

City Chambers  
DUNDEE  
DD1 3BY

5th August 2011

Dear Sir or Madam

**DEVELOPMENT MANAGEMENT COMMITTEE**

You are requested to attend a MEETING of the **DEVELOPMENT MANAGEMENT COMMITTEE** to be held in the City Chambers, 21 City Square, Dundee on Monday 15th August 2011 at 6.00 pm.

Yours faithfully

DAVID K DORWARD

Chief Executive

Members are reminded that, in terms of The Councillors Code, it is their responsibility to make decisions about whether to declare an interest in any item on this agenda and whether to take part in any discussions or voting.

This will include all interests, whether or not entered on your Register of Interests, which might be perceived as influencing your opinion/vote on any matter.

**AGENDA OF BUSINESS**

**1 DEPUTATIONS**

- (a) YEW HOUSE, 30C ALBANY ROAD, BROUGHTY FERRY- PROPOSED CARPORT AND GARAGE ROOF EXTENSION WITH EXTERNAL TIMBER STAIR ACCESS.

A request has been received for a deputation to address the Committee relative to objections to the above application.

**2 PLANNING APPLICATIONS**

(Reports enclosed).

**3 NEW LEGISLATION RELATING TO SECTION 75 PLANNING OBLIGATIONS AND THE IMPLICATIONS FOR UNDETERMINED APPLICATIONS WITH OUTSTANDING LEGAL AGREEMENTS**

(Report No 353-2011 enclosed).

**4 LARCH STREET (FORMERLY LARCHFIELD WORKS) - APPLICATION TO DISCHARGE SECTION 75 AGREEMENT**

(Report No 362-2011 enclosed).

A request has been received for a deputation to address the Committee relative to this application.

**5 WHITFIELD SITE 6 - SITE PLANNING BRIEF (AN116-2011)**

Reference is made to Article III of the minute of meeting of the City Development Committee of 27th June 2011 wherein the Committee agreed to approve the above mentioned site planning brief and to refer it to this Committee as a relevant material planning consideration.

The Committee is asked to note the above.

**6 FORMER MENZIESHILL MULTIS - SITE PLANNING BRIEF (AN117-2011)**

Reference is made to Article IV of the minute of meeting of the City Development Committee of 27th June 2011 wherein the Committee agreed to approve the above mentioned site planning brief and to refer it to this Committee as a relevant material planning consideration.

The Committee is asked to note the above.

**7 APPEAL DECISIONS (AN124-2011)**

- (a) LOCATION: TAYMILLS, 19 BROWN STREET, DUNDEE  
PROPOSAL : LISTED BUILDING CONSENT FOR ALTERATIONS TO FORM 25 STUDENT STUDIO APARTMENTS

Reference is made to the decision of the Council on 21 January 2011 under powers delegated to the Director of City Development, to refuse listed building consent for the above proposal. The Council considered that proposals would adversely affect the historic character and architectural features of the A listed building thus failing to satisfy the requirements of Policy 59 (Alternative Uses of Listed Buildings) and Policy 60 (Alterations to Listed Buildings) of the Dundee Local Plan Review 2005 as well as the requirements of Section 14 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 as amended.

The decision was appealed by the applicant under the provisions of Section 18 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The appeal was determined by written representations and the decision was received by the Council on 5 July 2011. Copies of the Reporter's decision letter have already been circulated to Members by e-mail.

The Reporter ALLOWED the appeal and granted listed building consent subject to conditions.

In reaching his decision the Reporter considered that the conversion of the listed building could be appropriately managed so as to safeguard its special interest, particularly since its interior has already been compromised by recent alterations. He noted that Historic Scotland did not object to the proposals and that the development would bring both gains and loses in the visibility of historic features. He felt the new use would secure the future of the building and that provided they were carried out sensitively the works would have minimum impact on its historic character.

The appellants also lodged a claim for expenses against the Council arguing that it had been unreasonable in its consideration of the application. The Reporter concluded that the Council had behaved appropriately in its consideration of the application and the conduct of the appeal and declined to make an award of expenses.

(b) LOCATION: TAYMILLS, 19 BROWN STREET, DUNDEE  
PROPOSAL: CHANGE OF USE TO FORM 25 STUDENT STUDIO APARTMENTS

Reference is made to Article I(a) of the Minutes of the Development Management Committee of 17 January 2011 wherein the above proposal was refused planning permission because the Council considered that:

- 1 the development was contrary to Policy 9 of the Local Plan because the applicants had not justified the additional student accommodation on an unallocated site and had not provided a transport assessment;
- 2 the proposals would adversely affect the Category A listed building; and
- 3 the proposed apartments would be afforded a low level of environmental quality due to poor air quality and noise disturbance.

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 5 July 2011. Copies of the Reporter's decision letter have already been circulated to members by e-mail.

The Reporter ALLOWED the appeal and indicated that he was minded to grant planning permission subject to conditions and the conclusion of a legal agreement restricting the use of the apartments to students.

In reaching his decision the Reporter considered that the apartments were larger than most student apartments and were in accordance with Policy 9 of the Local Plan being close to both universities, of satisfactory design, compatible with existing uses and made adequate provision for car parking and secure bike storage.

Given the small number of units involved he did not consider that the proposal would lead to an oversupply of student accommodation in the city. He considered that the conversion of the listed building could be appropriately managed so as to safeguard its special interest, particularly since its interior has already been compromised by recent alterations.

Finally, he concluded that the provision of secondary glazing and a mechanical ventilation system would provide an adequate standard of amenity for residents. However, in order to accord with Policy 9 of the Local Plan he required the applicant to enter into a Section 75 obligation with the Council before granting permission.

The appellants also lodged a claim for expenses against the Council arguing that it had been unreasonable in its consideration of the application. The Reporter concluded that the Council had behaved appropriately in its consideration of the application and in the conduct of the appeal and declined to make an award of expenses.

(c) LOCATION: LAND SOUTH OF RIVERSIDE AVENUE, DUNDEE  
PROPOSAL: ERECTION OF 102 BEDROOM HOTEL

Reference is made to Article I(b) of the Minutes of the Development Management Committee of 13 December 2010 wherein the above proposal was refused planning permission because the Council considered that:

- 1 the proposal was contrary to the Structure Plan and the Local Plan because the applicants had not fully demonstrated that a sequential approach had been applied to the site selection and as a result the development would have an adverse impact on the city centre;
- 2 the use of the site for purposes outwith business and industry contravened the Local Plan; and
- 3 the proposal represented an overdevelopment of the site contrary to the Local Plan.

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 26 May 2011. 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 accepted that the existing consent for a 60 bedroom hotel on the site had to be taken into account but considered that the current proposals were of a significantly different scale and character and that such a proposal would make a considerable contribution to the vitality and viability of the city centre. He concluded that the applicants had not correctly applied the sequential test, that the proposal contravened the Development Plan, that the Central Waterfront improvements deserved to be supported and the policies protecting the city centre should not be undermined.

He did not accept that contravention of employment land policies was an issue due to the previous consent for a hotel on the site. He agreed with the Council's position that whilst the design of the hotel was innovative, the scale of the hotel was excessive for the site.

Having concluded that the proposal contravened the Development Plan he did not consider that the material considerations of the existing permission for a 60 bedroom hotel or the economic impacts of the proposed development were of sufficient strength to support the development. In any event he considered that the economic benefits would also flow from a city centre hotel which would have the added benefit of reinforcing the role of the city centre.

- (d) LOCATION: UNIT A1, KINGSWAY WEST RETAIL PARK  
PROPOSAL: CONSENT TO DISPLAY ADVERTISEMENT

Reference is made to the decision of the Council on 21 January 2011 under powers delegated to the Director of City Development, to refuse advertisement consent for the above proposal. The Council considered that the proposed advertisement would be detrimental to the visual amenity of the area detracting from the uniformity of the signage evident in the Retail Park and therefore contrary to Policy 63 (Advertising) of the Local Plan.

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 & Country Planning (Control of Advertisements) (Scotland) Regulations 1984 .

The appeal was determined by written representations and the decision was received by the Council on 9 June 2011. Copies of the Reporter's decision letter have already been circulated to Members by E Mail.

The Reporter ALLOWED the appeal and granted advertisement consent.

In reaching his decision the Reporter noted that the sign had already been erected. He felt that if the appellants erected their sign on the gantry above the entrance (as is the case with most other retail units) then either the two signs would be out of scale or if reduced in size would appear fussy and difficult to read. He felt that since the sign was on what would otherwise be a long blank fascia it would be in reasonable balance with the sign above the entrance and would not be incongruous in a retail park that contains a variety of different signage. He did not consider that approving the sign would set a precedent for other advertising in the retail park or that there was any public safety issue.

## **8 DELEGATED ITEMS (AN118-2011)**

It is reported for the information of the Committee that from 22nd May, 2011 to 21st July, 2011, 81 applications were decided under delegated powers. Eleven of these applications attracted objections and nine of these were approved and two were refused.

