

3 PLANNING APPEAL DECISIONS (AN150-2006)

(a) 16-18 WHITEHALL STREET - CHANGE OF USE FROM CLASS 1 (RETAIL) TO CLASS 2 (FINANCIAL), PROFESSIONAL AND OTHER SERVICES)

Reference is made to the decision of the Council on 23rd August, 2006, under powers delegated to the Director of Planning and Transportation, to refuse planning permission as it was considered that the proposal would result in an unacceptable Class 2 use within the retail core contrary to the provisions of Policy 34 of the Dundee Local Plan Review 2005.

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

The appeal was determined by written representations and the decision was received by the Council on 9th May, 2007. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter considered the determining issues to be whether:

- 1 the proposal accorded with the provisions of the development plan (in this case the relevant provisions were considered to be Policy 34 of the Dundee Local Plan Review 2005); and if not
- 2 whether an exceptional approval was warranted by other material considerations. In this case the other material considerations were listed building and conservation issues and the arguments advanced by the appellants advocating that the policy should be relaxed in this instance.

In summary, the Reporter concluded that the policy framework was clear and that the Council's approach was a fair and considered one. The Reporter found no credible arguments for the relaxation of the policy in this case and that the objectives of preserving and enhancing the character of the immediate area as a result of the proposals were desirable, and that this aspect was not held to be of overriding importance.

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

(b) 217 BLACKNESS ROAD - ALTERATIONS TO BASEMENT TO FORM NEW FLAT AND ASSOCIATED ACCESS

Reference is made to the decision of the Council on 2nd November, 2006, under powers delegated to the Director of Planning and Transportation, to refuse planning permission because the Council considered that the proposals conflicted with the terms of Policy 4 and Appendix 1 of the Dundee Local Plan Review 2005 (new housing developments); and with the criteria specified under Policy 13 of the Dundee Local Plan Review 2005 (developments in roof spaces and basements).

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

The appeal was determined by written representations and the decision was received by the Council on 9th May, 2007. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter considered the determining issues to be whether:

- 1 the proposal accorded with the provisions of the development plan (in this case the relevant provisions were considered to be Policies 4, 12 and 13 of the Dundee Local Plan Review 2005); and if not
- 2 whether an exceptional approval was warranted by other material considerations. In this case the other material considerations were the views of the roads authority and the submissions of parties.

In summary, the Reporter concluded that the proposal was inconsistent with Policy 4 as none of the exceptions under this policy applied to this particular category of proposal, and as the parties were unable to establish the previous use of the basement as living accommodation the proposal failed the tests under Policy 13. Policy 12 did not apply in this case. Accordingly, the Reporter concluded that the proposal did not comply with the provisions of the development plan.

Turning to the material considerations, the Reporter considered the appellant's desire to secure extra funding to upgrade the rest of the house to be an insufficient basis on which to depart from policy.

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

(c) LAND NORTH OF NAUGHTON PLACE, GLAMIS ROAD - TELECOMMUNICATIONS MONOPOLE, ANTENNAE AND EQUIPMENT CABINET

Reference is made to Article 1(b) of the Minutes of the Development Quality Committee of 25th September, 2006 wherein the above proposal was refused planning permission because the Council considered that the proposal would be detrimental to the amenity of the surrounding area and the siting of the development on the footway would be detrimental to pedestrian safety. The decision was taken contrary to the recommendation of the Director of Planning and Transportation.

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

The appeal was determined by written representatives and the decision was received by the Council on 8th May, 2007. Copies of the Decision Notice have already been circulated to Members by e-mail.

The Reporter considered the determining issues to be whether:

- 1 the proposal accorded with the provisions of the development plan (in this case the relevant provisions were considered to be Policy 78 of the Dundee Local Plan Review 2005); and if not
- 2 whether an exceptional approval was warranted by other material considerations. In this case the other material considerations were NPPG19, PAN62, the Council's non statutory policies, the concerns of objectors and the submissions of parties.

