

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 13 SEPTEMBER 2022

PLANNING APPEAL DECISION: LAND NORTH EAST OF GARTH FARM, KIRRIEMUIR ROAD, TURFBEG WEST, FORFAR

REPORT BY SERVICE LEAD – PLANNING & SUSTAINABLE GROWTH

Abstract:

This report presents the findings of the Reporter appointed by Scottish Ministers to determine an appeal by Guild Homes (Tayside) Ltd in relation to the deemed refusal of planning permission for the erection of 245 dwelling houses, including 25% affordable homes with associated roads, drainage, and landscaping on land northeast of Garth Farm, Kirriemuir Road, Forfar. The Reporter dismissed the appeal and refused planning permission.

1. RECOMMENDATION

It is recommended that the committee notes the outcome of the appeal.

2. INTRODUCTION

- 2.1 A planning application (ref: [21/00857/FULM](#)) seeking permission for the erection of 245 dwelling houses, including 25% affordable homes with associated, roads, drainage, and landscaping on the site was registered as valid by the council on 10 November 2021.
- 2.2 The planning service wrote to the applicants by email dated 22 February 2022 requesting extension of time for determination of the application and setting out reasons for the requested extension. Those reasons included unresolved objections from consultation bodies, and issues associated with local government elections.
- 2.3 The applicant declined the request for extension to the determination period by email dated 11 March 2022, indicating a desire to continue to work with the council to allow early determination. Further documents were submitted in support of the application over the following days.
- 2.4 On 31 March 2022, the applicant notified the council that they had lodged an appeal to Scottish Ministers as the council had not issued a decision within the prescribed period. At that time, it is relevant to note that the application was subject of unresolved objections, including objection from SEPA.
- 2.5 Scottish Ministers appointed a Reporter to determine the appeal and, in circumstances where it was not possible to report the matter to committee due to local government elections, officers submitted a statement setting out the advice that would have been provided if it had been possible to report the application formally. Officers indicated that the appeal should be dismissed and planning permission refused. The Reporters decision and associated reasoning is set out below.

3. REPORTER'S DECISION

Reasoning

Development Plan

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. Having regard to the provisions of the development plan the main issues in this appeal are:
 - principle of development;
 - housing land supply;
 - impact on landscape and settlement character;
 - noise impacts;
 - accessibility and infrastructure considerations; and,
 - layout and design.
3. The development plan is comprised of TAYplan (October 2017) strategic development plan and the Angus Local Development Plan (September 2016) together with its supplementary guidance. The key development plan policies are TAYplan Policies 1, 2, 4 and 9, and the Angus Local Development Plan policies DS1, DS2, DS3, DS4, DS5, TC1, TC2, TC3, PV2, PV4, PV5, PV6, PV7, PV8, PV12, PV15, PV20 and F13. There would appear to be no disagreement between the main parties on the range of policies that I should consider or that supplementary guidance on Design Quality and Placemaking and Developer Contributions and Affordable Housing are of relevance.
4. I have noted that the local development plan is over 5 years old.

Principle of development

5. Policy 1 of TAYplan sets out a sequential approach for plans to release land; prioritising land within principal settlements in the first instance and then land on the edge of principal settlements. Forfar is a 'Tier Two' principal settlement.
6. The appeal site is not allocated for housing in the local development plan and is outside the settlement boundary of Forfar (although is contiguous with its North West boundary). It should be regarded as a site on the edge of a principal settlement. The local development plan, through Policy DS1, seeks to avoid development outwith settlement boundaries to protect the setting of settlements and to avoid uncontrolled development.
7. I have noted the concern from the council and community council regarding the use of prime agricultural land (as defined by the local development plan on page 271). It is agreed that the development would mean over 28 hectares of prime agricultural land (predominantly class 3.1 according to a 1:50,000 land use classification map) would be lost. TAYplan Policy 9 seeks to protect prime agricultural land where the development advantages do not outweigh the loss. Local development plan Policy PV20 supports development on such land only when it supports the plan's development strategy and policies. The appellant puts forward an argument that the scale of the loss is insignificant compared to the extent of prime agricultural land in Angus. However, development plan policy does not ask for that particular assessment to be made. The appellant makes a case for

the exclusion of class 3.1 from a definition of prime agricultural land. Nevertheless, I am guided by the local development plan definition which includes class 3.1.

8. Policy TC1 permits a housing site to be released if it is to maintain an effective housing land supply that is not met from existing sites. This however is based on consistency with other policies of the plan. The local development plan, in Policy TC2, does not explicitly support the release of sites outwith settlement boundaries for housing where an effective housing land supply shortfall exists.
9. According to local development plan Policy DS1, a site outwith a settlement boundary but contiguous with it (as in this appeal site) could be released if it is considered to be in the public interest and the social, economic, environmental and operational considerations confirmed a need that could not be accommodated within a development boundary or on previously developed land. Development of greenfield sites are only to be supported where there are no suitable and available brownfield sites capable of accommodating the proposed development.
10. Based on the above, I find that the principle of development is not generally supported by the above policies. Only in certain circumstances could the development of a site on the edge of a settlement, on prime agricultural land, be considered to be in line with the development plan. I go on to discuss the specific circumstances of the case below.