# Planning Applications

Reports by Director of City Development to the Development Management Committee

<b>Item No</b>	<b>Case No/Ward</b>	<b>Location</b>	<b>Page</b>
1	11/00232/FULL W08-The Ferry	Yew House, 30C Albany Road, Broughty Ferry, Dundee, DD5 1NT	1
2	11/00283/FULL W02-Lochee	11-24 Tayview Drive, Liff, Dundee, DD2 5PF	7

*Members may be aware that in making any determination under Planning Legislation, it shall be made in accordance with Structure and Local Plan Policies, unless other material planning considerations indicate otherwise. NB Background papers relating to these reports comprise letters of objection, correspondence with the applicants and/or their agents, comments from consultees and the Local Plans and other policy documents referred to.*

**KEY INFORMATION**

Ward The Ferry

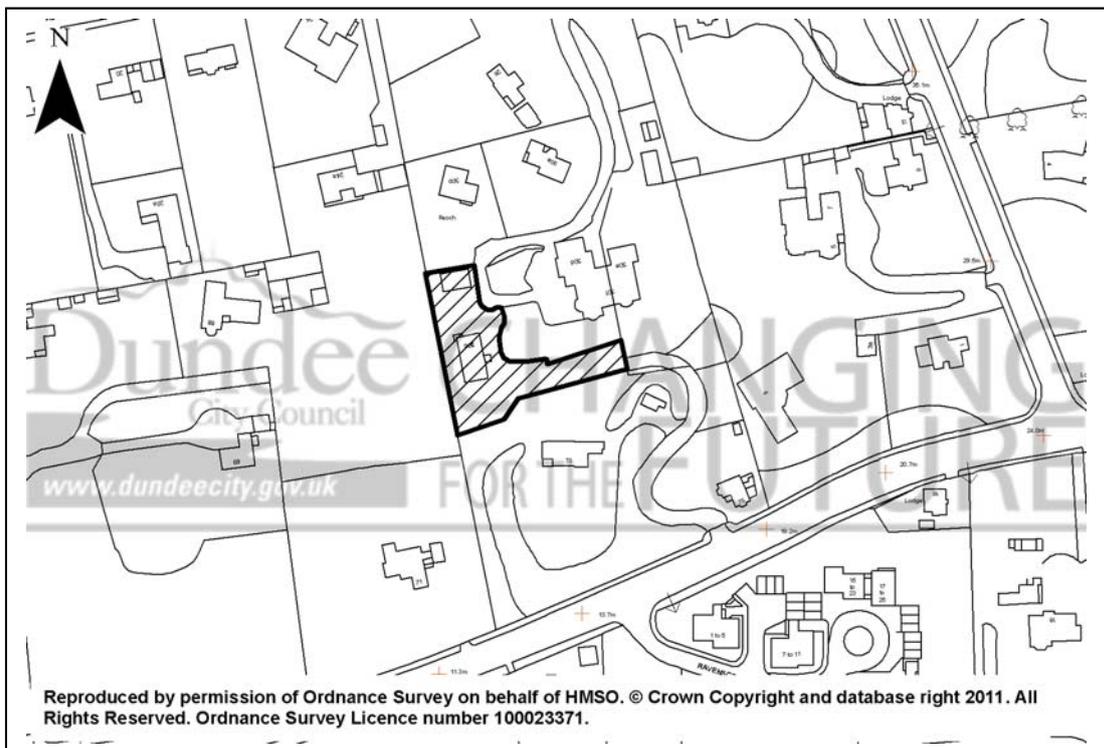
**Proposal**

Proposed carport and garage roof extension with external timber stair access

**Address**Yew House  
30C Albany Road  
Broughty Ferry  
Dundee  
DD5 1NT**Applicant**Mr Robin Lamb  
Yew House  
30C Albany Road  
Broughty Ferry  
Dundee  
DD5 1NT**Agent**Outline CAD (James Smyth)  
Flat 8  
6 Hazel Drive  
Dundee  
DD2 1QQ

Registered 7 June 2011

Case Officer Paul Macari



## Changes Proposed to Approved Garage Extension at Albany Road

The proposed carport and garage roof extension with external timber stair access is **RECOMMENDED FOR REFUSAL**. Report by Director of City Development.

**RECOMMENDATION**

The proposals fail to satisfy the requirements of Policies 14, 55 and 61 of the Dundee Local Plan Review 2005. The views of the Objectors are supported. There are no other material considerations that would justify laying aside the provisions of the Development Plan to grant planning permission. Accordingly the application is recommended for **REFUSAL**.

**SUMMARY OF REPORT**

- This application seeks planning permission for the erection of a car port and roof extension with external stair to the garage at Yew House 30C Albany Road, Broughty Ferry.
- This application has been submitted in response to concerns raised by neighbouring residents and the Council that the original garage extension approved by planning application ref: 10/00370/FULL was not built in accordance with the approved plans.
- Policy 14 (Alterations and Extensions to Houses), Policy 55 (Urban Design) and Policy 61 (Development in Conservation Areas) of the Dundee Local Plan Review 2005 are relevant to the proposed development.
- 6 letters of objection have been received from neighbouring residents.
- The proposals fail to satisfy the requirements of Policy 14 (Alterations and Extensions to Houses), Policy 55 (Urban Design) and Policy 61 (Development in Conservation Areas) of the Dundee Local Plan Review 2005.

## DESCRIPTION OF PROPOSAL

This application seeks planning permission to vary planning application ref: 10/00370/FULL for the erection of a car port and retrospective planning permission for the erection of a roof extension with external stair to the garage at Yew House 30C Albany Road, Broughty Ferry.

The original garage extension approved by planning application ref: 10/00370/FULL was not built in accordance with the approved plans. Given the differences between planning application ref: 10/00370/FULL and the extension as built the Council concluded that the changes to planning application ref: 10/00370/FULL were material and therefore could not be considered as a non-material variation under Section 64 of the Town and Country Planning (Scotland) Act 1997 as amended.

As well as applying for planning permission for the garage extension as built, the applicant also proposes to erect a car port on the southern elevation of the garage and an external stair and elevated platform on the western elevation of the garage.

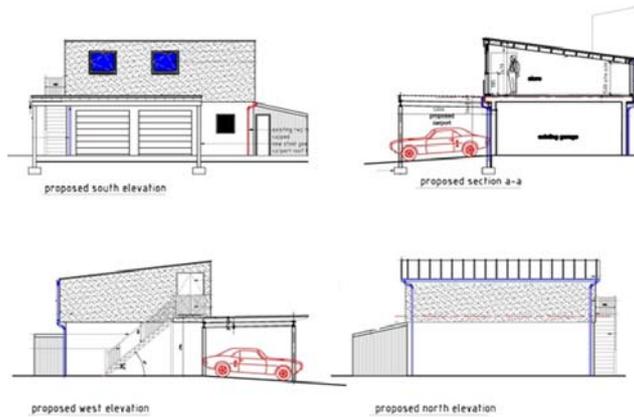
The purpose of the roof extension is to provide first floor storage accommodation and a workshop for the applicant's motorcycles. Access to the 1st floor storage area of the garage shall be taken from the proposed external timber stair and existing door on the western elevation of the building. The platform at the top of the stair shall have a portable hoist attached to allow motorbikes to be stored on the first floor of the garage.

The newly formed door opening at 1st floor level on the western elevation of the garage extension shall be made out of timber. The recently fitted windows in the south elevation of the garage extension match the window style in the existing house.

The car port shall project from the southern elevation of the garage and shall be supported by steel columns. The car port shall have dimensions 5m x 8m.

The garage extension has a sloping roof design with the roofline of the

southern elevation of the building being no less than 2.69m above the roof of the original garage and the roofline of the northern elevation being no less than 1.9m above the roof of the original garage. The garage extension shall be finished in materials matching the existing house with the walls



finished in white render and the roof in a single-ply membrane.

In accordance with the Council's scheme of delegation this application is being reported to the Development Management Committee at the request of the Director of City Development.

## SITE DESCRIPTION

The application site is located between Albany Road, Fairfield Road and Dundee Road within the garden grounds of the B listed sub-divided Victorian villa Balnacraig.

Several houses have been built in the garden grounds of Balnacraig each with very generous plots. Each of the houses is concealed from public view by dense woodland.

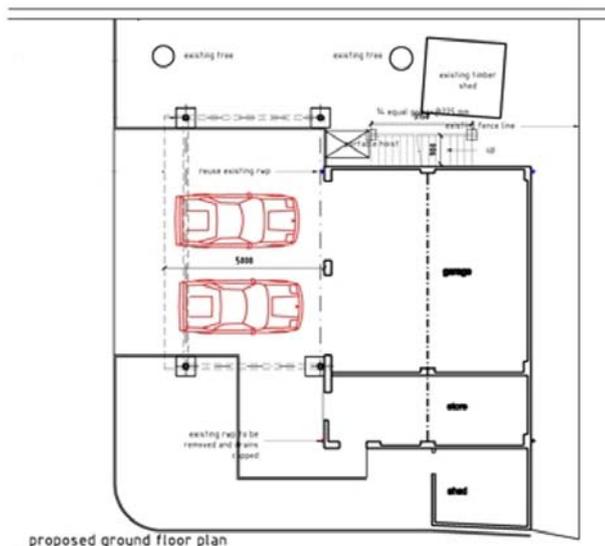
The application site is accessed from Albany Road by a private access road.

