

### **3 APPEAL DECISIONS (AN140 - 2011)**

- (a) LOCATION: NORTHWOOD, 118 STRATHERN ROAD, BROUGHTY FERRY, DUNDEE  
PROPOSAL: ERECTION OF ROOFTOP FLAGPOLE SUPPORTING 3 NO VODAFONE AND  
3 NO O2 ANTENNA WITHIN GRP SHROUD.

Reference is made to Article I(c) of the minute of meeting of this Committee of 17th January 2011 wherein the above proposal was refused planning permission contrary to the Director's recommendation because the Council considered that the proposed mast, due to its dimensions, would not appear convincing as a flagpole and would therefore detract from the architectural and historic character of the listed building and the visual amenity of the West Ferry Conservation Area contrary to Policies 60 and 61 of the Local Plan.

The appeal was determined by written representations and the decision was received by the Council on 17th August 2011. Copies of the Reporter's decision letter have already been circulated to Members by email.

The Reporter DISMISSED the appeal and refused planning permission.

In reaching his decision, the Reporter noted that although there was previously a flagpole on this listed building, the replica flagpole now proposed would be of a significantly greater diameter than that which previously existed. He felt that taking into account the relatively slender proportions of the tower and corner finials it would appear too thick and out of proportion and would appear as an attempt to conceal a telecommunications mast, and not a flagpole. On this basis he felt that it would detract from the appearance of the tower and have a slight but noticeable adverse effect on the architectural and historic character of the building as a whole. However, he did not think it would have a significant effect on the character and appearance of the conservation area.

He noted that Government advice supported the extension of 3G telecommunications coverage but that Policy 78 of the Local Plan required alternative solutions in terms of location and design to be assessed to minimise the environmental impact on the city. He also noted that Policy 10 of the Councils non-statutory policies only supported apparatus on a listed building where other options had been evaluated and the case for non-selection justified and where there would be limited visual impact on the listed building and the alterations would be fully reversible.

The Reporter was not convinced that the alternative sites had been properly assessed and felt in particular that a site at Caenlochan Road would be visually less sensitive than the application site. He therefore concluded that the proposal did not comply with Policy 78 of the Local Plan and non-statutory Policy 10. He also considered that it contravened Policy 60 of the Local Plan because it would fail to preserve the listed building. Although he felt the need to provide 3G coverage could have outweighed the effect on the listed building and lack of conformity with the Development Plan he was not satisfied that alternatives had been adequately considered and therefore decided that the Development Plan should prevail.

- (b) LOCATION: 11 STRAWBERRY BANK, DUNDEE  
DEVELOPMENT: UNAUTHORISED PARTIAL DEMOLITION OF THE EASTERN  
BOUNDARY WALL TO FORM A VEHICULAR ACCESS

This agenda note relates to the decision on an appeal under Section 130 of the Town and Country Planning (Scotland) Act 1997 against an Enforcement Notice served by the Council which required the owner to reinstate the wall, gate piers and pedestrian access to their previous condition and appearance prior to their unauthorised removal (planning permission to retain the breach had previously been refused under delegated powers in January 2011 - application 10/00634/FULL refers).

The appeal was determined by written representations and the decision was received the Council on 21st July 2011. Copies of the decision notice have already been circulated to Members by email.

The Reporter DISMISSED the appeal which claimed that the steps required by the Notice exceeded that which was necessary to remedy the breach of planning control or any injury to amenity caused by the breach.

In reaching his decision, the Reporter considered the although there were other examples of openings on the street, he felt the gap was particularly wide in this case and that a substantial injury to amenity had been caused by the breach. He felt that this was compounded by the loss of the pedestrian gateway with its enclosing piers. He also concluded that the steps required to remedy the breach were required in their entirety.

- (c) LOCATION: FORTHILL SPORTS CLUB, FINTRY PLACE, BROUGHTY FERRY, DUNDEE  
PROPOSAL: ERECTION OF 17.5M TALL REPLICA TELEGRAPH POLE TO ACCOMMODATE VODAFONE AND O2 ANTENNA WITHIN GRP SHROUD PLUS 2 GROUND LEVEL CABINETS

Reference is made to Article I(a) of the minute of meeting of this Committee of 21st March 2011 wherein the above proposal was refused planning permission contrary to the Director's recommendation because the Council considered that:

- 1 the proposed mast would adversely affect nearby houses and the school by reason of its scale and design contrary to Policy 1 of the Local Plan; and
- 2 the proposed mast contravened Policies 1, 2 and 7 of the Council's adopted Non-statutory Planning Policies on Telecommunications Masts as the operator had not demonstrated that the mast was sensitively located and designed or that it was the most appropriate option and because the application site was located within an area of public open space designated by the Local Plan.

