



Notice of Intention by Dan Jackman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-200-2063
- Site address: Site south of South Crosshill Road, Bishopbriggs
- Appeal by BDW Trading and W M Morrison against the decision by East Dunbartonshire Council
- Application TP/ED/19/0816 for planning permission dated 29 November 2019 refused by notice dated 24 November 2020.
- The development proposed: Proposed residential development comprising 158 units in a mix of flats and town houses with associated car parking and access from South Crosshill Road, refuse and cycle storage and formation of additional car parking spaces to the rear of the existing library
- Application drawings: See note attached to schedule 2
- Date of site visit by Reporter: 18 and 20 April 2021

Date of notice: 3 June 2021

Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission subject to the conditions listed below, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, or some suitable alternative arrangement, covering the matters listed in paragraph 80.

Preliminary matters

1. The scale and nature of the appeal proposal is such that it comes within the description of development as set out in Schedule 2 of the Environmental Impact Assessment (Scotland) Regulations 2017. East Dunbartonshire Council issued a screening opinion on 26 September 2018 to the effect that an environmental impact assessment would not be required in this case.
2. A claim for expenses has been made against the council. I will give my decision on this matter when I come to make my final decision.

Reasoning

3. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Section 59 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 requires me to also have special regard to the desirability of preserving the setting of the two nearby listed buildings.

4. There is no disagreement that the development plan comprises the Glasgow and Clyde Valley Strategic Development Plan, (approved July 2017), the East Dunbartonshire Local Development Plan 2017, (adopted February 2017) (LDP) and the associated supplementary guidance. No specific policies of the strategic development plan have been drawn to my attention, although I note that in general terms it would set the strategic framework within which any local development plan should be prepared, including setting the overall housing land requirement.

5. As is common for many local development plans, the LDP has policies that apply to specific sites, policies that apply to particular types of development such as residential development and general policies that would apply to any development, including a development for 158 residential units. The Development Quality Report and the council's appeal statement lists the following policies as relevant, Policy 1, 2, 4, 5, 6, 7, 8, 9, 10, 15, 16, and 20. On the proposals map the site is shown to be part of the defined town centre and part of the site is allocated for residential development. I agree that these policies are all relevant. The council, subject to conditions and an appropriate planning obligation, takes no issue with the above policies other than Policy 2 – Design and Placemaking, Policy 4 – Sustainable Transport, Policy 10 – Valuing the Historic Environment and Policy 20 – Developer Contributions.

6. Bearing in mind the provisions of the development plan and the representations made to me, I consider that the determining issues to be:

- The principle of the development;
- Whether the proposal amounts to overdevelopment;
- Whether the proposal complies with Policy 4 – Sustainable Transport;
- Whether the proposal complies with Policy 10 – Valuing the Historic Environment;
- Whether there is sufficient school provision to accommodate the proposal;
- Whether the proposal is consistent with the proposed local development plan;
- Whether the proposal is consistent with Scottish Planning Policy;
- Whether the proposal would prejudice consideration of future conservation area boundaries; and
- The number of community based representations

Development plan

The principle of the development

7. The site is located within the defined urban area of Bishopbriggs on vacant previously developed land. When the LDP is read as a whole, the spatial strategy is to focus development on accessible sites within the urban area in order to minimise the need to expand Bishopbriggs into areas of greenbelt.

8. Within the LDP, the site falls within the identified town centre boundaries indicated as suitable for mixed uses including retail and residential. Part of the site is specifically allocated for residential development. Ever since the school was demolished, re-development in general terms has been an aspiration of the council and previous planning permissions have been granted.

9. The appellants state that the council is minded to grant planning permission for the associated retail development. As part of that planning application, a masterplan was submitted, which shows a similar (but not identical) residential layout as the appeal proposal. The council has not challenged this version of events.

10. I consider the proposed local development plan below under material considerations. I note that the proposed local development plan has many similarities in approach compared with the currently adopted LDP. The proposed local development plan specifically allocates the site for residential development with an indicative capacity of 120 units. A proposed local development plan is intended to be the considered view of the planning authority.

11. I therefore conclude that the principle of re-development of this vacant area for a mixed retail and residential development fully accords with the provisions of the development plan. This conclusion has important consequences for my decision. Firstly, any development of vacant land will have some environmental impacts and secondly, securing an appropriately designed proposal would make an important contribution to securing the overall objectives of the development plan.

