

**KEY INFORMATION**

Ward The Ferry

**Proposal**

Proposed 2 storey dwelling in garden ground at 5 The Esplanade, Broughty Ferry

**Address**

Garden Ground at 5 The Esplanade, Broughty Ferry

**Applicant**

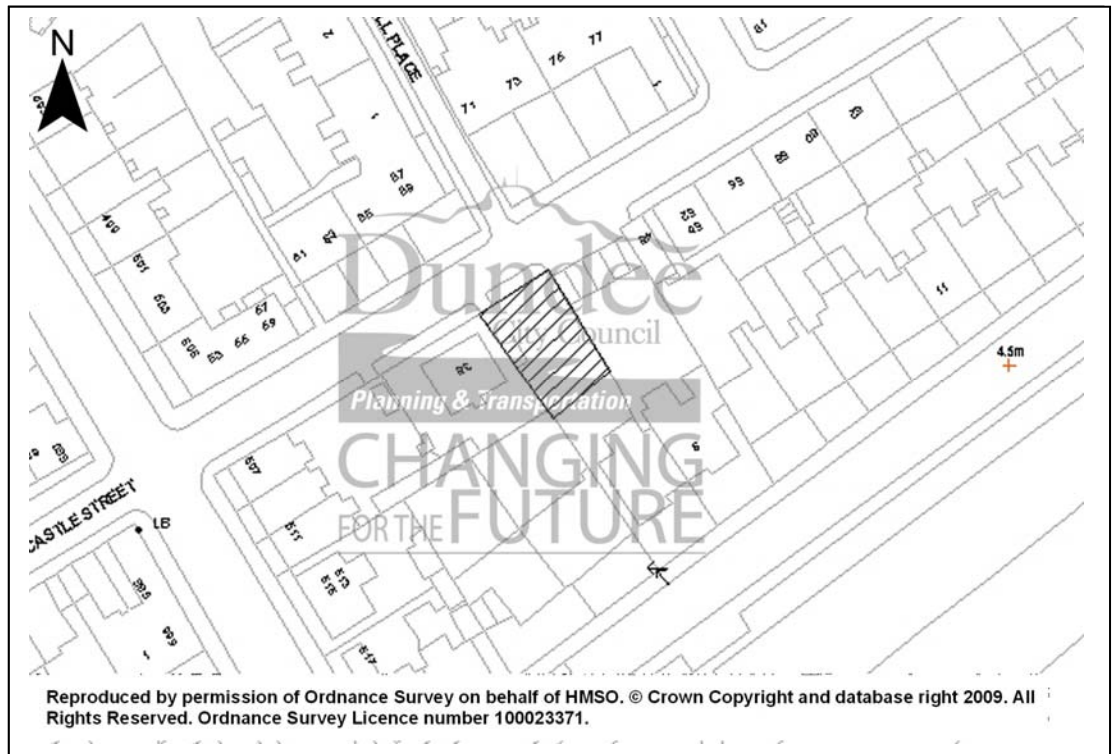
June & Jaclyn Duncan  
95 Camphill Road  
Broughty Ferry  
Dundee  
DD5 2NE

**Agent**

David S Dow DA ARIAS  
Lucas Dow Design Studios  
43 Craig Road  
Tayport  
DD6 9LD

Registered 27 Nov 2009

Case Officer B Knox



## Proposal for House in Garden in the Esplanade

A proposed 2 storey dwelling in garden ground is **RECOMMENDED FOR REFUSAL**. Report by Director of City Development.

**RECOMMENDATION**

The proposal fails to comply with section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Policies 4, 15, 55 and 61 of the Dundee Local Plan Review 2005. The objections are supported in these circumstances. Accordingly the application is recommended for **REFUSAL**.

**SUMMARY OF REPORT**

- The application proposes the erection of a detached dwelling in ground associated with 5 The Esplanade, Broughty Ferry.
- Policies 4, 15, 55 and 61 of the Dundee Local Plan Review 2005 are considered to be relevant to the determination of the application.
- It is considered that the proposal fails to comply with the above Policies and fails to discharge the statutory duty of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- In total there have been 33 objections which were received from 21 sources. A significant number of issues were raised including those relating to design, parking, overlooking and the impact upon the Conservation Area. Many of these concerns are supported.
- The application is therefore recommended for **REFUSAL**.

