

Dechmont Community Council

Meetings held in:
Dechmont Memorial Hall
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Dechmont
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Communication by email please:
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16th October 2022

FAO: Robert Seaton

The Scottish Government
Planning and Environmental Appeals Division
Ground Floor, Hadrian House
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

Case Reference: PPA-400-2148 (Planning Permission Appeal).

Site Address: Land At Burnhouse Farm, Burnhouse, Dechmont, West Lothian, EH52 6NB.

Case Detail: Planning Permission In Principle For A 12.3 Ha (Around 160 Homes) Residential Development With Associated Infrastructure, Landscaping And Engineering Works.

Dear Mr Seaton,

Dechmont Community Council (DCC) represents the people of Dechmont.

Following significant community engagement and consultation, as well as extensive discussions at Community Council meetings, DCC submitted an objection to the above noted planning application.

It is noted that the planning application was refused by West Lothian Council on 11th August 2022 and further that the applicant has now appealed this decision.

It is noted that DCC's original objection to the planning application will be forwarded to your office alongside 267 objections received during the application process. In the interests of efficiency, the matters contained within that representation will not be repeated here. In addition to objections from members of the public and residents of Dechmont, objections were also received from MSPs and the Association for the Protection of Rural Scotland.

Please find enclosed the additional representations DCC wish to make in response to the appeal. Please note there are further representations contained at Appendix A from MSPs, members of the public and others.

As a Community Council we have consulted widely to ensure that the views of as many residents as possible are represented in our appeal submission.

Dechmont Community Council - Request for Further Procedure

Dechmont Community Council respectfully requests further procedure in the form of a hearing session.

In accordance with DPEA, Guidance Note 8 – Deciding Further Procedure, it is noted that,

“One or more hearing sessions may be required where:

- the reporter needs to enhance his/her understanding by asking questions, seeking explanations of evidence or opinions;
- where there is some dispute but where cross examination of professional or other witnesses is not necessary;
- **where the evidence to be examined is largely a matter of opinion rather than settled fact**, such as design or policy issues or impact on the surroundings, and which could benefit from being explored through discussion led by the Reporter to enable /him/her to reach his/her own opinion.”

It is the view of Dechmont Community Council that a hearing session is required for the following reasons;

1. The issue of sustainable development is central to this appeal. A hearing session will enable the Reporter to consider the impact of the major development on the surroundings of the Special Landscape Area through discussion with the relevant parties. This would benefit the Reporter greatly in his determination of sustainability.
2. The issue of housing land supply is contentious. As Scottish Planning Policy does not state the method of calculation, it is for the Reporter to decide on the method that will be used. Therefore, it becomes a matter of opinion rather than settled fact. In other words, the outcome of the calculation is settled by the opinion of the Reporter as to the appropriate method to use.

Yours sincerely,



Gillian Anderson LLB, DipLP
Member of Dechmont Community Council
On behalf of Dechmont Community Council
October 2022

Enc. Response of Dechmont Community Council to Planning Permission Appeal
PPA-400-2148.

**Response of Dechmont Community Council to:
Planning Permission Appeal PPA-400-2148**

October 2022

1.0 Introduction

- 1.1 The Application
- 1.2 Referral to West Lothian Planning Committee
- 1.3 Planning Consent Refused

2.0 Housing Land Supply

- 2.1 Background
- 2.2 The Residual Method of Calculation
- 2.3 The Average Method of Calculation
- 2.4 A Calculation is not possible until NPF4 is Published
- 2.5 Material Considerations
 - 2.5.1 West Lothian Housing Land Audit 2021 (HLA 2021)
 - 2.5.2 The housing land requirements in Draft National Planning Framework 4 (NPF4)
 - 2.5.3 Housing Needs and Demand Assessment 2 (HNDA 2) & Housing Needs and Demand Assessment 3 (HNDA 3)
- 2.6 Housing Land Supply Calculation
- 2.7 Housing Land Supply Summary

3.0 Sustainable Development

- 3.1 Scottish Planning Policy 2014 – Sustainability
- 3.2 The Gladman Ruling – Tilted Balance
- 3.3 Transport and Sustainable Travel
 - 3.3.1 Walking Distances/Public Transport
 - 3.3.2 Walking – Access
 - 3.3.3 Journeys by Car
- 3.4 Traffic
- 3.5 COP26 and Climate Change Mitigation
- 3.6 Biodiversity
- 3.7 Pre-determination of the Emerging Plan
- 3.8 Summary

4.0 Impact on the Special Landscape Area

5.0 Impact on Education Capacity and Infrastructure

6.0 Summary of Failures to Comply with Relevant Planning Policies

Appendix 1 Additional Representations

1.0 Introduction

1.1 The Application

Springfield Properties Plc (hereafter referred to as 'the appellant') applied to West Lothian Council for Planning Permission in Principle for a 12.3 ha residential development within the Village of Dechmont.

