

To: Planning and Climate Change Policy Board

On: 23 August 2022

Report by: Chief Executive

Heading: Renfrewshire Local Development Plan – Outcome of Court of Session Appeal

1. Summary

- 1.1 At the Communities, Housing and Planning Policy Board on 7 December 2021, it was agreed that the Renfrewshire Local Development Plan be adopted in accordance with the provisions of The Town and Country Planning (Scotland) Act 1997. The Local Development Plan was formally adopted on 15 December 2021.
- 1.2 A statutory appeal was received by the Council on 20 January 2022 from James (Glasgow) Ltd seeking to either quash one chapter of the local development plan or the quashing of the allocations detailed within the local development plan as they relate to the sites at Thriplee Road, Bridge of Weir and the former Golf Driving Range, Rannoch Road, Johnstone.
- 1.3 Legal opinion was sought from a QC and the advice provided to the Council was that there is not any realistic possibility of defence to the appeal, in so far as it seeks to quash the local development plan in relation to the Thriplee Road and the Rannoch Road sites. However there was reasonable prospects of defending the appeal to avoid quashing a whole chapter of the local development plan - Delivering the Spatial Strategy – Places.
- 1.4 The Council accepted this advice and sought to defend the appeal on this basis.
- 1.5 During the statutory appeal process, the Court requested that other interested parties were made aware of the appeal by James (Glasgow) Ltd. The interested parties included the owners / prospective developers for the site at Auchenlodment Road in Elderslie.

1.6 The outcome of the appeal has now been intimated to the Council. The Court of Session decided allow the appeal and quash the Renfrewshire Local Development Plan (2021) in the following respect:-

- In relation to the Thriplee Road site in Bridge of Weir, to remove the green belt designation, thereby showing it as 'white space' in the adopted Renfrewshire Local Development Plan (2021);
- Removing the residential designation of site at Golf Driving Range, Rannoch Road, Johnstone, thereby showing it as 'white space' in the adopted Renfrewshire Local Development Plan (2021);
- In relation to Auchenlodment Road in Elderslie, to remove the green belt designation, thereby showing it as 'white space' in the adopted Renfrewshire Local Development Plan (2021).

1.7 The outcome also found the Council liable to the appellants in the expenses of the appeal in relation to James (Glasgow) Ltd.

2. Recommendations

2.1 It is recommended that the Board:

- (i) Note the outcome of Statutory Appeal in respect of the adoption of the Renfrewshire Local Development Plan;
- (ii) Note the award of expenses in relation to the appeal.

3. Background

3.1 On 14 April 2021, the Communities, Housing and Planning Policy Board authorised the Head of Economy and Development to modify the Proposed Renfrewshire Local Development Plan in line with the Scottish Government Reporter's recommendations set out in the Examination Report, except for 3 recommendations, these were in relation to housing sties at:

- the former Golf Driving Range, Rannoch Road in Johnstone (LDP 2057);
- Thriplee Road in Bridge of Weir (LDP 2064); and,
- Auchenlodment Road in Elderslie (LDP 2053).

The Board also authorised the Head of Economy and Development to notify the Scottish Ministers of the Councils intention to adopt the modified local development plan.

- 3.2 The Council advertised the intention to adopt the Modified Proposed Renfrewshire Local Development Plan and, on 30 April 2021, sent a copy of the modified local development plan to the Scottish Ministers along with a statement explaining why 3 modifications to the plan suggested by the Reporter were not accepted.
- 3.3 On 17 August 2021, the Scottish Ministers informed the Council that they may proceed to adopt the plan.
- 3.4 As a result of a judicial review, in relation to the local development plan process, submitted by Cosmopolitan Hotels (14 May 2021), the formal adoption of the local development plan was delayed until the conclusion of this court action.
- 3.5 On 7 December 2021 the Communities, Housing and Planning Policy Board resolved to adopt the Renfrewshire Local Development Plan in accordance with the provisions of the Town and Country Planning (Scotland) Act 1997.
- 3.6 The local development plan was formally adopted on 15 December 2021 following the publication of a notice in the local press.

