



**KILMACOLM CIVIC TRUST**

**(SCOTTISH CHARITY No SC 032744)**

John Cooper  
Kilmacolm Civic Trust

Mr Christopher Kennedy  
Planning and Environmental Appeals Division  
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25 September, 2020

Dear Mr Kennedy,

**KCT RESPONSE TO SUBMISSIONS – DPEA 280-2027-1- LAND AT CARSEMEADOW,  
QUARRIERS VILLAGE**

On behalf of the Kilmacolm Civic Trust, I enclose a response to submissions in relation to PPA-280-2027-1. The submission speaks for itself, but we would ask the Reporter to particularly note the legal precedents we quote in support of arguments.

Yours sincerely,

John Cooper

## KCT RESPONSE TO SUBMISSIONS – DPEA 280-2027-1- LAND AT CARSEMEADOW, QUARRIERS VILLAGE

### GENERAL

1. The KCT writes in response to the submissions of interested parties on DPEA 280-2027-1. We note that all responses less that by the Appellant, including that from Inverclyde Council (IC) state that notwithstanding the absence of Chapter 7 of the LDP all support the position that the application is “*significantly and demonstrably outweighed*” by other policies including green belt, sustainability, place-setting, character and accessibility.

2. We submit that the Appellant’s submission is contradictory in its consideration of the LDP. In Matter 2 – Comments on the quashing of the LDP – the Appellant argues in paras 2.9-2.11 that “*Site specific designations such as Greenbelt and Countryside (Policy14) attract less weight.....*” but later in their submission they quote other elements of the LDP that they state supports their application for example, Policy 10 at paras 3.15-3.19. The KCT submits that the Appellant cannot have it both ways and furthermore, there is case law that mitigates against Gladmans’ approach.

a. In the Holgate (English High Court *Gladman*)<sup>1</sup> case Gladman argued that it was not permissible to weigh anything in the balance other than other policies within the NPPF and that the countervailing policies of the development plan were irrelevant. This argument was rejected by the English High Court in that Holgate case.

b. We submit that the reporter must take notice of this precedent which is echoed by the Court of Session ruling which refers to the issue of other factors which “*significantly and demonstrably outweigh...*” development.

3. We also note the late emergence (on 23 September 2020) of a letter dated 4<sup>th</sup> September by representatives of MacTaggart and Mickel making a bid to build on Quarry Drive. This very late introduction of this issue is confusing, adds a further layer of debate and suggests that this case will be subject to possible further complication if other applications emerge whilst considering this case. The KCT suggests that given this and other possible applications/complications emerging, that no full and sound judgement can be made in advance of the issuing of Scottish Government Interim Planning Policy in December 2020 on the completion of their technical consultation. In the meantime, we reserve our position on the MacTaggart and Mickel application.

4. This KCT submission has been created in consultation with Protect Quarriers Village (PQV) and the Kilmacolm Residents Association (KRA). Our comments are our own, but themes and legal arguments have been shared.

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<sup>1</sup> *Gladman v Secretary of State for Housing Communities and Local Government* [2020] EWHC 518

## **MATTER 1 – THE COUNCIL TO PROVIDE A COPY OF THE ADOPTED DEVELOPMENT PLAN AND ASSESSMENT OF THE PROPOSAL AGAINST THE ADOPTED PLAN**

5. The KCT has no detailed comment to make on Matter 1, save to say that Inverclyde Council’s position has been consistent throughout, disputing the Appellant’s views on Housing Requirement figures and maintaining that even if there is a housing shortage, the other policies and schedules within the SDP and LDP “*significantly and demonstrably outweigh*” the application.

6. Whilst Chapter 7 of the LDP is no more, the SDP and the 2017 Main Issues Report highlight sites of a higher priority that would benefit from development as encapsulated in the 2019 LDP Sustainable Development Strategy and its associated Spatial Development Strategy. This approach represents a “plan-led” strategy as articulated by the Scottish Government in SPP and its new technical consultation and is a result of widespread local consultation representing democracy-in-action.

## **MATTER 2 - COMMENTS ON THE RECENT QUASHING BY THE COURT OF SESSION ON CHAPTER 7 OF THE LOCAL DEVELOPMENT PLAN**

7. In its submission, the Appellant states its position in paragraphs 2.9-2.11 under the heading “**Consequences of the Court Decision**” where they claim that the absence of a full LDP makes all supporting policies less relevant on greenbelt, sustainability, place-setting, character and accessibility. They also state that SPP paragraph 33 “*makes a presumption in favour of development that contributes to sustainable development is a material consideration to which significant weight should be given.*” We show the relevant extract from paragraph 33 below:

