

3 PLANNING APPEAL DECISIONS (AN81-2005)

(a) WESTBAY NURSING HOME, 34 ALBERT ROAD, BROUGHTY FERRY, DUNDEE, DD5 1AZ - PROPOSED ERECTION OF SINGLE STOREY 10 SINGLE BED/EN SUITE UNIT

Reference is made to the decision of the Council on 13th August, 2004, under powers delegated to the Director of Planning and Transportation, to refuse planning permission for reasons related to the loss of existing amenity space, the inadequate provision of amenity space; over development of the plot and window to window distances (contrary to Policies H10, H12 and BE4 of the adopted Dundee Local Plan 1998 and Policies 10 and 15 of the Finalised Dundee Local Plan Review).

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 1st February, 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 was consistent with the provisions of the development plan and, if not, whether an exception to these provisions is justified by other material considerations. In addition, the proposal required to be assessed against the desirability of ensuring that developments in conservation areas preserve and enhance the character and appearance of these areas.

In summary, the Reporter concluded that there was a "degree of failure" in the criteria of adopted policies H10 and BE4 being met in respect of courtyard garden area and window to window distances. The Reporter also acknowledged a failure under Policy 15(c) of the Local Plan Review although he considered the criteria of density to have been met. The Reporter, in reaching his decision, took account of the quality of open space to be removed and with the aid of landscaping the potential to create a pleasant seating area for residents and the overcoming of the potential window to window distance issue. The window to window separation distances in this case need not be rigidly applied. The merits of the proposal were found to be sufficient to counterbalance the failings under both the adopted and finalised draft plans.

Accordingly, the appeal was UPHeld with conditions relating to the submission of materials samples; landscaping and planting; and the rescinding of the appeal P\PPA\180\103 granted on 27th March, 2003 (DCC Ref 02/00543/FUL), since the carrying out of both developments could place unacceptable pressure on car parking and amenity space at the nursing home.

(b) 69 DUNDEE ROAD, WEST FERRY, DUNDEE - ENFORCEMENT NOTICE APPEALS AGAINST TREE REPLACEMENT NOTICES

Reference is made to Article XV of the minute of meeting of the Planning and Transportation Committee of 26th April, 2004, wherein the Committee agreed to serve a Tree Replacement Notice under the terms of Section 168 of the Town and Country Planning (Scotland) Act 1997 on the owners of "Woodcroft", 69 Dundee Road, West Ferry, Dundee. Notices were served on each of the two owners.

In its case the Council contended that on or around November 2003 in excess of 17 trees were removed from the site, which is located in the West Ferry Conservation Area, without compliance with the necessary statutory procedures. The Notices required the planting of 8 replacement semi-mature trees.

The Notices were each appealed under the provision of Section 169 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 27th January, 2005. Copies of the decision letters can be found in the Members' Lounges.

The Reporter considered the grounds of appeal advanced by the appellants and, in summary concluded that the appeals be dismissed and that the replanting requirements specified in the Notices shall be implemented next planting season after 1st October, 2005. The Reporter added to the Notices by requiring that within two months of the Notices taking effect, the written approval of the Council be obtained for the method of planting and for the maintenance of the trees to be planted. Once the method statements have been agreed the tree replacement shall be undertaken in accordance with these approved statements.

Accordingly, the appeals were DISMISSED as outlined above.

Commentary: It is understood that appeals against Tree Replacement Notices are relatively rare. By upholding the Notices the Reporter has reinforced the Council's concerns about the damaging effect unauthorised works to trees or the loss of trees can have in conservation areas and sends out a clear message to those contemplating the removal of trees in these areas or trees protected by Tree Preservation Orders to abide by the requirements of statute and to seek the necessary authority and best practice advice prior to undertaking any felling or other arboricultural work.

(c) UNIT 4 HIGHGATE CENTRE, 102 HIGH STREET, LOCHEE - CHANGE OF USE FROM CLASS 1 SHOP TO BETTING OFFICE

Reference is made to Article I(f) of the minute of meeting of this Committee of 26th April, 2004, wherein the above proposal was refused planning permission because the Council considered the proposals to be contrary to Policy S17 of the adopted Dundee Local Plan and Policy 39 of the Finalised Draft Local Plan (acceptable retail uses in a core retailing 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 27th January, 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 was consistent with the provisions of the development plan and, if not, whether an exception to the provisions is justified by other material considerations.

In summary, the Reporter concluded that there was no dispute that the proposal failed under Policy S17 of the adopted plan. Turning to Policy 39 of the draft review, to which the Reporter attached "considerable weight" given its recent passage through public inquiry with no challenge to this policy, he found that the proposal failed the 'density test' of the proportion on non retail units permitted in a shopping frontage.

Nevertheless, the Reporter attached considerable weight to the present and likely future function of the mall as opposed to the main shopping frontage and did not consider that screened windows which would result from a betting shop use would be as harmful to the district centre's viability and vitality as leaving a vacant unit with frontage to the High Street.

Accordingly, the appeal was UPHELD.

(d) TELEPHONE EXCHANGE, QUEEN STREET, BROUGHTY FERRY, DUNDEE - PROPOSED RADIO TELECOMMUNICATIONS INSTALLATION

Reference is made to Article I(b) of the minute of meeting of this Committee of 30th August, 2004 wherein the above proposal was refused planning permission because the Council considered that the proposed antennae would be visually prominent and detract from the setting of the adjacent listed building, the conservation area and the amenities of local residents, contrary to adopted Dundee Local Plan Policies BE31 (E), BE11 and H1 and the Finalised Dundee Local Plan Review Policies 1, 9 and 10.

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 1st February, 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 was consistent with the provisions of the development plan and, if not, whether an exception to these provisions is justified by other material considerations. Also Sections 59(1) and 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 were relevant in respect of the impact on the adjacent listed building and conservation area.

In summary, the Reporter concluded that he was not convinced that the applicants had failed to make a properly rigorous site search and that the proposal complied with several of the statutory and non-statutory policies relevant to the case. He also found that the proposal complied with all those policy criteria which related to visual impact, including effects on the conservation area and the setting of listed buildings. In terms of need, design and siting, the proposal was in line with the advice of NPPG 19 and PAN 62. In relation to public health issues which had been raised by objectors, the Reporter gave this issue no weight, these being concerns which are properly addressed to the appropriate authorities concerned with such issues. However, the Reporter expressed concern at the nature of the 'community consultation' exercise undertaken on behalf of the applicants which made no reference to the TETRA technology involved in this proposal.

Accordingly, the appeal was UPHELD with a condition requiring removal of the apparatus within six months of it becoming obsolete or redundant.