

4 PLANNING APPEAL DECISIONS (AN222-2007)

- (a) 12 & 18 WHITEHALL CRESCENT, DUNDEE - RETROSPECTIVE LISTED BUILDING CONSENT FOR THE INSTALLATION OF SERVICES AND LISTED BUILDING ENFORCEMENT NOTICES REQUIRING THE UNDERTAKING OF A RANGE OF RESTORATIVE WORKS

Reference is made to Article I(a) of the minutes of the Development Quality Committee of 26th February, 2007, wherein the above proposal to retain the unauthorised works already undertaken within the stairwells of 12 and 18 Whitehall Crescent was refused Listed Building Consent because the Council considered that the proposal was contrary to the provisions of Policy 60 of the Dundee Local Plan Review 2005 and Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (adverse impact on the character and appearance of the listed building).

The Council, requiring specific and detailed restorative works to be undertaken, served 2 Listed Building Enforcement Notices.

The Listed Building Consent decision and the enforcement notices were appealed by the applicant under the provisions of Sections 18 and 35 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The appeals were determined by written representations and the decisions were received by the Council on 14th August, 2007. Copies of the decision letter have already been circulated to Members by e-mail.

The Reporter **DISMISSED** the listed building consent appeal in all respects except that listed building consent was granted solely for the formation of the new opening and door on the first floor landing of Whitehall Crescent, subject to the submission of detailed plans.

The Reporter **DISMISSED** the appeals against both enforcement notices, upholding the terms of the notices with variations to reflect the works already undertaken by the applicant to comply with the notices and to ensure satisfactory restoration works within an adjusted timescale of 3 months.

In reaching his decision, the Reporter took into account the historic and architectural importance of the building, and in particular the architectural detailing of the stairwells concerned. Account was also taken of the views of residents who have objected to the application together with the efforts undertaken by the applicant since the service of the enforcement notices to rectify the situation to the satisfaction of the Council.

- (b) 17 ARKLY STREET, DUNDEE - VARIATION OF CONDITION OF A PREVIOUS PLANNING PERMISSION GRANTED ON APPEAL IN MARCH 2001, PREVENTING THE PLAYING OF AMPLIFIED MUSIC

Reference is made to Article I(r) of the minutes of the Development Quality Committee of 26th March, 2007, wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to the provisions of Policy 1 of the Dundee Local Plan Review 2005 (noise breakout likely to be detrimental to the amenities enjoyed by nearby residents).

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 7th August, 2007. Copies of the Decision Notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission for the variation of the condition and in doing so substituted Condition 5 of planning permission D24889 (March 2001) with a condition which provides that amplified music may be played subject to the submission of a noise impact assessment and a further noise insulation scheme both for approval by the Council.

In reaching his decision, the Reporter took into account the limited size and capacity of the public house; the lack of complaint during the 6 years since the previous permission; the ability for the

imposition of adequate noise level controls through a revised condition wording; and the regulatory influence of the Licensing Board.

(c) 17 BALGRAY STREET - OUTDOOR EXTENSION TO CLUB TO PROVIDE A SOCIAL AND DESIGNATED SMOKING AREA

Reference is made to Article 1(q) of the minutes of the Development Quality Committee of 30th October, 2006, wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to the provisions of Policy 1 of the Dundee Local Plan Review 2005 (potential noise disturbance to nearby residents).

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 August, 2007. Copies of the Decision Notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission with conditions relating to the submission of boundary wall details for approval; the restriction of the use of the site to prevent the provision of entertainment including music; and the restriction of hours of operation.

In reaching his decision, the Reporter found that given the distance from housing he considered that any impact on residential amenity from cigarette smoke would not be significant and that there would be no significant loss of privacy. Although he recognised that there would be "potential for some noise disturbance to nearby residents despite the barrier effect of the boundary wall" this could be restricted to reasonable levels by conditions.

(d) 71 CHARLESTON DRIVE, DUNDEE - DORMER EXTENSION

Reference is made to the decision of the Council on 16th April, 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 14 of the Dundee Local Plan Review 2005 (design, size and appearance of the dormer).