The application site comprises a 2 storey flat roofed contemporary dwelling with detached garage of a similar design. The existing house has white smooth rendered walls with large areas of glazing on each of the elevations. The site benefits from extensive south facing side and rear garden grounds. The principal elevation of the house is east facing.

There is a large driveway and area of hard standing between the existing house and garage where the access road terminates.

The application site is bound by timber fencing to the east and north as well as mature shrubbery and trees. To the west the site is delineated by a 2m high stone built wall and mature trees. To the south the site slopes considerably and is terraced with banks of trees and shrubs separating the curtilage of the existing house at 30C Albany Road from the neighbouring house at 75 Dundee Road.

The extensions to the existing house and garage approved by planning application ref: 10/00370/FULL are partially complete.



## POLICY BACKGROUND

### Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

### Dundee Local Plan 2005

The following policies are of relevance:

Policy 14: Alterations and Extensions to Houses - proposals to alter or extend existing dwellinghouses will be only be permitted where:

- a there is no adverse impact on the appearance of

prominent elevations of the house; and

- b there is no significant loss of sunlight, daylight or privacy to the occupants of neighbouring properties; and
- c more than 50% of the original useable garden area will be retained; and
- d the design and materials respect the character of the existing building.

Policy 55: Urban Design - for all new developments the emphasis will be on design quality and the City Council will seek the creation of new public places and points of interest which incorporate architectural and landscape features and reflect and enhance historic street layouts, significant views and vistas. All development should respect the setting of listed buildings.

The City Council require the use of Design Statements for planning applications or listed building applications for new buildings or extensions to existing buildings on significant sites. All development will, in its design and layout, be expected to contribute to an environment which is safe and accessible to all.

Policy 61: Development In Conservation Areas - within Conservation Areas all development proposals will be expected to preserve or enhance the character of the surrounding area. This will require the retention of all features which contribute to the character and appearance including unlisted buildings of townscape interest, trees and landscape features and the historic pattern of streets and spaces, as identified in the Conservation Area management plans to be advanced in the near future.

### Scottish Planning Policies, Planning Advice Notes and Circulars

There are no statements of Government policy relevant to the determination of this application.

### Non Statutory Statements of Council Policy

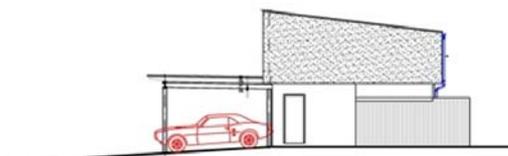
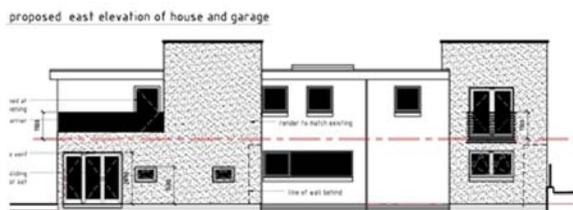
There are no non statutory Council policies relevant to the determination of this application

### SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

### SITE HISTORY

Planning application ref: 10/00370/FULL was granted planning permission for the erection of two, 2 storey extensions to the eastern and northern elevations of the original house and the erection of a roof extension to the garage at Yew House, 30C Albany Road, Broughty Ferry.



It was brought to the Council's attention during construction that the scale and massing of the garage extension was not in accordance with the approved plans. Upon further investigation it became apparent that an administrative error had occurred when planning application ref: 10/00370/FULL was being registered and no neighbouring properties were notified of the proposed development although the application was advertised in the local press as development affecting a conservation area.

Site visits carried out by the Council's planning officers and enforcement officers confirmed that the garage extension had not been built in accordance with plans approved by planning application ref: 10/00370/FULL. The main

differences were that the roof line of northern elevation of the garage extension rose to a height 1.9m above the roof line of the original garage instead of only 1.2m. In addition a large doorway had been created on the western elevation of the garage and the fenestration of the southern elevation of the garage had been altered to form 2 window openings instead of floor to ceiling French doors and a large horizontal window.

The applicant was advised that the changes to the development approved by planning application ref: 10/00370/FULL were material and could not be incorporated into planning application ref: 10/00370/FULL. The current proposals that are the subject of this report are representative of what has been built on site with the addition of an external stair on the western elevation of the garage to provide access to the 1st floor storage area and a car port.

Should members be minded to refuse this planning application, the applicant shall still have planning permission to build the roof extension to the garage as approved by planning application ref: 10/00370/FULL.

### PUBLIC PARTICIPATION

The Council has followed the statutory neighbour notification procedure outlined by the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008. This application has also been advertised in the local press as development affecting a conservation area. 6 letters of objection have been received from neighbouring residents concerned about:

- impact on the adjacent B listed building;
- impact on the West Ferry Conservation Area;
- insensitive design;
- impact upon privacy;
- noise disturbance from repair of motorcycles in garage;
- overshadowing of neighbouring properties;
- overdevelopment;

- impact on property values; and
- failure of the Council to notify neighbours of planning application ref: 10/00370/FULL.

It is intended to comment on the concerns of the objectors in the Observations section of the report.

## CONSULTATIONS

No adverse comments were received from consultees.

## OBSERVATIONS

Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance the development plan unless other material considerations indicate otherwise.

### The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

There is a history in Dundee of domestic properties being altered and extended to meet the changing demands and aspirations of householders. Whilst extensions are a sign of a stable community in which people wish to remain, it is the aim of Policy 14 (Alterations and Extensions to Houses) to assess the impact of extensions and alterations to the host property, neighbouring properties and the surrounding area.

Criteria (a) of Policy 14, requires alterations and extensions to properties not to adversely affect the appearance of prominent elevations of the existing house.

The extension to the garage is in keeping with the contemporary design of the existing house and is to be finished in a white render matching the existing building. In this instance the extension as built will not detract from the appearance of prominent elevations of the existing house. However, the proposed car port and external stair in combination with the increased height of the garage roof shall significantly increase the scale and massing of the garage to the detriment of visual amenity. The resulting garage shall have the appearance of a modern industrial building and shall dominate views of the site when viewed from neighbouring properties and is

therefore considered to be overdevelopment.

The proposals therefore fail to satisfy the requirements of Criteria (a) of Policy 14.

Criteria (b) of Policy 14 requires extensions to respect the level of amenity afforded to neighbouring properties by virtue of overlooking and overshadowing.

Given the height of the garage extension as built in comparison to the height of surrounding trees at 30C Albany Road, the extended garage shall not generate significant instances of overshadowing to the detriment of residential amenity.

In terms of overlooking, the elevated platform at the top of the access stair to the 1st floor of the garage shall generate intermittent instances of overlooking of the property to the immediate west of the application site. The elevated platform at the top of the access stair shall be positioned above the 2m high stone wall bounding the application site to the west. Although there are no windows within 18m of the elevated platform, the garden grounds to the south of the house at 24A Albany Road are secluded and completely private. The level of overlooking generated by the proposed development shall adversely affect the usability of the existing area of private garden ground afforded to the property at 24A Albany Road.

The proposals are therefore contrary to the requirements of Criteria (b) of Policy 14.

Criteria (c) of Policy 14 is supportive of alterations and extensions to properties where more than 50% of the original useable garden area will be retained. The garage extension shall not take up any of the original usable garden ground afforded to the property at 30C Albany Road. Therefore the requirements of Criteria (c) are not relevant to the proposed development.

Criteria (d) of Policy 14, requires the design and finishing materials to respect the character of the existing building and neighbouring properties.

The extension to the garage approved by planning application ref: 10/00370/FULL by virtue of design is considered to be complimentary to the appearance of the existing house at 30C Albany Road. However, the extension as built in combination with

the proposed car port and external access stair is considered to significantly increase the scale and massing of the building to the detriment of visual amenity. The resulting development shall dominate the application site and shall have an industrial appearance rather than that of a domestic garage. The proposals are therefore considered to be an overdevelopment of the application site.

The purpose of the proposed car port is to provide protection for the applicant's vehicles from the mature trees delineating the western boundary of the application site. Although the car port is of a contemporary design it does not compliment the appearance of the extended garage or house. This is because the excessive projection and area of the car port contributes to the industrial appearance of the garage building.

The proposed timber access stair, elevated platform and 1st floor door on the western elevation of the garage extension shall generate intermittent issues of overlooking of the only private garden grounds afforded to the property at 24A Albany Road.