Housing land supply

11. TAYplan was prepared after the Angus Local development plan and it is therefore the Housing Land Requirement of TAYplan 2017 which is of greater relevance. TAYplan Policy 4 requires the local development plan to meet a housing land requirement of 88 units a year in the West Angus Housing Market Area up to the year 2026 (from 2016). A minimum five-year effective housing land supply is also to be maintained. Where a five-year effective housing land supply does not exist, Scottish Planning Policy paragraph 125 says development plan housing supply policies are not up-to-date.
12. The agreed 2021 Angus Housing Land Audit identifies a shortfall of 138 units (or 1.6 years' worth of land) in the 5-year effective housing land supply using a residual method of calculation for the West Angus Housing Market Area. The council say the shortfall is offset in part by completions on small sites (64 completions). However, the housing land audit states that Angus Council does not calculate completions on small sites as contributing to meeting the strategic development plan housing land requirement. Nevertheless, the audit does recognise that such figures do supplement the housing land supply.
13. Based on their own assessments (the Lichfield's review), and again using a residual method, the appellant is now in agreement on the scale and nature of the shortfall shown in the 2021 housing land audit. There is no significant difference of opinion with regard to the existence or overall scale of the shortfall. Also, based on my experience and the evidence advanced by the appellant in their appeal statement, the residual method is an accepted method in the absence of an agreed national methodology for calculating housing land supply.
14. Based on the evidence before me, I also agree that a shortfall in the five year effective housing land supply exists. Therefore I consider that Policy TC1 of the local development plan (and other housing policies) is out of date in terms of the process for the release of unallocated housing sites. There is also evidence that the 2022 Draft Angus Housing Land Audit shows that a shortfall continues; although I note the draft is yet to be agreed.

15. Having read the submissions I am aware of the interest to build on local development plan site F4 (Westfield) and I visited that area on my site inspection. Other sites (F2, K1 and Ka and Kb) and their histories are also rehearsed in the submissions. Despite the terms of Policy TC1 concerning early release of allocated sites planned for later in the plan period, I consider that there is a body of evidence submitted in this appeal which shows me that a reasonable degree of uncertainty exists regarding the ability of effective housing sites in Forfar or West Angus to be brought forward from future years. I also note there are detailed submissions made regarding the effectiveness of specific sites. However, I do not consider it necessary to reach a definitive conclusion on the effectiveness of other allocated sites in order that I can make a decision. That is a matter that will fall to the council through monitoring its housing land audit.
16. The submissions also demonstrate uncertainty over whether sites which are part of the 'non-effective' established land supply can be relied upon to ensure the annual completions required by TAYplan for the West Angus Housing Sub Market Area. Policy TC1 says that in such circumstances (which the council agree does exist), other housing sites could be supported, subject to consistency with local development plan policies.
17. I find that there is no disagreement between the council and the appellant that an additional housing site, beyond those already allocated, could help address the shortfall in effective land supply within the housing sub-market area. There is therefore a strong public interest in progressing new sites for housing in West Angus in relation to Policy DS1.
18. In my judgement the shortfall in effective housing land should be considered of a reasonable scale for the West Angus Housing Market Area; being some 15 percent of the overall housing land requirement to the year 2026. However, that is in the context of a marginal shortfall across Angus as a whole. Having said that TAYplan asks that housing land requirements are to be provided for at the Housing Market Areas level and not at the local authority level.
19. I return to the matter of housing land in my conclusions below.

Impact on landscape and settlement character

20. A focus of the appellant's case is that the proposal presents a logical extension to Forfar, sympathetic to the surrounding landscape and settlement. The appellant considers that the proposal would improve the relationship between the Turfbeg area and its wider landscape setting. The council, the community council and a number of other representations do not agree with the appellant's position.
21. A number of parties make reference to previous consideration of the appeal area for housing. However, I consider it afresh in light of the submissions for this appeal.
22. Policy 9 (part C) of TAYplan seeks to safeguard the integrity of natural assets such as parks and townscapes and local development plan policy is asked perform that role. Angus Local Development Plan Policy PV6 seeks to avoid adverse landscape impacts arising on the local landscape and Policy F13 advises against development which would adversely affect the landscape value of Forfar Loch Country Park or its setting. Policy F13 says no further built development is permitted along the northern shore of Forfar Loch.
23. The appeal site is outwith the settlement boundary and has an open/simple topography. The only notable feature is a shoulder or ridge of land to the south of

the site before land (outwith the site) falls down relatively steeply towards Forfar Loch. This slope provides an arable farmland back drop to the loch. I do however note that no part of the site or areas adjacent to Forfar Loch are formally designated for their landscape value.

