

To: Communities, Housing and Planning Policy Board

On: 7 December 2021

Report by: Chief Executive

Heading: Renfrewshire Local Development Plan

1. Summary

- 1.1 At the Communities, Housing and Planning Policy Board on the 14 April 2021, the Board authorised the Head of Economy & Development to modify the Proposed Renfrewshire Local Development Plan in line with all but three of the Scottish Government Reporter's recommendations set out in the Examination Report and authorised him to notify the Scottish Ministers of the Council's intention to adopt the modified Local Development Plan.
 - 1.2 Scottish Ministers have considered both the modified Plan and supporting information provided and have concluded that they do not wish to intervene in the adoption of the Plan and that the Council may proceed to adopt the Modified Proposed Renfrewshire Local Development Plan. The response from Scottish Ministers is attached at Appendix 1.
 - 1.3 The Council also successfully defended a Judicial Review action raised by Cosmopolitan Hotels Limited which challenged the validity of the decision taken by the Board on 14 April 2021.
 - 1.4 The Plan to be adopted, together with Maps A to F, is set out on the Council webpages – [Local Development Plan](#).
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2. Recommendations

- 2.1 It is recommended that the Board:

- (i) Notes that the Council successfully defended the Judicial Review petition raised by Cosmopolitan Hotels Limited in respect of the proposed Renfrewshire Local Development Plan as set out in section 4 of this report and agrees in the circumstances to proceed to make a decision on adoption of the Renfrewshire Local Development Plan
 - (ii) Resolves to adopt the Renfrewshire Local Development Plan (referred to on the webpage as “the Modified Proposed Renfrewshire Local Development Plan”), including Map A, Map B, Map C, Map D, Map E and Map F as set out in the webpage – [Local Development Plan](#), in accordance with the provisions of the Town and Country Planning (Scotland) Act 1997.
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3. Background

- 3.1 On 14 April 2021 the Communities, Housing and Planning Policy Board authorised the Head of Economy & 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 in relation to housing sites 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 & Development to notify the Scottish Ministers of the Council’s 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 the 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 The Scottish Ministers had an initial 28 days to reach a view on the submission, however, the Council received consecutive correspondence on 24 May, 22 June and 20 July 2021 from Ministers extending their period of consideration.
 - 3.4 A letter from the Scottish Ministers was received on 17 August 2021 (Appendix 1) informing the Council that they may now proceed to adopt the Plan. There is no scope to alter the Plan at this stage in the Development Plan process.
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4. Judicial Review Challenge

- 4.1 On the 17 May 2021, Renfrewshire Council was served with a petition for Judicial Review of the decision of the Communities, Housing and Planning Policy Board on the 14 April 2021.

4.2 Cosmopolitan Hotels Limited (the petitioner), submitted that the decision of the Council (by the Board) was ultra vires, irrational and unreasonable and that the decision did not provide the Council with a justified basis to adopt the local development plan. The petitioner sought to have the Council's decision of the 14 April 2021 reduced.

4.3 The petitioner owns an area of land adjacent to the Erskine Bridge Hotel in Renfrewshire and has applied for planning permission in principle for residential development of the site at Erskine riverfront (planning application reference 19/0765/PP)("the Site").

4.4 The petitioner's main grounds of argument were:

Ground 1: The Council was required to consider whether the Reporter's conclusions in relation to the Site were conclusions that the Reporter could reasonably have reached. The Reporter had wrongly concluded that, because the Council had refused a planning application for the Site, the Council had changed its position on the Site being allocated in the Proposed LDP for residential development. The Reporter's overall conclusion and recommendation on the Site was materially flawed. Consequently, the Council was required to decline to accept the modification in respect of the Site; and

Ground 2: The Council did not set out any reason for not accepting that the Reporter's conclusions and recommendations were flawed. The petitioner's agents emailed the Council on 9 March 2021 to inform the Council that the Reporter's recommendation on the Site was flawed and that the Council must therefore reject the Reporter's recommendation. This was not addressed by the Board in reaching the decision on 14 April 2021.

4.5 The Judicial Review petition was heard in Court on 1 October 2021 and a decision was published on 9 November 2021. The outcome was that the Council successfully defended the petition and the Court agreed with the Council's argument that the petition was incompetent and premature. The Court concluded that Section 237 of the Town and Country Planning (Scotland) Act 1997 precluded the challenge by Cosmopolitan Hotels Ltd. This was because there is an alternative remedy available to Cosmopolitan Hotels Ltd. provided for under statute (the statutory right of appeal under section 238 of the 1997 Act), which would arise upon the Council adopting the LDP.

