

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 18 OCTOBER 2022

PLANNING APPEAL DECISION: LAND WEST OF JANEFIELD COTTAGE, PANBRIDE ROAD, CARNOUSTIE

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 Kirkwood Homes and Angus Estates in relation to the refusal of planning permission for a residential development with associated infrastructure, access, landscaping, drainage, SuDS and open space on land west of Janefield Cottage, Panbride Road, Carnoustie. 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 At its meeting on 24 March 2022, Council refused planning permission for a residential development on land at Panbride Road, Carnoustie (application [21/00523/FULM](#) refers).
- 2.2 The applicants, Kirkwood Homes and Angus Estates, submitted an appeal to Scottish Ministers in relation to that decision. The appeal was dismissed and planning permission was refused. The Reporters decision is set out below.
- 2.3 The appeal decision is significant as it confirms the council's policies are enabling delivery of new homes in the South Angus Housing Market Area at a rate and number that meets the requirements identified in TAYplan. The decision supports the council's policy approach of directing new housing development to sites specifically allocated for that purpose and promoting redevelopment of brownfield land in preference to the release of additional greenfield land. The decision also indicates support for the council's requirement that new development should comply with its design quality and placemaking supplementary guidance.

3. REPORTER'S DECISION

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan, the main issue in this appeal is whether the principle of residential development can be accepted in this location.
2. The development plan comprises the TAYplan Strategic Development Plan 2017 (TAYplan) and the Angus Local Development Plan 2016 (the LDP).

The principle of development

3. Although the site lies immediately adjacent to the edge of Carnoustie, a Principal Settlement, as defined in the LDP, it is outside the settlement boundary and therefore

in a countryside location, where LDP policy TC2 only supports residential development in limited circumstances, none of which applies to this proposal. Therefore, the principle of residential development here is contrary to policy TC2.

4. The land is also identified as prime agricultural land where LDP policy PV20 only supports development proposals that would either: support delivery of the LDP's development strategy and policies; be small scale and directly related to a rural business or mineral extraction; or constitute renewable energy development. I do not agree with the appellant that the proposal's delivery of houses, would qualify for the first of these because (for reasons I explain below) there is already sufficient effective land available to deliver the LDP's strategy. And it is unable to satisfy either of the other two grounds for developing on prime agricultural land. Therefore, I find the proposal to be contrary to policy PV20.
5. TAYplan policy 9 is similarly protective of prime agricultural land, recognising its status as a finite resource and protecting it from development unless the benefits of development would outweigh its loss. Due to the conclusions I reach below on the lack of justification for the principle of residential development here, I find the proposal to be contrary to policy 9.
6. The appellant argues that the proposal should be supported in order to address a shortfall in the effective five year housing land supply. SPP confirms that, where such a shortfall can be demonstrated, a housing development proposal that would help to address the shortfall may potentially be supported, even on a site that would, ordinarily, be considered unsuitable.
7. It is worth mentioning at this point that, where a development plan is more than five years old, it is regarded by Scottish Planning Policy (SPP) as "out of date". This does not affect its legal status as part of the development plan and the statutory requirement set out in paragraph 1 above, to take planning decisions in accordance with it, unless material considerations indicate otherwise. However, it does potentially allow a proposal to qualify for support from SPP despite being contrary to the development plan.
8. I agree with the appellant that the fact that the LDP is more than five years old is an important material consideration. However, the LDP is only one part of the development plan. The other (and strategic) part of the plan - TAYplan, which sets out the housing land requirement, is not out of date. This leads me to conclude that the LDP's in-principle opposition to residential development on this site may be capable of being overcome. But only if, when assessed against the housing land requirements that are set out in TAYplan, the proposal would help to address a shortfall in the five year supply of effective housing land.
9. The target for the five year effective supply can be calculated from the housing land requirements for each housing market sub-area (HMSA) that are specified in TAYplan policy 4. For the South Angus HMSA where the site is located, the annual requirement is 77 units.
10. There is no policy stipulation in SPP as to how an annual housing land requirement should be translated into a five year target. The approach advocated by the appellant on this occasion (which is often described as the "average" method) is simply to multiply the annual requirement by five. This would give a five year target of $77 \times 5 = 385$ homes.
11. The council argues that past strong performance in housing delivery over the TAYplan plan period cannot be ignored and advocates the "residual" approach to establishing how much land will be required for the next five years. Using that

approach, the 2021 housing land audit (HLA) found that, due to high levels of housing completions between 2016 and 2021 (amounting to 663 units over that five year period), there remains a need to find land for only 110 homes over the subsequent five year period 2021 to 2026.