## DESCRIPTION OF PROPOSAL

The application proposes the erection of a detached dwelling in ground associated with 5 The Esplanade, Broughty Ferry. The dwelling would provide a living room, kitchen, dining room and further living area to the ground floor. The ground floor would also provide a utility room, wc and cloak room to the north side of the dwelling onto Castle Street. There would be substantial glazing to the ground floor living areas which face south with a single door opening to the garden area to the rear of the property.

The upper floor would provide three bedrooms. There would be one bedroom to the north of the property and the other two would face southwards. There would be one family bathroom and two of the bedrooms are to be provided with ensuite facilities. In addition to this, there is to be an internal terrace to the south elevation with a small balcony area which would be accessed from one of the rear bedrooms.

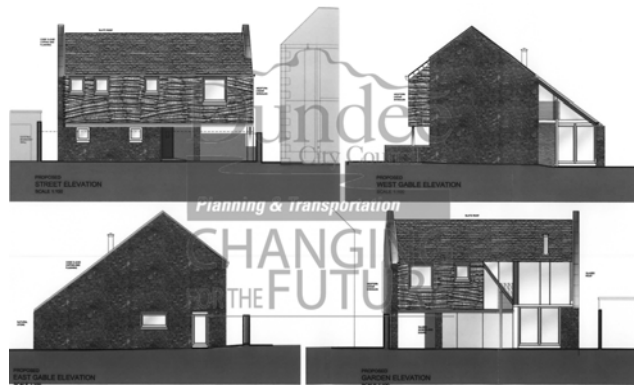
The ground floor is to extend approximately 9 metres in width across the site and there shall be a sliding gate to Castle Street provided vehicular access to the proposed dwelling. The sliding gate shall allow access to an undercroft area and as such the first floor shall extend to approximately 12 metres across the width of the site.

The proposed dwelling is to have a ground floor footprint of approximately 80m<sup>2</sup> and the first floor would have a slightly larger footprint of approximately 95m<sup>2</sup> due to the proposed undercroft area. The drawings submitted indicate that there would be the possibility of an access under the pend area for vehicles to the existing properties within 5 The Esplanade.

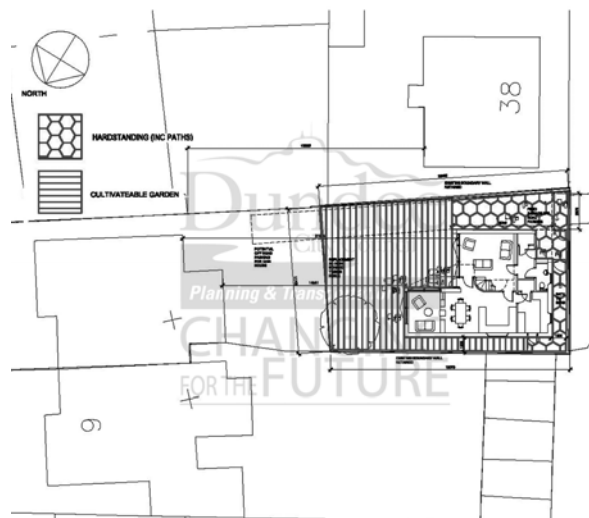
The applicant has also submitted a Design Statement to accompany the application which shall be discussed in relation to the Material Considerations section of the report below.

## SITE DESCRIPTION

The application site is to the rear of 5 Esplanade and is located on the south side of Castle Street. There is an existing 2.5 storey semi-detached Victorian villa at the south end of the site, which is subdivided into a number of bed sits. There is a fence at the rear of the application site which informally separates the site from the existing building but the planning unit for the existing dwelling includes the fenced off area.



