



Appeal Decision Notice

Decision by Alison Kirkwood, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-250-2377
- Site address: Prestonhill Quarry, Preston Crescent, Inverkeithing, Fife, KY11 1PP
- Appeal by DDR (UK) Ltd against the decision by Fife Council
- Application for planning permission in principle 21/01842/PPP dated 11 June 2021 refused by notice dated 22 February 2022
- The development proposed: Redevelopment of former Prestonhill Quarry, Inverkeithing to create a mixed use development including approximately 180 residential units (including affordable housing), holiday lodges, cafe/bistro, associated access, open space, landscaping, SUDs and other infrastructure
- Date of site visit by Reporter: 13 July 2022

Date of appeal decision: 22 September 2022

Decision

I dismiss the appeal and refuse planning permission in principle.

Preliminary

The council has issued a screening opinion dated 6 November 2020 in relation to the appeal proposal. It states that, although the development falls within Schedule 2 of the Environmental Impact Assessment Regulations 2017, the council considered that a formal Environmental Impact Assessment was not necessary. I agree that the nature and scale of the appeal proposal are such that it falls within Schedule 2. I have considered the information submitted as part of the appeal and the matters covered in the council's screening opinion, and agree that the proposal does not require an Environmental Impact Assessment.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan relevant to this appeal is the SESplan Strategic Development Plan 2013 (the SDP), FIFEplan Local Development Plan 2017 (the LDP) and the supplementary guidance associated with both plans. A more recent version of the strategic development plan (SDP2) was rejected by Scottish Ministers in 2019.

2. Having regard to the provisions of the development plan, the main issues in this appeal are:

- The principle of development
- Sufficiency of the effective housing land supply
- Infrastructure constraints

- Impact on the natural environment
- Impact on the built environment
- Impact on residential amenity
- Other potential impacts

The Principle of Development

3. The appellant is seeking planning permission in principle for a mixed use development incorporating approximately 180 homes (including affordable housing), holiday lodges, a café/bistro, associated access, open space, landscaping, SuDS, and other infrastructure. A concept plan has been submitted to show indicatively how the site could be developed. Two vehicular access points are shown, one from Preston Crescent and one from Fraser Avenue. The first stage of development would involve quarrying and engineering operations to regrade the existing steep quarry faces, infill the existing water-filled quarry void and provide materials for construction of the development.

4. The appeal site covers 18 hectares and comprises the former Prestonhill Quarry and an area of predominantly open land, which lies to the east of Preston Crescent and south-east of Fraser Avenue. The site includes a section of the Fife Coastal Path, which is to be upgraded and re-routed. With the exception of the area of land located immediately to the south-east of Fraser Avenue (where affordable housing is proposed), the site lies outwith the settlement envelope, as defined in the LDP.

5. LDP policy 1 is a 'gateway' policy and provides the development principles against which all development proposals are to be determined. The appellant contends that the principle of the proposed development complies with part A of LDP policy 1, because the affordable housing element in the north west of the site lies within the settlement boundary, the holiday lodges, café/bistro, pier redevelopment, reconstruction of the Beamer Rock lighthouse and supporting infrastructure would be supported by LDP policy 7 (Development in the Countryside); and the residential element of the development complies with LDP policy 2 (Homes).

6. The council indicates that, if the proposed development is considered in its entirety, the majority of the site is located outwith the settlement boundary. It considers that policy support for some elements of the proposal, such as the affordable housing and holiday lodges, is not sufficient to enable the proposal to comply with LDP policy 1.

7. I agree with the appellant that some individual elements of the proposal may be consistent with the development plan, subject to the criteria set out in LDP policy 7 (Development in the Countryside). However, housing development of the scale proposed would not normally be supported in a countryside location. Some exceptions do apply, including where the proposal would help meet a shortfall in the housing land supply.

Sufficiency of the Five Year Effective Land Supply

8. SDP policy 6 requires each planning authority in the SESplan area to maintain a five years' effective housing land supply at all times. LDP policy 2 states that where a shortfall in the five year effective housing land supply is shown to exist within the relevant Housing Market Area, housing proposals will be supported, subject to identified criteria. As part of the site could be described as "greenfield", I consider that SDP policy 7 (Maintaining a Five Year Housing Land Supply) may also apply.

9. I first need to establish whether there is a shortfall in the five year effective supply. I have been provided with detailed evidence on this matter by the appellant, the council and in third party representations. Whilst reference is made in submissions to the 2020 amendment to Scottish Planning Policy (SPP) and the provisions of Planning Advice Note 1/2020, these documents were both quashed by the Court of Session in July 2021. Submissions also make reference to draft National Planning Framework 4 (NPF4) which was published for consultation purposes in November 2021. However, draft NPF4 may be subject to change, prior to being adopted in its final form.

