

ABERDEEN CITY COUNCIL

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COMMITTEE	Development Management Sub-Committee	
DATE	13 June 2013	
LEAD HEAD OF SERVICE Margaret Bochel		DIRECTOR Gordon McIntosh
TITLE OF REPORT	Planning Digest	
REPORT NUMBER	EPI/13/107	

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1. PURPOSE OF REPORT

- 1.1 To advise Committee about recent appeal decisions, recent updates in Scottish Government Planning Advice and other aspects of the planning service.

2. RECOMMENDATION

- 2.1 To note the outcome of the appeal decisions.

3. FINANCIAL IMPLICATIONS

- 3.1 There will be financial implications arising from the appeal decisions - please see the section of the report entitled NOTICE OF AWARD OF EXPENSES AGAINST THE COUNCIL in respect of Broadford Works, Maberly Street.

4. OTHER IMPLICATIONS

- 4.1 The report is for information and does not have any implications for any legal, resource, personnel, property, equipment, sustainability and environmental, health and safety and/or policy implications and risks.

5. BACKGROUND/MAIN ISSUES

**APPEALS DISMISSED**

**RESTAURANT 21  
21-23 MARKET STREET, ABERDEEN**

The following appeal decision is in relation to an advert enforcement notice served by the Council in relation to unauthorised projecting signs at Restaurant 21, located on a listed building at 21-23 Market Street in the city centre. The Reporter dismissed the appeal and

upheld the enforcement notice, which remains to be complied with and may require direct action by the Council to secure removal of the offending signs, in the event that the owner does not remove the signs. The Reporter's decision is founded on the basis that this was not an appeal against the refusal of advertisement consent. It was not therefore appropriate to argue the merits of the signs and the appellant had not exercised their right to challenge the previous refusal. The decision letter is available at the following weblink :-

<http://www.dpea.scotland.gov.uk/Documents/qA344951/A5956368.pdf>

## **APPEAL UPHELD**

### **Broadford Works, Maberly Street**

**Proposed urban village (mixed development) including: - major restoration and conversion of important listed buildings formerly used as a textile mill; demolition of various industrial premises; construction of new-build developments comprising 517 flats (of which 175 are conversions); 4525 sq metres of non-residential uses (including a notional 1975 sq metres of ground floor retail; 1900 sq metres nursery and 200 sq metres restaurant; 579 surface and basement car parking spaces and associated engineering and infrastructure works.**

The Scottish Ministers accepted the Reporter's conclusions after careful consideration of his report and have stated that they are minded to grant planning permission subject to conditions and a legally binding planning obligation. The following paraphrases the Reporter's conclusions.

The Reporter considered that the proposal involves a high density development on a brownfield city centre site which, in its entirety, is a Category A listed building identified as being "at risk". The proposed development would contribute significantly to strategic targets and house building as well as providing the opportunity to preserve and restore important listed buildings. The principle of the proposed development is not an issue.

He considered that, although car parking is provided at less than the council's standard, the roads section accepts that the site would be well served by sustainable transport modes. Despite some overlooking of existing properties close to the boundary of the site, the impact on residential amenity is not unacceptable. Overall, a satisfactory design solution has been proposed and the development would not constitute over-development of the site.

He also concluded that the extant planning permission does not require affordable housing. There does not appear to have been any suggestion by the council in pre-application discussions that there should be an element of affordable housing in the current proposal. LDP Policy H5 recognises that the provision of affordable should not jeopardise the delivery of housing. The appellant's argument that the cost of securing the important buildings would threaten the viability of the development should affordable housing also be required is persuasive. Accordingly, it is not necessary to provide affordable housing as part of the development.

The Reporter recognised that draft heads of terms have been prepared setting out the obligations of the developer in respect of providing finance for the preservation of the “very important” listed buildings. The “Grey Mill” is to be offered to an “independent legal entity” and would provide the prospect of community facilities. Additionally, the developer has agreed to provide funding requested by the roads section of the council. All-in-all, there is the potential for a significant level of developer contributions and the nature of any further provision the council envisages is not clear.

He averred that the council has previously made no specific reference to the community facilities required, although a further condition was subsequently recommended seeking a financial contribution for primary education provision. In view of the level of contributions towards preserving the listed buildings, providing roads and traffic infrastructure, and offering the Grey Mill as a gift, no further contributions towards community facilities are justified. In any event, the timing of the request for contribution for educational provision was brought forward at too late a stage in the proceedings.

A traffic impact assessment has been prepared and the implications have been considered by the council’s roads section. Subject to a number of improvements which the developer has agreed to fund, the level of traffic generation is regarded as acceptable. There is no reason to disagree with this assessment.