4. Statutory Appeal

- 4.1 In accordance with planning regulations any aggrieved party can submit an appeal against the decision of a local authority to adopt a local development plan. Such an appeal should be received within 6 weeks of the date of publication of the above press notice.
- 4.2 On 20 January 2022, Renfrewshire Council was served with an appeal in relation to the adoption of the local development plan.
- 4.3 James (Glasgow) Ltd (the appellant), sought the quashing of part or parts of the local development plan, as set out as follows:
 - (1) The chapter headed “Delivering the Spatial Strategy – Places”, together with suspension of the operation of the chapter of that chapter of the Local Development Plan; failing which,
 - (2) In relation to the Thriplee Road Site, insofar as the Local Development Plan designates that part of the Thriplee Road Site coloured green as ‘ENV1-Greenbelt; and
 - (3) The designation of site LDP2057-Golf Driving Range, Rannoch Road, Johnstone as ‘Policy P2-Housing Land Supply’ and its inclusion in the list of ‘new residential sites’ on page 49; and any consequential references (whether express or by inclusion on a map or plan), together with suspension of the operation of the Local development Plan in relation to that site; and/or

- (4) In such other respects as the Court considers appropriate in all the circumstances of this appeal.

- 4.4 The appellant is the owner of the site at Thriplee Road, Bridge of Weir.
- 4.5 The appellant questioned the validity of the adopted local development plan. The primary ground of challenge was that the Board's reasons and grounds for declining to make the recommended modifications, as set out in the minute of the meeting of the Communities, Housing and Planning Policy Board on 14 April 2021, were perverse and did not fall within the prescribed list of grounds contained within the regulations.
- 4.6 In submitting the appeal the appellants believe that the Communities, Housing and Planning Policy Board used planning judgement. In their view this judgement lies outside the scope of planning regulations.

5. Legal Advice

- 5.1 Following receipt of the statutory appeal, the Council sought external legal opinion from Alasdair Burnet QC. The QC's opinion outlined that there is no realistic possibility of a successful defence to the challenge to the Board's decision to decline the modifications in relation to the site at Thriplee Road and the former Golf Driving Range site.
- 5.2 Notwithstanding the above, the opinion did though highlight that there were reasonable prospects of defending the appeal to the extent of avoiding the quashing of a whole of the chapter of the local development plans "Delivering the Spatial Strategy – Place", by instead accepting the quashing of the particular local development plan allocations at Thriplee Road and the former Golf Driving Range site.

6. Appeal Procedures

- 6.1 The Council responded to the Court of Session on 11 February 2022. The response submitted stated that there was no need to quash the whole of the chapter of the Local Development Plan entitled "Delivering the Spatial Strategy – Places" given the quashing of the allocations in respect of the aforementioned sites would be sufficient to address any prejudice towards the appellants. In addition, it is also noted that the quashing of the whole chapter would be disproportionate and would impact many other parties who are relying on the terms of the Adopted Renfrewshire Local Development Plan to respect of land owned or potential development.
- 6.2 The Court and the appellant accepted the Council's position. In finalising the appeal, a joint minute was prepared. On agreeing the joint minute, the Court required intimation of the motion and the joint minute on interested parties, namely the owners of the site at the Golf Driving Range, Rannoch Road in Johnstone and Auchenlodment Road in Elderslie and for them to make any representations they wish to make on the matter.

- 6.3 The prospective developer for the Auchenlodment Road in Elderslie, Stewart Milne Homes, intimated that they would be looking for the same action as the appellant and that the land use allocation of the site at Auchenlodment Road be quashed from the adopted Renfrewshire Local Development Plan (2021).

7 Court of Session Judgement

- 7.1 The outcome of the appeal has now been intimated to the Council as attached at Appendix 1. The Court of Session decided allow the appeal and quash the Renfrewshire Local Development Plan 2021 in the following respect:

- In relation to the Thriplee Road site in Bridge of Weir, to remove the green belt designation, thereby showing it as 'white space' in the adopted Renfrewshire Local Development Plan (2021);
- Removing the residential designation of site at Golf Driving Range, Rannoch Road, Johnstone, thereby showing it as 'white space' in the adopted Renfrewshire Local Development Plan (2021);
- In relation to Auchenlodment Road in Elderslie, to remove the green belt designation, thereby showing it as 'white space' in the adopted Renfrewshire Local Development Plan (2021).