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 27th August, 2007. Copies of the Decision Notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission with the standard 5 year lifetime condition.

In reaching his decision, the Reporter agreed with the Council that the proposal was indeed contrary to Policy 14 of the Dundee Local Plan Review 2005 because the proposal was for a large box dormer extending both to the front and rear of the property and reaching above the existing ridge height. The property also was located below the level of the road. Although the finishing materials would match those of the existing house the scale of the proposal would be dominant and thus not respect the character of the existing building.

However, the Reporter goes on to consider that an important consideration is that the dormer "would closely replicate the existing dormer on the adjoining semi detached house" and that the balance and symmetry which would result justified the approval.

Commentary

This decision is very disappointing. In relation to householder applications the purpose of the Local Plan and in particular Policy 14 is to promote improved design solutions at a domestic level. In reaching this decision on this application the Council supported this approach as it continues to do consistently in all similar applications. It did not consider that the unfortunate design of the neighbouring property's dormer should be a material consideration sufficient to counter balance the Local Plans objectives in this case.

(e) 108 KINGHORNE ROAD, DUNDEE - ERECTION OF DWELLINGHOUSE

Reference is made to the decision of the Council on 5th December, 2006, 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 4 and 15 of the Dundee Local Plan Review 2005 (scale, design, appearance, contrary to prevailing densities, overlooking and reduction in privacy in relation to neighbours).

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 7th August, 2007. Copies of the decision notice have already been circulated to members via e-mail.

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

In reaching his decision, the Reporter found in favour of all the points raised by the Council and concluded that the proposal was contrary to the provisions of the development plan and that there were no material considerations which were sufficient to counterbalance this view. In addition, the Reporter expressed concerns about the design of the proposal. Also, he was not convinced that the site could satisfactorily accommodate a new dwelling, irrespective of the design considerations.

(f) FORMER MOTORCYCLE RIDING CENTRE, OLD KINGS CROSS ROAD - ERECTION OF TELECOMMUNICATIONS MAST

Reference is made to Article 1(a) 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 "have an unacceptable adverse environmental impact on the area by reason of scale, design and the proliferation of the structures".

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 Council received the decision on 1st August, 2007. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission with conditions relating to the removal of the installation when obsolete or redundant; and the colour of the structure.

In reaching his decision, the Reporter found that the applicants had justified the need for the ground based mast; the potential for mast sharing had been investigated and discharged; that alternative possible sites had been investigated and discharged; the proposals would not conflict with Policy 78 of the Dundee Local Plan Review 2005; the application was accompanied by an ICNIRP Certificate and therefore the issue of RF emissions was not a material consideration. The site was well screened so that the proposals' impact on the overall visual amenity of the area would not be significant.

(g) FORMER WESTBAY NURSING HOME, 24 ALBERT ROAD, BROUGHTY FERRY, DUNDEE
DEMOLITION OF FIRE DAMAGED NURSING HOME AND REDEVELOPMENT WITH
SHELTERED HOUSING

Reference is made to Article I(c) of the minutes of the Development Quality Committee meeting on 23rd April, 2007, wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to the provisions of Policies 1, 10, 15 and 61 of the Dundee Local Plan Review 2005 (inadequacies of design, massing, scale, car parking, overlooking and overshadowing of neighbouring properties and failure to preserve or enhance the character or appearance of the conservation 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 14th August, 2007. Copies of the decision notice have already been circulated to members via e-mail.

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

In reaching his decision, the Reporter agreed with the case advanced by the Council and third parties who made representations (Historic Scotland, Broughty Ferry Community Council and local residents). The idea of redeveloping the site for sheltered housing was acceptable in principle. However, the problems with the present proposal stemmed from the attempt to accommodate too many flats. In respect of design the Reporter found that the proposed building would neither preserve nor enhance the character or appearance of the Grove Conservation Area. The project as a whole conflicted with Policies, 1, 10 and 61 of the Dundee Local Plan Review 2005. No material considerations persuaded the Reporter to grant planning permission contrary to the provisions of the Development Plan.