There is a natural stone wall approximately 2 metres high to the front boundary of the site onto Castle Street which contributes to the character of the Broughty Ferry conservation area within which the application site is located. There is an existing opening in the wall which is wide enough to allow vehicular access and this is currently controlled by a metal gate. There is also boundary walling to the sides of the property in addition to fencing.



There are some evergreen trees within the grassed area of the site.

## 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 4: Design Of New Housing - this policy sets out requirements for the design and layout of all new housing, which should be of a high quality. As a basis for achieving this, new development at this location will be required to conform to the Design Standards for central Broughty Ferry contained in Appendix 1 of the Plan.

Policy 15: Development In Garden Ground - Policy 15 relates to garden ground development. The preamble to

this policy states that its aim is to protect the architectural appearance and landscape features of low density parts of the city.

Policy 55: Urban Design - this policy places an emphasis on good design quality.

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

PAN 84:Reducing Carbon Emissions in New Development

## Non Statutory Statements of Council Policy

The following policy statements are of relevance:

Dundee City Council Urban Design Guide.

## SUSTAINABILITY ISSUES

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

## SITE HISTORY

09/00219/FUL Erection of dwelling house in garden ground. This application was withdrawn prior to decision on 10 April 2009.

09/00220/COU Alterations to Existing house to form two flats from existing bed sits. This application was withdrawn prior to a decision on 9 April 2009.

## PUBLIC PARTICIPATION

The Council has carried out the statutory neighbour notification procedure as stipulated in Section 19 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.

A total of 33 objections were received from 21 sources and the following concerns were raised:

- the proposed house is out of character with the conservation area and fails to preserve or enhance the conservation area;
- a new house would be overdevelopment;
- it would face a Listed Building and detract from its setting;
- overlooking of nearby properties and gardens;
- overshadowing of nearby properties and gardens;
- it will lead to the undermining of nearby tree roots;
- it would impact upon the servicing of a nearby gas supply;
- development in this location will remove the possibility of parking for residents at the existing No 5

The Esplanade leading to further parking pressures in the area;

- the proposed dwelling is of a poor design and the materials are not appropriate;
- there would be an increase in noise levels with a dwelling in the location proposed;
- a two storey building seems excessive for the size of the site;
- the roof line of the proposed plans is not accurate;
- it is not a "gap site" as stated in Design Statement;
- it would have a detrimental impact upon the wildlife in the area;
- there is a lack of landscaping proposal details;
- there is a discrepancy between the materials mentioned in the design statement and shown on the drawings;
- it is unclear what the boundary treatments would be to enclose the garden area;
- the number of existing off road car parking spaces is not 1 as stated on application form;
- the dwelling would have a negative effect upon the existing property at 5 The Esplanade;
- there are no details to demonstrate the use of Passive Haus technology as claimed in the application;
- the balcony for the bedroom could be made into a living room without the need for planning permission. This would result in the proposal being contrary to Appendix 1 of the Dundee Local Plan Review 2005 which states that 'living room windows should not unacceptably overlook private gardens of houses';
- the cedar cladding would require ongoing maintenance and there are concerns that this would not be done;
- the fenestration when viewed from Castle Street is peculiar;
- failure to comply with Policy 15 and there are no material

considerations to justify approval contrary to this;

- the application fails to discharge Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act and Policy 61 in the Dundee Local Plan Review 2005; and
- the proposal fails to comply with Policy 55 of the Dundee Local Plan Review 2005.

Members will already have had access to the objection letters. The issues raised will be considered in the Observations below.

## CONSULTATIONS

The Head of Environmental Health and Trading Standards has advised that the property lies within a Smoke Control Area as designated under the Clean Air Act 1993. As such it has been requested that an informative be placed upon the grant of any permission to advise the applicants of this.

The Community Council have objected to the proposal in terms of the following reasons:

- the materials and design are inappropriate for the conservation area;
- the new house will incongruously face a terrace of listed houses and adversely affect their setting in a traditional landscape; and
- inadequate useable garden ground.

## OBSERVATIONS

### Statutory Requirements

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

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.