10. I have been provided with three different calculations in relation to the five year effective land supply. All parties have used the housing land requirement (HLR) rather than the housing supply target (HST), when calculating the sufficiency of the five year effective supply. I consider that this would be consistent with the Gladman Developments Limited v. The Scottish Ministers [2020] CSIH 28 court decision, and I have no evidence before me advocating an alternative approach.

11. There are generally two methodologies used to calculate the sufficiency of the five year effective land supply. The first is the residual method, which takes into account any shortfall in housing completions to date, and the second is the average method, which divides the overall housing land requirement by the relevant number of years to identify an annual requirement. In this case, variations in the calculations also arise because different housing requirement and supply figures have been used. I consider the different approaches in turn below.

The Council

12. Paragraph 2.2.18 of the planning committee report directs me to Housing Land Audit 2020 for the current figures on the effective housing land supply in Fife. However, during the course of the appeal, a copy of Housing Land Audit 2021 was submitted. As this provides a more up to date agreed position on the housing land supply, I consider it appropriate to use the figures from the 2021 audit.

13. The council's approach to calculating whether there is an effective five year housing land supply is set out in a committee report dated 30 January 2020 entitled "Fife Development Plan Update – SESplan Housing Position Statement and Proposed Approach". It uses an updated housing supply target based on figures from the Housing Needs and Demand Assessment 2015 (HNDA2) and a housing background paper for the now rejected SDP2. During the course of the appeal, the council submitted a copy of a more recent housing needs and demand assessment for South East Scotland (HNDA3), which was signed off as being "robust and credible" in July 2022.

14. The council points out that the housing land requirement figures set out in LDP figure 2.3A are derived from the SDP. Whilst the SDP forms part of the development plan, the plan itself and its housing figures are now more than five years old. In these circumstances, the council considers that weight should be given to the housing figures contained in subsequent housing need and demand assessments (HNDA2 and HNDA3).

15. The council's position is that there is a surplus five year effective housing land supply for both market and affordable tenures in the Dunfermline and West Fife Housing Market Area. The following table (based on figures 4.17 and 4.18 in Housing Land Audit 2021) summarises the council's calculations in relation to the five year effective supply, and indicates that there is a surplus of 917 homes.

| Tenure | Adjusted annual HST | HST 2021 - 2026 | HLR 2021 - 2026 | Total Supply | Surplus |
|------------|---------------------|-----------------|-----------------|--------------|---------|
| Affordable | 201 | 1005 | 1106 | 1359 | +253 |
| Market | 431 | 2155 | 2371 | 3035 | +664 |
| Total | 632 | 3160 | 3477 | 4394 | +917 |

The Appellant

16. The appellant's evidence on housing land provision is set out in what it refers to as 'the Arthur Stone Report' (document reference DDR93). During the course of the appeal, the appellant updated its calculations to reflect the figures from Housing Land Audit 2021. Its calculations use the housing land requirement 2009 - 2026 for the Dunfermline and West Fife Housing Market Area (from LDP table 2.3A), the total five year effective supply figure (from figures 4.17 and 4.18 in Housing Land Audit 2021) and completions 2009 - 2021 (from figure 2.1 in Housing Land Audit 2021). These are summarised in the tables below and show a shortfall of 931 homes in the five year effective supply using the average method, and a shortfall of 7,403 homes using the residual method.

17. The appellant has drawn my attention to some recent appeal decisions which have concluded that the calculation of the five year housing land supply should be based on the figures in the SDP and LDP. The appellant points out that previous appeal decisions have rejected the use of figures from HNDA2. Furthermore, it is of the opinion that HNDA3 should not be used in development management decisions at this time, because it is not yet reflected in the housing land audit or development plan.

| Average Method | HLA 2021 |
|------------------------------------------------|----------|
| LDP Housing Land Requirement 2009 - 2026 (HLR) | 18107 |
| Number of years in HLR period | 17 |
| Annual HLR | 1065 |
| Five year HLR | 5325 |
| Five year Effective Supply 2021 - 2026 | 4394 |
| Shortfall | - 931 |

| Residual Method | HLA 2021 |
|------------------------------------------------------------|----------|
| LDP Housing Land Requirement 2009 - 2026 (HLR) | 18107 |
| Completions 2009 - 2021 | 6310 |
| Recalculated HLR 2021 - 2026 | 11797 |
| Years remaining in plan period / Five year HLR 2021 - 2026 | 5 |
| Total Five year Effective Supply 2021 - 2026 | 4394 |
| Shortfall | - 7403 |

Third Party Representations

18. Third parties have submitted an alternative calculation, which uses the average method and figures from Housing Land Audit 2019, and shows a surplus of 6,130 homes.