24. After visiting the area, I agree with the appellant's landscape and visual assessment that the agricultural land of the Strathmore Broad Valley Lowlands is in itself is not highly sensitive to change given its open, simplistic topography and widespread occurrence in the area. I do not therefore have a concern that the landscape character type as a whole would be significantly impacted by the scale of the development proposed.
25. As the proposal would not extend fully to the Kirriemuir Road (A926), I also consider that the development would visually assimilate into the landscape as an extension to the settlement when looking toward the proposal from Kirriemuir Road to the north. The spacing between the road and the housing would soften any localised landscape or visual impact in this area. The woodland planting surrounding and within the site would also assist in that visual assimilation (over time) in such views from the north. I consider that views of the housing seen on the skyline from the A90 travelling north would be relatively limited in duration as vehicles pass Forfar Loch due to the screening effect of the road embankments around Garth Farm. Further north on the A90, before the Kirriemuir Road junction, the site would appear as new extension to the settlement on relatively flat topography; albeit with the rear of properties mainly in sight.
26. Based on my site visit and an examination of the contours on maps provided in submissions, the proposed housing on the southern boundary of the site would be built on the highpoint / shoulder of land before it falls away down to Forfar Loch. The housing has not been set back from the ridge in order to reduce its prominence.
27. The Angus Settlements Landscape Capacity Study (at 6.3.2) notes that the undeveloped area north of Forfar Loch and south of the shoulder (ridge) of land is of high landscape and visual sensitivity. Having walked around the core path (303 and 304) network of Forfar Loch I understand why that is the case in terms of the rural and agricultural setting to the north of the loch and its country park.
28. I consider that it is the visual impact of development rising above the shoulder (or ridgeline) of land that is the primary concern from a local visual and landscape setting perspective. In that regard I noted on my site inspection, and from photographs in the landscape capacity study and appellant's landscape and visual impact assessment, that the shoulder of land to the north of the loch is also relatively prominent when viewed from path on Balmashanner Hill.
29. The landscape capacity study concludes that development in this area would be disproportionately prominent and visually subsume Forfar Loch into the urban fabric. The study does not consider that mitigation is capable of over-coming much of the capacity considerations. However, some mitigation advice is provided in the study if development was to be pursued which the appellant has rehearsed in their submissions.
30. Although the proposal is limited to the ridgeline, with woodland planting to be established, my assessment is that the housing (because it is taken up to the top of that ridgeline and with some of the houses being 1.5 storeys) would be unduly prominent. It would be visible to the extent that I would regard it as a significant visual change to the setting of Forfar Loch Country Park. This would be evident in the short and medium term; but also likely in the long term also.

31. The existing rural and farmland setting to the north of the loch would be lost. This is best seen from view 8 of the appellant's landscape and visual assessment; and from other areas south of the loch. More generally, development which breaches the ridgeline also increases visibility and the setting of Forfar from the elevated positions to the south. It would be viewed from the pathways around Balmashanner Hill where Forfar Loch would be seen to be almost encircled by the urban environment. However, my conclusion is that such long range and panoramic views are not so starkly affected when compared to the more immediate impacts in and around the country park where the urban fabric would appear to dominate the surroundings of the park when viewed on the south side of the country park.
32. The above factors point to a negative long term effect on the existing setting of the country park. The park is in itself an important community asset and one protected by local development plan policy (Policy F13).
33. The appellant relies on tree growth and screening in the long term to ameliorate the negative visual effects of housing development on the ridge. That, in my judgement, could take in the region of 20 to 25 years as the woodland existing on site has only been recently planted and would take time to mature. Based on my site visit the existing planting offers very little or no screening at the moment. There is also no evidence to suggest that tree species are particularly fast growing or can form effective screening in short a period of time. Even with mature trees and if larger growing specimens were chosen, I consider that the screening would not wholly mitigate the visual impacts of a distinctly linear row of houses along the ridgeline (including the Glencoe house type at around 6 metres in height). The creation of a linear tree structure on the ridge, in such an open landscape, would also generate a stark visual contrast to the existing rolling agricultural land.
34. For these reasons I do not agree with the appellant's assessment that long term visual amenity impacts would be of minor significance. While tree planting may assist in screening, the open fields, which are acknowledged by the appellant to be important to the rural setting of Forfar Loch, would be irrevocably changed by developing on the ridgeline.
35. The council's Design and Placemaking Supplementary Guidance (on page 20) seeks to avoid skyline development and recommends using landscaping to backcloth development. This development would not satisfy that guidance viewed from the south of Forfar Loch.
36. I have also noted that accessibility and physical connections are discussed as part of the landscape and visible assessment. However, I do not consider these matters to be critical matters in relation to landscape and visual assessment of the site. In any case, I conclude (below) that accessibility of the site should be considered positively.
37. Overall, based on my findings above I conclude that the proposed development would have an adverse and detrimental impact on visual amenity and localised landscape setting around the Forfar Loch Country Park. This would lead, in my view, to unacceptable visual amenity effects in relation to local development plan policy PV6 and be in direct conflict with Policy F13.