Whether the proposal amounts to overdevelopment

12. The council consider that the appeal proposal results in overdevelopment that would be harmful to the character, function and amenity of the area. This assessment is justified by reference to the 120 unit indicative capacity set out in the proposed local development plan. I consider the proposed local development plan in more detail under material considerations below. Aside from the council, there are many representations from local residents, which in summary, consider the proposal to be out of keeping with the area, result in overlooking and loss of privacy and that Bishopbriggs already has too much residential development compared to available facilities.

13. The total number of units on a site, taken in isolation, is a poor indicator of design acceptability. There are many other considerations such as size of the units, the site layout and the particular characteristics of the site. The proposed local development plan does provide an indicative capacity of 120, which the proposal exceeds. However, the adopted LDP only indicates a number for a small part of the site, the rest is defined as falling into the town centre where a mixed-use re-development, including residential, would be appropriate.

14. The appeal proposal's density equates to 25 dwellings per hectare (dpha). I would not describe that as high density. To my knowledge, many modern two storey suburban housing developments would be in the order of 30 dpha. I would describe high density as between 40-50 dpha.

15. I accept that the proposal has a higher density than the older residential development to the north. The proposal is clearly a completely different form compared to this area that comprises mostly of 1920/1930s bungalows. However, the residential development to the north is not the sole benchmark against which the design of the proposal should be judged.

16. The wider area is more mixed. Cleddens Court is a 3 storey development. There are 3 storey tenements fronting Kirkintilloch Road. There are mainly 3 storey apartments

adjacent to Bishopbriggs Park. The Triangle shopping centre, whilst 2 storey, is nonetheless a modern building of some considerable visual bulk, very different to the bungalows on the north side of South Crosshill Road. It is expected and entirely visually appropriate for higher density development to be located adjacent to a town centre and close to a railway station.

17. The appeal proposal mostly comprises 3 and 4 storey development. Many representations compare this unfavourably to the mainly single story development to the north. However, in my opinion, this comparison is unfair. The land levels fall away from a high point on South Crosshill Road to lower levels near the railway line. The bungalows in South Crosshill Road are mostly set at a higher level than the road level. The overall heights are broadly comparable when proposed site levels, total building heights relative to a fixed datum and the site cross sections are considered. Most of the 4 storey blocks of flats are located on lower lying land adjacent to the 3 storey Cleddens Court. The 4 storey block 1 (amended to have a flat roof) is located near the proposed supermarket carpark. The 3 story town houses and 3 storey block 6 are set back from the road and have a finished floor level generally lower than the finished floor level of most of the properties on the north side of South Crosshill Road. The submitted plans that I have to consider do not indicate to me 3 or 4 storey development out of scale with surrounding development when the details are properly considered.

18. In any urban setting, there will be a mix of areas with different characteristics. South Crosshill Road will now form a boundary between two visually distinctive areas. I see nothing inherently wrong with such an arrangement. The former school would have also been visually distinctive. I do not believe that the current vacant site adds to the character and amenities of the area.

19. The 3 storey town houses and 3 storey block 6 largely face the already public frontages of the properties on South Crosshill Road. I note that 2 Bocclair Road (a corner plot) has screening vegetation. The council has not drawn my attention to any particular physical relationship that it considers unacceptable. I note the careful analysis in the Development Quality Report and the extensive dialogue between the council's planning officials and the appellants' design team.

20. In some of the representations provided to me, overdevelopment is articulated in the sense that Bishopbriggs as a settlement is already overdeveloped and there is inadequate provision of a range of necessary facilities. I consider the impact on school provision below. However, in general terms, councils as planning authorities have to balance the need for development against available facilities. I note from table 1 of the LDP (see page 22) that the councils overall housing land requirement between 2008 and 2025 is some 6400 units. I can find no reference in the Bishopbriggs settlement section to there being no need for any residential development. Given that planning policy context, there is no basis in planning terms to conclude that there should be no development on a vacant site, next to a town centre because there has already been excessive development in Bishopbriggs.