Together, the garage extension detailed on the proposed plans, the car port and the timber access stair, elevated platform and door in the western elevation of the garage extension adversely affect the appearance of the garage in relation to the existing house, the adjacent B listed building and surrounding properties.

The proposals fail to satisfy the requirements of Criteria (d) of Policy 14.

Therefore, the proposals are contrary to Policy 14 (Alterations and Extensions to Houses) of the Dundee Local Plan Review 2005.

Policy 55 (Urban Design) is supportive of proposals of a high quality design that respect the setting of listed buildings.

It is considered that for the reasons set out in the assessment of the proposals against Policy 14 above, the garage extension, car port, external stair and elevated platform are an overdevelopment of the application site. The increased prominence of the garage through the excessive scale and massing of the roof extension and car port, shall adversely impact on the

setting of the B listed building at Balnacraig 30D and 30E Albany Road.

The proposals are therefore contrary to the requirements of Policy 55 (Urban Design).

Policy 61 (Development in Conservation Areas) is supportive of proposals that aim to enhance or preserve the character of the surrounding area.

In the assessment of planning application ref: 10/00370/FULL it was considered that the design of the garage extension and two, 2 storey extensions to the house were in keeping with the design of the original building at 30C Albany Road and would not detract from the character of the surrounding area. However, even though the application site is not publicly visible from Dundee Road, Fairfield Road or Albany Road, the increased height of the garage roof in combination with the proposed car port, timber stair and elevated platform are considered to significantly increase the massing of the garage and its prominence in relation to surrounding properties. The proposals in their current form are considered to be an overdevelopment of the application site. In this instance the proposals are not considered to enhance or preserve the low density wooded environment of the West Ferry Conservation Area.

The proposals are therefore contrary to the requirements of Policy 61 (Development in Conservation Areas).

### **Statutory Duty**

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as amended.

Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 advises that in considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

It has been concluded in the assessment of the proposals against the requirements of the adopted Local Plan above that the garage extension, car port, external stair, elevated platform and changes to the fenestration do not enhance or preserve the setting of the

B listed building at Balnacraig, 30D and 30E Albany Road.

In accordance with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the Council is required to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

It has been concluded in the assessment of the proposals against the requirements of the adopted Local Plan above that the garage extension, car port, external stair and elevated platform do not enhance or preserve the character of the West Ferry Conservation Area. Therefore the proposals fail to satisfy the requirements of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

It is concluded from the foregoing that the proposal does not comply with the provisions of the development plan.

### **Other Material Considerations**

The other material considerations to be taken into account are as follows:

#### **Views of Objectors**

6 letters of objection have been received from neighbouring residents. The concerns raised relate to:

Impact on The Adjacent B Listed Building - this matter has been addressed in the assessment of the proposals against the requirements of the adopted Local Plan. It has been concluded that the proposals shall adversely impact upon the setting of the B listed building at Balnacraig, 30D and 30E Albany Road.

Impact on the West Ferry Conservation Area - this matter has been addressed in the assessment of the proposals against the requirements of the adopted Local Plan. It has been concluded that the proposals shall adversely impact on the character of the West Ferry Conservation Area.

Insensitive Design - the concerns of the objectors relating to the design of the garage extensions have been addressed in the assessment of the proposals against the requirements of the adopted Local Plan. It has been concluded that together the roof extension, car port, external stair and elevated platform shall adversely affect

the appearance of the garage in relation to the existing house at 30C Albany Road and neighbouring properties.

Impact upon privacy - the concerns of the objectors relating to the impact on privacy that the proposed development shall have on neighbouring properties has been addressed in the assessment of the proposals against the adopted Local Plan. It has been concluded that the elevated platform shall generate intermittent instances of overlooking of the private garden grounds of the property at 24A Albany Road. The proposed elevated platform shall therefore have an adverse impact on the level of residential amenity afforded to the property at 24A Albany Road by virtue of overlooking.

Noise Disturbance from Repair of Motorcycles in Garage - the storage and repair of motorcycles at a domestic scale does not require planning permission. Should excessive levels of noise disturbance arise from the repair of motorcycles in the garage such instances should be reported to Tayside Police or the Council's Environmental Health and Trading Standards Department.

Overshadowing of neighbouring properties - the concerns of the objectors relating to overshadowing of neighbouring properties have been discussed in the assessment of the proposals against the requirements of the adopted Local Plan. It has been concluded that the proposals shall not significantly overshadow neighbouring properties due to the extent of existing tree cover surrounding the application site.

Overdevelopment - the concerns of the objectors relating to the overdevelopment of the application site have been discussed in the assessment of the proposals against the adopted Local Plan. The proposals by virtue of scale and massing shall reduce the distance between the extended garage and existing house at 30C Albany Road as well as increase the prominence of the garage in relation to neighbouring properties. In this instance the proposals are considered to be an overdevelopment of the application site.

Some of the letters of objection received by the Council made reference to the extensions to the original house at 30C Albany Road approved by planning application ref: 10/00370/FULL and also raised

concerns that are not valid objections such as loss of property value and the failure of the Council to notify neighbours of planning application ref: 10/00370/FULL. These concerns have not been taken into account in the assessment of the current planning application but have been addressed in individual responses to the objectors by the Director of City Development.

The valid planning concerns of the objectors are supported.

It is concluded from the foregoing that the material considerations weigh against the proposed development and justify the refusal of planning permission in accordance with the provisions of the development plan.

It is therefore recommended that planning permission is refused.

## Design

The roof extension to the garage, erection of a car port, external stair, elevated platform and changes to the fenestration of the south elevation of the garage give the application site an overdeveloped appearance that detracts from the setting of the adjacent B listed building and low density suburban environment of the West Ferry Conservation Area. The proposals are therefore considered to be of an unsatisfactory design.

## CONCLUSION

The proposals fail to satisfy the requirements of Policies 14, 55 and 61 of the Dundee Local Plan Review 2005. The views of the Objectors are supported. There are no other material considerations that would justify laying aside the provisions of the Development Plan to grant planning permission. Accordingly it is recommended that planning permission is refused.

## RECOMMENDATION

### Recommendation

It is recommended that the application be REFUSED for the following reasons.

### Reasons

1 By virtue of scale and massing, the proposed car port and retrospective garage roof extension shall adversely affect the appearance of the garage

relative to the house at 30C Albany Road. The resulting development shall give the application site an overdeveloped appearance that shall adversely impact on the setting of the adjacent B listed building at Balnacraig, 30D and 30E Albany Road and the low density wooded environment of the West Ferry Conservation Area. The proposals are therefore contrary to the requirements of Policies 14, 55 and 61 of the Dundee Local Plan Review 2005. There are no material considerations that would justify laying aside the provisions of the Local Plan to grant planning permission.

- 2 The proposed elevated platform providing access from the external stair to the 1st floor storage space of the garage shall generate instances of intermittent overlooking of the private amenity space afforded to the property at 24A Albany Road to the detriment of residential amenity. Therefore the proposals are contrary to the requirements of Policy 14 of the Dundee Local Plan Review 2005. There are no material considerations that would justify laying aside the provisions of the Local Plan to grant planning permission.
- 3 By virtue of scale and massing, the proposed car port, external stair and retrospective garage roof extension shall adversely affect the appearance of the garage relative to the house at 30C Albany Road. The resulting development shall give the application site an overdeveloped appearance that shall adversely impact on the setting of the adjacent B listed building at Balnacraig, 30D and 30E Albany Road and the low density wooded environment of the West Ferry Conservation Area. The proposals therefore fail to satisfy the requirements of Sections 59 and 60 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

**KEY INFORMATION**

Ward Lochee

**Proposal**

Housing re-mix to existing development to erect 10 dwellings to North of Tayview Drive, Dundee comprising 5 house types