*“The planning system should proactively support development that will contribute to sustainable economic growth and to high quality sustainable places. Achieving sustainable economic growth requires a planning system that enables the development of growth enhancing activities across Scotland and protects and enhances the quality of the natural and built environment as an asset for that growth. Planning authorities should take a positive approach to development, recognising and responding to economic and financial conditions in considering proposals that could contribute to economic growth.”*

**This paragraph must be seen within the hierarchy of planning policies in Scotland and can only be understood in context when read in conjunction with the SDP and the bulk of the LDP. As we and other parties have argued, this case does not support sustainability or economic growth, it is within the greenbelt, it offers no significant economic benefits to Quarriers Village and the surrounding area and does not meet the criteria laid out in LDP 2019 on Sustainable Development Strategy and its associated Spatial Development Strategy. The Appellant has produced no evidence to counter these policies.**

8. Within paragraphs 2.9-2.11 the Appellant makes no mention of the SDP, Clydeplan 2017 which remains extant in its entirety, mitigates against this application and on which the Court of Session made no ruling. The application contravenes Policies 1 and 14 of the

SDP and paragraph 8.15 and again, the Appellant has produced no evidence to undermine or counter those policies.

9. Finally, in paragraph 2 above, we cite case law which undermines entirely the Appellant's position on other policies being less important in the light of the court's decision.

### **MATTER 3 – COMMENTS ON THE FINDINGS OF THE REPORTER IN THE ORIGINAL APPEAL DECISION OF 29<sup>TH</sup> JULY 2019**

10. **LDP 2014.** In addressing Matter 3, at paragraph 3.1 the Appellant comments "*The 2014 LDP has since been superceded and is not relevant to this appeal.*" In fact, that is not the case. In *Peel Investments Ltd v SSHCLG & Salford County Council*<sup>2</sup> it was held that just because the local development plan period had expired, it did not necessarily mean that the plan was also "out of date" in terms of paragraph 11 of NPPF. The original judge hearing the case, made the following statement with which the Court of Appeal ultimately agreed:

*"It is very far from uncommon to have policies in a plan related to environmental protection whose objectives will, and are intended to continue well beyond the end of a plan period. Whilst, of course, when a local development document is formulated it is formulated as a whole, and is intended to present as a coherent suite of policies, that objective is not inconsistent with the inclusion of some environmental policies being intended and designed to operate on a longer time scale than that which may be contemplated by the plan period. The kind of policies to which this might apply are policies such as Green Belt (one of the characteristics of which is its "permanence"), or policies pertaining to environmental assets such as those relating to heritage assets or internationally protected and irreplaceable habitats. It would be both counter-intuitive, and contrary to long standing provisions of national policy, if policies in a development plan protecting these interests were deemed out-of-date at the expiration of a plan period."*

**Thus, LDP 2014 policies on greenbelt, character and place-setting and sustainability continue to apply. Specifically, RES 7 and ENV 2 mitigate against building in the greenbelt and TRA 2 against increasing traffic volume.**

11. Under Matter 3, the Appellant comments on site accessibility, character and place-setting and greenbelt issues as articulated within Policy 8 of the SDP. We address these matters in turn below but preface them by stating that no aspect of the total content of Scottish Planning Policy indicates that development should take place "*anywhere at any price*" which would pertain if the Appellant's arguments on the greenbelt, character, place-setting and accessibility were applied.

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<sup>2</sup> 2020] EWCA Civ 1175, decision of 3 September 2020 and therefore not available at the time of the Court of Session decision.

12. **Site Accessibility.**

a. The KCT has produced significant data in its previous submissions on this case. In our submission to the Reporter we produced road measurements and photographs demonstrating how narrow access to Quarriers Village is. The Appellant has stated that the roads are never less than 5.00m wide. Our evidence to the Reporter dated 15<sup>th</sup> April 2019 showed that this assertion was wrong, with no parts of Torr Road being wider than 5m and with many choke points of 4m or less existing. We urge the Reporter to look again at these figures and we express our disappointment in the Inverclyde Council Transport Department that has not measured the access roads in detail in their submissions.

b. Furthermore, the Appellant quotes Policy 10 of the LDP to support its assertions on accessibility whilst stating elsewhere that Policy 14 of the same LDP “*attracts less weight*”. There is an issue of lack of consistency here; **if Policy 10 applies, then so should all others, as confirmed in the Holgate case in paragraph 2 above.**

13. **Character and Place Setting.** In addressing the Reporter’s comments on character of the settlement the Appellant focuses on selected quotations by the Reporter to support their submission, they skip over the details of the 2019 LDP that support a refusal and they produce no evidence to show that the benefits of the proposal is not “*clearly and demonstrably*” outweighed by the other factors in SDP, LDP 2019 and LDP 2014.