It is of note that a previous pre-application consultation and EIA screening request were submitted by the appellant in 2017. However, the Local Development Plan was in place at that point and with no chance of success the appellant did not progress to a planning application at that time. Instead, they waited for a period of extreme uncertainty, exacerbated by the Covid pandemic and delays to the publication of National Planning Policy Framework 4 (NPF4).

1.2 Referral to West Lothian Planning Committee

The proposal is classified as a major development in terms of planning regulation and guidance. The development was deemed significantly contrary to the Local Development Plan by the Council's Head of Planning, Economic Development and Regeneration. Given the extent of the non-conformity of the proposed major development, the proposal was heard by the full council. The purpose of this is to ensure robust, democratic decision making, to ensure that decision making powers are not delegated to one person or a particularly small group. The full council meeting was held on 11th August 2022. Representations were made by Dechmont Community Council and others.

1.3 Planning Consent Refused

The application was refused Planning Permission in Principle on the 11th of August 2022 by West Lothian Council Planning Department following a pre-determination hearing. The full council vote was unanimous, with no persons voicing support for the proposal.

2.0 Housing Land Supply

2.1 Background

The Local Development Plan requires planning authorities to maintain a five year supply of effective housing land. The appellant argues unconvincingly that there is a shortfall in housing land supply in West Lothian and that, therefore, this unallocated Special Landscape Area should be brought forward for a major development.

DCC notes that there is currently a highly unsatisfactory situation in that neither the development plan, nor national policy, sets out how the housing land supply should be calculated. The matter will be clarified through the publication of National Planning Framework 4 (NPF4) which is expected imminently, and indeed may be published by the time this appeal is heard.

While we await NPF4 in the short term, it is noted that it is for the Reporter to determine the method of calculation, having regard to the alternative approaches promoted.

2.2 The Residual Method of Calculation

The residual method of calculation attempts to address any shortfalls in housing completions in previous years, by adding them to the housing requirement for the remaining years in the plan period. In short, this is done by taking the total housing requirement for the plan period and subtracting the number of completions so far to establish what the remaining housing supply target should be.

Within an example contained in the Scottish Government, 'Housing Land Research Paper to inform amendments to the Scottish Planning Policy', (published December 2020), the Scottish Government notes that the use of the residual method results in unrealistic figures;

"The theoretical 5 year requirement would therefore be 31,155 (6,231 x 5). This is an example of a recognised weakness of the residual method. In situations where the actual completions lag behind the planned requirement, as the plan period left to run reduces, the forward 5 year effective supply **calculation becomes larger and larger and arguably becomes unrealistic.**"

This approach is inherently flawed in that it takes no account of any other factor which may have influenced demand for housing or house completions. Importantly, it has no regard to the number of units which could realistically be completed annually within West Lothian, resulting in calculations which are simply not achievable. The Scottish Government has recognised this flaw with the residual method of calculation;

"...although the residual method does take into account previous shortfalls, **it has a practical disadvantage**, which is illustrated in 4 of the councils **but particularly West Lothian**. As previous shortfalls are taken into account, any continuing shortfalls against an increasing requirement means that the forward 5 year effective supply becomes larger and larger until **it is unrealistic compared to likely completions**. So for West Lothian a forward 5 year supply equates to 10,684 (2137 a year) but the actual annual average completion rate since 2011 is only 642. **This tendency is particularly likely towards the end of the plan period.**"

(Source: Paragraph 4.33, The Scottish Government, 'Housing Land Research Paper to inform amendments to the Scottish Planning Policy', published December 2020.)

The recent Drumshoreland decisions (considered in detail below) emphasise that the extreme level of housebuilding the appellant alleges is required to address a fictitious shortfall is completely unrealistic in the time frame that NPF4 is expected to be adopted within. In a letter from Tom Arthur MSP to Ariane Burgess MSP (Convener: Local Government, Housing & Planning Committee of the Scottish Parliament), dated 11th July 2022, it is stated that the final draft of NPF4 will be laid before Parliament mid-autumn, followed by a period of six weeks before Parliament will be asked to approve NPF4. At the time of writing this submission, it is mid-autumn.