21. I accept that design is to an extent subjective. I have no doubt that there are a range of opinions as to the design merits of the proposal. However, the council has not been able to provide me with any examples of harmful physical relationships caused by "overdevelopment" other than the general statement that the proposal is harmful to the character, function and amenity of the area. In the absence of any articulated design

critique, I can find no basis for concluding that the design is harmful in any material respect or contrary to Policy 2 or the associated supplementary design guidance.

Whether the proposal complies with Policy 4 – Sustainable Transport

22. In its reasons for refusal the council considered that the traffic generated from the development would exacerbate an already congested road network, that there was inadequate on-site parking provision and it had safety concerns regarding the number of pavement crossings in South Crosshill Road to serve the townhouses. In the council's view, each would be contrary to Policy 4.

23. The objective of Policy 4 is to enhance sustainable transport options in order to reduce the overall number of trips. The council have not suggested that the site is situated in an unsustainable location. The policy does not seek to control development in order to prevent any congestion but proposals should be assessed and appropriate mitigation measures provided. Adequate parking should be provided and layouts should meet expected safety requirements. Air quality is also a matter listed in Policy 4. Although the council had no objection on air quality grounds, it was a matter raised by some local residents.

a) Traffic generation

24. Accompanying this planning application was a transport assessment. As is normal practice, the scope and methodology was agreed. Recognised and widely used databases and software assessment packages were utilised. The full report and background data was reviewed by council officials familiar with the local road network and the standard working practices used in transport assessments throughout Scotland. The overall conclusion was that subject to a financial contribution to allow for a minor lane widening the traffic generated from the overall development would have an acceptable impact on the road network.

25. The council's current position is that the number of units proposed and the access to the library would result in a substantial increase in vehicle movements utilising the Kirkintilloch Road/South Crosshill Road junction and that there were no suitable mitigation measures available.

26. However, the council is minded to grant the new retail development, which also has access onto South Crosshill Road. The council has also approved a proposed local development plan with an indicative capacity of 120 residential units. My understanding of the previous masterplans is that there has always been an intention to improve access and parking to the library. The actual increase on the level of development that the council has previously considered acceptable is therefore at most only 38 residential units. I would not describe this as a substantial increase.

27. To justify the refusal of planning permission the council would have to demonstrate how the additional 38 units, over and above what it has previously found acceptable would lead to the capacity of the surrounding road network being materially and detrimentally affected.

28. The submitted plans show 7 car parking spaces for the library. Significant travel movements from these 7 spaces during the morning peak (i.e. 8:00 – 9:00) are unlikely. Of

the 38 extra units, not all residents will wish to travel in the peak period. Not all will travel by car. Any trips have to be averaged out over the peak hour. The council has not attempted to quantify how many trips from these additional units would be generated. Using the data from the transport assessment, any additional trips are most likely to be within the inevitable daily variation in traffic flows that occurs for most road junctions.

29. Due to the timing of the appeal, I was only able to visit the site whilst covid restrictions were still in place. I recognise that what I was able to observe is unlikely to be representative of how the road network would normally operate. Nonetheless, I observed all the relevant junctions in both the peak and off peak periods. During my site visits, I did observe queues forming. However, I saw nothing to indicate the road network was in such stress that controls on the development of a vacant site, indicated as appropriate for re-development would be justified.

30. The transport assessment used data collected prior to the covid restrictions. From the figures supplied in the transport assessment and the comments made from residents, I do not doubt that in normal circumstances the surrounding road network in general and the Kirkintilloch Road/South Crosshill Road junction in particular, becomes congested during peak times. On a main road corridor into Glasgow, with a succession of traffic light controlled junctions relatively close together, queueing would be inevitable during peak periods. When this occurs, it would not be surprising if queues backed up to such an extent that “green time” could not be fully utilised. This would compound the length of queues and the time taken for them to clear. I can image that this situation would be frustrating to local residents who would in turn find it difficult to leave their houses by car at certain times.

31. However, congestion and lengthening queues during peak periods are commonplace in urban areas. Congestion free peak periods are not a realistic baseline against which proposals should be assessed. The council has not provided me with any quantified evidence that this junction is particularly worse or that the times where queues occur extends beyond numerous similar junctions throughout urban areas in Scotland. In the absence of such evidence from the council, I prefer the advice of council officials, who are familiar with the real world operation of the road network, have considered appropriate mitigation measures and are familiar with the nature of transport assessments.

b) Car parking provision

32. The proposal does not fully comply with the council’s car parking guidelines. This is a deliberate choice due to the sustainable location of the appeal site close to a main public transport corridor and a railway station. The concept of limiting on site car parking provision in order to prevent car use is not new or novel. I note for example, that Annex B of Scottish Planning Policy sets national maximum parking standards for similar reasons. Encouraging development in sustainable locations and attempting to reduce trips by car seems to me to be the primary objective of Policy 4.