14. **Greenbelt.** The Appellant produces no new evidence to show that building on the Greenbelt is allowable in this instance. Policy 8 of the SDP is clear and whilst the Appellant argues that the LDP carries less weight (even whilst relying on Policy 10 on accessibility) it cannot trump SDP Policy 8 and produces no new evidence so to do. The Appellant quotes DPEA NOD-EDB-002 – Edinburgh Garden City which produced a decision based on an aged SDP, but the 2017 Clydeplan SDP is extant, relevant and applicable in this case. We address their quotation and reliance on paragraph 33 of SPP in Matter 2 above.

15. **Conclusion.** In conclusion, the Appellant has produced no coherent and linked set of arguments or evidence on Matter 3. Furthermore, their submission that LDP 2014 is superceded is wrong as evidenced by *Peel Investments Ltd v SSHCLG & Salford County Council* In our submission of 3<sup>rd</sup> September 2020 (submitted on 4<sup>th</sup> September) we highlighted the concluding remarks by the Reporter in paragraphs 84-86; for the sake of brevity we produce only paragraph 85 from the Reporter below which shows there is no case for development that “*clearly and demonstrably*” outweighs the impacts.

“85. *I have considered the emerging local development plan and the revisions to development plan policy arising from this but I do not find that there are any provisions in the emerging plan that would justify setting aside my conclusions on Clydeplan policy 8 and the SPP. The economic benefit to both the joint appellant, Quarriers and the area generally are important considerations but I do not find there is anything exceptional regarding these*

*benefits that would justify approving this development that does not, in my opinion, constitute sustainable development.”*

#### **MATTER 4 -COMMENTS ON THE OPINION OF THE COURT OF SESSION OF 3 JUNE 2020 WHICH QUASHED THE ORIGINAL APPEAL DECISION**

16. The Appellant states in paragraph 4.1 (b) that *“the starting point in the assessment of this appeal is that there is a presumption in favour of development because it provides a solution at least in part, to the housing shortage.”* However, the Court of Session did not rule that there was a housing shortage, it merely said that the manner in which housing figures were calculated was wrong. In our submission of 3<sup>rd</sup> September, 2020 we (along with the Protect Quarriers Village and the Kilmacolm Residents Association) produced detailed figures that demonstrated that no housing shortage exists. The Appellant has produced no figures within their submission to establish any shortfall other than their interpretation to the Court of Session on which the court made no judgement on their accuracy. If there is no shortfall, then the Appellant’s *“starting point”* and all that follows is without foundation.

17. Also in paragraph 4.1(b) the Appellant addresses whether the other policies in the LDP *“significantly and demonstrably outweigh”* the benefits of development but produces no evidence to show that they do not and does not refute the policies that we have quoted in the SDP, LDP 2014 and LDP 2019.

18. A direct result of the Court of Session judgement of 3 June 2020 was the extremely quick launch by the Scottish Government of its consultation on Scottish Planning Policy on 17<sup>th</sup> July. We address the details of the consultation in responding to Matter 5 and in our initial response of 3<sup>rd</sup> September but the link between the 3<sup>rd</sup> June decision by the Court of Session and the consultation is clear and the Appellant has failed to acknowledge that link. We expand on this view under Matters 5 and 6.

#### **MATTER 5 – COMMENT ON THE SCOTTISH GOVERNMENT’S TECHNICAL CONSULTATION ON PROPOSED AMENDMENTS TO SCOTTISH PLANNING POLICY**

19. The Appellant makes several points on the weight to be given to the Scottish Government consultation and concludes at paragraph 5.16 *“... the proposed amendments to SPP can be given very limited, if any, weight to be carried out in the balancing exercise in this appeal.”* And in paragraph 5.17 they state *“...where the presumption in favour of development which contributes towards sustainable development is a significant material consideration there is tilted balance in favour of granting consent...”* In our submission to the Reporter dated 3<sup>rd</sup> September we stressed that the **“Intent”** of the Scottish Government was clear; it cited the Gladman case specifically and was set on *inter alia*, producing a Planned planning policy, creating a clear and unambiguous method of calculating a five year housing supply and removing the *“tilted balance”*.

20. We appreciate that judging the balance on this matter is a difficult one for the Reporter. We acknowledge the direction given in the Chief Planner’s letter of 4<sup>th</sup> September 2020:

*“These are draft proposals and in the meantime the existing policy remains in place. The paper may be a material consideration in the determination of planning applications and appeals, with the weighting of any material consideration being a matter for the decision maker.”*

However, the consultation exists, its implementation is close at hand and the specific nature of the proposals which stem from the Gladman case serve to reinforce Government Intent which means that contrary to the Appellant’s view that no weight should be given to this, we respectfully submit that the consultation is “*a material consideration*” and that the Reporter should not ignore the consultation and its objectives. An authority that is cited in this regard is *Tesco Stores Ltd v Secretary of State for the Environment*.<sup>3</sup> That is authority for the proposition that what constitutes a material consideration is a matter of law, however, the weight to be applied to any relevant material consideration is a matter entirely for the decision-maker.

