

5 PLANNING APPEAL DECISIONS (AN222-2008)

(a) 210 STRATHMARTINE ROAD - CONVERSION OF AN EXISTING 48 SHEET ADVERTISING DISPLAY TO AN INTERNALLY ILLUMINATED UNIT

Reference is made to the decision of the Council on 26th June, 2008, under powers delegated to the Director of Planning and Transportation, to refuse Advertisement Consent because the Council considered that the proposal was contrary to the provisions of Policy 63 of the Dundee Local Plan Review 2005 in that the proposal due to its illumination and prominence would be injurious to the amenity of the area.

The decision was appealed by the applicant under the provisions of Section 182 of the Town and Country Planning (Scotland) Act 1997 and Regulation 21 of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 on the grounds that the Council had failed to reach a determination within the statutory period a claim not bourn out by the circumstances of the case. A decision notice had been issued but appears not to have been received by the applicant.

The appeal was determined by written representations and the decision was received by the Council on 17th November, 2008. Copies of the Reporter's decision letter have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted Advertisement Consent with the normal statutory conditions plus an additional condition to control levels of illumination.

In reaching his decision the Reporter considered that despite the appeal site being on a prominent gable location there was no evidence to suggest that the existing sign harmed amenity or public safety. However, the Reporter conceded that whilst an "increase in brightness could raise the prominence of the site and detract from the street scene at night time" provided the intensity of illumination was controlled there would be no overall harm caused to amenity or public safety.

(b) 3 BALMYLE ROAD, BROUGHTY FERRY - ERECTION OF DWELLINGHOUSE, GARAGE AND ANCILLARY WORKS (ALTERNATIVE PROPOSALS)

Reference is made to Articles I (o) and (p) of the minute of meeting of this Committee of 18th August, 2008 wherein two alternative proposals in the form of separate applications for the development of the appeal site were refused planning permission. The Council considered that the proposals were contrary to Policies 4, 15 and 61 of the Dundee Local Plan Review 2005 (scale, massing, design and finish of the proposal; failure to preserve or enhance the character of the conservation area; overlooking and privacy issues; reduction of on site parking spaces).

The decisions on the two applications were appealed by the applicant under the provisions of Section 47 and Schedule 4 of the Town and Country Planning (Scotland) Act 1997.

The appeals were determined by written representations and the decisions were received by the Council on 17th November, 2008. Copies of the Reporter's decision letter have already been circulated to Members by e-mail.

The Reporter **DISMISSED** both appeals and refused planning permission.

In reaching his decisions the Reporter commented as follows: "I find both versions of the proposed development to be visually unacceptable and at odds with the character of this part of the conservation area. Both designs are clumsy, poorly presented and even lacking in the level of precision and detail which in my view is always justified in such a sensitive setting. Independently of all other factors these points - taken together - would justify refusal on their own". The Reporter expressed concern over various aspects of the detail of the design and that neighbours would be vulnerable to the loss of privacy. The Reporter considered that even if the principle of development had been acceptable all the design matters he referred to "would need to be revisited in all probability by an experienced chartered architect". The proposal would also be likely to lead to overshadowing and overall constitute overdevelopment. In conclusion, the Reporter considered that all three policies of the local

plan were to varying degrees breached and there were no material considerations justifying a departure from the development plan.

- (c) LAND TO NORTH EAST OF THE BETTING OFFICE, FINLARIG TERRACE/FINTRY ROAD - OUTLINE APPLICATION FOR A SINGLE STOREY EXTENSION TO AN EXISTING BUILDING TO FORM A NEW RETAIL UNIT

Reference is made to Article I (r) of the minute of this Committee of 16th June 2008 wherein the above proposal was refused planning permission because the Committee considered the proposal to be contrary to Policy 1 of the Dundee Local Plan 2005 (likely increased traffic congestion; additional demand on limited parking; pedestrian safety issues). The decision to refuse was contrary to the recommendations 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 and Country Planning (Scotland) Act 1997.

The appeal was determined by written representations and the decision was received by the Council on 18th November, 2008. Copies of the Reporter's decision letter have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission with the normal statutory conditions relating to the approval of reserved matters and a condition relating to the construction of an adjacent footway to Council standards.

In reaching his decision the Reporter considered that the proposal was unlikely to lead to additional parking problems; that the adjacent footway was of satisfactory size although in relatively poor condition; that there was unlikely to be pedestrian safety issues arising from the development and that the amenity of nearby residents was unlikely to be adversely affected.

The appellants sought an award of expenses against the Council in that the Council had acted in an unreasonable manner. The claim was rejected by the Reporter.

- (d) 102 CHURCH STREET, BROUGHTY FERRY - ERECTION OF TWO SEMI-DETACHED HOUSES IN GARDEN

Reference is made to Article I (s) of the minute of meeting of this Committee of 18th August, 2008 wherein the above proposal was refused 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 (overlooking, overshadowing, design quality, layout, over-development of the site, car parking and impact on existing buildings and the existing streetscape).