This calculation compares the housing land requirement against the unconstrained land supply total for the Dunfermline and West Fife Housing Market Area (figure 3.1 in Housing Land Audit 2019), rather than the five year effective supply figure used by the council and the appellant. This is on the basis that sites included in the unconstrained land supply are free to be developed, if required. For comparison purposes, I have inserted the equivalent unconstrained land supply total from figure 3.1 in Housing Land Audit 2021 and adjusted the calculation accordingly - see table below. This indicates a surplus of 5,558 homes.

| Average Method | HLA 2019 | HLA 2021 |
|--------------------------------------------------|-----------------|-----------------|
| LDP Housing Land Requirement (HLR) | 18107 | 18107 |
| Number of years in HLR period 2009 - 2026 | 17 | 17 |
| Annual HLR | 1065 | 1065 |
| Five year HLR | 5325 | 5325 |
| Unconstrained Land Supply from Figure 3.1 in HLA | 11455 | 10883 |
| Surplus | +6130 | +5558 |

My conclusions on the five year effective supply

19. Figure 3.1 in Housing Land Audit 2021 explains that the figures for the unconstrained supply are not limited to the five year period. Paragraph 3.7 of the housing land audit makes clear that there is no restriction on any site coming forward for development earlier than programmed. However, the programming information on each site is generally agreed between the council and the housebuilding industry, and provides an annual snapshot of the number of homes expected to be delivered within the next five years.

20. Paragraph 123 of Scottish Planning Policy highlights the role of the annual housing land audit, as a tool in reviewing and monitoring whether there is enough effective land for at least five years. Whilst, I acknowledge that more homes than expected may be built in the five year period to 2026, no substantive evidence has been submitted to justify deviating from the programming set out in the housing land audit.

21. On this matter, I agree with the council and the appellant, that it is the five year effective supply figure (4,394 in Housing Land Audit 2021) which should be used.

22. Figures in the more recent housing needs and demand assessments (HNDA2 and HNDA3) and the housing background paper for the rejected strategic development plan (SDP2) suggest a lower housing supply target (between 277 and 867 homes each year) than that in the approved strategic development plan (1,065 homes each year). The current draft national planning framework (NPF4) also supports a potentially lower figures for the central and south part of Fife (565 homes each year).

23. However, as SDP2 was rejected by Scottish Ministers, I find that the targets in HNDA2 and its related housing background paper are not directly relevant to this appeal. Furthermore, I do not consider that the figures in HNDA3 are directly comparable with the approved SDP, as these have not yet been translated into a planning policy document. I am aware that NPF4 is due to be published later this year and that this will provide an updated housing land requirement. However, the figure in draft NPF4 may be subject to change and, at this time, I cannot reach a conclusion on what the NPF4 requirement might be.

24. The SDP only sets a housing land requirement to 2024. However, the LDP provides an equivalent figure for the period up to 2026. It is therefore possible to calculate whether a five year effective supply is being maintained, by comparing the effective supply figure from

Housing Land Audit 2021 with the LDP housing land requirement for the Dunfermline and West Fife Housing Market Area.

25. The LDP housing land requirement figures are based on information from the SDP and its supporting housing needs and demand assessment, which I acknowledge are now somewhat dated. However, these figures do still form part of the development plan. For the reasons set out above, I do not consider that I can rely on the suggested alternative figures in HNDA2, HNDA3 or draft NPF4. I therefore consider that, for the purpose of this appeal, the sufficiency of the five year effective housing land supply should be calculated using the LDP housing land requirement.

26. Using this figure, the calculations provided by the appellant indicate that there is a shortfall in the five year effective housing land supply of between 931 (average method) and 7,403 (residual method) homes in the Dunfermline and West Fife Housing Market Area. On this basis, I conclude that there is a shortfall in the five year effective supply at this time.

27. Consistent with the *Gladman Developments Limited v. The Scottish Ministers* [2020] CSIH 28 court decision, I must also make a broad assessment of the seriousness of this shortfall. This is to enable the shortfall to be given due weight when balancing against the adverse impacts of the proposal.

28. There is no consensus between parties as to which methodology I should use to determine the extent of the housing shortfall and there is no definitive answer in national policy or case law. I do not consider that it is my role to establish which methodology is more appropriate. Both methods have strengths and weaknesses, and the divergence in the above calculations demonstrate that making even a broad assessment of the extent of the shortfall is challenging.

29. I find that 7,403 homes would represent a worst case scenario. However, even if the figure was less than 7,403 homes, I consider it reasonable to assume that the housing shortfall up to March 2026 is likely to be substantial.