4.6 The period for submitting an appeal against the Court's decision has now expired although Cosmopolitan Hotels Limited are still able to put forward the arguments outlined in paragraph 4.4 in a statutory appeal under section 238 of the 1997 Act, should the Board decide to adopt the proposed LDP.

4.7 The judge who decided the Judicial Review, commented that it had not been demonstrated that there had been an error on the part of the Reporter that would have entitled the Board to decline to make the recommended

modification and that no unfairness or procedural impropriety was caused by the officials' decision not to draw the petitioners' representations to the attention of the Board. However, those comments would not be binding on the judges in the Inner House of the Court of Session who would consider a statutory appeal.

5. Adoption of the Local Development Plan

5.1 The Board may now resolve to adopt the Renfrewshire Local Development Plan. However, in considering its decision to adopt the Local Development Plan, the Board needs to consider whether, it is reasonable for it to proceed to take that decision.

5.2 It is recommended that the Board does proceed to consider the adoption of the Local Development Plan. In making that recommendation a range of relevant factors have been taken into account.

- The Local Development Plan has been through the prescribed statutory process in the 1997 Act which has resulted in the Scottish Government issuing a letter on 17 August 2021 advising the Council that they did not wish to issue any direction. This in effect means that it is for the Council to proceed to adopt the plan.
 - By adopting the plan and publishing that decision the statutory period to submit a challenge to the LDP is triggered enabling any person aggrieved by the adoption of the plan to raise a challenge in the Court of Session. The Council has already received an intimation of a potential challenge by another landowner.
 - There are many organisations and individuals who have an interest in the Council proceeding to take a decision on the adoption of the Plan. Any unwarranted delay in the Council adopting the plan can cause delays to proposed development of sites in the Plan and may delay investment decisions that hinder economic development in Renfrewshire. The council has received several requests for information regarding when the Plan is to be adopted and urging the Council to proceed quickly.
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6. Next Steps

6.1 Should the recommendations in this report be approved, the Plan and associated Maps will now be adopted as set out in the Council's webpage – [Local Development Plan](#) and the post adoption procedures will be undertaken in line with the relevant statutory procedures as set out in the Town and Country Planning (Scotland) Act 1997.

6.2 There is a statutory right of appeal to the Court of Session which allows a challenge to the validity of the Plan, if a person feels aggrieved by the Plan or

any alteration, repeal or replacement of the Plan. The period of challenge is 6 weeks from the date the adoption advert is published.

- 6.3 The Board should be aware that there is a real prospect of a statutory challenge being made to the Local Development plan, once adopted.
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Implications of the Report

1. **Financial** – None.
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 adoption of the plan is subject to a statutory right to any aggrieved person to challenge the adopted plan in the Court of Session. The report also refers to a Judicial Review petition raised by Cosmopolitan Hotels Limited which challenged the decision taken at Board on 14 April 2021. That Judicial Review was decided in the Council's favour.
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 Proposed 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.
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Appendix 1 - Letter from Scottish Ministers 17 August 2021.

List of Background Papers – Judicial Review Decision.

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Alasdair Morrison
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Renfrewshire Council

By email:

alasdair.morrison@renfrewshire.gov.uk

Our ref: A34310944
17 August 2021

Dear Alasdair

**Town and Country Planning (Scotland) Act 1997
Notice of Intention to Adopt – Proposed Renfrewshire Local Development Plan**

I refer to your correspondence of 4 May 2021 regarding Renfrewshire Council's intention to adopt the Renfrewshire Local Development Plan. We understand that the planning authority's intention to adopt was advertised on 28 April 2021.

Scottish Ministers' decisions as to whether they will intervene at this stage of the development planning process are taken on a case by case basis and in light of the particular circumstances of each proposed plan. It is the responsibility of the planning authority to satisfy itself that they have complied with legislation, and in regard to this particular plan, compliance with section 19(10) of the Town and Country Planning (Scotland) Act 1997.

Scottish Ministers do not propose to issue a Direction in the case of this proposed plan.

Yours sincerely

Helen Wood
Assistant Chief Planner
Planning and Architecture Division