**Address**

11-24 Tayview Drive  
Liff  
Dundee

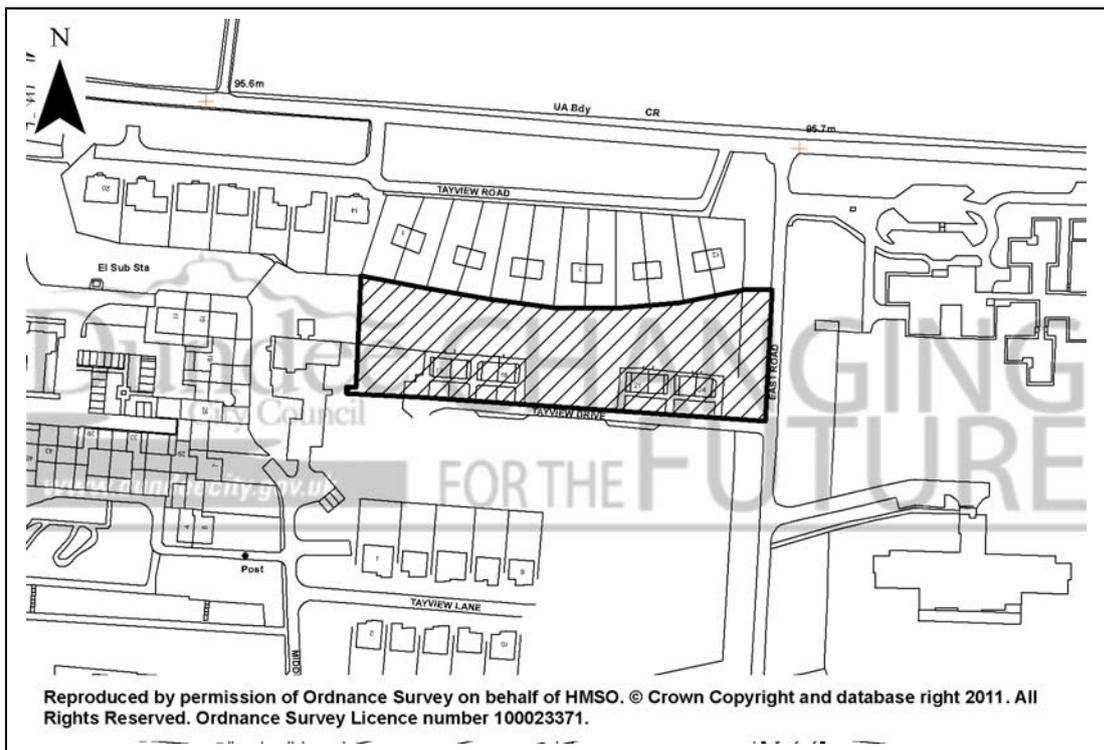
**Applicant**

Cala Homes East Ltd  
Anderson House  
25 Abercrombie Court  
Prospect Road  
Westhills  
Aberdeenshire  
AB32 6FE

**Agent**

Registered 20 June 2011

Case Officer Eve Young



## Amended Housing Layout at Liff Hospital Site

The housing re-mix to the existing development to erect 10 dwellings to North of Tayview Drive, Dundee comprising 5 house types is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of City Development.

**RECOMMENDATION**

The proposals comply with the relevant policies in the Dundee Local Plan Review 2005 and there are no material considerations which would support a contrary recommendation. The application is recommended for **APPROVAL** subject to conditions and to a Section 75 planning obligation.

**SUMMARY OF REPORT**

- Planning consent is sought for the erection of 10 detached houses on part of an existing new build housing site in the grounds of the former Liff Hospital. Part of the site has planning permission for the erection of 4 new detached houses between the existing 8 semi detached houses. These 8 houses are to be demolished and the site will be developed for a new mix of 10 houses with 5 different house types.
- The smaller units have 4 bedrooms, a study and a single garage whilst the largest have 5 bedrooms, a study and a double garage. All will be finished to match the existing Cala houses in smooth buff render with reconstituted slate roofs and white UPVC windows.
- The site is 0.76 hectares on the north side of the existing road in the centre of the larger former hospital grounds (approx 20 ha). The original listed buildings have been converted to residential use and new houses have been constructed in selected sites within the estate. No trees protected by the Tree Preservation Order are affected by this development.
- Dundee Local Plan Review 2005 - Policy 4: Design of New Housing and Policy 20: Funding of On and Off site Infrastructure Provision apply.
- The application was notified to 36 surrounding neighbours and was also advertised in the local press to notify owners of adjacent land. There were no responses from the public.
- The removal of the older houses and their replacement by a new mix of 10 detached houses in the same style as the remainder of the street will significantly improve the appearance of this part of the development.

## DESCRIPTION OF PROPOSAL

Planning consent is sought for the erection of 10 detached houses on part of an existing new build housing site in the grounds of the former Liff Hospital which has been partly redeveloped for residential use. Currently, part of the site has planning permission for the erection of 4 new detached houses between the existing 8 semi detached houses which formed part of the hospital complex. The 8 semi detached houses are to be demolished and the site will be developed for a new mix of 10 houses ie a net reduction of 2 units.

Five different house types are proposed providing between 156 and 234 square metres of floor space. The smaller units have 4 bedrooms, a study and a single garage whilst the largest have 5 bedrooms, a study and a double garage. All will be finished to match the existing Cala houses in smooth buff render with reconstituted slate roofs and white UPVC windows.

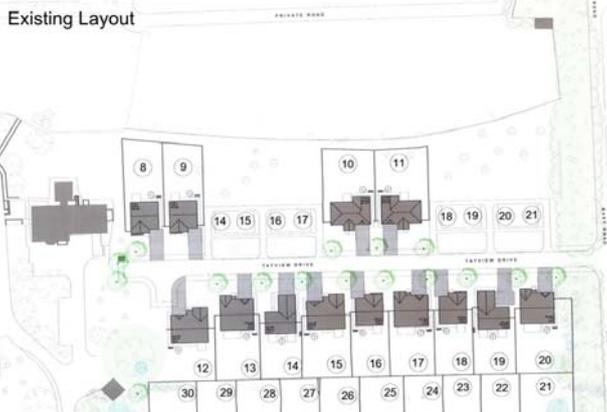
## SITE DESCRIPTION

The site is 0.76 hectares on the north side of the existing road in the centre of the larger former hospital grounds (approximately 20 ha). The grounds slope gently from north to south. The internal road and footpath network is private.

The mature trees form a high quality parkland setting for the buildings and the tree belts, which surround the site, screen it from long distance views. The trees in the grounds are the subject of Tree Preservation Order. The original listed buildings have been converted to residential use and new houses have been constructed in selected sites within the estate.

The Trust Offices which lie to the west of the site have remained in office use but have planning permission and Listed Building consent for residential use. To the north of the application site there is a row of private houses, fronting on to a private road with their rear gardens facing southwards over this site. To the south lie new houses recently constructed by this developer.

No trees protected by the Tree Preservation Order are affected by this development.



## POLICY BACKGROUND

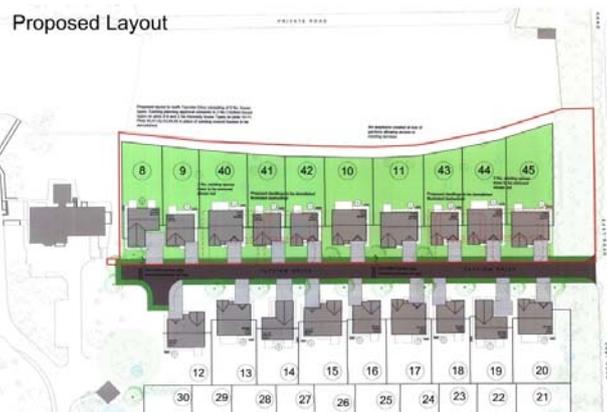
### Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

### Dundee Local Plan Review 2005

The following policies are of relevance:

Policy 4: Design of New Housing - "The design and layout of all new housing in Dundee should be of a high quality. As a basis for achieving this, new development will be required to conform to the Design Standards contained in Appendix 1 of this Local Plan unless:



- a the City Council, through either site allocation in the Local Plan or site planning briefs, considers it appropriate to vary the standards to reflect the constraints or opportunities offered by the development of a particular site; or
- b the proposal is within an established low density

residential area, in which case the density of the new development should reflect this and more generous external space standards will be required.

New housing development should also have regard to the principles of the City Council's Urban Design Guide.

In addition, new housing development should meet "Secured by Design" standards. New residential streets should be designed to promote low vehicle speeds of 20 m.p.h. or less. New housing should have regard to opportunities to maximise energy efficiency and

promote sustainable waste management."

Policy 20: Funding of On and Off Site Infrastructure Provision - "Within the context of Circular 12/1996 the City Council, where necessary and appropriate, will seek to secure developer contributions towards the cost of infrastructure provision both on and off site."

## Scottish Planning Policies, Planning Advice Notes and Circulars

There are no statements of Government policy relevant to the determination of this application.

## Non Statutory Statements of Council Policy

There are no non statutory Council policies relevant to the determination of this application.

## SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

## SITE HISTORY

04/00622/FUL Planning permission was granted for the redevelopment of the former Royal Dundee Liff Hospital for residential use. There were companion listed building applications for the conversion of each of the Listed Buildings. The conversion of 3 of the listed buildings has been completed.

07/00823/FUL Planning permission for 47 new build plots was granted by the Development Quality Committee on 17 December 2007 subject to a Section 75 legal agreement. This involved the change of house types on two sites within the estate, no additional houses were involved.

09/00438/FUL Planning permission was granted for change of house types on 47 plots plus 7 additional houses, total 54 plots on two sites. This permission was granted to Cala, the current applicant, who have re-commenced construction on the central site.

## **PUBLIC PARTICIPATION**

The application was notified to 36 surrounding neighbours and was also advertised in the local press to notify owners of adjacent land. There were no responses from the public.

## **CONSULTATIONS**

There were no adverse comments from consultees.