## The Development Plan

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

The proposal seeks planning permission for the erection of a detached house in the garden ground of a Victorian Villa within Central Broughty Ferry.

Policy 4 requires a minimum of two bedrooms. The proposed house has three bedrooms and so the proposal complies with this requirement. Whilst it is stated that this part of the City is particularly suited to the development of townhouses, other Policies of the Local Plan are of relevance and in these circumstances the site is located within a conservation area and so the character of the area must be respected. This issue will be addressed later in this section under Policy 61 of the Dundee Local Plan Review 2005.

One car parking space is required and space for a garage. As discussed, it is proposed that there would be a sliding gate at the side of the dwelling to provide vehicular access into the site. This will allow the possibility of providing two parking spaces for the proposed new dwelling. An additional drawing provided to show the extent of hard standing and cultivatable garden area indicates that the hard standing shall cover the area immediately to the front of the dwelling and the side pend shall extend to approximately 8 metres in length. The applicants agent was made aware that one of the implications of granting planning permission for a development on this site could be to remove the possibility of off street parking for 5 The Esplanade and that this is a material planning consideration to be taken into account as the determination of this application.

In terms of the distance between facing windows of habitable rooms, there is a distance of approximately 14.5 metres between the ground floor facing windows of the proposed dwelling and the existing dwellings. This is within the 18 metre distance as required by policy to ensure the privacy of existing dwellings and the application therefore fails to comply with this part of Policy 4. In addition, there is the potential for overlooking into neighbouring gardens from the glazed areas on the south

elevation, including the small balcony and terrace being proposed. Therefore the proposal does not comply with the overlooking criteria.

Policy 4 of the Dundee Local Plan Review also states that new housing should be of a high quality in terms of design and layout. New housing development should also have regard to the principles of the City Council's Urban Design Guide. It is intended to comment on the design of the proposal under the terms of Policies 15 (Development in Garden Ground) and Policy 61 (Development in Conservation Areas.)

It is concluded that the proposal does not comply with Policy 4 due to potential overlooking into neighbouring properties and gardens and poor design.

Due to the nature of the proposal Policy 15 is applicable. Throughout the City there are a number of areas characterised by villas set in large garden grounds. Pressure to develop new houses in the garden grounds of these areas threatens their whole character. Consequently, the aim of Policy 15 is to protect the architectural appearance and landscape features of low density parts of the City. It states that planning applications must contain sufficient detail to enable consideration under each criteria.

Criteria A requires the proposal to be of high quality design and use materials appropriate to its surroundings. In these circumstances, the surrounding properties are all Victorian style and are stone built with slate roofs. The use of natural stone and slate with lead flashing as shown on the submitted drawings is considered to be positive and these traditional materials are in keeping with the surrounding conservation area. However, the submitted Design Statement makes reference to 'guillotine cut masonry'. In the event of approval, the materials would require to be subject to a condition to agree an appropriate finishing material.

It is considered that the marriage of the old and new elements in the building confuse the design. The fenestration for the property is irregularly shaped and positioned, particularly to the Castle Street elevation and this is considered to have a negative disjointed effect upon the streetscape and surrounding conservation area. In addition, the overall visual scale of the

proposed building is dominant and the gable elevations are particularly bulky in appearance, bringing the proportions of the building into something which is quite alien to the surrounding area.

In addition, the proposed use of timber shingle cladding is considered to be inappropriate and introduces an alien material into the conservation area that has a strong sense of local distinctiveness and restricted use of materials. It is therefore considered that the proposed dwelling does not present a design solution appropriate to the site and context.

It is considered that the proposal therefore fails to comply with Part A of Policy 15.

In terms of part B of Policy 15, the total footprint of the proposed house does not exceed one and a half times the original house and the proposal complies with this criteria.

The proposal is considered to fail to comply with criteria C of Policy 15 which requires that the final proportion of ground covered by hard standings and buildings should not exceed 40% of the original house and garden. Calculations have shown that more than 40% of the entire site shall be taken up by buildings and hard standings and the proposals put forward would breach the required level by approximately 20 square metres. The applicant calculations provided in the submitted Design Statement do not match with the figures provided within the later submitted drawing showing cultivatable and hard standing areas.