Unrealistic time frames for major developments was a factor specifically applied in West Lothian just two months ago by Reporter Buylla in his Drumshoreland decision, where he stated,

“we are close to the end of the plan period and replacement housing targets (via the fourth National Planning Framework (NPF 4)) are in preparation...the number of homes that would need to be built each year in order to ‘catch up’ the deficit over the next five years would require a level of housebuilding, **which no evidence suggests would be realistically deliverable and which might be in excess of emerging targets.**”

(Appeal Decision Notice: PPA-400-2131 and PPA-400-2132 at paragraph 24)

It is DCC’s view that the residual method of calculation artificially inflates the five-year housing land requirement. This position is shared by the Scottish Ministers who have identified that economic conditions and the Covid pandemic are material factors. In light of these material factors, the use of the residual method is both foolish and short-sighted. The use of the residual method would lack a basic understanding of the impacts of the Covid pandemic on the economy.

The historical completion rates used by developers go as far back as the pre-economic recession period following the economic crash of 2008, after which demand for housing reduced significantly for several years. The residual approach fails to recognise this accepted fact and simply keeps adding figures from previous years, increasing the numbers year-on-year to ‘bank’ at a later date.

It is interesting to note that with regard to sites exceptionally released by the Reporter (through an appeal decision within West Lothian from 2015-2019), none were complete by October 2020. The sites made zero contribution to the apparent housing land shortfall claimed by the various developers.

Table 2.6 - Exceptional release housing site completions by Council area

Council	Units granted permission	Completions by Oct 20
Edinburgh	2023	705
East Lothian	373	143
Fife	580	72
Borders	40	0
Midlothian	300	19
West Lothian	740	0
<i>SESplan subtotal</i>	<i>4056</i>	<i>939</i>
East Dunbartonshire	122	45
North Lanarkshire	997	50
Falkirk	70	0
Stirling	170	0
Total	5415	1034

Source: The Scottish Government, ‘Housing Land Research Paper to inform amendments to the Scottish Planning Policy’, published December 2020.

2.3 The Average Method of Calculation

The average method of calculation is logical and practical and is not unfairly balanced towards the commercial needs of housing developers. The average

method divides the total housing requirement for the plan period by the number of years the plan covers, giving an annual housing requirement. This is then multiplied by five to establish the five-year effective housing land requirement.

The average method of calculation is generally accepted by professionals including local authorities, planning assistance and charities.

2.4 A Calculation is Not Possible until NPF4 is Published

National planning strategy and policy in Scotland are principally set out in National Planning Framework 3 (NPF3) 2014 and Scottish Planning Policy (SPP) 2014. However, the Scottish Government will replace these with the emerging National Planning Framework 4 (NPF4), which is due imminently. NPF4 combines the roles of both NPF3 and SPP, and once approved it will supersede both. Unlike NPF3 and SPP, it will be part of the statutory development plan for West Lothian. All planning decisions will need to have direct regard to its policies.

The Strategic Development Plan for South East Scotland (SESplan) is based on the Housing Needs and Demand Assessment 2010, and was approved by the Scottish Ministers in 2013. The plan (and accompanying supplementary guidance) are now more than five years old, and the policies relating to housing are out of date in accordance with Scottish Planning Policy. There are fewer than five years left in the plan period.

It is therefore not possible to calculate a five-year effective housing supply and consequently SESplan Policy 7 and LDP HOU 2 cannot be engaged.

This view is supported by recent decisions by DPEA Reporters in West Lothian:

Appeal Decision Notice: PPA-400-2131 and PPA-400-2132 (one Report)

Location: Drumshoreland, East Calder, West Lothian.

Date of appeal decision: 19th August 2022

Reporter: David Buylla

Reporter Buylla, in his appeal decision at paragraph 25 states,

“Ultimately, there is a fundamental impediment to adopting either methodology, which is that SESplan only provides housing targets until 2024. This means there is no longer any means of determining how many homes are required by the development plan to be provided over the next five years. Consequently, I conclude that the provisions of SPP paragraph 125, SESplan policy 7 and LDP policy HOU 2 provide no basis for allowing this proposal.”

Reporter Buylla’s decision was made only two months ago regarding a location only a couple of miles from the Burnhouse Special Landscape Area. This precedent equally applies to Burnhouse.

Appeal Decision Notice: PPA-230-2294

Location: Old Dalkeith Road, Edinburgh

Date of appeal decision: 29 September 2020

Reporter: Christopher Warren

This Decision Notice concerns another appeal by the present appellant, Springfield Properties plc, where their appeal was refused by Reporter Warren. Reporter Warren, in his Decision Notice at paragraph 11 stated,

“the scale of the housing shortfall should further influence the weight to be given to the benefits of a housing proposal. In this appeal, **the absence of a target against which the effective housing land supply can be measured presents significant difficulties in establishing whether or not there is a shortfall which needs to be addressed.** There are even greater difficulties in establishing the scale of a shortfall, should one exist.”