## **OBSERVATIONS**

In accordance with the provisions of Section 25 of the Act the Committee is required to consider:

- a whether the proposals are consistent with the provisions of the development plan; and if not
- b whether an exception to the provisions of the development plan is justified by other material considerations.

## **The Development Plan**

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

Policy 4 - Design of New Housing - Appendix 1 to Policy 4 details the standards to be met by new housing developments in the villages of the Western Gateway. The proposed revised house types exceed the minimum requirement in respect of the size of the houses, the parking and garaging provision, protection of privacy and the private usable garden ground.

It is considered that the proposals comply with the guidelines and therefore comply with Policy 4.

Policy 20 - Funding of On and Off Site Infrastructure Provision states that the City Council where necessary and appropriate will seek developer contributions towards infrastructure costs.

In this case, Council will seek, by means of a Planning Obligation, the payment of a specific, index linked sum per dwelling house completed towards education provision. This payment is the subject of a current legal agreement with this applicant on the existing planning permissions for development on these sites and will be the subject of future legal agreements with other housing developers in the Western Gateway.



It is considered that the proposal complies with Policy 20.

It is concluded from the foregoing that the proposal complies with the provisions of the development plan.

## **Other Material Considerations**

The other material considerations to be taken into account are as follows:

### **Planning Obligations**

Members are advised of a recent change in the legislation relevant to legal agreements.

The Planning etc (Scotland) Act 2006 amended the 1997 Act by replacing the existing Section 75 with a revised Section 75 and added new sections which deal with Planning Obligations.

Any planning obligation concluded after February 1st 2011 is subject to the provisions of this revised legislation which provides the

opportunity whereby a person against whom a planning obligation is enforceable may apply to the planning authority to modify or discharge the terms of the agreement and establishes a subsequent right of appeal to the Scottish Ministers where the planning authority refuse the application or fail to determine it within a set time period of 2 months.

There are no material considerations which would justify refusal of planning permission contrary to the provisions of the development plan. It is therefore recommended that planning permission be issued in terms of this report.

## **Design**

As noted above, the design and materials match the existing houses to the south which are currently being developed by this applicant. The removal of the 8 semi-detached houses and their replacement by 6 detached houses in the same style as the remainder of the street will significantly improve the appearance of this part of the development.

## **CONCLUSION**

Within the original hospital estate, there were 8 semi-detached houses which were retained and the new housing developments were to be built around them. This applicant is currently constructing large detached houses on this central site and has proposed the demolition of these older properties and their replacement by fewer new detached properties to match their on-going development. The previous total of 12 properties will be replaced by 10 properties of 5 different designs which will significantly improve the appearance of this part of the development. The proposals comply with the relevant policies in the Dundee Local Plan Review 2005 and there are no material considerations which would support a contrary recommendation.

## **RECOMMENDATION**

### **Recommendation 1**

This planning permission shall not be issued unless and until an obligation, under Section 75 of the Town and Country Planning (Scotland) Act 1997 as amended, between the Council and

all parties with appropriate interests in the land, has been recorded. This agreement will relate to developer contributions towards Education provision.

## **Recommendation 2**

It is recommended that consent be GRANTED subject to the following conditions:

- 1 The council shall be immediately notified in writing if any ground contamination is found during construction of the development, and thereafter a scheme to deal with the contamination shall be submitted to, and agreed in writing by, the Council Planning Authority. The scheme shall include a full timetable for the remediation measures proposed. Verification shall be provided by the applicant or his agent, on completion, that remediation has been undertaken in accordance with, and to the standard specified in the agreed remediation scheme.
- 2 Prior to the commencement of development, a comprehensive landscaping scheme for hard and soft landscaping shall be submitted for approval and if approved, the works shall be carried out only in accordance with such approved details.
- 3 The landscaping scheme as detailed in Condition 2 shall be fully implemented in accordance with the approved details within 6 months of the completion of the development. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted in terms of this condition.

## **Reasons**

- 1 In the interests of the amenities of the future occupants of the residential accommodation.
- 2 To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
- 3 To ensure a satisfactory standard of appearance of the development

in the interests of the visual amenities of the area.

**REPORT TO: CITY DEVELOPMENT COMMITTEE - 15 AUGUST 2011**

**REPORT ON: NEW LEGISLATION RELATING TO SECTION 75 PLANNING OBLIGATIONS AND THE IMPLICATIONS FOR UNDETERMINED APPLICATIONS WITH OUTSTANDING LEGAL AGREEMENTS**

**REPORT BY: DIRECTOR OF CITY DEVELOPMENT**

**REPORT NO: 353-2011**

## **1 PURPOSE OF REPORT**

- 1.1 This report outlines changes to the legislation governing planning agreements and obligations which make provision for applications to be made for obligations to be modified or discharged and also provide for a right of appeal to Scottish Ministers where a planning authority either refuses the application or fails to determine it within 2 months.
- 1.2 There are a number of planning applications which the Committee has resolved to approve subject to the conclusion of a Section 75 Agreement. This report seeks to ascertain the position of the Council on these applications in the light of the new legislative provisions.

## **2 RECOMMENDATION**

- 2.1 It is recommended that the Committee:
  - a authorises the Director of City Development in conjunction with the Depute Chief Executive (Support Services) to proceed to conclude all the outstanding Section 75 Agreements as Planning Obligations where the applicant is willing to do so, in the knowledge that at a future date the Obligation may be the subject of an application (and a subsequent appeal) seeking to modify or discharge it; and
  - b authorises the Director of City Development in cases where the applicant no longer wishes to pursue the application or enter into the Obligation to seek the withdrawal of the application or failing that to report the matter back to Committee seeking further instruction.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 There are no direct financial implications arising from the approval of this report.

## **4 BACKGROUND**

- 4.1 The Planning etc (Scotland) Act 2006 amended the 1997 Act by replacing the existing Section 75 with a revised Section 75 and adding new sections including Sections 75A, 75B and 75C which deal with Planning Obligations (previously known as planning agreements).
- 4.2 Section 75A establishes a formal process whereby a person against whom a planning obligation is enforceable can apply to the planning authority to have that obligation either modified or discharged. S75B provides for a right of appeal to Scottish Ministers where a planning authority either refuses the application or fails to determine it within 2 months.

- 4.3 The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 sets out the procedures for making applications under S75A.
- 4.4 Any planning obligation concluded after 1 February 2011 is subject to the provisions of S75 A and B. At present the Council has 18 applications with outstanding S75 Agreements (listed in Appendix 1 to this Report). When the Committee initially resolved to approve these applications subject to a Section 75 Agreement it did so in the knowledge that there were no provisions to formally apply to the Council to have them modified or discharged or any subsequent right of appeal to the Scottish Ministers. This is no longer the case.
- 4.5 This report seeks to ascertain the views of the Committee on these applications and whether it is content for the agreements to be concluded in circumstances where they can subsequently be challenged.
- 4.6 Circular 1/2010 - Planning Agreements sets out the criteria for seeking planning agreements (they must be necessary, serve a planning purpose, relate to the proposed development and be reasonable). The Council takes all these criteria into account in deciding to impose planning agreements and therefore should be in a good position to defend any subsequent applications or appeals seeking to modify or discharge agreements it concludes. In these circumstances it is considered that the new legislative provisions providing for a right to apply to modify or discharge agreements and to appeal any negative decision will not have a major impact in practical terms and it is therefore recommended that the Committee agrees to continue to conclude these outstanding agreements irrespective of the new legislative provisions.
- 4.7 Some of the applications with outstanding S75 Agreements have been with the Council for some time without any recent activity. In cases where the applicant no longer wishes to pursue the application or conclude the agreement it is proposed to seek the withdrawal of the application or failing that to report the matter back to Committee seeking further instruction.

## **5 POLICY IMPLICATIONS**

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

## **6 CONSULTATIONS**

- 6.1 The Chief Executive, Depute Chief Executive (Support Services) and Director of Finance have been consulted and are in agreement with the contents of this report.

## **7 BACKGROUND PAPERS**

- 7.1 The Planning etc (Scotland) Act 2006 (Sections 75, 75A, 75B and 75C - Planning Obligations).
- 7.2 The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010.

- 7.3 Circular 1/2010 - Planning Agreements and Annex to Circular 1/2010 - Planning Agreements: Planning Obligations and Good Neighbour Agreements.