Noise impacts

38. Noise from traffic on the A90 is of concern for the council and the community council. The appellant agrees that noise from the A90 means that several proposed properties would experience external and internal noise levels in excess of

recognised standards. Noise mitigation has been investigated by the appellant and, as a result of a further information request, I have clarified the mitigation recommended by the appellant.

39. My understanding is that 24 houses would require windows closed in living rooms to ensure acceptable levels of noise internally; relying on trickle vents within windows for ventilation in these living rooms. Seven of these plots are predicted to suffer from a moderate to large adverse impact. This is due to predicted exceedances of the British Standard 8233:2014 guidelines for day and night-time noise limits in buildings; as described in the appellant's noise impact assessment and supporting material. I have noted that physical noise barriers would have to be a significant height to effectively mitigate the road traffic noise within the houses affected and I accept this would not be a practical solution.
40. The appellant indicates that the worst effect, of 'moderate to large' at seven houses, is regarded by the Scottish Government Technical Advice Note Assessment of Noise as likely to be an important consideration in a planning decision.
41. Although I accept that it may not be an absolute requirement (and that a Planning Advice Note is a material consideration) paragraph 16 of Planning Advice Note 1/2011 states 'it is preferable that satisfactory noise levels can be achieved within dwellings with the windows sufficiently open for ventilation'. Notwithstanding the arguments made by the appellant in response to the council's concerns, I consider that it would not be desirable for new residents in a 'greenfield' housing development to have to keep windows closed in order to reach acceptable internal amenity noise levels in living rooms. I also do not consider that developing close to a trunk road corridor on an unallocated site which is not part of the development plan's spatial strategy means that noise impacts should simply be mitigated with closed windows or accepted because it only affects a small number of houses. I consider that the impact on future residents is an important consideration regardless of the number or proportion of plots involved.
42. My general understanding of the guidance highlighted in the appellant's noise impact assessment and supporting information is that development should be designed to achieve the lowest practical noise levels. The lack of flexibility shown in the appellant's overall layout does not demonstrate to me that this has been done; although an effort has been made to locate bedrooms on quiet elevations. In addition, the location of the appeal site is not within a heavily urbanised environment with unavoidable adjacency to transport routes and where noise may be treated differently. Residents of new dwellings in a semi-rural setting would not, in my view, expect to have to live with lower amenity standards in terms of noise.
43. The appellant's view is that their noise impact assessment presents mitigation through the design of the development, orientation of the layout, creation of buffer zones and environmental noise barriers. That is all contained within section 2.3 of the noise impact assessment. However, the orientation of the site layout does not present a uniform buffer zone which follows the route of the A90. Rather, the rigid grid iron pattern of the site layout is preferred as opposed to adapting it to the noise contours associated with the A90.
44. While a material consideration, I discuss here the Royal Environmental Health Institute of Scotland Briefing Note 017 (2020) on noise submitted by the council. It is not part of the development plan nor is it Scottish Government policy or guidance. The appellant has also questioned its approach in suggesting exceptional circumstances must exist to allow a windows closed approach to internal noise mitigation. The appellant says that in light of other guidance and

more recent approaches taken by other authorities. However, to my knowledge the Briefing Note has not been withdrawn and I consider that it has some relevance. I find that the appeal site is not wholly consistent with the exceptional circumstances criteria set out in the briefing note (paragraph 4.60) with regard to closed window mitigation. However, the guidance does suggest that the promotion of sustainable development and transport is one of the exceptions and I consider the matter of sustainable development in the context of Scottish Planning Policy below.

