

**KEY INFORMATION****Ward** Lochee**Proposal**

Application under Section 42 of the Town & Country Planning (Scotland) Act 1997 as amended to vary Condition 1 of 08/00124/FUL and extend the period to 30 June 2012.

**Address**

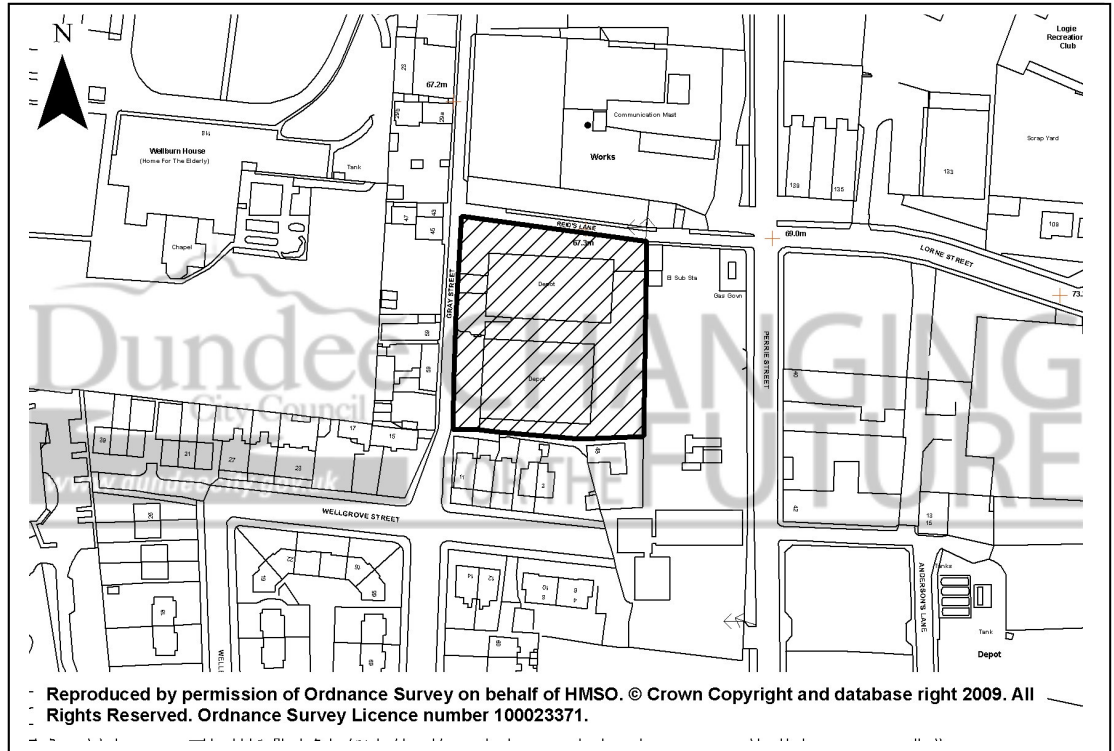
44 Gray Street  
Dundee DD2 2QU

**Applicant**

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**Agent**

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**Registered** 8 March 2010**Case Officer** Eve Jones

# Extension Sought to Consent for Housing Development in Gray Street

An application under Section 42 of the Town & Country Planning (Scotland) Act 1997 as amended to vary Condition 1 of 08/00124/FUL and extend the period to 30 June 2012 is **RECOMMENDED FOR REFUSAL**. Report by Director of City Development.

**RECOMMENDATION**

The development was approved subject to a time limit for the commencement of development within two years in order to ensure that the supply of housing land is managed and that demand is focused on areas that will benefit most, in strategic terms, from new development. Progress has been slow in addressing the conditions required to be complied with prior to the commencement of development, funding from a housing association has not materialised and it is considered that this site is unlikely to be brought forward for development in the near future. Accordingly the application is recommended for **REFUSAL**.

