



KILMACOLM CIVIC TRUST

(SCOTTISH CHARITY No SC 032744)

John Cooper
Kilmacolm Civic Trust

Mr Christopher Kennedy
Planning and Environmental Appeals Division
4 The Courtyard
Callendar Business Park
Falkirk
FK1 1XR

26th October, 2020

Dear Mr Kennedy,

KCT RESPONSE TO BURGES SALMON/GLADMAN COMMENTS – DPEA 280-2027-1- LAND AT CARSEMEADOW, QUARRIERS VILLAGE

On behalf of the Kilmacolm Civic Trust, I enclose a reply in relation to PPA-280-2027-, specifically the Burges Salmon/Gladman submission dated 7th October, 2020.

Yours sincerely,

John Cooper

LAND AT CARSEMEADOW QUARRIERS VILLAGE -PPA-280-2027-1

INTRODUCTION

1. The Kilmacolm Civic Trust (KCT) writes in response to the Burges Salmon submission on behalf of Gladman Developments dated 7th October. We are grateful to the Reporter for allowing us this opportunity to respond to the unsolicited Burges Salmon comments on our submission of 25th September.

2. We note that the debate is now awash with legal arguments and precedents and we trust that the DPEA has access to its own legal advisors to provide informed judgement. Our own legal arguments are based on Counsel rather than solicitor advice and we observe that like all legal debate, opinion is open to interpretation and degrees of emphasis and weight. Against that background, the KCT notes that this case continues to contain significant disagreements on the law and on how to calculate housing supply and requirement. As stated above, legal opinion will not produce an undisputed solution to the first of those uncertainties and we suggest that the only sound option on housing figures is to utilise a method that will be clear and unambiguous, which is to adopt the calculation as contained within the Scottish Government Consultation which concluded on 9th October.

BURGES SALMON COMMENTS ON OTHER PARTIES

3. **Comments on McTaggart and Mickel.** At paragraphs 1.2 and 1.8 the appellant argues that the McTaggart and Mickel bid is not an alternative to its own site and that the granting of either site would not preclude delivery on the other. Given the disputed nature of calculating housing figures and the fact that the KCT maintains there is no housing shortfall within the Renfrewshire sub-HMA, it is clear that it is extremely unlikely that there is an argument for both Quarry Drive and Carsemeadow to be developed. If Quarry Drive goes ahead (and we continue to maintain there is no housing shortage in the area to support such an action as witnessed by our figures submitted on 4th and 25th September, 2020) the case against Carsemeadow is strongly reinforced, not least because it reduces any supposed housing shortfall and brings into focus the other policies that are extant in both LDP 2014 and 2019 on green belt, sustainability and place-setting.

4. **Comments on Protect Quarriers Village (PQV).** The appellant rejects the PQV case on “prematurity” at paragraphs 3.2-3.6. They state that the Inverclyde Council (IC) emerging plan is not “*well advanced*”. This is to ignore the fact that the IC LDP 2019 is 90% complete; they are not changing the bulk of the plan, merely complying with the Court of Session direction to re-write Chapter 7. All the underlying principles and policies that guide the LDP remain in place and therefore the plan is indeed “*well advanced*”.

BURGES SALMON COMMENTS ON KCT SUBMISSION

5. At paragraph 4.1 the Appellant seeks to dismiss our citing of *Gladman Developments Limited v Secretary of State for Housing Communities and Local Government (2020) EWHC (the Holgate case)* by claiming that the detail of the law is similar but not identical in Scotland from that in England and Wales. There is an element of sophistry in this approach; the Gladman case in the Court of Session cited English precedent and both SPP and the

NPPF refer to benefits being “*significantly and demonstrably*” outweighed by adverse impacts. The planning balance and the presumption in favour of the local development plan apply equally north and south of the border. The Holgate case does indeed carry weight and is relevant in this matter.

6. **Applicability of LDP 2014.** In our submission of 25th September, we highlighted the continued applicability of enduring policies within LDP 2014, citing RES 7, ENV 2 and TRA 2 as being applicable still. The legal basis of this is *in Peel Investments Limited Secretary of State for Housing and Communities and Local Government & Salford County Council [2020] EWHC Civ 1175* and in paragraph 10 we quoted the ruling in some detail. The appellant states at paragraph 3.9:

“It is the Appellant’s position that LDP 2014 has been superseded because a new LDP has now been adopted. The LDP 2014 does not form part of the statutory development plan. This is a matter of law and is not a controversial position.”