And further, at paragraph 21,

“I find it would be inappropriate to make any assumptions about what may be considered to be an appropriate future housing supply target and housing land requirement for Edinburgh, as part of this appeal. This is a policy matter which is of strategic importance, which cannot be resolved through individual development management decisions.”

2.5 Material Considerations

As noted above, the historic housing land figures are out of date. There is, however, a body of recent evidence relating to housing land supply. DCC seeks to bring the Reporter’s attention to the following;

2.5.1 West Lothian Housing Land Audit 2021 (HLA 2021)

The audit was prepared in line with Scottish Planning Policy 2014 and Scottish Government guidance contained within Planning Advice Note (PAN) 2/2010: Affordable Housing and Housing Land Audits (August 2010), which sets out the criteria for the inclusion of sites in the audit.

The HLA 2021 demonstrates, in a manner consistent with Scottish Planning Policy, that there is a total effective housing land supply of 21,468 units. In accordance with West Lothian Council’s written submissions to this appeal,

“this is more than sufficient unconstrained housing land to meet the housing land requirement and illustrates that the five-year completions programme is above target.”

2.5.2 The Housing Land Requirements in Draft National Planning Framework 4 (NPF4)

NPF4 will clarify the method of calculating housing land supply. The Scottish Government, following extensive consultation, and discussion with the Housing Advisory Group, refined the methodology to be used, before going on to publish the ‘10 year Minimum All Tender Housing Land Requirements’ (MATHLR) in February 2021. West Lothian Council submitted the figure of 9,600 units which was accepted by the Scottish Government and has been incorporated into draft NPF4. A 10-year supply of 9,600 equates to 960 per year. This accepted NPF4

ten-year figure should be contrasted with the development industry's assertion that the annual housing requirement in West Lothian is now 3,000 units.

This point highlights how grossly distorted the development industry's figures are.

Dechmont Community Council is of the view that, although NPF4 is in draft form, the MATHLR element has been subject to consultation and agreement. Therefore, the housing land requirement within the draft is a material consideration which should be given significant weight when determining a planning appeal.

The MATHLR demonstrates, by the agreed method, that demand is significantly lower than the assumed housing requirement identified in recent planning appeals. The residual method of calculation would unreasonably inflate demand.

The figures submitted by West Lothian Council, and agreed by the Scottish Government, should be given significant weight as the most up to date assessment of housing land requirements in West Lothian.

It is of note that NPF4 may have been published by the time this appeal is determined.

2.5.3 Housing Needs and Demand Assessment 2 (HNDA 2) & Housing Needs and Demand Assessment 3 (HNDA 3)

Both HNDA 2 and 3 have been confirmed as 'robust and credible assessments of demand for housing in West Lothian' by the Scottish Government Centre for Housing Market Research.

Both of these were published after the SESplan SDP and they provide a more up-to-date assessment of housing demand. These documents are material considerations which should be afforded significant weight in the determination of this appeal.

The first Housing Needs and Demand Assessment (HNDA1) is the version which was used to inform the SESPlan housing targets. Thereafter, HNDA2 was published which showed a significantly lower demand than HNDA1. Thereafter, HNDA3 was published, which represents the most recent, accurately forecasted, agreed figures. HNDA 3 was certified by Scottish Government as being "robust and credible" in July 2022 and is therefore a material consideration of significant weight.

HNDA3 shows, without question, that the housing land supply target in the West Lothian development plan is out of date.

HNDA3 provides a range of projections in relation to need and demand. For West Lothian, these range from 13,088 (slow growth scenario) to 15,312 (strong growth scenario) over a 20-year period. These figures are comparable

to those used in the draft NPF4 based on the Minimum All Tenure Housing Land Requirement of 9,600 homes over a 10-year period.

Overwhelmingly, this shows that there is no housing land supply shortage in West Lothian. A failure to recognise this would amount to a failure to accept the clear and unambiguous evidence accepted by the Scottish Government.

2.6 Housing Land Supply Calculation

The Scottish Government, in its recent analysis titled 'Housing Land Research Paper to inform amendments to the Scottish Planning Policy' (published December 2020), at paragraph 3.30 states the following;

“it is assumed that the Court considers that the correct interpretation of SPP should be:

- To identify whether a shortfall exists, **the HLR should form the basis of the calculation.**
- **The HLA should be the starting point for determining the available effective housing land supply.”**

The West Lothian Housing Land Audit 2021 (HLA) confirms that the total effective housing land supply (unconstrained) is 21,468 units:

SUMMARY		West Lothian Housing Land Audit 2021 (finali			
All tenures		Housing Land Supply			
Status	Total site capacity	Total affordable units	All completions by 31/3/2021	Total dwellings remaining	
Under Construction	4,210	613	1,876	2,334	
Consent	10,391	2,028	0	10,391	
No Consent	6,627	1,761	0	6,627	
Small Sites	240	0	40	200	
Total Effective Supply	21,468	4,402	1,916	19,552	
Constrained	3,629				
Total Established Supply	25,097				

Source: West Lothian Housing Land Audit 2021

The Housing Land Requirement (HLR) with a 10% generosity allowance is 19,811.