The appeal was determined by written representations and the decision was received by the Council on 17th August 2011. Copies of the Reporter's decision letter have already been circulated to the Members by email.

The Reporter DISMISSED the appeal and refused planning permission.

In reaching her decision, the Reporter noted that health concerns were not a material planning consideration. She concluded that the general character of the area was strongly residential, meaning that there was a general presumption against the mast under Policy 2 of the Councils non-statutory policies. She also felt that taking this into account and the concerns of neighbours, a higher sensitivity threshold should be applied.

She accepted that the mast would be slim line but although designed to look like a telegraph pole, at 17.5 metres, it would be more than double the normal height of such structures. Whilst the visual impact of the mast would be softened by the nearby trees, it would project above them and be clearly visible from the school and dwellings. Furthermore, any screening impact would be greatly reduced by tree removal.

She therefore concluded that the mast would look out of place in an otherwise attractive and low key residential setting and there was no justification for an exception to Policy 2 of the Council's non-statutory policies. It therefore followed that the proposal conflicted with Policies 1 and 78 of the Local Plan because of harm to residents' environmental quality.

She did not feel that the proposal conflicted with Policy 66A as the mast did not impinge on the sports function of the ground but felt that it conflicted with Policy 7 of the Councils non-statutory policies which presumes against such development in areas of open space. Taking all other matters into account she found nothing to carry sufficient weight to override the above conclusions.

- (d) LOCATION: FORMER WHITE HORSE INN, HAREFIELD ROAD, DUNDEE  
PROPOSAL: CHANGE OF USE FROM VACANT PUBLIC HOUSE TO 2 RETAIL UNITS AND A HOT FOOD TAKEAWAY AND THE CREATION OF ROAD LAY-BY

Reference is made to Article I(b) of the Minutes of the Development Management Committee of 18th April 2011 wherein the above proposal was refused planning permission contrary to the Director's recommendation because the Council considered that:

The proposed development would draw trade from and adversely impact on the nearby parade of shops at Strathmore Avenue/Brantwood Avenue and the Lochee District Centre.

It was contrary to Policy 45 of the Local Plan as there was suitable sites for retailing in the Lochee District Centre and the proposal will not address a deficiency in shopping provision in this 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 August 2011. Copies of the Reporter's decision letter have already been circulated to Members by email.

The Reporter DISMISSED the appeal and refused planning permission.

In reaching her decision the Reporter agreed with the Council that the retail element of the proposal was contrary to Policy 45 of the Local Plan as it involved an out of centre site where there were opportunities for further retail development within the nearby Lochee District Centre, there was no evidence that these sites were unsuitable for the proposed development and finally there was no quantifiable evidence that the proposal would not harm the district centre.

On Policy 53 relating to the location of hot food takeaways, the Reporter concluded that it was unclear whether this policy was breached. She considered the protection of residential amenity under Policy 1 but taking into account the fact that there was previously a public house on the site, the existing consent for a restaurant, the separation of the houses from the site by a busy road and the commercial character of the area she felt that the impact of the proposed takeaway on residential amenity would be diluted.

On traffic and parking issues she concluded that the appeal site was close to a busy and complex arrangement of junctions, that the lay-by would not provide sufficient parking at peak times and that this would increase vehicular congestion and activity and that on street parking would be potentially dangerous. She felt the short stay nature of the parking for both the takeaway and shops would be worse than that for a public house or approved restaurant. On this basis she concluded that the proposed development would contravene Policy 1 of the Local Plan.

Looking at factors in support of the proposal, she concluded that although the site was in clear need of regeneration, that outcome could be achieved by developing a range of non retail uses or by reverting to a public house or implementing the restaurant consent. She did not see any support for the proposal in Scottish Planning Policy nor did she see any examples of the precedents that would support the current proposals. She therefore concluded that there were no matters of sufficient weight to override the presumption against the development stemming from its contravention of the development plan.