45. That all said, Planning Advice Note 1/2011 does advise that local circumstances should influence an approach on noise levels with open or closed windows. In that regard I consider that the arguments set out by the appellant in favour of a closed window mitigation strategy are not compelling. The reliance on a closed window approach arises not only because of the need to address a shortfall in effective housing land but also due to the choice taken to propose housing close to the A90.
46. Although the appellant indicates that different approaches have been taken on other sites throughout Angus, no further detail on the circumstances of these cases has been provided.
47. In addition to the above, eight properties would experience noise levels in excess of the BS8233: 2014 upper limits for external noise levels supported the Scottish Government Technical Advice Note Assessment of Noise and World Health Organisation guidelines and as quoted by the appellant. The properties affected by external noise would be located on the western boundary and most of their private garden areas would experience road traffic noise; albeit the exceedance is not excessive.
48. With regard to mitigation for external noise, the appellant's assessment suggests mitigation in the form of solid screening and I note the council has sought solid walls if consented. Meeting the upper limit for external noise would require an acoustic barrier on the eight garden boundaries. This would be to the west of the properties and some three metres in height. This could either use a bund or a solid fence/wall or a combination of both. Between these properties a 1.8 metre fence would also be required to secure the noise mitigation. I have no question over the feasibility of implementing such mitigation but I do have concerns about the visual and amenity impacts arising from the design of such measures where houses are only of a single storey. The current landform in this part of the site is relatively flat and a three metre high solid boundary would be in stark contrast to the existing low lying landform. Together with 1.8 metre solid boundaries between the houses, I consider that the outcome for the residents would be an overbearing feeling of enclosure for the eight properties concerned. This would be in addition to negative visual outcomes as a consequence of the creation of the bund/barriers when seen travelling along the A90, on the Kirriemuir Road and moving around the proposed development near to these plots.
49. The appellant points to BS8233:2014 which indicates that a relaxation of the upper limit could be allowed for due to the anonymous characteristics of road traffic noise. I also recognise that the exceedance of the noise standards is marginal for external areas of the development. The appellant also says that residents would be more likely to tolerate marginally higher noise levels in exchange for the convenience of living close to the strategic transportation network (the A90). I have no evidence to suggest that this would be supported by residents of a new housing development in a semi-rural edge of settlement location where noise would not likely be expected. The British Standard points to relaxation in situations where development is either desirable in a particular location or constrained by existing noise levels. In these circumstances achieving the lowest practical level is sought.

50. My overall conclusion on noise is that, despite the greenfield nature of the site and the obvious existence of the A90 corridor, the proposal has not been designed in a way which would allow for properties to meet the appropriate noise thresholds without mitigation. The outcome is that lower amenity levels (by having to close windows or accept additional noise) would be experienced by a number of residents in and around their homes in surroundings where noise pollution would not be expected. The scale and layout of the development has meant that Planning Advice Note 1/2011 has not been followed in terms of achieving the lowest impact possible. Given the mitigation required to meet noise standards, I consider the proposal to be contrary to policies DS4 and TC2 of the local development plan. While I understand that external noise levels are marginally above the threshold, and may not on its own warrant refusal of an application, this impact adds to internal noise impacts and could result in overbearing noise mitigation screening.

Accessibility of site and infrastructure considerations

51. On my site inspection I observed that the appeal site would have reasonably good pedestrian access to the Forfar Community Campus and its services. Access routes for pedestrians and cyclists exist on the proposed plans and can also be secured using conditions. I noted on my site inspections that public bus services also existed within a reasonable walking distances on Taylor Street/Turbeg Road south east of the site and to the north on Kirriemuir Road; all within the 400 metres recommended by Scottish Planning Policy. As noted by the council in its submissions, additional bus laybys and bus stop provision are appropriate on Kirriemuir Road. I consider these could be addressed by using planning conditions if required. Walking distances to shops and other services/facilities are at the limits of what may be considered acceptable at around 20-30 minute walking times; with the nearest primary school at under one mile from the nearest part of the site. However, I do not share the community's councils concern that the distant to the primary school is unreasonable.
52. In addition, linkages with existing pathways would be made by the development with the housing development currently under construction at Turbeg. The proposed footpath/cycleway between Forfar Loch and the site would be of recreational value and I agree with the council's submission that a planning condition could secure the dual use of the path by cycles and pedestrians. I do note the concerns raised over the lack of natural surveillance which may lead to security concerns with the connecting pathway to Forfar Loch. I agree that given its nature and setting, that perceptions of security may be an issue. However, I also note that this will not be the only route available and that other routes through existing built up areas could be chosen.
53. No significant issues have been raised with regard to impact on the road infrastructure by Transport Scotland and I note that the council's consultation with its roads advisors did not identify significant concerns, subject to the use of conditions. In that regard I have noted the request for certain works to pathways to form cycle ways, and internal traffic crossing infrastructure giving pedestrians and cyclists priority.
54. The community council is concerned that traffic modelling used in the transport assessment may not accurately reflect the development on the ground. However, the community council do not substantiate that concern.
55. Overall, having considered the factors above and in light of the transport assessment provided by the appellant, I consider that the accessibility of the site should be assessed positively against TAYplan Policy 2 and local development plan Policy DS2 and DS3 in terms of being relatively well connected; subject to the

imposition of planning conditions.