30. In considering what contribution the proposal could make to addressing this shortfall, the appellant has indicated that the 45 affordable homes and 35 private homes would be completed by the end of March 2026. Given the complexity of the project and the extent and nature of matters specified in the council's proposed conditions, I consider some of the timescales in the appellant's indicative programme to be overly optimistic. I find that any delays in the pre-construction stages would be likely to have a knock on effect on the programming of the housing phases.

31. Whilst I consider it more likely that only the affordable housing would be delivered by March 2026, I conclude that the proposal would make a contribution towards meeting the shortfall in the five year effective supply.

LDP policy 2 and SDP policy 7

32. As there is a shortfall in the five year effective supply, housing development would accord with LDP policy 2 and housing on the greenfield part of the site would be supported by SDP policy 7, subject to identified criteria. I consider these criteria below.

33. I have already concluded that the proposal would deliver housing within five years. It would therefore meet the first criterion in LDP policy 2. The West Villages Area strategy in the LDP states that, "it is appropriate that further allocations are made in this area due to its

proximity to jobs, services, and other infrastructure which allows access to the rest of Fife and the wider region". Within this context, I find that the development would complement and not undermine the strategy of the LDP, and would therefore meet criterion 3 in LDP policy 2. As the site is not located within the green belt, SDP policy 7 criterion b) would not apply.

34. Whilst representations raise concerns regarding impact on water and drainage infrastructure, and strain on schools and local facilities such as GP practices and dentists, I note that the Scottish Environment Protection Agency (SEPA), Scottish Water and NHS Fife have not objected to the proposal.

35. LDP policy 4 does not make provision for developer contributions towards health facilities and the council states that this is a matter which would be addressed by NHS Fife. The council's education team has indicated that there are capacity issues at Inverkeithing High School, which would be exacerbated by the proposal. However, this impact could be mitigated through planning obligation payments, in line with the council's Planning Obligations Framework Supplementary Guidance. On this basis, I conclude that the proposal would meet criterion 4 in LDP policy 2 and criterion c) in SDP policy 7, in relation to the provision of infrastructure.

36. LDP policy 2 also requires me to consider whether the development would have any adverse impacts which would outweigh the benefits of addressing the housing shortfall. This is an application for planning permission in principle and therefore the opportunity would exist for further information on potential impacts to be addressed through applications for the approval of matters specified in conditions. However, the proposal still requires to be assessed in relation to relevant LDP policies, with sufficient information provided to allow consideration of likely adverse impacts and the potential for mitigation.

Impact on the natural environment

37. LDP policy 13 (Natural Environment and Access) supports proposals where they would protect or enhance natural heritage and access assets. Where adverse impacts on existing assets are unavoidable, the policy requires impacts to be satisfactorily mitigated. The appellant's concept plan, landscape and visual assessment, and design and access statement indicate how the site could be developed and identify potential impacts. An ecological assessment has also been submitted, which has been amended in response to comments from the council, NatureScot and the RSPB.

Landscape and Visual Impact

38. The landscape and visual appraisal predicts potential adverse visual effects from properties immediately to the north and west of the site and for users of recreational routes, including those that currently pass through the site and the Fife Coastal Path. In refusing the application, the council stated that the nature and scale of the proposal would have a detrimental impact on natural heritage assets, including the coastal plain.

39. Whilst the north eastern part of the site lies within the Letham Hill Local Landscape Area, no housing development is proposed in this area. I consider that, subject to appropriate conditions, holiday lodges and a café/bistro could be accommodated on this part of the site with no adverse impact on the character of the local landscape area.

40. A photomontage visualisation from viewpoint 2 shows the predicted visual impact from the section of the Fife Coastal Path located to the south west of Inverkeithing Bay.

The landscape and visual appraisal notes that adverse visual effects are anticipated due to the relative proximity of the receptors to the proposed development and the lack of screening provided by topography and vegetation. I agree that the proposal would have an adverse visual impact from this viewpoint. The introduction of housing development would alter the naturalised appearance of the quarry and adjacent shrubland, and reduce the extent of visual separation between Inverkeithing and Dalgety Bay.

41. The annotated photographs for viewpoint 5 (Friary Gardens) and viewpoint 7 (open space off Forth View) show that the south-western part of the site is visible in views towards the Firth of Forth. Development in this part of the site would sit higher than existing housing on Preston Crescent. Without detailed visualisations and clarity on final site levels and building heights, it is not possible to fully understand the impacts that development would have on views towards the Firth of Forth from these viewpoints, and whether any adverse impacts could be mitigated.

42. I agree with the appraisal that housing development along the coastal front is likely to be visible from the Fife Coastal Path at Dalgety Bay (viewpoint 6). In the absence of a detailed visualisation from this viewpoint, it is difficult to predict what the visual impact would be, or the potential for mitigation. The proposal would result in the section of the coastal path which runs along the length of the quarry void becoming part of a suburban development. This would alter the character of the “undeveloped” coastal path between Inverkeithing and Dalgety Bay.