However, as the Peel case makes clear, enduring policies **do** continue to apply and the Appellant has produced no clear evidence to deny this fact. Thus, the enduring policies from LDP 14 when added to those from LDP 2019 create an abundance of factors that “*significantly and demonstrably*” outweigh the case for development contrary to the Appellant’s claim in paragraph 4.4.

7. **Other Reporter Decisions.** At paragraph 4.6 the Appellant makes much of two other decisions by Reporters that chose to give the Scottish Government Consultation little weight (PPA-400-2109 and PPA 160-2030). However, we highlight several factors that mitigate against the Appellant’s claim:

- The first is that we understand that each Reporter judges any case on the evidence and that there is no tradition or common practice of one case influencing others by precedent.
- The second is that the Carsemeadow case is directly-linked to the launch of the consultation itself. The KCT continues to maintain that the Scottish Government **Intent** is clear and a decision on this case in advance of the consultation’s finding being known would be premature.
- Third, the circumstances of the cases are radically different. The housing shortfall in PPA -400-2109 is undisputedly large no matter how the figures are calculated whereas the Carsemeadow figures continue to be fiercely disputed by all parties. Crucially, PPA-400-2109 involves a brownfield site as shown in the Reporter’s comments below:

“The appeal site is located on brownfield former business land, and there is currently an oversupply of employment land in West Lothian. The proposal would increase the range and choice of housing available in the Livingston area, and I have not identified any significant negative impacts. For these reasons I conclude that the existence of the Scottish Government

consultation paper is not such a powerful consideration as to outweigh my conclusion at paragraph 37 above that the proposal complies overall with the development plan.”

- The issues in PPA-400-2109 have no bearing on the proposed changes to SPP, there are no Greenbelt issues, sustainability or place-setting factors as with Carsemeadow and thus it is hardly surprising that the Reporter felt able to come to a decision giving little weight to the consultation.
- Finally, in relation to the consultation, the factor of time continues to apply. We note that the Reporter in PPA 160-2030 based his decision partly on the fact that the Scottish Government consultation was not yet concluded and clarity had not emerged. However, time has passed, the consultation is closed and with each passing day, the SG is closer to making its **Intent** reality. By waiting for details to emerge, debate on how housing figures are calculated will be resolved and the primacy of plan-led development will be reinforced.

8. **Scottish Government Consultation on SPP.** At paragraph 4.5 the Appellant states that they believe that whereas NPF4 may be amended no interim policy change should be issued on SPP. We note that the NPF4 consultation was a different exercise and the latest consultation was on detailed elements of SPP. Our understanding is that interim planning policy will follow but the Reporter will know the facts of this matter better than any of the disputing parties. However, the KCT position remains that any decision should be after any interim position is issued in order-to achieve undisputed figures and to meet the clear Intent of the Scottish Government.

SUMMARY AND CONCLUSIONS

9. In summary:

- We note that the debate is now awash with legal arguments and precedents and we trust that the DPEA has access to its own legal advisors to provide informed judgement.
- A key question remains what the housing figures are and how they are calculated. The methodology remains in dispute between the Appellant and all other parties. We suggest that the only sound option on housing figures is to utilise a method that will be clear and unambiguous which is to adopt the calculation as contained within the Scottish Government Consultation which concluded on 9th October.
- Given the disputed nature of calculating housing figures and the fact that the KCT maintains there is no housing shortfall within the Renfrewshire SHA, it is clear that it is extremely unlikely that there is an argument for both Quarry Drive and Carsemeadow to be developed; if Quarry Drive development goes ahead, the case against Carsemeadow is strongly reinforced, not least because it brings into focus the other policies that are extant in both LDP 2014 and 2019 on green belt, sustainability and place-setting.

- All the underlying principles and policies that guide the LDP remain in place and therefore the plan is indeed “*well advanced*” thus its influence on any decision should not be ignored.
- The enduring policies from LDP 14 when added to those from LDP 2019 create an abundance of factors that “*significantly and demonstrably*” outweigh the case for development contrary to the Appellant’s claim in paragraph 4.4.
- The issues in PPA-400-2109 have no bearing on the proposed changes to SPP, it is a brownfield site, there are no Greenbelt issues, sustainability or place-setting factors as with Carsemeadow and thus it is hardly surprising that the Reporter felt able to come to a decision giving little weight to the consultation.
- The KCT submits that the Reporter should delay his decision should await whatever Scottish Government guidance is issued following its consultation on SPP.

10. In conclusion, the multiplicity of legal arguments, the continued disputed housing figures and the concluded Scottish Government consultation mean that the only way of achieving an unambiguous and clear solution to this matter is to await the guidance or policy that the Scottish Government will issue by the end of this year.