FIGURE 4		West Lothian Housing Land Supply Target		
		2009 - 19	2019 - 24	2009 - 24
(A)	LDP Housing Supply Target	11,420	6,590	18,010
(B)	Generosity Allowance (10%)	1,142	659	1,801
(C)	LDP Housing Land Requirement (A+B)	12,562	7,249	19,811

Source: West Lothian Local Development Plan 2018

The five-year housing land supply in West Lothian is 9,040 units. The five-year effective land requirement is 6,606 (19,811 divided by 15 (years) times 5).

There is therefore a surplus of 2,436 units, using the figures we have at present. The surplus will be even higher when NPF4 is adopted, based on the current figures that have already been consulted upon.

The draft NPF4 states a 10-year land requirement of 9,600 units.

Therefore, there is no shortfall in housing land supply, there is more than enough unconstrained housing land to meet the housing land requirement. The five-year completions programme is above target.

Delivery Programme								
◀ Programmed Completions ▶					Total			
21/22	22/23	23/24	24/25	25/26	21/22 to 25/26	26/27	27/28	POST 28
867	855	455	157	0	2,334	0	0	0
299	889	1020	1303	1245	4756	1194	989	3502
18	128	294	497	813	1,750	812	597	3,468
40	40	40	40	40	200	0	0	0
1,224	1,912	1,809	1,997	2,098	9,040	2,006	1,586	6,970

Source: West Lothian Housing Land Audit 2021

2.7 Housing Land Supply Summary

In summary, the housing land requirements in the West Lothian Local Development Plan 2018 are out of date. It is therefore not possible to demonstrate a deficit in the five-year effective housing land supply.

SESplan Policy 7 and Local Development Plan Policy HOU2 cannot therefore be invoked.

Significant weight should be attached to the other material considerations noted above, evidence which confirms that there is sufficient effective housing land supply within West Lothian to meet the predicted demand.

Overwhelmingly, this shows that there is no housing land supply shortage in West Lothian. A failure to recognise this would amount to a failure to accept the clear and unambiguous evidence already accepted by the Scottish Government.

3.0 Sustainable Development

3.1 Scottish Planning Policy 2014 – Sustainability

The stated aim of Scottish Planning Policy 2014 (SPP), is detailed at paragraph 28,

“...to achieve the right development in the right place; it is not to allow development at any cost.”

SPP paragraph 29 sets out the principles for assessing a proposed development. The relevant factors are considered below.

3.2 The Gladman Ruling – Tilted Balance

Within the recent ‘Gladman Ruling’ (Gladman Developments Limited v. The Scottish Ministers [2020] CSIH 28), the issue of the ‘tilted balance’ was addressed.

In the Gladman ruling, Lord Carloway ruled that a presumption in favour of granting planning permission is automatically engaged in areas where there is a housing shortage, or a development plan is out of date.

The ‘tilted balance’ principle makes a presumption towards planning permission being granted **unless** there are “adverse impacts which would significantly and demonstrably outweigh its benefits”.

Although Lord Carloway found that there was a probable shortfall in five-year housing supply in the area based on the out-of-date figures, he refused to grant permission because the development did not constitute sustainable development.

Lord Carloway stated that the existence of one or more adverse findings in relation to the 13 guiding principles on sustainability in SPP (paragraph 29) did not prevent the operation of the tilted balance, **although it may result in the balance tilting back to refusal.**

In accordance with the precedent noted above, the tilted balance should not be applied where a housing land shortage has not been established. It is impossible to determine the degree of tilt to apply if the scale of shortage cannot be demonstrated. This position has been confirmed in numerous recent appeal cases in West Lothian.

3.3 Transport and Sustainable Travel

The West Lothian Local Development Plan 2018, Policy NRG 1 ‘Climate Change and Sustainability’ states that sustainable land use will be promoted by integrating land use with sustainable transport approaches through,

“safeguarding and enhancing the network of sustainable forms of transport: **walking and cycling, public transport, rail**, park and ride and water-borne traffic.”

Policy NRG 1 further states that compliance with the policy requires, “directing new developments to locations accessible by a choice of modes of transport and **which specifically encourage walking, cycling, and public transport in preference to the private car.**”

3.3.1 Walking Distances/Public Transport

Planning Advice Note 75 – Planning for Transport (PAN75), Annex B, Paragraph B13, states,

“For accessibility of housing to public transport the recommended guidelines are less than 400m to bus services and up to 800m to rail services.”