21. **Timing and Timeliness.** The consultation closes on 9<sup>th</sup> October 2020. We understand that the Scottish Government will then issue Interim Planning Policy including the proposed changes by the end of this year, which given the Christmas period, means mid-December. Thus, a decision that ignores or gives no weight to the consultation may find itself to be out-of-date within a little over two months or less. Against that background, we continue to submit that where there is doubt in this matter (and there is significant doubt on how Housing Land Requirement is calculated), a delay in taking a decision is warranted until Interim Planning Policy is issued.

## **MATTER 6 – CURRENT ASSESSMENT OF THE EXTENT OF THE CURRENT EFFECTIVE HOUSING LAND SUPPLY**

22. In our submission of 3<sup>rd</sup> September, we produced detailed calculations on the Housing Supply Target and Effective supply figures in the Inverclyde Council All-Tenures and the Renfrewshire SHMA private tenure which demonstrated that there is no shortage of effective housing land in either area. The outcome is similar if Housing Land Requirement figures are utilised ie a private sector surplus in Renfrew sub-HMA to which Kilmacolm and Quarriers Village belong. We note that the Appellant commented on various aspects of Matter 6 but did not submit any revised figures themselves; we suspect they may do so in the light of our and others (PQV and the KRA) figures.

23. The SG Consultation itself states:

*“Based on previous consultation, we are aware that views on methodologies for calculating the 5 year effective housing land supply vary...”*

and as we demonstrate in our submission of 3<sup>rd</sup> September, the figures can be calculated differently but soundly, thus there will continue to be strongly disputed figures between the

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<sup>3</sup> [1995] 1 WLR 759.

Appellants and ourselves until an undisputed methodology is introduced. That clear and undisputed methodology is contained within the Scottish Government consultation:

*“The extent of the forward 5 year effective land supply should be calculated by dividing the housing supply target set out in the adopted local development plan by the plan period (to identify an annual figure) and multiplying that figure by 5. That should be compared to the 5 year effective land supply, based on information collected as part of the housing land audit process.”*

*Where a shortfall in the forward 5 year effective housing land supply has been identified, this will be a relevant material consideration to be taken into account alongside other considerations as part of a balanced planning judgement. Whilst the weight to be afforded to it is a matter for decision-makers to determine, recognising the facts and circumstances of each case, the contribution of the proposal to addressing the shortfall (in both scale and kind) should be taken into account to inform this judgement.”*

The figures contained within our submission of 3<sup>rd</sup> September 2020 include this methodology and a key extract is shown below:

*“The 5-year HST is therefore  $(5/12)*3,157 = 1,315$  units. Table A.1.1 of the Inverclyde 2019 HLA shows total commitments of 282 and consents of 1,677 units so that the five-year HST is well covered even before considering additional sites with residential potential let alone greenfield release.”*

24. There has also been debate as to whether to include houses that will not be completed within a five-year period. We show a reconciliation of calculation from Appendix 1 of our submission of 3<sup>rd</sup> September taking this factor into account in Table 1 below and it will be seen that within the Renfrewshire sub-HMA, there is a significant surplus and a tiny deficit within the overall Inverclyde HMA.

**Reconciliation of Inverclyde Council and Appendix 1 five-year Housing Land Surplus/Deficit**

	<b>Private Sector Renfrew HSMA Total</b>	<b>All Tenure Inv'clyde Council</b>
Surplus/Deficit per Inverclyde Council (Excluding disputes)	1409	694
Add: Effective sites not included in programmed supply	4912	46
	6321	740
Rounding Difference (note 1)	3	2
Surplus/Deficit per Appendix 1	6324	742
Disputed sites	145	767
Surplus/deficit if all disputed sites excluded	6179	-25

**Note 1**

Rounding difference occurs due to calculation of HST from HLR

**Note 2**

The principal difference the two calculations of surplus/deficit arises because the Council excludes capacity from sites that are deemed to be effective but which are not programmed to produce completions during the five year period.

Table 1

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25. **Conclusion.** From the above we draw the following conclusions. First that our figures show that there is no shortfall now and that those same figures would also emerge by utilising the government’s new proposed methodology. Second, it reinforces the need to delay any decision until Interim Planning Policy is in place; any ruling on figures now, unless utilising the method contained within the consultation will be disputed because an agreed and unambiguous system is not in place.

**MATTER 7 – RESPONSE TO FURTHER REPRESENTATIONS ON THE APPEAL**

26. The KCT has no comment to make on Matter 7.

**MATTER 8 – ANY OTHER NEW OR UPDATED MATERIAL CONSIDERATIONS WHICH HAVE EMERGED SINCE THE ORIGINAL APPEAL DECISION**

27. The KCT has no additional comment to make on Matter 8.