56. Local development plan Policy DS5 and the council's Developer Contributions and Affordable Housing Supplementary Guidance set out infrastructure requirements for new development. The council has confirmed that an education contribution is not required on the basis of existing capacity and future forecasts.
57. I have also noted that the policy and supplementary guidance does not seek direct contributions towards healthcare in Forfar. That said Policy DS5 indicates that contributions could arise from the need for new, extended or improved public services. I recognise that local medical practices are concerned about impact on services to existing residents expressed in a joint letter from four practices in the area. Despite these concerns and those of the community council, as far as I understand, this matter remains unquantified. The evidence submitted by the practices does not show what the impact of the proposal would be on healthcare provision in Forfar or what mitigation is required. It is presented simply as a potential impact. I also accept the appellant's point that the appeal proposal would be assisting in delivering a housing shortfall. Therefore, if allocated sites in Forfar are not required to mitigate for healthcare, there is logic to suggest that the same scenario would exist for a replacement site.
58. I consider that Policy DS5 places an onus on the council or other public service providers to quantify what the contributions would be for new, extended or improved healthcare infrastructure and that has not been done. It is not the case that there is no mechanism to secure contributions nor do I agree that contributions to health care facilities are beyond the scope Policy DS5. However, having regard to the evidence, and in light of the lack of a specific policy requirement which has been informed by an assessment of need, I am not in a position to conclude that developer contributions for healthcare is justified or in line with Circular 3/2012: Planning Obligations And Good Neighbour Agreements.
59. There are no other developer contributions I am aware of that would need to be secured by a legal agreement in terms of Policy DS5.

Layout and design

60. I have already considered the matter of developing on the skyline in relation to the localised landscape above.
61. The Design and Placemaking Supplementary Guidance sets out requirements for new development proposals in line with local development plan policy DS3. In that regard the council has concerns over the 'grid iron' pattern used in the proposal. However, I find that the general pattern draws from the layout completed and under construction immediately to the east. While I agree that the regimented layout would appear stark in the countryside location, it simply repeats the character of what has been built previously; albeit to the west of the settlement. As a consequence, it would adhere to policy ambitions of Policy DS3 by replicating, in general terms, the character and appearance of surrounding development.
62. That said, when the detail of the layout is examined it is clear that on the eastern, southern, and western boundaries the proposed houses will back onto open areas viewable by the public. The council say that such a layout is undesirable where the interface is with public areas. In this respect the layout is clearly at odds with the supplementary guidance which guards against the rear of buildings interfacing with the public realm (page 21). Despite the public facing northern elevations, given scale of the matter for this development, with over 40 plots with rear elevations and gardens facing public views and/or onto public footpaths, I consider that the

development is contrary to the policy desire to create successful places contained within Policy DS3 and in the supplementary guidance. In this particular respect, the potential attractiveness of the development as a 'place' would, in my view, be significantly diminished by the orientation of the housing.

63. I note that the council's supplementary guidance does not support open plan front gardens. However, I consider that such a matter could be addressed by planning condition.
64. To the north of the proposal open space would be provided. It would be fairly large in scale with a simplistic layout but somewhat detached from the housing development. This open space is also divided by a new access link road from the A926. In that regard, I agree with the council that a road would generate traffic movement through the amenity area. This could reduce the attractiveness of the open spaces and perceptions of safety around them. Improvements, could however be secured by condition which would require revised landscaping, drainage basin and pathway schemes to be approved in order that the spaces are attractive to users. The layout of the proposed play area could also be improved by the use of conditions requested by the council's internal consultees. Otherwise, the layout generally provides for a safe and pleasant set of open spaces sought by Policy DS3. I have also noted that the council has said that the open space provision is generally compatible in scale with regard to the requirements of Policy PV1 and PV2. I agree that to be the case and note that a generous level of open space has been provided overall.
65. I also consider that planning conditions could be used to reduce a small number of the plot boundary heights to allow for improved natural surveillance toward the internal pathways proposed by the development.
66. Overall, I consider that the design and layout of the proposal is not in line with the council's supplementary guidance. Although I consider that the proposal would consolidate the existing character of the surrounding area, developing on the skyline above Forfar Loch and the placement of rear elevations facing public facing views brings the development into clear conflict with the supplementary guidance of the development plan.

Other development plan considerations

67. The applicant proposes the provision of 25 percent of the units on the site to be affordable housing. Therefore, subject to the imposition of a planning condition, the proposal would comply with local development plan Policy TC3 regarding affordable housing. This view is shared by the consultation response of the council's housing division.
68. Local development plan Policy TC2 requires new residential development to be compatible with existing and proposed land uses. In that regard I have already discussed noise matters above. However, the council also has concerns about odour from potential re-use of poultry operations to the south west of the site at Garth Farm. They suggest a planning obligation could address that use. The appellant's odour assessment points to the potential for adverse odour effects to the south west corner of the proposed site should poultry operations resume. As the appellant has indicated control over the farm (in the form of a title extract), I support the use of a legal agreement to control the use of the farm to the development. Otherwise, in terms of Policy TC2, an appropriate mix of house sizes, types and tenures and provision for affordable housing are to be provided.