The Reporter concluded that overall, both the principle of the development and the detailed proposal are acceptable. The development accords with the provisions of the development plan and there are no material considerations pointing to the refusal of planning permission. The conditions initially suggested by the council – which are acceptable to the appellant – should be imposed. Additional conditions limiting construction operations and requiring notification of the completion of each phase should also be applied. Prior to the issue of planning permission, a planning obligation under section 75 of the Act should be concluded. The basis of the obligation should be the draft heads of terms that have been prepared.

The appeal intentions letter and full Reporter’s report can be viewed at:  
<http://www.dpea.scotland.gov.uk/Documents/qA323852/A5943524.pdf>  
and <http://www.dpea.scotland.gov.uk/Documents/qA323852/A5429951.pdf>

## **NOTICE OF AWARD OF EXPENSES AGAINST THE COUNCIL**

### **Broadford Works, Maberly Street Application Ref 120048**

The Reporter reasoned that the claim was made at the appropriate stage of the proceedings. The council explained that the Development Management Sub-committee considered the proposal at length and, despite being recommended for approval, the decision was taken “at that point” to refuse planning permission. Thereafter, a certificate was issued indicating that “the council, in exercise of their powers.... hereby refuse planning permission.” Five reasons for refusing planning permission were listed in the decision notice.

The council further indicated that when the matter was considered “by the full council” it was decided that the application “was suitable for approval”. Although the council stated that it was reasonable for the application to be refused for the “valid planning reasons” contained in the refusal notice, on reconsideration, the balance of planning benefits was reassessed. This, claims the council, “is not to say the initial decision taken was unreasonable”.

Despite the involvement of council officers in the steering group, the Reporter accepted it was not necessary for the council to follow the recommendation that permission be granted. However, although the council pointed out that it was subsequently decided that the application was suitable for approval, by that time the refusal certificate had been issued. It seemed clear to the Reporter that, unless the applicant had decided not to pursue the matter further, it was necessary to lodge an appeal against the decision to refuse planning permission albeit that, in due course, the council no longer supported that decision.

In responding to the appeal, the council did not explain this background. It was simply stated that it had been decided “not to resist the appeal”. The Reporter considered that the lack of any support for the reasons for refusal was fundamental. He pointed out that Circular 6/1990 indicates that the inability to support reasons for refusal is an example of unreasonable behaviour by a planning authority. Despite the claim by the council that the reasons for refusal were valid, no evidence was provided to support this claim. Neither was it explained why the council subsequently took a different view on the potential planning merits of the proposal following the issue of the refusal certificate.

The Reporter believed that, whatever the reason the council decided not to resist the appeal, the process in total clearly represented an example of unreasonable behaviour. Whilst he could appreciate that the council effectively changed its mind having considered the matter further, there were significant practical and financial implications in this decision.

Although not an exact parallel to the example referred to in the circular, it is clear that the appellant had been required to incur unnecessary expense in mounting an appeal against the refusal of planning permission which was the subject of no defence or justification by the council.

The council argued that, in the event of an award being made in favour of the appellant, expenses should be restricted to the costs involved in the appeal itself. The Reporter believed this to be correct although, subject to relevance, it was for the appellant to determine the content of the appeal and the supporting documents to be provided. As previously explained, it is normally expected that parties should agree the level of expenses between themselves.

With reference to the additional condition relating to educational provision, the council had suggested that this was put forward “at the request of the Reporter”. The Reporter considered this was not the case as the contribution to educational provision was one of the two “further conditions” recommended by the council in addition to the 18 conditions contained in the report to the sub-committee.

Subsequently, a procedure notice was issued requiring the re-drafting of the condition to meet the tests set out in Circular 4/1998. In his report on the appeal, he concluded that to require a contribution to educational provision – by means of a condition or a planning obligation - at such a late stage in the proceedings was unreasonable. However, insofar as the claim for an award of expenses is concerned, this detailed matter is subsumed within his wider conclusion that the council's behaviour was unreasonable and led to unnecessary expense being incurred.

## 6. IMPACT

The Scottish Government has stated that an effective planning service is fundamental to achieving its central purpose of sustainable economic growth. As such the information in this report relates to a number of Single Outcome Agreement Outcomes:

- 1 - We live in a Scotland that is the most attractive place for doing business in Europe;
- 2 - We realise our full economic potential with more and better employment opportunities for our people;
- 10 - We live in well-designed, sustainable places where we are able to access the amenities and services we need;
- 12 - We value and enjoy our built and natural environment and protect it and enhance it for future generations;
- 13 - We take pride in a strong, fair and inclusive national identity; and
- 15 - Our public services are high quality, continually improving, efficient and responsive to local people's needs.

Public – The report may be of interest to the development community and certain matters referred to in the report may be of interest to the wider community.

## 7. BACKGROUND PAPERS

None.

## 8. REPORT AUTHOR DETAILS

Margaret Bochel  
Head of Planning and Sustainable Development  
[Mbochel@aberdeencity.gov.uk](mailto:Mbochel@aberdeencity.gov.uk)  
01224 523133