

Minister for Local Government Empowerment and Planning

Recall Consideration: Residential Development with Associated Infrastructure, Landscaping and Engineering Works, on land north of B792, Mossend, West Calder, West Lothian

Purpose

1. That you agree to recall the above planning appeal which has been lodged with the Planning and Environmental Appeals Division (DPEA).

Priority

2. Routine.

Background

3. The decisions on most appeals to DPEA are made by independent Scottish Government Reporters. However, Scottish Ministers can 'recall' an appeal for their own determination if they consider a case raises matters of genuine national interest. When an appeal is recalled by Ministers the process is still the same, except instead of the final decision being delegated to a reporter, the reporter will prepare a report with a recommendation for Ministers, who will then make the final decision.

Proposed Development and Site

4. Miller Homes applied to West Lothian Council in March 2022 for planning permission in principle for residential development with associated infrastructure, landscaping and engineering works, on a site north of the B792 in Mossend, West Calder. The planning application indicated that the development would consist of around 250 new homes, ten percent of which would be affordable housing.

5. The applicant appealed to DPEA against the failure of the council to determine the application, in August 2022 (reference PPA-400-2147).

6. The site is designated in the adopted West Lothian Local Development Plan (LDP) as *Countryside Belt*, and is outwith but adjacent to the settlement boundary of West Calder as shown in the LDP.

Representations and consultations

7. Around 131 individual letters of representation objecting to the application, and approximately 260 identical 'proforma' letters of objection, were received by the Council. These raised various concerns, including that there is no need for the development; the development is unsustainable and represents overdevelopment; it would place unacceptable pressures on local infrastructure (e.g. roads, sewage treatment, education and healthcare). Other common concerns include that it

would have adverse impacts on the character of the area, local wildlife and heritage and would be contrary to various planning policies.

8. The local community council objected to the application, raising concerns regarding potential impacts on the Five Sisters (a shale bing) scheduled monument, a local nature reserve and local wildlife. West Lothian Council's education service also objected, on grounds related to the capacity of secondary education provision. There were no objections from any other consultees.

Key issue

9. The West Lothian LDP contains an 'exceptions' policy (Policy Hou 2) which supports planning applications for residential development on unallocated greenfield sites if additional sites are needed to maintain a five year effective housing land supply and stated criteria are met. The appellant argues that there is a shortfall in the effective housing land supply, and that the appeal is supported by this LDP policy.

10. The Fourth National Planning Framework (NPF4) was published by Scottish Ministers in February 2023, and replaced National Planning Framework 3 and Scottish Planning Policy (SPP). The statutory development plan for West Lothian now consists of NPF4 and the West Lothian LDP and its supplementary guidance.

11. NPF4 Policy 16 'Quality Homes' sets out the Scottish Government's new policy approach to planning for new homes, which focuses action on delivery instead of conflict over precise housing numbers or percentages. Policy 16(f) states that development proposals for new homes on land not allocated for housing in the LDP will only be supported in limited circumstances, set out in the policy. Those circumstances do not include where there is a 'shortfall' in the effective housing land supply (those concepts do not feature in NPF4) so this policy is significantly different to the LDP Policy Hou 2.

12. Scottish Government 'transitional guidance' on NPF4 advises that Policy 16 is applicable to decision making at this stage, and that consideration must be given as to whether provisions in LDPs are incompatible with provisions of NPF4. It states that where there is an incompatibility, such as between a housing exceptions policy in an LDP (which includes the West Lothian LDP Policy Hou 2 mentioned above) and Policy 16(f) of NPF4, the latter will prevail.

13. However, comments submitted by the appellant and the council to the Reporter in relation to the Mossend appeal show that there is disagreement over these matters, including on whether Policy 16(f) can currently be applied. The appellant has submitted an opinion from James Findlay KC, who is of the view that there is no conflict between the LDP Policy Hou 2 and NPF4 Policy 16(f). He considers that NPF4 Policy 16(f) is incapable of being sensibly applied at present. On the other hand, West Lothian Council argues that Policy 16(f) should be applied, and that the LDP policy is incompatible with NPF Policy 16(f).

14. In view of the above, we consider that this appeal highlights an important issue regarding the interpretation and application of NPF4 Policy 16, with implications for many applications and appeals proposing residential development, either live in the planning system now or likely to come forward for decision over the next few years before the next round of LDPs are in place across the country.

Recalling the appeal for Ministers’ own determination would provide an opportunity for Ministers to set out, in their decision letter, more detail on how the policy should be applied. Given the conflicting interpretations, there is a strong possibility that the terms of the eventual decision on the appeal could be challenged in the Courts; which in itself could help to clarify the position for similar cases.

15. DPEA currently have around 7 other appeals which will need to be placed in sist pending the issue of the Ministerial decision in this case. That number could rise as other appeals progress towards determination. Should you agree to recall this appeal, the Chief Reporter intends to write to the affected parties to explain the reasons for sisting their appeals, together with providing reassurance that they will have the opportunity to comment on the Ministerial decision prior to determination of their appeals. We anticipate that there will be adverse reaction to further delay in these cases.

Recommendation

16. That you agree to recall the appeal as it raises national issues in terms of the application of NPF4.

Tom Barratt
 Planning, Architecture and Regeneration Division
 18 April 2023

Copy List	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Deputy First Minister and Cabinet Secretary for Finance			X		

- DG Communities
- Director for Local Government and Housing
- Fiona Simpson, Chief Planner
- Helen Wood, Assistant Chief Planner
- Andy Kinnaird, PARD
- Carrie Thompson, PARD
- Grainne Lennon, Planning Decisions
- Elaine Ramsay, Planning Decisions
- Clare Donnelly, Planning Decisions
- Paul Lawson, Planning Decisions
- Jane Smith, Planning Decisions
- Andrew Evans, Planning Decisions
- Scott Ferrie, DPEA
- David Henderson, DPEA
- Norman Macleod, SGLD
- Kirsty Jamieson, SGLD
- Adrienne Forman, SGLD
- Iain Monk, Senior Media Manager
- Henry Bird, Senior Media Manager
- Alasdair McKillop, Media Manager
- Callum McCaig, SpAd