12. The purpose of maintaining an effective five year supply at all times is ultimately to deliver the housing land requirement for the plan period as a whole. When levels of housing completions in the first five years of the plan period have significantly exceeded the target (a fact the appellant does not refute), I find no justification to adopt the average approach to setting a target for the subsequent five years, as this would almost certainly lead to more land being authorised for housing than is needed to deliver the plan's overall housing land requirement for this HMSA. For that reason, I conclude that the residual approach is the most appropriate to employ on this occasion.
13. Within the 2021 HLA, the council estimates a five year effective supply of 534 homes. When compared with the five year target (for the period to 2026) of 110, that represents a significant surplus. The appellant questions how realistic the council's assumptions about certain sites (particularly Strathmartine Hospital) may be. But, the submission of a planning application for the hospital site and comments from the prospective developers of that site and from Homes for Scotland, do not support the appellant's position. And, even if one accepted the appellant's pessimistic assumptions about delivery from the Strathmartine site, its own calculation of the effective five year supply (rolled forward to 2027) of 328 is still indicative of a very healthy surplus in the supply of effective housing land in the South Angus HMSA.
14. I have also been referred to a draft 2022 HLA. This can be given less weight due to its draft status. However, it again does not support the appellant's position that there is a shortfall in the five year supply of effective housing land. For the South Angus HMSA, it shows a surplus of 559 units in the effective five year supply to 2027.
15. The appellant describes the South Angus HSMA as dysfunctional and unbalanced due to there being a particular shortage of effective housing land (both in past years and in forward projections) within Carnoustie. The appellant points out that, even if the council's housing delivery predictions for the next five years were accepted, the great majority of development would take place within Monifieth, with virtually no development activity in Carnoustie. It is argued that this is unacceptable, given that Carnoustie is identified as a Principal Settlement in TAYplan.
16. I agree that it can be relevant to consider the distribution of development across an HMSA. However, Carnoustie is a Tier 3 Principal Settlement, which TAYplan policy 1 expects to play an important but more modest role in the regional economy and where only a small share of the additional development will be accommodated. According to the 2021 HLA, it has an allocated housing site (Pitskelly) which has planning permission for 249 units and has commenced. Following discussions with the prospective developer of that site, the council predicts that 75 units will be delivered in 2022/23. This does not suggest that any revision is required to my earlier conclusions on the adequacy of the effective housing land supply.
17. LDP policy DS1 recognises that sites that are (like the appeal site) contiguous with a development boundary, may be appropriate for development where this would be in the public interest and where social, economic, environmental or operational considerations confirm there is a need that cannot be met within a development boundary. As this proposal would involve residential development on prime agricultural land with housing for which no justification has been proven, it cannot be considered to be in the public interest, even if it could be demonstrated that there were no alternative sites within the settlement boundary.

18. Taking all factors into account, I conclude that the principle of development is contrary to the development plan.
19. SPP sets out a presumption in favour of development that would contribute to sustainable development. This involves achieving the right development in the right place, guided by a series of principles. I agree with the appellant that the proposals would deliver significant economic benefits. However, as there is no convincing evidence of any shortfall in the supply of effective housing land, and as a housing market can only support a certain level of such development at any one time, it is not unreasonable to conclude that such benefits would be at the expense of other housing development in the locality and therefore offer, at best, very limited net economic benefit.
20. The proposal could also satisfy some of the other criteria that SPP requires to be taken into account when assessing this issue. However, the proposed use of greenfield, prime agricultural land would be directly in conflict with SPP's expectation to make efficient use of existing capacities of land, buildings and infrastructure, and would not support town centre and regeneration priorities. For this reason, and the fact that what is proposed is not necessary in order to deliver required levels of housing development, I conclude that the proposal would not contribute to sustainable development.
21. And even if it were, in the context of there being no land supply justification for the proposal, I find the benefits it would deliver to be significantly and demonstrably outweighed by the disbenefits I have identified above.
22. The fourth National Planning Framework (NPF 4) is currently in preparation. Upon adoption, possibly towards the end of the year, it will inform future levels of housebuilding across all parts of Scotland, replacing the housing land requirements that are set out in strategic development plans including TAYplan. At this stage it can be given very limited weight in this appeal, but it is worth noting that, as currently proposed, its minimum alltenure housing land requirement for Angus of 255 houses per annum would be almost 100 houses below the current TAYplan requirement of 342 houses per annum.

Other matters

23. Had I been minded to allow this appeal, it would have been necessary for me to consider the detailed design of the proposals. As I find the principle of development to be unacceptable, a consideration of such matters would be unproductive. However, it is worth observing that I share the council's concern over the proposed layout of the site, which would turn its back on adjacent roads, contrary to the expectations of LDP policy DS3.

Conclusions

24. For the reasons set out above, I find the proposed development not to accord overall with the relevant provisions of the development plan and I conclude that there are no material considerations which would still justify granting planning permission.

4. FINANCIAL IMPLICATIONS

There are no financial implications associated with 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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APPENDIX 1: LOCATION PLAN AND SITE LAYOUT