It is considered that the prevailing densities in the area are respected and so the proposal complies with criteria D.

No new building is proposed in front of the main elevation of the original property at 5 The Esplanade. This is in accordance with criteria E and F.

No new breaches in boundary walls are proposed and so the proposal complies with criteria G.

No tree survey details have been submitted to accompany the application. However, the applicant has indicated that no trees are to be removed as a result of the dwelling. It is therefore considered to be acceptable in this regard.

No detailed landscaping proposals have been submitted at this stage and so Criteria I is not met.

It is considered that the proposal does not comply with criteria A, C, and I of Policy 15.

Policy 55 promotes good design and for the reasons set out in the assessment of the proposal against Policy 15(A) of the Plan it is considered that the design of the proposal is not acceptable.

The Dundee Local Plan Review 2005 states that within Conservation Areas all development proposals will be expected to preserve or enhance the character of the surrounding area. It is considered that the design, massing and language of the surrounding buildings and streetscape has not been taken into consideration through the design of the proposed house.

The house is styled with both traditional and modern detailing and is almost wholly glazed on the south elevation. Although a slate roof has been proposed there are limited design features that have been derived from the surrounding context. Furthermore, the fenestration pattern proposed, particularly to the north elevation onto Castle Street is irregularly sized and positioned. This is considered to have a detrimental effect upon the character and appearance of the conservation area and would result in an incongruous appearance to the main public elevation of the dwelling. The design of the building has not taken into account the residential amenity of neighbouring residents as there will be significant overlooking from the south elevation windows and balcony/terrace in particular.

In addition, the proposed use of timber shingle cladding is considered to be inappropriate and introduces an alien material into the conservation area which has a strong sense of local distinctiveness and restricted use of materials. It is therefore considered that the proposed dwelling does not present a design solution appropriate to the site and context.

It is concluded that the proposal would be detrimental to the character and appearance of the conservation area and would fail to preserve it, failing to meet the terms of Policy 61 of the Dundee Local Plan Review 2005.

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

The Statutory Requirements under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that the Council have special regard to any buildings or other land in a conservation area and special attention shall be paid to the desirability of preserving and enhancing the character and appearance of the area.

As discussed above, the design of the proposed dwelling is considered to be detrimental to the character and appearance of the surrounding conservation area. Therefore the proposal fails to discharge the statutory duties set out in Section 64 of the Planning Act 1997.

The applicant's agent was made aware of the policy concerns as discussed in this report and has indicated that they consider the proposal is in accordance with the above policies. This shall be discussed in further detail in the Material Considerations Section below.

## Other Material Considerations

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

### 1 Impact upon existing dwelling/Parking provision/garden provision.

The applicants have indicated on the planning application form that there is currently 1 off road parking space available. Upon visiting the site it was found that the vehicular access leads to a large area of hard standing capable of accommodating approximately three cars. The proposed layout of the proposal including the areas proposed to be finished in hard standing and other areas to be cultivatable, would mean that there would be no potential for off street parking for the existing properties within 5 The Esplanade. However, the large majority of properties in the nearby vicinity of the application site do not benefit from off street parking and it is therefore considered that whilst the loss of

parking for the existing 5 The Esplanade is regrettable, it is not of sufficient weight to warrant refusal of this application alone.

### 2 Loss of Privacy:

As discussed above, the proposal is in breach of the window to window distances as recommended within Appendix 1 of the Dundee Local Plan Review 2005. As also discussed, the extensive glazing to the rear elevation and the inclusion of a balcony and terrace area increases the impact that a new dwelling would have in this location in terms of privacy of existing nearby residential occupiers.

### 3 Views of the objectors:

- the proposed house is out of character with the conservation area and fails to preserve or enhance the conservation area;
- the proposed dwelling is of a poor design and the materials are not appropriate; and
- the fenestration when viewed from Castle Street is peculiar.