The proposed major development exceeds the guideline 400m walking distance to public transport. From the centre of the site the distance is around 500m, and from the back of the site it is considerably more. The proposed development exceeds the 800m to rail services guideline, the actual distance being over three kilometres (over two miles). Indeed, the appellant acknowledges that the train station is “a short drive away”. It is of note that there is insufficient parking at Uphall train station. Persons travelling from the new development, having to take their cars because they are outwith walking distance, would have nowhere to park.

Current travel distances to schools from the proposed development would involve a walk of over a mile each way for the infant school, quite a feat for a five-year-old child especially in the winter months. For children upwards of Primary 3, it would involve a walk of more than 1.6 kilometres (over a mile) then a bus journey. Once the new school at Bangour village is built, the distance to this school will be around two kilometres, as the proposed site is not integrated in any way with either the new Bangour development or the village of Dechmont.

The bus service within Dechmont already inadequate. The X18 bus is the only service to go through Dechmont and bus stops exceed the recommended 400 metre walking distance. To access major retailers at the nearest shopping area or visit St John’s hospital, one must walk out of Dechmont village to Uphall to catch the bus, a walk of around one kilometre from the proposed site.

3.3.2 Walking – Access

Within the appellant’s paperwork there is reliance upon an 18th century bridge that crosses the Brox Burn outside the site to the north west. Unfortunately, the Archaeological Assessment based on a site visit on 26th June 2017 fails to show that this bridge no longer exists. The bridge was demolished immediately after Bangour Village received Planning Permission in Principle. There is, therefore, no link across the Brox Burn and the site boundary terminates at the burn.

There is no natural linkage between Dechmont village and the proposed site. The appellant’s assertion that they will “connect existing settlement to new development with a boardwalk across burn” is not achievable. The plan includes 1 (or 2 depending on which drawing is referred to) proposed boardwalks across the Brox Burn. The boardwalks would be, quite literally, a path to nowhere. There are no footpaths in Goodall Crescent or Goodall Place. Paths would need to be procured from the existing homeowners by carving up their gardens. This is an overly imaginative and wholly unrealistic idea. This point was specifically recognised during the examination of the existing LDP, when it was decided that the site was not suitable for development.

In their 'Examination of the Local Development Plan' (Date of Report 11th December 2017) Reporters; David Liddell, Andrew Fleming, Lorna McCallum and Christopher Warren stated (at paragraph 32);

“the existing housing along Goodall Place, Goodall Crescent and Burnside Drive, and the Brox Burn itself, could be a **constraint** upon the provision of good footpath links from the site south into the village itself. The fairly steep valley of the burn, and its associated woodland, would also appear to be a **constraint** in providing footpath links with the former hospital site to the west.”

3.3.3 Journeys by Car

The statement by the appellant that the proposed development would “encourage residents of the new development to use alternative modes of transport other than motor car” is not accepted by Dechmont Community Council. The application shows that this will not be the case.

Recent Appeal Case

Appeal Decision Notice: PPA-400-2134

Location: Upper Bathville, Armadale, West Lothian, EH48 3JZ.

Date of appeal decision: 23rd August 2022

Reporter: Alison Kirkwood

Within a very recent appeal case, determined just eight weeks ago, in relation to another site in West Lothian, Reporter Kirkwood concluded that **where a proposed development would result in a high proportion of journeys by car, this would not contribute to sustainable travel and would not accord with policy NRG1;**

“On the basis of my assessment, I share the council’s concern that the development would be likely to result in a high proportion of journeys by car. I conclude that the proposal would not contribute to sustainable travel objectives and, for this reason, would not accord with policy NRG1.”

Summary

Dechmont Community Council does not consider that the overall development would be well connected by sustainable forms of transport. We share West Lothian Council’s concern that the development would be likely to result in a high proportion of journeys by car. The proposal would not contribute to sustainable travel objectives and, for this reason, would not accord with policy NRG1.

3.4 Traffic

Development Plan policy TRAN1 (Transport Infrastructure) states that development will only be permitted where transport impacts are acceptable.

Within the documentation provided by the appellant, the ‘Transportation Assessment’ (at page 39, para 8.44) states,

“Diagrams 8a and 8b shows that the two-way traffic flow over the bridge, with traffic growth to 2024 and with the committed and proposed developments in place, will be approximately 587 vehicles in the morning peak hour, and 498 in the evening peak hour.”

According to the appellant’s figures, this means that about 10 cars per minute will be trying to use a single lane road bridge. This will cause an immediate serious problem at the junction of Burnhouse Road and Main Street.