43. The landscape and visual appraisal concludes that the site at Prestonhill Quarry can be developed without leading to unacceptable levels of potentially adverse landscape and visual effects. However, no evidence has been provided to indicate how the potential adverse visual effects identified in the appraisal could be mitigated.

44. I find that insufficient detail has been provided to enable me to fully assess the landscape and visual impact of the proposal in relation to LDP policy 13. However, the information provided indicates that there would be adverse impacts. The council has suggested a condition which would require the submission of an updated landscape and visual impact assessment. However, I require sufficient level of detail at this stage to provide confidence that an acceptable form of development can be achieved. Given the landscape sensitivities outlined above and in the absence of such detail, I have significant concerns regarding the landscape and visual impact from the Fife Coastal Path and the upper parts of Inverkeithing, in particular. I am not convinced that adverse landscape and visual impacts could be mitigated.

Impact on protected species

45. Whilst the appeal site is located close to the Firth of Forth Special Protection Area, NatureScot has indicated that internationally important natural heritage interests would not be adversely affected by the proposal.

46. Concerns have been raised regarding potential impact on protected species and other ecological interests. The revised ecological assessment concludes that there would be no adverse impact on biodiversity from the loss of the existing shrubland, and there is no evidence of badgers or great crested newts using the land. Whilst otters use the shore adjacent to the site, this species is likely to be accustomed to human activity at this location.

47. The assessment notes that there is bat roost potential in the quarry walls, and the site would provide forage opportunities of value to bats. Survey findings suggest that the

quarry is not significant to bats, but the exercise would need to be repeated because it was carried out late in the season. The survey was also restricted by the instability of the quarry walls.

48. Paragraph 214 of Scottish Planning Policy requires that: "If there is evidence to suggest that a protected species is present on site or may be affected by a proposed development, steps must be taken to establish their presence. The level of protection afforded by legislation must be factored into the planning and design of the development and any impacts must be fully considered prior to the determination of the application."

49. I find the outcome of the ecological assessment, in relation to the impact on bats, to be inconclusive. The council has suggested a condition which would require the submission of a biodiversity plan to be informed by updated survey work. However, post consent surveys are normally only appropriate to refine the detail of mitigation measures that have been identified following a full understanding of the effects of the proposal, and not as a mechanism for identifying what those effects are, after planning permission has been granted. As the regrading of the quarry walls would form an integral part of the proposal, I consider that the potential impact on bats and scope for mitigation would require to be understood prior to granting planning permission in principle.

Other potential impacts on the natural environment

50. Representations indicate that the quarry pond is used for water-based recreation and for training purposes by the emergency services. Indeed at the time of my site inspection, recreational diving activity was taking place. Representations also indicate that the site has naturally regenerated to such an extent that the quarry is valued as an area of recreational greenspace, with associated health and wellbeing benefits.

51. The site is not shown as protected open space in the LDP. However, it is identified in Making Fife's Places Supplementary Guidance as providing a green network opportunity. I do not consider that the provisions of the supplementary guidance would preclude the redevelopment of the site. The appellant's concept plan indicates that the proposal would have the potential to deliver an enhanced green network as part of the overall development, consistent with some of the expectations of the supplementary guidance.

52. I recognise that the quarry void has re-naturalised over time and has become a place which is valued by a range of users from the local community and beyond. However, evidence indicates that the use of the quarry for diving and other recreational activities is unauthorised and unregulated, and poses a risk to public safety. I will return to the issue of public safety later in my decision.

53. Taking account of the unregulated and unauthorised use of the site and the potential to incorporate green networks into the proposal, I do not consider the impact on open space and water-based recreation would in itself justify the refusal of planning permission.

Conclusions on the impact on the natural environment

54. Based on the information before me, I conclude that the proposal would not accord with LDP policy 13 (Natural Environment and Access), in terms of landscape and visual impact, and also potential impact on bats.

Impact on the Built Environment

55. LDP Policy 14 (Built and Historic Environment) requires new development to demonstrate how it would meet the six qualities of successful places. Further information is provided in the Making Five's Places Supplementary Guidance. Policy 14 also indicates that proposals will not be supported where they would harm or damage designated sites and buildings, including the World Heritage Site, the conservation area and historic battlefields.

Successful Places

56. Section 7.2 of the design and access statement addresses each of the six qualities of successful places. It draws attention to the potential benefits the proposal would bring, such as links with existing routes and green networks, the inclusion of the reconstructed Beamer lighthouse and respecting the topography of the site.