**SUMMARY OF REPORT**

- Planning permission is sought, under Section 42 of the Town and Country Planning (Scotland) Act as amended, to modify a condition attached to a previous planning permission which would extend the two year time period for the commencement of development.
- The applicant has requested an extension of a further two years to allow current negotiations with a developer to be concluded. As the conditions were imposed by the Committee, having granted planning permission contrary to the recommendation of the then Director of Planning and Transportation, this application requires to be referred back to the Committee for determination under the terms of the approved Scheme of Delegation.
- The current restrictive condition was imposed to ensure that this development, which is contrary to several policies in the Dundee Local Plan Review 2005, is brought forward at an early date in order to ensure that the supply of housing land is managed and that demand is focused on areas that will benefit most, in strategic terms, from new development. The development is contrary to several policies in the Dundee Local Plan Review 2005 and does not comply with the approved Lochee Physical Regeneration Framework.
- There was no progress prior to April 2010 to address the other planning conditions which are fundamental to the development of this site for residential use and most remain undischarged, funding from a housing association has not materialised and it is considered that this site is unlikely to be brought forward for development in the near future.
- This application was deferred by the April Development Quality Committee to allow the applicants to bring forward documentary evidence of the claim made by their deputation at Committee that Hillcrest Housing Association had secured funding for this project in the current financial year. No such evidence has been submitted and instead the applicants have submitted a letter indicating that a private developer is in advanced negotiations to purchase the site from them.

## DESCRIPTION OF PROPOSAL

Planning permission is sought, under Section 42 of the Town and Country Planning (Scotland) Act as amended, to modify a condition attached to a previous planning permission which would extend the time period for the commencement of development. The application, for the erection of 18 x 2 storey, semi-detached dwellings and a new access road, was approved by the Development Quality Committee on 16 June 2008, application 08/00124/FUL refers. Condition 1 required the development to commence within two years of the date of the permission. The applicant has requested an extension of that time for a further two years to allow current negotiations with a developer to be concluded. As the conditions were imposed by the Committee, having granted planning permission contrary to the recommendation of the then Director of Planning and Transportation, any amendment to the condition requires to be referred back to the Committee for determination under the terms of the approved Scheme of Delegation.

This application was deferred by the April Development Quality Committee to allow the applicants to bring forward documentary evidence of the claim made by their deputation at Committee that Hillcrest Housing Association had secured funding for this project in the current financial year. No such evidence has been submitted and instead the applicants have submitted a letter indicating that a private developer is in advanced negotiations to purchase the site from them.

## SITE DESCRIPTION

The site lies on the east side of Gray Street, south of Reids Lane. It is currently occupied by two industrial buildings with concrete hardstanding yard to Gray Street. There are residential properties to the west and south and industrial properties to the north and east.

## 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 2: Housing Land Release



### 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

The following policy statements are of relevance:

The Lochee Physical Regeneration Framework was approved by the Planning and Transportation Committee on 10 December 2007 and

the Development Quality Committee on 4 December 2006 noted it as a material consideration in the determination of planning applications.

## SUSTAINABILITY ISSUES

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

## SITE HISTORY

05/00107/FUL - Erection of 20 houses, application withdrawn.

05/00428/FUL - Erection of 18 houses, refused by Development Quality Committee on 24 April 2006.

07/00694/FUL - Erection of 18 houses, withdrawn 25 January 2008.

08/00124/FUL - Erection of 18 houses approved subject to conditions, 16 June 2008.

## PUBLIC PARTICIPATION

Statutory Neighbour Notification is not required to be served for an application under Section 42 of the Act. The application was included in the Weekly List of applications but no representations have been received.

## CONSULTATIONS

There were no relevant consultations.

## OBSERVATIONS

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.

## The Development Plan

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

This planning application seeks to modify a condition attached to a previously approved planning application under Section 42 of the Act. As such, it is only the terms of the condition that are subject to

consideration in this report. No new issues or areas of concern in terms of development plan policies are raised.

## Other Material Considerations

The reason for the imposition of a condition allowing two years for development to commence, rather than the maximum statutory period of five years which was applicable at that time relates to Policy 2: Housing Land Release of the Dundee Local Plan Review 2005.

The policy outlines the criteria against which proposals for housing land release additional to the Dundee Local Plan 2005 allocations will be acceptable. The preamble to the policy states that where planning permission is granted outwith the Housing Investment Focus Areas, a condition may be imposed requiring that development commences within two years. Such a condition is considered to be appropriate to ensure that the supply of housing land is managed and that demand is focused on areas that will benefit most, in strategic terms, from new development.

The site is not allocated for residential development in the Dundee Local Plan Review 2005 and fails to meet Policy 4 Design of New Housing on several points. Policy 2 does not support such "windfall" sites unless they meet the criteria in other policies in the Plan. Therefore the proposed development fails to meet the identified criteria of Policy 2.

However Members were minded to approve the application in 2008 and, in accordance with the advice in Policy 2, a condition was imposed requiring the development to commence within two years.

