

3 PLANNING APPEAL DECISIONS (AN429-2005)

(a) LAND AT THE LODGE, 4 GROSVENOR ROAD, DUNDEE - TREE ENFORCEMENT APPEAL: REPLACEMENT OF 37 TREES

Reference is made to Article III of the minute of meeting of the Planning and Transportation Committee of 20 December 2004 wherein the Members agreed that a Tree Replacement Notice be served as the Council was of the opinion that mature trees were either dead or dying and that the trees had been wilfully destroyed. The site lay within a Conservation Area and the requisite Notice to the Council specifying the works to be done to the trees had not been made, as required under planning legislation. This period of notice would have offered the Council the opportunity to either consent to the works or to consider making a Tree Preservation Order.

The Tree Replacement notice was served on the owner of the land and required the 37 trees to be replaced on a 1:1 basis by 30 April 2005.

The terms of the Tree Replacement Notice were appealed under the provisions of Section 169 of the Town & Country Planning (Scotland) Act.

The appeal was determined by public inquiry and the decision was received by the Council on 22 September 2005. A copy of the decision letter can be found in the Members' Lounges.

The Reporter found as follows:

- a The 37 trees specified in the Notice had been destroyed without the necessary prior notice and Council's consent;
- b Replacement trees had not been planted as required by the Act;
- c The trees concerned formed an important element in the landscape, were of amenity value and the making of a Tree Preservation Order would have been expedient and justified;
- d The circumstances of the breach of Act do not justify dispensing with the requirement to replant.

Accordingly, the Tree Replacement Notice was UPHeld with a variation to its terms requiring the trees to be replaced during the period for compliance which is now six months from the date on which the Notice comes into effect i.e. by 22 March 2006.

Claims for expenses by both parties were rejected by the Reporter.

Commentary: This appeal decision provides an important interpretation of the law in respect of a Council's duties and responsibilities in relation to the protection and preservation of trees particularly when considering planning applications and when situated in conservation areas and the fundamental role the designation of Tree Preservation Orders play in fulfilling those responsibilities. The decision also sends out a clear message to owners of trees in Conservation Areas to be aware of the need to give the Council 6 weeks Notice of any intention to undertake works to such trees. Wilful destruction of trees in conservation areas will not be tolerated, enforcement action will be taken. As this appeal decision illustrates, if the Notice is upheld the penalties can have the effect of being financially severe.

(b) BALTIC WORKS, 28 ANNFIELD ROAD, DUNDEE: TELECOMMUNICATIONS ANTENNAE (6) MOUNTED ON A CHIMNEY AT A HEIGHT OF 20 METERS

Reference is made to Article 1(d) of the minute of meeting of this Committee of 6 December 2004 wherein the above proposal was refused planning permission because of the inappropriateness of the site given "its proximity to two health centres and a primary school, given the health concerns" and because the applicant had failed to consider a greater range of alternative sites.

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 21 September 2005. A copy of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposal complied with the provisions of the development plan and, if not, whether there were any material considerations which dictated an exceptional approval of planning permission.

In summary, the Reporter concluded that parties to the appeal agreed that there was no contravention of the development plan. The Reporter was satisfied that the applicant had undertaken the necessary degree of site selection, examination and elimination. Concerning the issue of health risk, the Reporter followed Government policy as expressed in NPPG19. As a Certificate of Conformity with exposure standards had been supplied, it was more appropriate for any health concerns to be addressed to the National Radiological Protection Board.

Accordingly, the appeal was **UPHELD** with the application of a condition relating to the removal of the apparatus when obsolete or redundant.

- (c) WATER TREATMENT, CLATTO WORKS, DALMAHOY DRIVE, DUNDEE: 29 METRE TELECOMMUNICATIONS MONOPOLE AND TWO EQUIPMENT CABINETS.

Reference is made to Article 1(b) of the minute of meeting of this Committee of 6 December 2004 wherein the above proposal was refused planning permission because the Council considered that by virtue of its design, the proposal would adversely affect the amenity of that predominantly residential area (Policy H1 Dundee Local Plan 1998 and Policy 2 of the Council's non-statutory policies relating to telecommunications developments; no alternative locations were promoted; and the Council considered that the public perception of risk to health should be given weight as a material consideration.

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 21 September 2005.

The Reporter considered the determining issues to be whether the proposal complied with the development plan and, if not, whether any material considerations justified exceptional approval.

In summary, the Reporter concluded that the proposal satisfied all the criteria set out in Policy BE31 of the adopted Dundee Local Plan and that the proposal would not adversely affect amenity contrary to Policy H1. Concerning issues of risk to health, the Reporter followed Government policy as expressed in NPPG19, was satisfied that as a Certificate of Conformity with exposure standards had been supplied community concerns in this regard should properly be addressed to the National Radiological Protection Board.

The Reporter found that there were no material considerations which had a bearing on his conclusion that no development plan policies were compromised.

Accordingly, the appeal was **UPHELD** with the application of a condition relating to the removal of the apparatus when obsolete or redundant.