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Mike Galloway  
Director of City Development

MPG/CW/KM

3 August 2011

Dundee City Council  
Tayside House  
Dundee

## APPENDIX A

## UNDETERMINED APPLICATIONS WITH OUTSTANDING LEGAL AGREEMENTS

Ref No	Location	Proposal	Date Applications Considered	Reason For Section 75
02/00552/COU	31 South Tay Street, Dundee, DD1 1NP	Change of use from offices to bar/restaurant with elevational alterations. Application on hold pending legal agreement	27 January 2003	Public right of passage through vennel
03/00618/FUL	Kingsway West, Dundee	Proposed development of 270 dwellings and a residential retirement home with associated landscaping, servicing and access	27 October 2003	Off-site roadworks Compensatory flood storage areas Links to future adjoining development sites Maintenance of open space Education and open space contributions
05/00026/FUL	Land to West of Ainslie Street, West Pitkerro Industrial Estate, Dundee	Erection of retail unit and warehouse	28 March 2005	Exclusion of Class 1 Retail Use at existing unit
06/00184/COU	20 Exchange Court, Exchange Street, Dundee, DD1 3DE	Change of use from vacant unit to 2 flats	22 May 2006	HMO prohibition
06/00313/FUL	Wallace Craigie Works, 2 Wallace Street, Dundee, DD4 6BB	Demolition of buildings, alterations to existing buildings and erection of 15 townhouses and 131 flats	26 March 2007	HMO prohibition
07/00036/FUL	South Gray Village, Dykes of Gray Road, Dundee	Erection of 230 dwellings with associated landscaping access and infrastructure	21 April 2008	Financial contributions for infrastructure education and open space Phasing of development and maintenance of open space and drainage areas

Ref No	Location	Proposal	Date Applications Considered	Reason For Section 75
07/00190/FUL	South Gray Village, Dykes of Gray Road, Dundee	Engineering works for surface water outfall	21 April 2008	Provision and maintenance of sustainable drainage
07/00219/COU	36-40 Seagate, Dundee, DD1 2EJ	Conversion of 1st, 2nd, 3rd and 4th floors to 24 flats and construction of new escape stair links and plant	16 June 2008	HMO prohibition
07/01126/COU	80 High Street, Dundee, DD1 1SD	Change of use to form 24 residential units	18 June 2007	HMO prohibition
08/00048/FUL	40 Perth Road, Dundee, DD1 4LN	Conversion of stores to two maisonette flats (lower ground floor rear)	17 March 2008	HMO prohibition
08/00046/FUL	40 Perth Road, Dundee, DD1 4LN	Conversion of 2 offices and stores to two maisonette flats (lower ground floor front)	17 March 2008	HMO prohibition
08/00171/COU	11, 12 & 13 Springfield, Dundee, DD1 4JE	Redevelopment to Provide 7 Flats with Internal and External Alterations	18 August 2008	HMO prohibition
08/00346/FUL	Land at 2A Glenagnes Street and 215/217, Blackness Road, Dundee	Demolition of dwelling houses and erection of 10 flats	17 November 2008	HMO prohibition
08/00669/FUL	281 Perth Road, Dundee, DD2 1JS	Conversion of 3 storey townhouse into 2 flats, velux windows and skylight added to roof. Single storey building at rear to be demolished and provision of secure and sheltered parking and entrance gate	17 November 2008	HMO prohibition

Ref No	Location	Proposal	Date Applications Considered	Reason For Section 75
08/00863/FUL	The Glass Pavilion, The Esplanade, Broughty Ferry, Dundee, DD5 2EP	Extension and refurbishment of existing restaurant and ground floor, erection of 2 new storeys of residential accommodation above, consisting of 4 holiday let apartments at first floor and 2 holiday let apartments at second floor level	16 February 2009	Restriction to holiday let apartments only
09/00154/FUL	Peterson House, 25 Roseangle, Dundee, DD1 4LS	Refurbishment of Former Student Residences into Residential Flats, partial demolition and the formation a car park	18 May 2009	HMO prohibition
10/00155/FULL	283 Perth Road, Dundee, DD2 1JS	Change of use from 1 house to 2 houses with alterations to provide parking, rooflights, windows and patio doors	21 June 2010	HMO prohibition
10/00298/FULM	Land to East of Nursing Home, Linlathen Road, Dundee	Erection of supported living community, comprising of 60 flats and communal facilities	18 October 2010	Restriction to older occupants. Contribution for footpath link Making adjoining building wind and watertight. Early delivery of project.

**REPORT TO: DEVELOPMENT MANAGEMENT COMMITTEE - 15 AUGUST 2011**

**REPORT ON: LARCH STREET (FORMERLY LARCHFIELD WORKS) -  
PURPORTED APPLICATION TO DISCHARGE SECTION 75  
AGREEMENT**

**REPORT BY: DIRECTOR OF CITY DEVELOPMENT**

**REPORT NO: 362-2011**

## **1 PURPOSE OF REPORT**

- 1.1 To inform the Committee of a purported application under S75A (2) of the Town and Country Planning (Scotland) Act 1997 to discharge the terms of a Section 75 Agreement relating to the prohibition of the use of new dwelling houses in Larch Street, Dundee as Houses in Multiple Occupation and to seek the views of Committee as to how the application should be considered.

## **2 RECOMMENDATION**

- 2.1 It is recommended that the Committee:
- a determines that this application is incompetent as it seeks to discharge an agreement concluded prior to 1 February 2011 using legislative provisions that do not have retrospective effect and remit the Director of City Development to challenge any purported appeal to Scottish Ministers by the applicant or the acceptance by Scottish Ministers of any such appeal as competent on this basis; and
  - b agrees that even if the application were competent it should be refused for the reasons set out in this report.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications associated with this report.

## **4 BACKGROUND**

- 4.1 This is the second attempt by the owners against whom this agreement is enforceable to seek to have its terms discharged. The previous attempt was a request that the Council agree voluntarily (not an application under the new statutory provisions) to waive and discharge the terms of a Section 75 Agreement relating to the prohibition of the use of 8 new houses in Larch Street, Dundee as Houses in Multiple Occupation.
- 4.2 In June 2006 the Development Management Committee resolved to approve outline planning application 06/00258/OUT for the erection of 8 new town houses on the site of the former Larchfield Works in Larch Street subject to the conclusion of a Section 75 Agreement prohibiting the use of the properties developed on the site as houses in multiple occupation (Article 1(g) of the minutes of the Development Quality Committee of 19 June 2006 refers). The agreement was concluded and the decision notice was issued on 24 August 2006.

- 4.3 Following completion of the development, the developers wrote to the Council on 11 May 2009 seeking to have the terms of the S75 Agreement waived and discharged. This request was first considered by the City Development Committee of 11 January 2010 when it was deferred to allow the Council to consult with local residents on the terms of the proposal and for the Committee to be advised of the extent of existing HMO's in the local area (Article III of the minutes of the City Development Committee of 11 January 2010 refers). The matter came before the Committee again in April 2010 when the developers in their deputation sought a further deferral and this was agreed to (Article 1 of the minutes of the City Development Committee of 26 April 2010 refers).
- 4.4 Finally in January 2011 the Development Management Committee considered the request to waive and discharge the agreement, heard a deputation in support of the request and its decision was to refuse the request (Article II of the minutes of the Development Management Committee of 17 January 2011 refers). At that time there were no provisions for formal applications to discharge S75 Agreements or any right of appeal if the application was refused.
- 4.5 On 1 February 2011 new legislative provisions came into force whereby the Planning etc (Scotland) Act 2006 amended the 1997 Act by replacing the existing Section 75 with a new Section 75 and added new sections including Sections 75A, 75B and 75C which deal with Planning Obligations (the replaced version of Section 75 provided for "Planning Agreements"). Section 75A establishes a formal process whereby a person against whom a planning obligation is enforceable can apply to the planning authority to have that obligation either modified or discharged. S75B provides for a right of appeal to Scottish Ministers where a planning authority either refuses the application or fails to determine it within 2 months.
- 4.6 Planning consultants acting on behalf of Zulco Limited as proprietors of the 8 houses submitted a formal application under S75A (2) of the Town and Country Planning (Scotland) Act 1997 on 15 June 2011 seeking to discharge the terms of an Agreement entered into under the replaced Section 75 and registered on 23 August 2006 relating to the prohibition of the use of new dwelling houses in Larch Street, Dundee as Houses in Multiple Occupation.
- 4.7 The applicants were aware from previous correspondence with the Council that the Council considered that the new legislation was not retrospectively applicable and therefore only related to S75 Planning Obligations concluded after 1 February 2011. However, they proceeded to make the application taking comfort from what they stated was Scottish Government advice that their application was competent. In fact the most recent advice the Council has received from the Scottish Government, whilst suggesting that the provisions are retrospective, concludes by stating "In order to remove any potential for doubt, we intend to lay before the Scottish Parliament an Order clarifying the position". This has not yet happened.
- 4.8 The Council has sought legal advice from a QC on the matter and is firmly of the opinion that this application is incompetent and the Committee is therefore advised to treat the application as incompetent.
- 4.9 However, it is likely that in response to this the applicants will seek to lodge an appeal to the Department of Planning and Environmental Appeals on the basis that the Council has failed to determine their application. It is therefore considered appropriate that given the uncertainties involved in how the Courts will interpret the

legislation and in order to protect its position, the Council gives its views on the merits of the case.