57. Paragraphs 2.3.8 and 2.3.9 of the planning committee report highlight concerns regarding the indicative layout shown in the concept plan. It states that "while the proposal offers a reasonable layout in terms of permeability and, within a reasonable landscape setting, it is let down by the lack of contextual references - there is little evidence that the layout presents a strong relationship to distinctive characteristics of Inverkeithing." In refusing planning permission, the committee considered that the proposal would have a detrimental impact on the character of the historic town of Inverkeithing.

58. Whilst this is an application for planning permission in principle and details would remain to be approved, I require sufficient information to consider whether the principle of development and the nature of the impacts arising would be acceptable. In this regard, I share the concerns raised in the committee report that the submitted information provides insufficient comfort that the quality of design and placemaking expected by LDP policy 14 could be achieved. In particular, I do not consider that it has addressed the need for the proposal to be "distinctive", in other words, to make best use of site attributes and enhance the character of the surrounding area.

59. The photomontage from viewpoint 2 in the Landscape and Visual Appraisal shows a housing development of suburban character, which I consider would be poorly integrated with its landscape and coastal context, and the settlement of Inverkeithing. Whilst design and layout details do not require to be approved at this stage, I remain unconvinced that the principle of housing development on this scale could be accommodated without adverse impact on the character of the existing settlement.

60. On a more localised level, due to the marked difference in site levels and the requirement for an embankment for noise mitigation purposes, the development would not result in a natural extension of the built up area or reflect the existing pattern of development along Preston Crescent. No evidence has been provided to show that development at the western end of the site could be satisfactorily integrated with the existing settlement. Furthermore, the indicative levels strategy shows a retaining wall of up to four metres directly opposite the row of cottages on Preston Terrace, and site levels increasing from 6.5 metres AOD on the existing street to 10 metres AOD on the site boundary. This would suggest that, notwithstanding the provision of a "buffer zone", the proposal would have a detrimental impact on the character of Preston Terrace and the outlook from the existing cottages.

61. I find that the council's suggested condition for the submission of an updated design statement as part of a masterplan would not address the requirements of LDP policy 14. I conclude that the proposal has not demonstrated how it would meet the six qualities of successful places.

Impact on the historic environment

62. Historic Environment Scotland has indicated that the proposal has the potential to affect the Forth Bridge World Heritage site and the Battle of Inverkeithing II Battlefield. However, it did not object to the proposal. Planning officials address impact on historic assets in section 2.6 of the planning committee report and conclude that, subject to final details, the proposal could be accommodated without significant adverse impact on the cultural heritage of the area.

63. The appellant's design and access statement and landscape and visual appraisal provide supporting information in relation to the impact of development on the Forth Bridge World Heritage Site, Inverkeithing Conservation Area and the historic battlefield site. My conclusions above indicate that the proposal would have adverse impacts on views from the upper parts of Inverkeithing, which includes the conservation area. However, I do not consider that such impacts would necessarily detract from the setting of the conservation area.

Conclusions on impact on the built environment

64. I conclude that the proposal would not accord with LDP policy 14 as it has not demonstrated how it would deliver a successful place. Furthermore, as the proposal would not be in keeping with the character of the settlement and local area, it would not satisfy criterion a) in SDP policy 7.

Impact on Residential Amenity

65. LDP policy 10 (Amenity) requires proposals to demonstrate that they will not lead to a significant detrimental impact on amenity, including in relation to construction impacts. The proposal raises potential issues in relation to noise impact on new residents due to the proximity of existing industrial uses, and on existing residents due to rock blasting and engineering operations during the construction phase. Concerns have also been raised regarding the effects of light and air pollution.

66. The appellant's noise impact assessment and the consultation response from the council's public protection service conclude that adverse impacts from existing industrial uses at the western end of the site could be mitigated and addressed through conditions. I have no reason to disagree with their conclusions on this matter.

67. Quarrying and engineering operations would form an essential part of the overall proposals and are expected to last around 15 months. The noise impact assessment does not consider the effects of rock blasting and other construction noise on existing residents. The air quality impact assessment indicates that the site restoration phase has the potential to cause loss of amenity due to dust impacts on adjacent residential areas. Whilst it anticipates that the impact would be limited, a further assessment would be required.

68. I find that insufficient information has been provided in relation to quarrying and site engineering works to allow an assessment of likely impacts on residential amenity. The planning committee report suggests that these matters could be addressed through

conditions to require the submission of a separate vibration, noise impact and air quality assessment. However, this approach would not address the requirements of LDP policy 10.

69. I consider that the construction stage of the proposal has the potential to have adverse impacts on the amenity of existing residents, and that it is unclear whether such impacts could be mitigated. As the appellant has not demonstrated that there would be no significant detrimental impact on amenity, I conclude that the proposal would be contrary to LDP policy 10.