69. I have not identified any conflict with built environment resources, subject to a condition requested by the council's archaeology advisor. Therefore, I consider Policy PV8 would not be compromised.
70. There would be potential to enhance biodiversity and tree cover as part of the development's final landscaping schemes. I have also not identified any negative natural heritage impacts. Therefore, I see no specific conflict in terms of local development plan Policies PV4, PV5 and PV7.
71. With regard to Policy DS4 see no conflict in terms of air quality, contamination, light pollution, refuse collection and storage, overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing.
72. Scottish Water do not object but indicate insufficient existing capacity at their wastewater treatment plan. The council and appellant indicate this is likely to be addressed if consent was achieved. That position is supported by the statement from Scottish Water that upgraded works could be delivered at a cost to the developer. The appellant has provided further explanation in response to Scottish Water through correspondence from its Engineers, Millard, on capacity matters. In light of all the evidence, I do not consider this matter as a constraint in relation to development plan policy PV15; which recognises that such a scenario would exist from time to time.
73. Concerns raised by Scottish Environment Protection Agency regarding surface waterflooding have been resolved. In light of that I see no conflict with Policy 2 of TAYplan or Policy PV12 of the local development plan with regard to flooding.
74. I consider that there are no further development plan matters which require discussion within my decision.

Development plan conclusions

75. I find that the principle of development on the site is not directly supported by the development plan policies. That said, the proposal would provide economic and social benefits; including supporting a public interest in addressing an identified effective housing land shortfall within the housing market area, providing employment and by facilitating accessibility to the north of Forfar. Some environmental benefits would also be gained through new planting and open space provision.
76. The detrimental environmental impacts I have identified are with regard to development plan policies related to the immediate setting of Forfar Loch Country Park, design matters and the residential amenity for future residents in relation to noise. I consider that when taken together, even in the context of a housing land shortfall, I do not consider that social and economic benefits arising would override these lasting negative impacts. Therefore the removal of an area of prime quality agricultural land is also not justified.
77. As a consequence, and while it is a matter of balance and judgement, I consider that the proposal is contrary to the development plan as a whole.

Material considerations

National Planning Framework

78. Although the Draft National Planning Framework 4 is mentioned in submissions, I

recognise that it has not been approved. Until approved, I should not afford significant importance to its contents. In addition, I note that no party has raised the relevance of National Planning Framework 3.

Scottish Planning Policy

79. At paragraph 115 Scottish Planning Policy indicates that strategic development plans are to set out the housing land requirement for each local authority area and each functional housing market. Paragraph 119 expects local development plan to allocate sites to meet those housing land requirements and provide for a minimum of 5 years effective land supply at all times.
80. Scottish Planning Policy (paragraph 33) says when a development plan is more than five years old a presumption in favour of development that contributes to sustainable development will be a significant material consideration for planning proposals. Although TAYplan is less than 5-years old, the local development plan is more than 5-years old as it was adopted in September 2016. Paragraph 125 of Scottish Planning Policy also says where a shortfall in the 5-year effective housing land supply exists, housing land policies of the development plan should not be considered as being up-to-date. In line with paragraph 33, I therefore consider that the presumption in favour of development that contributes to sustainable development is therefore engaged as a significant material consideration in this case.
81. Based on the evidence submitted and my findings above, in relation to the principles of paragraph 29, my assessment is summarised as follows:
 - There is no evidence to suggest that the proposal would have anything other than a positive net economic benefit. This includes capital expenditure and employment creation.
 - Elements of the design proposal respect the character of neighbouring developments. However, my findings point to design failings in respect of unduly prominent siting affecting the setting of Forfar Loch Country Park by developing on its northerly skyline and detrimental visual amenity effects arising from the orientation of rear housing elevations facing onto public views.
 - In relation to making efficient use of land, this is a greenfield site which would use 28 hectares of prime agricultural land. That is also a consideration for the principle which seeks to consider the implications of impacts upon soil quality.
 - I have no specific concerns regarding the principles relating to accessibility, waste production, infrastructure provision, climate change, flood risk or health and well-being in relation to social interaction and physical activity.
 - Development is also to have regard to the principles for sustainable land use set out in the Land Use Strategy. However, no party has raised any concern in this respect.
 - No impacts on culture or historic environment resources are evident.
 - With regard to natural heritage and landscape my concerns relate to the localised landscape and visual impacts on the setting of Forfar Loch Country Park that I have identified above. Otherwise there are no further natural heritage or landscape issues.

