

### 3 PLANNING APPEAL DECISIONS (AN83-2009)

- (a) 53 GELLATLY STREET - PROPOSAL: RECONSTRUCTION OF EXISTING WAREHOUSE AND OFFICE TO FORM EIGHT SELF-CONTAINED RESIDENTIAL FLATS WITH ON-SITE CAR PARKING

Reference is made to the decision of the Council on 30th October, 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 the Dundee Local Plan Review 2005 in the following respects:

- 1 Inadequacy of parking and lack of respect for the privacy of neighbouring properties (Policy 4).
- 2 Poor quality design (Policies 4 and 55).
- 3 Lack of suitable bin storage (Policy 80).
- 4 Substandard vehicular and pedestrian access (Policy 81).
- 5 Lack of evidence regarding the discharge of ground contamination and archaeological issues (Policies 79 and 65).

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 5th March, 2009. Copies of the Reporter's decision letter have already been circulated to Members by e-mail.

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

In reaching his decision the Reporter considered that the proposed flats would have a very poor outlook and that there would be significant overlooking and loss of privacy by neighbours; that the design of the elevations was poor with no recognition having been given to the architectural qualities of the existing building or its surroundings; that there was likely to be noise issues from electrical and mechanical plant on adjacent buildings and from the function suite opposite; that pedestrian and vehicular access arrangements were substandard; that there was no bin storage; and that insufficient information had been provided to allow proper assessment of potential ground contamination and the impact of the proposal on archaeology.

- (b) LAND SOUTH EAST OF EXPLORER ROAD - ERECTION OF NEW HEADQUARTERS BUILDING FOR HILLCREST GROUP

Reference is made to Article 1(a) of the Minutes of the Development Quality Committee of 17th December, 2007, wherein the above proposal was refused planning permission because the Council considered that the proposal was contrary to Policy 1 of the Dundee Local Plan Review 2005 (failure of the applicants to conclusively demonstrate that the chimney emissions from the biomass facility would not be to the detriment of local air quality and as a result the applicant had failed to demonstrate that the proposal would not have a significant adverse impact on the environmental qualities enjoyed by local residents).

The report that was submitted to Committee recommended approval of the application without conditions regarding the biomass boiler.

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 a public inquiry held between 21st and 23rd October, 2008 and the decision was received by the Council on 26th February, 2009. Copies of the Reporter's decision letter and the letters in respect of his decisions on claims for expenses have already been circulated to Members by e-mail.

The Reporter **UPHELD** the appeal and granted planning permission subject to a range of 11 conditions covering the following issues: finishing materials; noise limits; landscaping; public art provision; cycle rack provision; refuse and recycling measures; approval of a travel plan; details of the biomass boiler and its maintenance in relation to output of emission performance; and full details of wood fuel.

In reaching his decision the Reporter considered that the principle of erecting an office building on this site was supported by Policies 2 and 22 of the Local Plan Review and that the main issue of dispute for the inquiry arose from the effects that the emission from the biomass boiler may have on local residents and the nearby nursery. The Reporter on the basis of evidence exchanged did not consider that the proposal required to be resisted in order to protect local communities and local residential amenity. The proposal therefore did not conflict in any material way from Policies 1, 10 or 77 of the Local Plan Review. Turning to national planning policy, the Reporter, in considering SPP6, PAN45, PAN84 and the Biomass Action Plan for Scotland found that this low carbon proposal would not be undermined or made unacceptable by the likely emissions from the biomass boiler on air quality, provided that safeguarding conditions were imposed. Even in an area where the concentrations of PM<sub>10</sub> are currently below the National Air Quality Standards the Reporter recognised the significance of the non-threshold status of PM<sub>10</sub> and its public health significance for the nursery and residents of Gowrie Park and applied conditions that require the minimisation of PM<sub>10</sub> (and NO<sub>2</sub>) emissions to the local environment through the use of best available technology. The reporter also recognised that there is a gap in the statutory control of these facilities and hence a need for these to be regulated through the planning system.

Claims for awards of expenses were made by both appellant and the Council. The Reporter rejected both claims.

(c) **LAND AT FORMER TAY ROPE WORKS, MAGDALEN YARD ROAD - RESIDENTIAL DEVELOPMENT COMPRISING OF 7 FLATS TO SOUTH, 4 FLATS TO NORTH AND 3 HOUSES AND ENVIRONMENTAL IMPROVEMENTS TO BOUNDARY WALLS**

Reference is made to Articles 1(a) and (b) of the Minutes of the Development Quality Committee of 16th June, 2008, wherein the above proposal was refused planning permission and Listed Building Consent. The Council considered that the planning application was contrary to the provisions of Policies 1, 4 and 61 of the Dundee Local Plan Review 2005 (impact on amenity due to design, layout, traffic movement and parking issues, excessive number of flats and failure to preserve or enhance the Conservation Area). The Council considered that the listed building application failed to have regard to the preservation or enhancement of the listed building by removing the second storey contrary to the provisions of Policy 60 of the Dundee Local Plan Review 2005.

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 and Section 18 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The appeal was determined by a public inquiry held on 13th January, 2009 and the decision was received by the Council on 1st April, 2009. Copies of the Reporter's decision letter have already been circulated to Members by e-mail.

The Reporter **DISMISSED** the appeal and refused planning permission and listed building consent.

In reaching his decision the Reporter concluded that the development would not convincingly convert the linear rope works into a new lane and therefore failed to preserve or enhance the Conservation Area. He felt that in the absence of acceptable proposals to redevelop the site, the removal of the upper level of the listed building would fail to preserve its special interest. Finally, he considered that although flats were acceptable and that there would not be an adverse impact on amenity due to traffic noise, the deficiencies in visitor parking and drying areas counted against the development.

Both parties put forward claims for an award of expenses but the Reporter concluded that neither party had acted unreasonably and therefore declined to make an award.