These issues have been discussed and discharged in the Observations section of the report above. The views of the objector are supported in this respect.

- A new house would be overdevelopment.

It is considered that the scale of the proposed dwelling is too large for the site in relation to parking and garden requirements and in terms of visual appearance. These issues have been discussed in the Observations Section above in relation to the requirements of the Dundee Local Plan Review 2005. The objectors concerns in this regard are therefore supported.

- It would face a Listed Building and detract from its setting

It is considered that the proposed property would have a detrimental effect upon the setting of the conservation area but it would not impact upon the setting of the nearest Listed Buildings.

- Overlooking of nearby properties and gardens; and
- the balcony for the bedroom could be made into a living room without the need for planning permission. This would result in the proposal being contrary to Appendix 1 of the Dundee Local Plan Review 2005 which states that 'living room windows should not unacceptably overlook private gardens of houses'.

The issue of privacy associated with this development has been discussed above in the Observations section. It was concluded that the proposal would be likely to result in the loss of privacy to the nearby existing residential occupiers to an unacceptable level.

- Overshadowing of nearby properties and gardens.

Due to the positioning of the dwelling, it is not considered that there will be significant overshadowing issues.

- It will lead to the undermining of nearby tree roots.

The application site is located within a conservation area and the applicant has indicated on the application form that no trees will be removed. Permission will be required from the Council if they wish to remove or cut back trees at any time in the future.

- Development in this location will remove the possibility of parking for residents at the existing No 5 The Esplanade leading to further parking pressures in the area.

This issue has been discussed in Point 1 of the Material Considerations Section above.

- It would impact upon the servicing of a nearby gas supply.

No issues have been raised by consultees.

- There would be an increase in noise levels with a dwelling in the location proposed.

It is not considered that an additional dwelling within this urban setting would result in significant noise issues and the concerns of the objectors cannot be supported in this regard.

- The building size seems excessive for the size of the site.

The building is of a substantial height and scale within what is considered to be a constrained site. The width of the frontage for the proposed dwelling would extend to approximately 12 metres and the total width of the application site at its widest point is approximately 13.5 metres. When compared with the existing adjacent dwelling at 38 Castle Street to the west of the site, which has a site width of approximately 18.5 metres and a frontage of approximately 10.5 metres, this suggests that the scale of the proposed dwelling is overly large.

- The roof line of the proposed plans is not accurate.

The submitted plans are too a recognised scale and do not appear to contain any inaccuracies.

- It is not a "gap site" as stated in Design Statement.

As discussed above in the Site Description section there is a fence at the rear of the application site which informally separates the site from the bed sits within the existing building but the

planning unit for the existing dwelling includes the fenced off area.

- It would have a detrimental impact upon the wildlife in the area

There have been no indications that there is a presence of any protected wildlife species habiting the site.

- There is a lack of landscaping proposal details; and
- it is unclear what the boundary treatments would be to enclose the garden area.

This issue has been discussed in relation to criteria I of Policy 15 of the Dundee Local Plan Review 2005. The plans have indicated in general terms that the property would be provided with a replacement 2 metre high stained timber fence to the rear boundary. The existing boundary walls to the other three sides are to be retained.

- There is a discrepancy between the materials mentioned in the design statement and shown on the drawings

As discussed above, the use of natural stone and slate with lead flashing as shown on the submitted drawings is considered to be positive and these traditional materials are in keeping with the surrounding conservation area. However, the submitted Design Statement makes reference to 'guillotine cut masonry'. In the event of approval, the materials would require to be subject to a condition to agree an appropriate finishing material.

- The number of existing off road car parking spaces is not 1 as stated on application form; and
- the dwelling would have a negative effect upon the

existing property at 5 The Esplanade.

These issues have been discussed as point 1 of the Material Considerations section of this report.

- There are no details to demonstrate the use of "Passive Haus" technology as claimed in the application.

The Council is supportive of such an approach which is considered to be consistent with the guidance contained within PAN 84. However, the applicant has not submitted any further details to support this.

- The cedar cladding would require ongoing maintenance and there are concerns that this would not be done.