The figures provided by the appellant of an increase of 127 cars crossing the bridge (460 per hour now compared with 587 per hour in the future) during the morning rush hour on completion of the proposed development, and on completion of the 998 houses at Bangour, and the 105 houses on Dechmont Main Street, appears grossly inaccurate.

The proposed development at Burnhouse and the resulting additional traffic would result in an intolerable increase in traffic within and in the vicinity of the village.

3.5 COP26 and Climate Change Mitigation

The Climate Change (Scotland) Act 2009, Section 44 outlines the duties of public bodies relating to climate change;

“A public body must, in exercising its functions, act—

- (a) in the way best calculated to contribute to the delivery of the targets set in or under Part 1 of this Act;”

Part 1 of the Act refers to reducing emissions to meet the net zero target. Maintaining the allocation of a Special Landscape Area and Countryside Belt on an area of fertile farmland is in keeping with the requirements of this Act, and specifically the requirements placed on a public body to uphold the principles of the Act.

All new build housing will result in additional carbon emissions (embodied in the new build process itself, as well as those resulting from habitation). However, at the moment little or no account is taken of this within the planning system. As noted above, public bodies must take net zero targets into consideration when they plan how to deliver housing targets. Approving a major development on an unallocated site amounts to a failure to comply with Section 44 of the above noted Act.

During the COP26 Conference in Glasgow, Michael Matheson, Cabinet Secretary for Net Zero, Energy and Transport stated,

“**Climate change is the most significant crisis that we face.** Governments must be ready to take bold and decisive action to reduce emissions, deliver a just transition towards a net-zero future... **What we choose or fail to do now on climate change will shape our entire future.** Children and young people from around the world took part in COP26 because they get it – they understand

the seriousness of climate change, because they will face what happens next if we do not get it right.”

Dechmont Community Council agrees with the view of West Lothian Council that the development of greenfield land inherently does not contribute towards climate change mitigation. Supporting climate change mitigation would involve preserving agricultural land and accommodating growth on existing brownfield or allocated sites.

3.6 Biodiversity

The Nature Conservation (Scotland) Act 2004, Section 1 states,

“(1) It is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.”

In the Preliminary Ecological Assessment provided by the appellant it is stated that there is zero presence of woodcock. This is untrue, these birds are present, as confirmed by eye witness accounts. Additionally, the entry for brown hare at para 5.3.8 is inaccurate. These animals, which are on the Scottish Biodiversity List and protected by law, can be seen on this site every spring as they form breeding pairs. There are many photographs available to substantiate this. Please request these photos from DCC should this evidence be required. After the water vole, hares are the second British mammal to suffer the greatest decline in the last century and their habitat on a Special Landscape Area must be protected.

3.7 Pre-determination of the Emerging Plan

SPP, Paragraph 34 sets out that where a plan is under review, it is appropriate to consider whether granting planning permission would prejudice the emerging plan. The recent Drumshoreland appeal decisions (referenced above) confirm the need to assess whether a proposed development could prejudice the emerging NPF4.

The granting of planning permission in principle for a major development, such as that proposed by the appellant, on land that is not allocated for residential development, on land that is not part of the settlement boundary, on land that is both Countryside Belt and Special Landscape Area is grossly inappropriate in any case and specifically when NPF4 and a new Local Development Plan are emerging. Once approved, NPF4 will form part of the Local Development Plan.

The question of the principle of development on the land in question should be addressed through the emerging LDP rather than now. This would enable the principle of development on the land to be subject to due process and consultation. One of the key aspects of The Planning (Scotland) Act 2019 is to advocate greater community involvement in planning – this is achieved through public consultation on the new LDP.

Dechmont Community Council makes mention of the prematurity argument. If the Reporter were to approve this application now, they would effectively be pre-determining an important element of the emerging LDP, without due process. It is the strong opinion of Dechmont Community Council that all potential development sites in West Lothian should be considered together as part of the emerging LDP, whereby they can be compared with one another and the relative merits of each site assessed.

There is precedent for this argument. In the local case of 'The Trustees of the late Mrs Pilkington v. The Scottish Ministers', the Reporter found that it would be premature to grant planning permission before the outcome of the Local Development Plan process was known. To do so would predetermine where a large proportion of Perth's strategic housing allocation would be located without the benefit of examining the relative benefits of all other potential sites in the area. The importance of making such strategic allocations through the LDP process overrode the developer's immediate wish to develop the site. The developer appealed the Reporter's decision on various grounds. The Court dismissed the appeal. In particular, the Court found that the Reporter was entitled to conclude that the proposed LDP was a material consideration.

Additionally, the opinion of Lady Paton in *Angus Estates (Carnoustie) LLP & Others v. Angus Council* [2016] CSOH 145 is relevant;

"Approval of this application would prejudice the emerging Angus Local Development Plan as the proposed development is substantial and its cumulative effect is considered to be significant. It would predetermine decisions about the scale, location or phasing of new development that are central to the emerging development plan."