Other potential impacts

Traffic movements

70. Concerns have been raised in representations regarding potential transportation and road safety impacts, particular in terms of additional traffic on the local road network.

71. The appellant has undertaken a transport assessment which has considered the impact of the proposed development on the surrounding public road network and addressed accessibility matters. It shows that road junctions in the vicinity of the site would all operate within capacity at morning and evening peak times, and most of Inverkeithing would be within 20 minutes walking distance of the site. The council's transport team has considered the transport assessment and has no objection to the proposal, subject to a financial contribution towards strategic transport interventions.

72. I find that the appellant has demonstrated that the proposal would not have an adverse impact on the capacity of the local road network or the safety of existing road users. I also note that it is intended that rock material from the quarrying operations would not be removed from the site, thereby reducing the potential adverse effects of construction traffic. On this basis, I do not consider that there would be any justification to refuse planning permission on traffic grounds.

Flooding

73. LDP policy 12 (Flooding and the Water Environment) provides criteria for assessing the proposal in terms of potential flooding impact. The appellant has submitted technical reports on flood risk and surface water drainage. Paragraph 2.10.7 of the planning committee report, states that the council's structural services team is satisfied that sufficient information has been provided on surface water management and coastal protection matters.

74. I note that the site is partly within the functional floodplain as shown on the Scottish Environment Protection Agency's (SEPA) flood maps, and is at medium risk of coastal flooding. The appellant's flood risk assessment concludes that the proposed development would not be at risk of coastal flooding, subject to some land-raising within the site boundary and the provision of a low wall on the seaward side of some properties. Whilst the flood risk assessment shows that extreme seawater levels may result in flooding at the access on Preston Crescent, the access from Fraser Avenue would not be affected and would provide a safe alternative route. SEPA has not objected to the proposal and is satisfied that, subject to mitigation in the form of a small wall, the development would not be at risk of coastal flooding.

75. I sought further information from the appellant on the issue of coastal flooding along the re-aligned section of the coastal path. It states that the minimum levels along the new coastal path would be 5.1 metres AOD, and that predicted extreme sea levels, taking account of the effect of climate change, would be around 5.05 metres AOD. The path would therefore sit above this extreme sea level. However, there would be only a marginal freeboard to allow for uncertainty and waves.

76. I find that the realignment of the coastal path would increase its risk of being flooded, albeit, only in extreme weather conditions. I observed on my site inspection that other sections of the Fife Coastal Path are also positioned in close proximity to the sea and in this case, the provision of alternative access routes would help mitigate risks to public safety.

77. SEPA and the council's structure services team are satisfied that the proposed housing would not be at risk of coastal flooding, and I take account of their technical expertise on this matter. I conclude that, subject to appropriate conditions, the proposal would accord overall with LDP policy 12.

LDP policy 2 and SDP policy 7 - conclusions

78. I have concluded that the proposal would have adverse impacts on the built and natural environment, and potentially also on residential amenity. In terms of criteria 2 in LDP policy 2, I consider on balance that these adverse impacts would outweigh the benefits of addressing the housing shortfall.

79. The proposal would not meet each of the criteria in LDP policy 2 and would therefore also not meet the requirements of LDP policy 1 part A. Furthermore, I consider that the proposal would be contrary to SDP policy 7, because the development would not be in keeping with the character of the settlement and local area. Based on my assessment of the proposal against these and other relevant policies, I conclude that it would not accord overall with the development plan.

Material Considerations

80. I now need to consider whether there are any material considerations which would still justify granting planning permission.

Public safety

81. The appellant and the council are in agreement that the proposal would provide an opportunity to address existing risks in relation to rock stability, the quarry pond and other public safety hazards. Supporting representations indicate that the proposal would address the unsafe condition of the quarry, which has in the past resulted in deaths, and reduce anti-social behaviour.

82. The appellant considers that public safety should be the paramount consideration in the determination of this appeal. Its supporting information indicates that the council has been unable to use its statutory powers to require the landowners to undertake any safety measures, and that fencing and warning signs erected by the council in the past have been repeatedly vandalised. The appellant states that the proposed redevelopment presents the only opportunity to resolve the very serious and longstanding public safety issues.

83. The press articles from July 2022 provide evidence of the ongoing safety issues associated with the quarry in its current form. Whilst the council has erected a vehicular

barrier on the coastal path following recent incidents at the quarry, this would not prevent people gaining access to the site.

84. In refusing the application, the council has stated that the adverse impact of the proposal is not outweighed by the safety advantages. Third party objections indicate that safety concerns are a result of poor practice and behaviour and don't represent the majority of people using the site. Given the extent of natural regeneration, the site should not be considered as brownfield and derelict land.