The use of timber shingle has been discussed in the Observations Section of the report above. It is considered that the use of this particular finishing material would not be appropriate given the sensitive conservation area setting.

- Failure to comply with Policy 15 and there are no material considerations to justify approval contrary to this

This issue has been discussed and discharged in the Observations Section of the report above where it was concluded that the proposal fails to comply with all of the requirements of this policy.

- The application fails to discharge Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act and Policy 61 in the Dundee Local Plan Review 2005.

These issues were discussed and discharged in the Observations Section of the report above. It was concluded that the proposal fails to comply with Policy

61 of the Dundee Local Plan Review 2005 and fails to discharge the statutory duties set out in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act.

- 4 Applicants supporting information.

With regards to the window to window distances of habitable rooms the applicant has indicated in this regard that the proposal fails to meet this requirement 'only at ground floor level between the windows of the sun room and the window to the ground floor utility room in No 5. There is a 2 metre fence between. Neighbouring properties all breach this guidance'.

The window to window distance between the existing property and the proposed dwelling is approximately 14.5 metres. This has been considered and it is concluded that a property of a more suitable scale would avoid these window distances which may be likely to give rise to privacy issues. In addition to this, the nearest adjacent properties do not breach these distances as suggested by the applicant. For example, the adjacent dwelling is situated with a distance of approximately 19 metres between facing windows. There is no reason why a more suitable design could not fully comply with these requirements.

In relation to the percentage of hard standing and cultivatable garden ground, this issue has been fully discussed in relation to Part C of Policy 15 of the Observations Section above. It has been concluded that the proposal fails to satisfy this part of Policy 15 for the reasons as set out in the Observations Section above.

The applicants have also indicated that a recently approved application under delegated powers (09/00696/ful) raises similar issues and therefore the current application should be treated in the same light.

Each case must be assessed on its own merit and clearly every site presents different considerations.

The current application site is considered to be constrained by the proximity of existing dwellings and the location within the street and surrounding conservation area. The application cited by the applicant was in compliance with the Policies of the Development Plan. It is therefore not considered to offer a precedent in relation to the current application.

It is concluded from the foregoing that insufficient weight can be accorded to any of the material considerations such as to justify the grant of planning permission contrary to the provisions of the development plan. It is therefore recommended that planning permission be refused with conditions.

## Design

As discussed in detail above, it is considered that the design of the house is detrimental to the character and appearance of the surrounding properties in this conservation area. The proposed house will appear "alien" in form to its surroundings.

## CONCLUSION

The proposed development is considered to contravene Policies 4, 15, 55 and 61 of the Dundee Local Plan Review 2005 and fails to discharge the statutory duties set out in Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act. A number of the grounds of objection are supported in these circumstances. There are no material considerations that would justify approval of the application.

## RECOMMENDATION

It is recommended that consent be REFUSED for the following reasons:

## Reasons

- 1 The proposal is contrary to Policy 4 of the Dundee Local Plan Review 2005 due to potential overlooking and loss of privacy for neighbouring residents due to there being less than 18m between facing windows of habitable rooms. There are no material considerations that would justify approval contrary to the provisions of the development plan.

- 2 The proposal is contrary to criteria a, c and i of Policy 15 of the Dundee Local Plan Review 2005 as the design and materials of the proposed house do not respect the surrounding buildings; the final proportion of ground covered by hardstandings amounts to more than 40% of the original house and garden and no landscaping details were provided with the proposal. There are no material considerations that would justify approval contrary to the provisions of the development plan.
- 3 The proposal is contrary to Policy 61 of the Dundee Local Plan Review 2005 as the design, scale and massing of the proposed dwelling does not preserve or enhance the character of the surrounding area. There are no material considerations that would justify approval contrary to the provisions of the development plan.
- 4 The proposal is contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as the proposed house does not blend in with surrounding properties and will have an adverse impact on the character of the conservation area.
- 5 The proposal is contrary to Policy 55 of the Dundee Local Plan Review 2005 as the design quality is not of the standard sought for the area.