- In relation to over development and protecting amenity, the development would not protect the amenity of new residents due to exposure to adverse noise levels.
82. In considering the nature of the Scottish Planning Policy principles it is those supporting good design (third); protecting and enhancing landscape and the wider environment (eleventh); and, protecting the amenity of new and existing development/soil quality (twelfth), that are of concern to me in this case. I have not identified conflicts with the other Scottish Planning Policy principles and the development should be viewed positively in respect of these other principles.
 83. The appeal site would assist in helping to address a reasonably significant housing land shortfall within the West Angus Housing Market Area. There is also a strong public interest in ensuring that the shortfall is met. However, taking all of the above matters into account I consider that the significant adverse impacts that relate to the localised setting of the Forfar Loch Country Park, the level of mitigation required to address noise impacts for future residents, together with failings in the overall design should override the significant presumption in Scottish Planning Policy in favour of development that contributes to sustainable development. The benefits of addressing a shortfall in housing land supply would, in my view, not be of greater importance to outweigh the long-term harm which would be associated with the proposal. In this context, the removal of over 28 hectares of prime agricultural land would not be justified.
 84. The policy advice of Scottish Planning Policy at paragraph 28 is clear that “The aim is to achieve the right development in the right place; it is not to allow development at any cost”. While a certain scale of development may be acceptable in this general location, I consider, for the reasons I have set out above, that the proposal is not the right development.

Other matters

85. Issues that have been raised in the representations have been largely addressed in my assessment above.
86. In representations, other non-allocated sites in the Forfar are preferred. However I must consider the merits of the appeal proposal on its own.
87. The council has said that the current draft Housing Needs and Demand Assessment is of some relevance. However, I consider that until the assessment receives a robust and credible appraisal from the Centre for Housing Market Analysis, it should be considered to be of limited importance to my decision. The draft assessment is only an indication that housing need and demand within the housing market area may have reduced. It is not independently verified evidence. Therefore I do not consider it further.
88. Scotia Homes make reference to the area of land immediately north of Forfar Loch. They say that if the appeal is consented, this area will be under pressure to be developed. However, I do not consider the matter of setting a precedent to be relevant to this area of land as each individual proposal would be considered on its own individual merits.
89. The Professional Practice Guidance on Planning and Noise New Residential Development relates to developments in the English Planning system and not Scotland.
90. I agree with the appellant that just because the appeal proposals is not

'regeneration' means that it is in some way inherently unsustainable.

91. The appellant and others have raised a number of procedural matters with regard to the council's handling of the application but none are relevant to my consideration of the appeal.
92. Representations have raised the relationship between Elite Homes and Guild Homes. Other private business related matters are raised in submissions along with a criticisms of individual businesses. I do not consider these to be valid planning matters or of any importance for my assessment.
93. Finally, and in light of housing policy of the development plan being judged out of date, I consider that the level of shortfall in effective housing land across the whole of the Angus Council area is also a material consideration for my planning assessment.

Conclusions

94. Based on the above, the proposed development does not accord overall with the relevant provisions of the development plan. Only material considerations of sufficient importance would allow for a proposal which is in conflict with the development plan to be supported. However, I should also take into account the Graham's Family Dairy Limited and Mactaggart & Mickel Homes Limited Court decision against the Scottish Government which sets out an explanation on how to consider a 'tilted balance' in decisions where a shortage in effective housing land exists and where development plan housing policy should be regarded as out-of-date.
95. Therefore, in coming to my overall conclusion I recognise that the proposal, in assisting with an effective housing land supply shortfall, could be considered sustainable even although it does not meet all the principles set out in paragraph 29 of Scottish Planning Policy. There is also no doubt that the proposal for 245 houses would make a sizeable contribution to the agreed shortfall in effective housing land supply within the West Angus Housing Market Area. For that reason I consider that the 'angle of title' in favour of development is reasonably significant. That said, it is tempered by the fact that the level of shortfall across the Angus Council area is very small.
96. However, although the site has the ability to deliver a range of new homes for the community, I consider that when considered cumulatively the number and nature of the shortcomings of the proposal, together with the resultant conflicts with development plan policy, significantly and demonstrably outweigh the need to address a shortfall in effective housing land in the housing market area. In my view, due to the long term negative impacts, the planning balance weighs against the proposal and that it should not be viewed as a sustainable proposal in overall terms.
97. I find that there are no material considerations, including the terms of Scottish Planning Policy and its presumption in favour of development that contributes to sustainable development, which would justify granting planning permission in this instance. I have considered all the other matters raised in the submissions, but there are none which would lead me to alter my conclusions.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from this Report.

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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DATE: 6 SEPTEMBER 2022

APPENDIX 1: SITE LAYOUT PLAN
APPENDIX 2: PLANNING SERVICE PRESENTATION