation of the Dundee Local Plan Review 2005 because it is a flat with a shared entrance, outwith the City Centre where there were significant parking problems in the area and as a result of this the development would have a detrimental impact on residential amenity. There were no material considerations of sufficient strength to justify the granting of planning permission contrary to the policy. For similar reasons the proposal contravened the Council's Supplementary Planning Guidance in respect of the establishment of HMOs.

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 10th July, 2008. Copies of the Decision Notice have already been circulated to Members by e-mail.

The Reporter **DISMISSED** the appeal and refused planning permission.

In reaching her decision the Reporter, for similar reasons to the Council, found that the proposals contravened Policy 11 and the Non-Statutory Planning Guidance. In considering other material considerations the Reporter found no parallels with two recent appeal decisions which granted planning permission.

(j) TRADES BAR, 40 UNION STREET, DUNDEE - EXTERNAL WINDOW CANOPIES ON EACH STREET FONTAGE

Reference is made to Articles I(p) and (q) of the Minutes of the Development Quality Committee of 20th August, 2007 wherein the above proposal was refused both planning permission and listed building consent. The Council considered that the proposals were contrary to Policies 60 of the Dundee Local Plan 2005 and Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (adverse impact on the conservation area and the listed building; the proposal would obscure CCTV coverage and be detrimental to pedestrian safety as a result of the potential for the footway to be obstructed).

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 and Section 18 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The appeals were determined by written representations and the decision was received by the Council on 16th June, 2008. Copies of the Decision Notices have already been circulated to Members by e-mail.

The Reporter **DISMISSED** both appeals and refused both planning permission and listed building consent.

In reaching his decisions the Reporter concluded that the proposals would be at odds with the development plan; they would detract from the character of the listed building and would fail to preserve or enhance the character or appearance of the Central Conservation Area. There were no material considerations which were sufficient to outweigh these conclusions.

(k) LAND AT 534 STRATHMARTINE ROAD, DUNDEE - CONTINUED SITING AND OPERATION OF A 22.6 METRE TELECOMMUNICATIONS TOWER AND ASSOCIATED EQUIPMENT

Reference is made to Article I(a) of the Minutes of the Development Quality Committee of 15th October, 2007 wherein the above proposal was refused planning permission because the Council considered that the applicants had not demonstrated that alternative solutions in terms of design and location had been explored (Dundee Local Plan Review 2005 - Policy 78); and because of the mast's design and visual impact (Non-Statutory Planning Policies in Relation to Telecommunications Masts - Policies 2, 3 and 15). At the time of the submission of the application the mast had been in place since January 2007 and the period for this existence as a temporary structure under permitted development rights had already expired. The application sought to extend the period of installation until 31st December, 2007. The decision was not appealed.

This agenda note relates to the decision on an appeal under Section 182 of the Town and Country Planning (Scotland) Act 1997 against an Enforcement Notice served by the Council which required the removal of the temporary mast and equipment by 8th February, 2008.

The appeal was determined by written representations and the decision was received by the Council on 23rd July, 2008. Copies of the Decision Notice have already been circulated to Members by e-mail.

The Reporter **DISMISSED** the appeal and upheld the terms of the Enforcement Notice. However in so doing, the Reporter adjusted the date for compliance with the Notice. The date for compliance is now two calendar months after the date on which the Notice takes effect. In effect, the structures now require to be removed by 23rd September, 2008.

In reaching his decision, the Reporter agreed with the Council that the mast had been on site for a period of 17 months, well in excess of the period of six months allowed for in the Permitted Development Order. He also agreed with the Council that the impact of the mast on the visual and residual amenity of the area was "entirely unacceptable" and contrary to Local Plan and non-statutory policies.

Towards the latter stages of the appeal process the appellant made the Council and the Reporter aware that it was preparing to implement a mast share solution with another operator on one of the existing nearby masts. Such a solution would be permitted development not requiring the benefit of planning permission. The Council examined the proposals and confirmed that a planning application would not be required for this mast share proposal. The appellants further indicated that this solution was capable of implementation during August 2008. In reaching his conclusions on the appeal the Reporter has acknowledged this proposal and allowed adequate time for its implementation in the revised terms of the Enforcement Notice.

Members are advised that the Council has now requested a definitive timescale for implementation of the mast share solution and compliance with the Enforcement Notice which the Council will vigorously continue to enforce.

(l) FLAT 1/1, 5 MORGAN PLACE, DUNDEE - CHANGE OF USE OF A 3 BEDROOM FLAT TO A MULTIPLE OCCUPANCY FOR 4 PERSONS

Reference is made to Article I(x) of the Minutes of the Development Quality Committee of 17th December, 2007 wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to the provisions of criteria (a) and (c) of Policy 11 of the Dundee Local Plan Review 2005 (involves the change of a tenement flat with a common stair; because there is very limited car parking available in the area of the proposed site; because the proposal will add further to the current parking problems). For the same reasons the proposed development contravened criteria (a) and (c) of HMO3 of the Council's Supplementary Planning Policy Guidance to the Dundee Local Plan Review 2005 approved by the Council in November 2006. There were no material considerations of sufficient strength to justify the granting of planning permission contrary to the Development Plan.

An Enforcement Notice dated 18th January was served on the appellants requiring that the unauthorised change of use of the premises from a three bedroom flat HMO occupied by four or more unrelated people. The time for compliance was 90 days after the notice took effect.

The planning application decision was appealed by the applicant under the provisions of Section 47 and Schedule 4 of the Town and Country Planning (Scotland) Act 1997 and the enforcement notice was appealed under the provisions of Section 130 of the Town and Country Planning (Scotland) Act 1997.

Both appeals were determined by written representations and the decisions in a joint decision letter were received by the Council on 18th June, 2008. Copies of the decision letter have already been circulated to Members by e-mail.

The Reporter **DISMISSED** both appeals, refused planning permission and directed that the terms of the enforcement notice be upheld.

In reaching his decisions the Reporter was in no doubt from the consistent evidence provided by the Council and by neighbours that multiple occupancy by up to four unrelated people had taken place. This was corroborated by evidence within the flat on the Reporter's site visit. The enforcement notice appeal failed on the ground advanced by the appellant that no multiple occupancy occupation had occurred. The Reporter then turned his attention to the appellant's contention that planning permission ought to be granted. The Reporter found that the proposal was contrary to two if not three of the criteria specified in Policy 11. The Reporter considered that in terms of other material considerations the particular location of the flat was likely to lead to noise problems for several neighbours within a densely developed cul de sac. Also the site was not located on a bus route and this appeal therefore bore no comparison with another recent HMO appeal decision at Arbroath Road.

The enforcement notice took effect on the date of the decision (20th June, 2008).