The planning permission is also subject to a number of conditions which require details of drainage, potential ground contamination, design, materials and landscaping to be submitted and approved prior to the commencement of development. Condition 2 also requires the existing high stone boundary wall on the east boundary of the site to be raised in height by 1m, subject to the required statutory permissions, before any development is commenced. This is in order to address the existing problem of noise from the adjoining industrial yard.

Since April 2010 the applicants have been pursuing the discharge of the six conditions that must be resolved prior to the commencement of development. At the time of writing this report information relating to three of these conditions has been provided and two of the conditions have subsequently been discharged. As the planning consent is valid until 16 June 2010, the required details relating to the remaining conditions could be submitted and discharged whilst negotiations with any potential purchaser are being progressed and this would then allow limited preliminary development to commence on site within the time limit and keep the planning permission live.

However the delay in discharging these conditions in the two years since the planning permission was granted, the fact that condition 2 relating to noise protection from an adjoining site has not yet been discharged and finally that the potential purchasers of the site suggest that they intend to "commence full construction works within approximately 12 months" means that this site is unlikely to be brought forward for development in the near future. As such it fails to meet the justification for its approval under Policy 2.

The Lochee Physical Regeneration Framework was approved by the Planning and Transportation Committee on 10 December 2007 and the Development Quality Committee on 4 December 2006 noted it as a material consideration in the determination of planning applications. The need for additional sites for new family housing has been addressed in the Lochee Physical Regeneration Framework which identified 20 sites with development opportunities within the Lochee area in addition to the nearby Pitalpin Village redevelopment area which will provide potentially up to 100 units of various sizes and tenures. New development is currently underway at Pitalpin. The approved Lochee Physical Regeneration Framework is the appropriate method to identify new development sites to encourage the regeneration of Lochee and to protect the existing industrial areas which provide much needed local business and employment opportunities.

It is considered that the future use of this site should await the preparation of the Local Development Plan which

will replace the Dundee Local Plan Review. This will address the issue of appropriate land uses for the whole of the Lochee area as part of the statutory process and will include extensive public consultation.

## Justification for the Application

The agent has submitted a justification in support of the application as follows: "This is due to the economic recession which had affected the housing market and the applicant's ability to conclude negotiations with the Housing Association to develop the site. These negotiations are now almost complete." Subsequently, when the application was being considered by the Development Quality Committee at its April meeting, a deputation on behalf of the applicants stated that Hillcrest Housing Association had secured funding for this project in the current financial year.

The Committee deferred the application to allow the applicants to bring forward documentary evidence of that claim. No such evidence has been submitted and the Council has made its own checks with both housing associations referred to in the applicant's deputation and neither has included this development in their programme for the current financial year. Instead the applicants have submitted a letter indicating that a private developer is in advanced negotiations to purchase the site from them and hope to conclude imminently. The letter adds that it is "intended to immediately proceed with demolition works and thereafter commence full construction works within approximately 12 months".

Clearly the applicants have not been able to substantiate the claim made at the April Development Quality Committee meeting which resulted in the deferral of the application. Furthermore the letter from the potential purchasers simply indicates an intention, as opposed to a commitment, to purchase the site and start construction within 12 months. In these circumstances there is no certainty that the site will be brought forward for development in the near future and no overriding justification for extending the time period for implementing this consent.

**Design**

There are no design implications.

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**CONCLUSION**

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It is concluded that the development, which is contrary to several policies in the Dundee Local Plan Review 2005 and does not comply with the approved Lochee Physical Regeneration Framework, was approved under application reference 08/00124/FUL subject to a time limit for the commencement of development within two years in order to ensure that the supply of housing land is managed and that demand is focused on areas that will benefit most, in strategic terms, from new development. In the interim, progress has been slow in addressing the conditions required to be complied with prior to the commencement of development, funding from a housing association has not materialised and it is considered that this site is unlikely to be brought forward for development in the near future.

It is therefore recommended that planning permission be refused.

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**RECOMMENDATION**

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

- 1 The development, which is contrary to several policies in the Dundee Local Plan Review 2005 and does not comply with the approved Lochee Physical Regeneration Framework, was approved under application 08/00124/FUL subject to a time limit for the commencement of development within two years in order to ensure that the supply of housing land is managed and that demand is focused on areas that will benefit most, in strategic terms, from new development. In the interim, progress has been slow in addressing the conditions required to be complied with prior to the commencement of development, funding from a housing association has not materialised and it is considered that this site is unlikely to be brought forward for development in the near future.