In summary, the Reporter concluded that the prospects for mast share options and alternative locations for the proposal had been thoroughly explored and discounted and that the proposal was broadly consistent with the provisions of the development plan.

Turning to other material considerations, the Reporter found that in the light of the mast's relationship to street furniture and the backdrop of mature trees it would not be injurious to residential amenity. Given the size and positioning of the mast and the cabinet relative to the width of the existing footway, it was concluded that national standards for footway width and for the safe passage of pedestrians and wheelchair users were complied with. There were therefore no material considerations sufficient to warrant the withholding of planning permission in this case.

Accordingly, the appeal was **UPHELD** with conditions relating to the colour of the mast and cabinets matching that of adjacent street furniture, and the removal of the apparatus if or when it became obsolete or redundant.

Claims for expenses were lodged by both parties. The Council's claim against the appellants was rejected. However, the claim against the Council was upheld on the grounds that the Reporter agreed with the appellants that the Council had reached its decision without reasonable grounds for doing so. This was considered to be unreasonable behaviour as described in Circular 6/1990.

(d) 144 GLAMIS ROAD - ERECTION OF GARAGE EXTENSION AND DORMER WINDOWS

Reference is made to the decision of the Council on 16th August, 2006, under powers delegated to the Director of Planning and Transportation, to refuse planning permission because the Council considered that the proposed extension by its size, scale and positioning would significantly increase the bulk of the house and the proposed dormer for similar reasons would have an adverse impact on the street scene contrary to the provisions of Policy 14 of the Dundee Local Plan Review 2005.

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

The appeal was determined by written representations and the decision was received by the Council on 14th May, 2007. Copies of the Decision Notice have already been circulated to Members by e-mail.

The Reporter considered the determining issues to be whether:

- (a) the proposal accorded with the provisions of the Development Plan (in this case the relevant provisions were considered to be Policy 14 of the Dundee Local Plan Review 2005); and if not
- (b) whether an exceptional approval was warranted by other material considerations. In this case the Reporter was silent on other material considerations.

In summary, the Reporter concluded that neither element of the proposal raised issues of overlooking, loss of sunlight/daylight and that the materials were acceptable. In addition, the Reporter disagreed with the Council on the issue of design. She considered that the proposal would not have an adverse impact on the principal elevations of the house, the streetscene nor on adjacent properties. The conclusion was reached that the proposal complied with the provisions of the development plan.

Accordingly, the appeal was **UPHELD** with a condition which suspended permitted development rights beyond the scope of the permission granted.

(e) 30 WHITEHALL STREET - CHANGE OF USE FROM RETAIL TO OFFICE USE

Reference is made to the decision of the Council on 4th September, 2006, under powers delegated to the Director of Planning and Transportation, to refuse planning permission as it was considered that the proposal would result in an unacceptable Class 2 use within the retail core contrary to the provisions of Policy 34 of the Dundee Local Plan Review 2005.

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

The appeal was determined by written representations and the decision was received by the Council on 15th May, 2007. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter considered the determining issues to be whether:

- 1 the proposal accorded with the provisions of the development plan (in this case the relevant provisions were considered to be the Dundee and Angus Joint Structure Plan Policy SRT3 and Policy 34 of the Dundee Local Plan Review 2005); and if not
- 2 whether an exceptional approval was warranted by other material considerations. In this case the other material considerations were listed building and conservation issues.

In summary, the Reporter concluded that the proposed relocation of the estate agency from the corner of Whitehall Street/Whitehall Crescent would disturb the balance between the retail core and the non-core and speciality shopping areas. It would erode the role of Whitehall Street within the retail core. Accordingly, it was concluded that the proposal would be contrary to both policy elements of the development plan.

The proposals would not affect the listed building or its setting in the conservation area. The Reporter therefore found no other material considerations which led her to grant planning permission in the face of the above conclusion.

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