

### 3 PLANNING APPEAL DECISIONS (AN67-2007)

(a) 113 CHEVIOT CRESCENT - CHANGE OF USE FROM SANDWICH SHOP TO A HOT FOOD TAKEAWAY

Reference is made to Article 1(z) of the minute of meeting of this Committee of 28 August 2006 wherein the above proposal was refused planning permission because the Council considered that the proposal was located within 30 metres of residential property contrary to Policy 53 of the adopted Local Plan Review; and that the proposal would result in significant potential problems relating to noise, smell, litter and anti-social behaviour (due to the presence of other hot food takeaways).

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 23 January 2007. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposal was:

- i Consistent with the relevant provision of the Development Plan;
- ii Whether an exceptional approval is warranted.

In summary, the Reporter concluded that the proposal was located 25 metres from the rear boundaries of Nos 98-104 Findhorn Street. Policy 53 was therefore breached. However, the terms of the policy alludes to a degree of flexibility in its application. The four properties concerned were in themselves (rather than their curtilages) at least 40 metres from the proposal site.

The Reporter considered that there appeared to be no reason why the presence of a second hot food takeaway in the parade and in addition to a public house should increase the amount of noise to a significant extent. Subject to the installation of appropriate filtration and extraction equipment and additional litter bins, smell and litter matters were capable of being overcome. Accordingly, the proposal was found not to conflict with Policy 1 of the Local Plan Review. This was considered to counterbalance the proposal's non compliance with Policy 53.

Accordingly, the appeal was **UPHELD** with conditions relating to noise and smell mitigation, litter bin provision and restrictions on opening hours.

The appellant claimed an award for expenses against the Council and was unsuccessful.

(b) 34 REFORM STREET - ERECTION OF TIMBER DECKING WITH RETRACTABLE SCISSOR ARM CANVAS AWNING ABOVE AND RETENTION OF UNISEX DISABLED WC

Reference is made to Article 1(o) of the minute of meeting of this Committee of 27 February 2006 wherein the above proposal was refused planning permission because the Council considered that the use of the proposed decking with its protective canopies would result in an unacceptable noise and smell impact to adjacent offices throughout the year to the detriment of their occupants.

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 8 January 2007. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether:

- i The proposal would preserve or enhance the character of the conservation area;
- ii The proposal would preserve the building or its setting or any features of special or historic interest it possesses;
- iii Whether the proposal is consistent with the relevant provisions of the Dundee Local Plan Review 2005; and if so
- iv Whether an exception to the plan is justified by other material considerations (particularly the issues of noise and smoke)

In summary, the Reporter concluded that as the proposal was contained within an inner courtyard at the rear of the site neither the conservation area nor the setting of the listed building would be adversely affected. She found that the proposal complied with the provisions of the development plan. In relation to the issues of smoke and noise the Reporter considered that as the office windows were not adjacent and 4.5 metres above and 6 metres away and as the canopy would act as a means of deflecting smoke and noise, the potential adverse impacts were not considered to be so severe that planning permission should be refused. Nevertheless a planning condition was appropriate to prevent amplified music or vocals. In concluding, the Reporter commented, "I consider that the provision of the proposed facility for staff and customers who wish to smoke would be beneficial in comparison to the tendency for smokers to congregate outside commercial premises in close proximity to passers-by, workers and customers".

Accordingly, the appeal was **UPHELD** with a condition relating to the prevention of amplified music and vocals.

(c) 78 FINTRY ROAD - CHANGE OF USE OF VACANT STORE TO HOT FOOD TAKE AWAY

Reference is made to Article 1 (cc) of the minute of meeting of this Committee of 28 August 2006 wherein the above proposal was refused planning permission because the Council considered that the proposal was located within 30 metres of residential property, contrary to Policy 53 of the adopted Local Plan Review; and that the proposal would result in significant potential problems relating to noise, smell, litter and anti-social behaviour (due to the presence of other hot food takeaways).

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 23 January 2007. Copies of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposal was

- i Consistent with the relevant provisions of the Development Plan; and if not
- ii Whether an exceptional approval is warranted.

In summary the Reporter concluded that the proposal was located 25 metres from the property at 63 and 63a Fintry Road and accordingly Policy 53 was breached. However, the terms of the policy alluded to a degree of flexibility in its application. The properties were themselves (as opposed to their gardens) 32 metres distant, across Fintry Road. The Reporter saw no reason to assume that the proposal should exacerbate noise issues alleged to be associated with a nearby public house and hot food take away. Subject to the installation of appropriate filtration and extraction equipment and additional litter bins, smell and litter matters were capable of being overcome. Accordingly, the proposal was found not to conflict with Policy 1 of the Local Plan Review. This was considered to counterbalance the proposal's non compliance with Policy 53.

Accordingly, the appeal was **UPHELD** with conditions relating to noise and smell mitigation, litter bin provision and restrictions on opening hours.