- 7.2 The outcome of the appeal also found the Council liable to the appellants in relation to the expenses of the appeal against James (Glasgow) Ltd.

8 Next Steps

- 8.1 This Court judgement now concludes the statutory process in relation to the Renfrewshire Local Development Plan (2021).
- 8.2 The Council's webpages and paper copies of the adopted Renfrewshire Local Development Plan (2021) will include explanatory text providing information in relation to the Court of Session judgement and how this effects the plan.
- 8.3 The phrase 'white space' is defined in legal case law as a result of the courts actions in relations to plans. Courts can only strike out/quash parts of or full areas of plans. The effect of quashing the designation of three sites in the local development plan is in effect leaving white space in a development plan.
- 8.4 The Council still have a statutory obligation to consider and determine any planning application submitted in respect of the three sites and would require to take account the Reporters recommendations, the outcome of any court proceedings as well as all of the other relevant policies in the local development plan and any other material considerations, as outline in planning legislation.

- 8.5 The determination of planning application 19/0749/PP for a residential development at the former golf driving range, Johnstone, will require to be reconsidered by the Planning and Climate Change Policy Board following the Court's decision on the statutory appeal given that this site is no longer designated as a potential residential site and is now 'white space'.
- 8.6 It is anticipated that the sites at Thriplee Road, Bridge of Weir and Auchenlodment Road in Elderslie are likely to be progressed by land owners/developers, given the 'white space' status in the adopted local development plan.
-

Implications of the Report

1. **Financial** – The extent and details of the additional duties is still to be confirmed.
2. **HR & Organisational Development** – None.
3. **Community/Council Planning** – Reshaping our place, our economy, and our future - The Development Plan is a key document in establishing a land use framework for supporting, encouraging, and delivering economic development in Renfrewshire through investment and regeneration.
4. **Legal** - The report concerns the adoption of the Renfrewshire Local Development Plan, in terms of the Town and Country Planning (Scotland) Act 1997. The report details that a statutory appeal has been determined in respect of the adoption of the Local Development Plan.
5. **Property/Assets** – None.
6. **Information Technology** – None.
7. **Equality & Human Rights** -
 - (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety** – None.
9. **Procurement** – None.
10. **Risk** – None.

11. **Privacy Impact** – None.
 12. **COSLA Policy Position** - None.
 13. **Climate Risk** – The Local Development sets out a framework, spatial strategy and policies to ensure sustainable development and places, aiming to facilitate the transition to a low carbon economy and adaptation to climate change.
-

Appendix 1 – Interlocutor from the Court of Session

Author: David Love, Chief Planning Officer.
Tel: 07483410182; Email: david.love@renfrewshire.gov.uk

APPENDIX 1 – Interlocutor from the Court of Session

Edinburgh, 29 June 2022

The Lords, on the appellants' motion, of consent, allow the joint minute between the appellants and respondents to be received and marked No. 11 of process, and in terms and in respect thereof:-

- (i.) allow the appeal and quash the Renfrewshire Local Development Plan 2021 in the following respects:-
 - (a) in relation to the Thriplee Road site (LDP2064) in so far as it designates that part of the site coloured green as 'ENV1- Greenbelt'; and
 - (b) the designation of site LDP2057 – Golf Driving Range, Rannoch Road, Johnstone - as 'Policy P2 – Housing Land Supply' and its inclusion in the list of 'new residential sites' on page 49 thereof; and any consequential references (whether express or by inclusion on a map or plan);
- (ii.) further, having seen and considered the unopposed written submissions from the interested parties, *viz.* The Stewart Milne Group Limited and The Trustees of the AD Houston Trust, Nos. 14 and 15 of process respectively, also quash the Renfrewshire Local Development Plan 2021 in relation to the Auchenlodment Road site (LDP2053) in so far as it designates the site as 'ENV1-Greenbelt' and decern;
- (iii.) find the respondents liable to the appellants in the expenses of the appeal; remit the account thereof, when lodged, to the Auditor of Court to tax; and
- (iv.) find no expenses due to or by any party with regards to the involvement of the interested parties in this appeal.

Edinburgh, 29 June 2022

The Lords decern against the respondents for payment to the appellants of the expenses referred to in the foregoing interlocutor, of even date, as the same shall be taxed by the Auditor of Court.