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 21st November, 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 found the design of the proposal to strike a discordant contrast with the adjacent traditional cottages with or without the design changes which had been introduced to avoid overlooking. The Reporter also criticised the proposed car parking layout and general design for similar reasons to those set out by the Council. The Reporter stated: "This novel attempt to reconcile the development with the Council's quantitative standards imposed by the local plan, resourceful as it is, demonstrates the level of compromise which is necessary to achieve such a scale of development on this site. This situation can be summarised as a clear symptom of over-development". The proposal was not informed by local architectural traditions.

The Reporter concluded that the development did not accord with Policies 4 and 15 of the local plan review and that there were no material considerations which would justify a development plan departure.

(e) 66 DALRYMPLE TERRACE - EXTENSION TO DWELLINGHOUSE

Reference is made to Article I(r) of the minute of meeting of this Committee of 18th August 2008 wherein the above proposal was refused planning permission because the Council considered that the proposals failed to comply with Policy 14 of the Dundee Local Plan Review 2005 in respect of the potential loss of sunlight and daylight to an adjacent property; the potential for the loss of privacy in respect of an adjacent property; and the proposed design of the extension which was considered to be out of keeping with the scale and character of the existing property.

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 12th November, 2008. Copies of the decision notice have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission subject to a condition requiring the submission for approval of details relating to the internal secondary access to a bin position within the garage; and details of obscured glazing to a bedroom window. These measures were to help guard against the unsatisfactory visual impact of potential refuse storage in the front garden and to maintain a reasonable level of privacy at the rear of number 68.

In reaching his decision the Reporter did not consider the flat roofed portion of the extension to be objectionable in its concealed position. He did not consider the perceived loss of natural lighting to the neighbouring property to be significant enough to warrant refusal on this ground. The Reporter concluded that the east facing window "could seriously overlook the rear patio at number 68 despite the intervening 2m fence". His judgement was that this could be mitigated by the imposition of a condition requiring this window to be glazed in obscure glass at least up to its mid point.

Commentary: This is a disappointing decision given the effort which the Council takes to ensure that the highest design standards are promoted and that the risks of overlooking are mitigated if possible through design measures where this is appropriate rather than in the way suggested by the Reporter in this case.

(f) FORMER FILLING STATION, MACALPINE ROAD - NEW FILLING STATION SHOP, CANOPY, PUMP ISLANDS AND TANKS

Reference is made to the decision of the Council on 21st May, 2008, 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 44 of the Dundee Local Plan Review 2005 and Scottish Planning Policy 8 - Town Centres and Retailing in that the proposal was likely to have a detrimental effect on the vitality and viability of local shopping provision. The Council's concerns lay with the degree of retail floor space involved and not with any other aspect of the proposals.

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 18th November, 2008. Copies of the Reporter's decision letter have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission with conditions attached regarding the discharge of any ground contamination matters.

In reaching his decision the Reporter acknowledged that 50% of the shop units at Macalpine Road Shopping Centre were vacant or locked at the time of this site visit. However, he attributed this to the impact of major convenience stores and the reduction in the population at the redeveloped Ardler community. He also noted that the proposal would be only 62m² larger than the retail unit which had occupied the application site until a few years ago. The Reporter could not safely conclude that such a modest net increase in the site's retail function would materially affect either the vitality or viability of local shops or the distribution of local shopping provision. The Reporter also considered that the re-opening of the petrol filling station would be to the community's benefit as opposed to the site continuing to lie in a derelict condition. The Council had not suggested an alternative strategy for the beneficial use of the site.

(g) OLD MILL COMPLEX, BROWN STREET - STUDENT ACCOMMODATION (116 FLATS AND ANCILLARY ACCOMMODATION)

Reference is made to Article III of the minute of meeting of this Committee of 16th June, 2008 wherein the Council agreed the case it wished to be advanced in respect of the above appeals which had been lodged following the Council's failure to determine the applications within the prescribed statutory period. The Council resolved that had it determined the applications for planning and listed building consent it would have refused both applications. The reasons for refusal are summarised as follows:

- failure to provide an adequate justification for additional student accommodation and a full transport assessment;
- unsuitable land use in an economic development area;
- contrary to policy for support of higher education development;
- design issues relating to listed buildings and conservation areas;
- failure to justify the proposed demolition of a listed building.

The Council considered Policies 9, 26, 28, 55, 61 and 62 of the Dundee Local Plan Review 2005.

The applications were appealed 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 October, 2008 and the decisions were received by the Council on 7th November, 2008. Copies of the decision letter which dealt with both appeals jointly have already been circulated to Members by e-mail.

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

In reaching his decisions the Reporter considered that:

- (a) the impact of the proposals in design terms would undermine the historic and architectural context of the Blackness Conservation Area and would fail to protect or enhance its character;
- (b) the applicants had failed to provide a feasibility study reviewing the listed buildings and their capacity for change including the case for demolition which should always be a last resort;
- (c) the applicants had failed to provide the necessary level of detail in order that a full and comprehensive assessment of the proposals' impact on the surrounding townscape could be assessed.
- (d) the architectural design standard was poor, public spaces were ill conceived and there was insufficient consideration for the context of the site within the conservation area and the setting of listed buildings;

- (e) the proposals were contrary to Structure Plan Policy 5A, Local Plan Review Policies 55, 59, 60, 61 and 62, NPPG 18 and the Memorandum of Guidance in respect of conservation areas and listed buildings.