85. I observed on my site inspection a number of potential safety issues, including broken fencing on the upper level of the quarry, rockfall from the quarry face and the quarry pond being used for recreational purposes. I also note the information provided regarding previous accidents and recent gatherings at the site. The site is included in the council's Vacant and Derelict Land Audit and given its quarrying history, I would describe it as predominantly brownfield land. As the site is no longer required for quarrying purposes, I consider that there would be benefits in finding an alternative use for the site, and addressing the current risks to public safety.

86. I have not been directed to any policy which indicates that public safety should be the paramount consideration in the determination of this appeal, and no evidence has been provided to demonstrate that the appeal proposal represents the only opportunity to address the public safety issues on the site. I conclude that the public safety benefits associated with the proposal are a material consideration to be assessed alongside other benefits and adverse impacts. I do not underestimate the importance of making the site safe or the serious consequences of not doing so. However, I do not consider that this matter in itself would justify the approval of the appeal proposal.

Inverkeithing Spatial Master Plan 2019

87. The Inverkeithing Spatial Master Plan 2019 sets out a shared vision to shape investment and community decision-making over the next 20 years. I note that the natural environment and open spaces within and surrounding the town are valued by the community, and seen as a strength of Inverkeithing as a place to live. These valued assets include the setting of Inverkeithing Bay, the coastal edge, and the wooded braes of Letham Wood. Whilst the proposal would not align with the longer term aspiration for an activity centre at the quarry, it could help deliver some of the projects listed in the spatial master plan. However, this would not justify the granting of planning permission.

Community Benefits

88. The proposal includes a number of potential community benefits. These include enhanced recreational public access and viewpoints, the creation of a new pier, and industrial heritage and amenity features. I find that the proposed benefits require to be balanced against the views expressed by the community council, Inverkeithing Trust and individuals who consider that the site, in its current state, also brings a range of benefits.

89. I have no doubt that should planning permission be granted, there would be an opportunity to deliver detailed features and environmental improvements which would be beneficial to existing and future residents and those visiting the area. However, the proposal would also result in the loss of existing elements of the site which are of value to the local community. I do not consider that the community benefits associated with the proposal would justify a departure from the development plan.

Scottish Planning Policy

90. Scottish Planning Policy (SPP) states that there is a presumption in favour of development that contributes to sustainable development. Where the development plan is more than five years old, or where there is a shortfall in the five year housing land supply, this “presumption in favour” is a significant material consideration.

91. In this case, the SDP which forms part of the development plan, is more than five years old. Furthermore, I have also concluded that there is a shortfall in the five year effective housing land supply at this time.

92. As explained previously, I consider that the shortfall in the five year effective supply is likely to be substantial. In *Gladman Developments Limited v The Scottish Ministers* [2020] CSIH 28, it was held that the greater the shortfall in the effective housing land supply, the further in favour of approval the planning balance is tilted.

93. Within this context, paragraph 33 of SPP requires me to consider whether any adverse impacts of the development would “significantly and demonstrably” outweigh the benefits of the proposal. Paragraph 29 of SPP sets out a list of sustainable development principles to guide this assessment. The appellant addresses this matter in section 15 of its planning statement.

94. I consider that the proposal would be likely to contribute to sustainable development principles in relation to economic matters; the re-use of brownfield land; supporting the delivery of accessible housing, leisure development and infrastructure; and enhancing cultural heritage. For the principles in relation to waste reduction and management; improving health and wellbeing; supporting climate change mitigation; having regard to the principles for sustainable land use in the Land Use Strategy; and the implications on water, air and soil quality, I find that the effects are either neutral or I have insufficient detailed information to reach a conclusion.

95. I have identified above a number of adverse impacts on the built and natural environment, in particular in relation to the existing settlement of Inverkeithing and the Fife Coastal Path. There would also potentially be adverse impacts on protected species and the amenity of existing residents. As a result, I consider that the proposal would not meet the sustainable development principles in relation to good design and the six qualities of successful places; protecting natural heritage; and protecting the amenity of existing development.

96. In this case, the presumption in favour of development that contributes to sustainable development tilts the planning balance towards the approval of planning permission. I find that the substantial shortfall in the housing land supply would tilt the balance further in favour of approval. Added to that are the other benefits the proposal would bring, including in terms of public safety and contributing to the economy.

97. However, the proposal would result in adverse impacts on the built and natural environment, and potentially also on protected species and residential amenity. Based on the information before me, I consider that these adverse impacts would significantly and demonstrably outweigh the benefits of the proposal, and therefore tilt the planning balance back to refusal.

Conclusions

98. I conclude that the development would not accord overall with the relevant provisions of the development plan. Notwithstanding the shortfall in the housing land supply, there are no material considerations which would justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Alison Kirkwood

Reporter