- 4.10 The case submitted on behalf of the applicants is the same as that put before the Committee in January this year (a detailed statement in support of their clients' application and a Financial Statement outlining the investment in the site and the economic impact of the Section 75 restrictions). However they have also included additional information to address the issue of precedent and the extent of the HMO survey area.
- 4.11 The consultants consider the following material considerations should be taken into account:
- a the applicants were aware of the S75 agreement when they purchased the site;
  - b the applicants have contributed to the regeneration of the area;
  - c the applicants have tried to secure family occupation of the site without success and the houses are under occupied;
  - d the main reason for the application is that the applicants are unable to sell or rent to full occupancy;
  - e the applicants do not intend to change the planning use of the properties to HMOs;
  - f local residents were previously surveyed at the request of elected Members and only 4 objections were received from 238 properties; and
  - g the area over which the concentration of HMOs was assessed ignores industrial and derelict buildings which should have been included in the survey and this would have reduced the concentration of HMOs in the area.
- 4.12 The submitted Financial Statement outlines the investment in the site and the expected returns which have been adversely affected by the economic downturn. The solicitors began marketing the properties for sale in December 2007 but withdrew them from the market in June 2010. There has been no demand or interest shown in the properties for normal residential use. The solicitors advise that while the state of the property market will be a factor in that, it is clear that the fact that the Section 75 Agreement exists is an off putting factor to potential purchasers who may be interested in the purchase of one of these properties with a view to occupation by 3 or more unconnected persons. They conclude by stating that Zulco Ltd still wishes to develop sites within the Dundee area but is restrained from carrying on its business because these units cannot be sold.
- 4.13 The further information submitted with the current application refers to the Councils concern that if it granted this application it would set a precedent for the submission of other similar requests. The applicants state that they are unaware of other similarly sized properties in this location with similar restrictions, state that no evidence has been put forward of any similar examples and finally that there is no concept of precedence in planning law and that this case should be considered on its individual merits.

- 4.14 They accept that based on the Census Output Area survey within which this site is located, the provision of HMO's within this development could result in the threshold for HMO's being exceeded further but they feel they are unfortunate in terms of the location of their site at the eastern edge of an area where there are many HMO's. They state that much of the accommodation in this area is being marketed as student housing and that Scottish Government Circular 8/2009 states that purpose built student accommodation should not be counted towards HMO concentration levels as they do not have the same impact on amenity as do high concentrations of HMO's within existing housing stock. Whilst accepting that the other properties in this area are not "purpose built student accommodation" they state that they effectively function as such. Finally they point out that they simply wish to remove the restriction on HMO's that require a licence and not those which require planning permission (up to 5 unrelated people can occupy a dwelling house without the requirement for a change of use planning application).
- 4.15 The Dundee Local Plan Review 2005 promotes new residential development in the Central Dundee Housing Investment Focus Area (in which the residential properties at Larch Street are located). However, many developments in this area were being purchased for multiple occupation purposes. In light of the proximity of higher education institutions, this was a particular issue in relation to the occupation of the units by students. Whilst such properties require to be licensed as HMOs, the houses can be occupied by up to 5 unrelated persons without requiring planning permission for use as an HMO.
- 4.16 The multiple occupation of new houses in the Central Dundee Housing Investment Focus Area made them unavailable to other sectors of the housing market. Furthermore, such occupation can increase pressure in residential areas for facilities such as parking, whilst the relatively "transient" nature of occupants does not contribute to a stable community. In order to achieve the objectives of the Central Dundee Housing Investment Focus Area and retain new residential development for occupation by families, it was considered appropriate that its occupation by 3 or more unrelated people be prevented. The Council has sought to secure this objective through the use of legal agreements as set out in the approved Supplementary Planning Guidance covering HMOs (approved November 2006 and reviewed February 2008). Agreements have been applied to all new residential development within the Central Dundee Housing Investment Focus Area with little to no resistance to them.
- 4.17 During consideration of the outline planning application for the 8 houses in question in 2006, it was considered appropriate by virtue of the size and type of the proposed houses and their proximity to the University of Dundee campus area, to restrict the use of the properties to mainstream housing only. This restriction was discussed in full and agreed with the applicants at that time and this acceptance was reported to the Members of the Council's Development Quality Committee that approved the application on 19 June 2006. It is considered that without this agreement being in place it is unlikely the outline application would have been offered the support of the Council. The applicants have now applied to discharge of this Agreement.
- 4.18 When the previous request to discharge this agreement was submitted the Committee asked that the views of the occupiers of the surrounding residential properties on this matter be ascertained. There is no provision for neighbour notification or publication of applications to discharge S75 Obligations under the new legislation. However given that the previous consultation with neighbours was

carried out in April 2010 it is reasonable to assume that this information remains valid but it should be stressed that these views were not submitted as a response to the current application.

- 4.19 The consultation that took place was in the predominantly residential area bounded by Horsewater Wynd in the east, Brook Street to the north, Edward Street to the west and Blackness Road to the south. This area accommodates 238 residential properties, 67 of which have active HMO Licenses (ie 28% of the residential properties). This suggests that the area is dominated by mainstream housing in accordance with the objectives of the Central Dundee Housing Investment Focus Area. This also clearly demonstrates that the current provision of HMO accommodation in this local area already significantly exceeds the recommended 12.5% maximum concentration of such accommodation within the total residential stock of any Census Output Area within the Central Dundee Housing Investment Area (Policy HMO2 of Supplementary Planning Guidance on Houses in Multiple Occupation 2006 (revised 2008) refers).
- 4.20 The Larch Street properties under consideration are located towards the east side of this identified consultation area. Each individual residential household was advised, in writing, of the request to use the properties in Larch Street as Houses in Multiple Occupation and 4 objections to the proposal were received from local residents on the grounds that:
- a the proposal is contrary to the provisions of the Development Plan and the Councils approved Supplementary Planning Guidance on Houses in Multiple Occupation;
  - b the use of the properties for multiple occupation purposes will further exacerbate disturbance and nuisance to the detriment of the residential amenities of the area;
  - c the proposal will have a significant detrimental impact upon traffic and car parking in the surrounding area;
  - d the proposal would set an undesirable precedent for other properties in the city that are similarly covered by a Section 75 Agreement relating to the prohibition of HMO occupancy; and
  - e that prospective purchasers of a number of the properties in question withdrew their interest due to the restrictions on occupancy imposed by the terms of the Section 75 Agreement.
- 4.21 In line with the views of Committee in January 2011 when it considered the previous request to discharge this legal agreement, the Council considers that:
- a the current economic circumstances and the financial circumstances of the applicants are not sufficient to justify the waiving of the S75 agreement;
  - b it is important to retain the mixed character of the area which includes both family properties and HMOs to encourage the future redevelopment of the remaining vacant and derelict buildings. The removal of the restrictions would tend to result in an area wholly given over to HMO use which would be detrimental to the area and to the amenities of occupants;

- c it is clear that the number of HMO's in this area significantly breaches the threshold. The applicant's argument that if the Census Output Area had been defined differently to include areas with non residential uses makes no sense as the threshold is calculated in relation to residential properties only. Arguments based on purpose built student accommodation are invalid as there is no such accommodation in this area; and
- d the application does not relate to the planning use but to the S75 restrictions which were the subject of an agreement between the parties which the applicants confirm they were aware of when they purchased the site.

## **5 CONCLUSION**

- 5.1 Taking into account all the relevant issues above, it is considered firstly that this application is incompetent as it seeks to discharge an agreement concluded prior to 1 February 2011 using legislative provisions that do not have retrospective effect and secondly that even if the application was competent the terms of the current Section 75 Agreement are compliant with the Council's stated aims in the control of houses of multiple occupation in this part of the city and are consistent with the Section 75 agreements which have been concluded with many other developers. There is concern that the use of these properties as additional houses in multiple occupation in this area would further erode the Council's objectives to retain new residential properties in the Dundee Housing Investment Focus Area for occupation by families. The justification submitted on behalf of the applicant is not supported for the reasons given in this report.

## **6 POLICY IMPLICATIONS**

- 6.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

## **7 CONSULTATIONS**

- 7.1 The Chief Executive, Depute Chief Executive (Support Services) and Director of Finance have been consulted and are in agreement with the contents of this report.

## **8 BACKGROUND PAPERS**

- 8.1 Article III of the minutes of the City Development Committee of 11 January 2010.
- 8.2 Article I of the minutes of the City Development Committee of 26 April 2010.
- 8.3 Article II of the minutes of the Development Management Committee of 17 January 2011.
- 8.4 Article 1(g) of the minutes of the Development Quality Committee of 19 June 2006.
- 8.5 Section 75 Agreement Minute of Agreement 2006.
- 8.6 Dundee Local Plan 2005.

- 8.7 Supplementary Planning Policy Guidance - Houses in Multiple Occupation (November 2006, reviewed February 2008).
- 8.8 The Planning etc (Scotland) Act 2006.

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MPG/CW/KM

28 July 2011

Dundee City Council  
Dundee House  
Dundee