The cumulative effect of numerous unallocated sites being promoted by developers arguing that there is a housing land supply shortage, will undermine the proper plan-making process in relation to NPF4 and housing land targets. Developing on unallocated sites, without taking account of up-to-date housing land targets will not lead to the right development in the right place.

3.8 Summary

Dechmont Community Council asserts that, even in the event of a housing shortfall being considered by the Reporter, this development does not constitute sustainable development and both SPP 2014 and the Gladman principles should be applied. Any benefits of developing the site do not outweigh the negative impacts which have been identified. The appeal under consideration fails to comply with the principles of sustainability and is therefore not 'sustainable development' in terms of Scottish Planning Policy.

In their 'Examination of the Local Development Plan' (Date of Report 11th December 2017) Reporters; David Liddell, Andrew Fleming, Lorna McCallum and Christopher Warren came to the following conclusion about the Burnhouse field,

“Given my concerns above about the suitability of the site for development, I am led to conclude that the site should not be allocated at all.”

4.0 Impact on the Special Landscape Area

The majority of the site is allocated as a ‘Special Landscape Area’, with a small section being allocated as Countryside Belt. The land rises northwards, from the edge of the Dechmont settlement boundary towards the Bathgate Hills.

The West Lothian Local Development Plan 2018, Policy ENV 1: Character and Special Landscape Areas, at page 38 states,

“Within the Special Landscape Areas (SLAs) shown on the proposals map **there is a presumption against development which would undermine the landscape and visual qualities** for which the areas were designated... The council will seek to protect and enhance landscape character and local landscape designations...”

Development of this open countryside would have a significant detrimental visual impact on the SLA and the setting of Dechmont. The development conflicts with the purpose and aims of the SLA designation and accordingly the application is contrary to policy ENV1.

In accordance with Scottish Natural Heritage, Special Landscape Areas play an important role in developing an awareness of the landscape qualities that make particular areas distinctive. They promote a community's sense of pride in their surroundings. Scottish Natural Heritage has stated the purpose of such areas, namely,

“This is to ensure that the landscape is not damaged by inappropriate development.” (Source: Scottish Natural Heritage www.snh.gov.uk)

During the examination of the current LDP, Reporters David Liddell, Andrew Fleming, Lorna McCallum and Christopher Warren concluded that they were,

"not inclined to favour the allocation of this site for housing development due to the likely landscape and visual impacts of development and the relatively **poor prospects for adequately integrating development on the site** with the existing village and with development at Bangour Village Hospital".

Source: Examination of the Local Development Plan' (Date of Report 11th December 2017) Reporters; David Liddell, Andrew Fleming, Lorna McCallum and Christopher Warren

The Reporters took account of the SLA allocation, the topography of the site and the loss of prime agricultural land. This decision was taken in the context of the Reporters also concluding that there was a shortfall of effective housing land in the LDP. This indicates that, even if more housing land is required in West Lothian, this site is not a suitable due to its impact on the SLA and the setting of Dechmont.

5.0 Impact on Education Capacity and Infrastructure

The proposed major development is in the catchment area for Dechmont infant school, which has extremely limited capacity and only accommodates P1-P3. The capacity at Dechmont Infant School will be entirely taken up by the Bangour Village development (998 houses), and the site to the south end of Dechmont (105 houses).

The appellant has refused a phasing restriction in relation to education. Policy INF1 in the LDP states that development will not be permitted to commence unless phasing to manage demand on infrastructure has been agreed. The development therefore cannot be accommodated within existing capacity and is contrary to policy INF1 in the LDP.

6.0 Summary of Failures to Comply with Relevant Planning Policies

	Policy	Notes
The West Lothian Local Development Plan	DES 1 Design principles	The application fails to comply
	HOU 1 Allocated Housing Sites	The application fails to comply
	HOU2 Maintaining an Effective Housing Land Supply	The application fails to comply
	INF 1 Infrastructure Provision and Developer Obligations	The application fails to comply
	ENV1 Character and Special Landscape Areas	The application fails to comply
	ENV 2 Housing Development in the Countryside	The application fails to comply
	ENV4 Loss of Prime Agricultural Land	The application fails to comply
SESPlan	Policy 1B The spatial strategy: development Principles	The application fails to comply
	Policy 5 Housing land	The application fails to comply
	Policy 6 Housing land flexibility	The application fails to comply
	Policy 7 Maintaining a five-year housing land supply	The application fails to comply
	Policy 9 Infrastructure	The application fails to comply
	Policy 13 Other countryside designations	The application fails to comply