33. Of course when this approach is deployed, the concern is that it might not work as intended and could lead to an increase in on-street car parking. I accept that there is a risk that this could occur. However, I agree with council officials that in the particular circumstances of the appeal proposal, such a risk is acceptable if the objectives of Policy 4 are to be achieved. Anyone purchasing a flat would be aware that each flat only had one allocated parking space. If on-street parking did occur, the Council as Roads Authority can apply parking restrictions. It is not unprecedented for residential properties, particularly in

town centre locations, to have restricted or even no onsite parking. Prospective residents who own cars do not normally choose to live in such properties.

c) Safety concerns

34. The council is also concerned about the safety implications of the pavement crossings to serve the townhouses on South Crosshill Road. Pavement crossings to serve houses in residential areas are normal. I am unaware of any study that suggests this common practice is unsafe in any way. I note that the existing properties on the north side of South Crosshill Road all have pavement crossings.

35. Any resident entering or leaving their parking area would be travelling at slow speed and would have adequate visibility. I have been given no evidence to suggest that either the numbers of pedestrians and cars using South Crosshill Road or the speed of vehicles is such that the use of pavement crossings would be impractical or dangerous. I note that the appellants' have submitted a full safety audit prepared by independent experts. The council have not challenged any of the data used. I find the council's safety concerns are misplaced.

d) Air quality

36. As set out above, I accept that the overall development, including the retail element that the council is minded to grant would generate extra traffic. Extra traffic would add to emissions, which can contribute to poor air quality. There is no doubt that poor air quality affects human health. In accordance with Policy 4, the council required an air quality assessment to be completed.

37. In summary, the submitted assessment found that the combined development (i.e. both the retail and residential proposals) would result in a slight impact on annual mean NO₂ and negligible impact on PM₁₀ and PM_{2.5}. This is worst case because the assessment ignores any benefits to air quality likely to occur as the use of older more polluting vehicles declines.

38. The council officials with responsibility for air quality accepted the methodology and conclusions from this study. They did not recommend refusal of planning permission. Based on the agreed conclusions from the submitted study, I see no reason that the air quality element of Policy 4 is breached.

e) Conclusions

39. The site is clearly located in a sustainable location where the policies of the LDP encourage development to be located. I accept that the overall development will increase trips and this will be added to a network that is already congested at peak times. However, Policy 4 does not seek to prevent congestion; it seeks to manage it. The council by virtue of previous decisions has accepted a retail development and at least 120 residential units. It has failed to provide any detailed evidence that the extra trips, over and above what it has already found to be acceptable would substantially increase movements or show that the overall road network would be unable to function. In the circumstances of the appeal site, relaxing onsite car parking guidelines are appropriate and consistent with the overall objective of Policy 4. The council's safety concerns are misplaced for a practice that is extensively used in most residential development. Overall, I agree with council officials,

subject to a planning obligation to fund a minor lane capacity improvement, I find no breach of Policy 4.

Whether the proposal would comply with Policy 10 – Valuing the Historic Environment

a) Setting of the listed buildings

40. As mentioned above, I am required to have special regard to the desirability of preserving a listed building, its setting or any features of special architectural or historic interest. The only two listed buildings are the B listed library and the C listed St Matthews Church. The proposal would have no direct impact on the physical fabric of either listed building. I cannot agree that either the overall re-development or the demolition of 4 South Crosshill Road would have any significant impact on the setting of the church.

41. The church is set at a lower level than the re-development site. It was designed with the principle views to be from what will be the civic space. The church was not designed or built with any direct visual or functional relationship with the appeal site, including 4 South Crosshill Road. The church and 4 South Crosshill Road are not read together to any meaningful extent. At its closest point, Block 1 is approximately 30 metres from the church. I consider 30 metres to be a generous spacing within an urban area. I accept it is closer to the church hall, but this is an ancillary building and subservient to the church itself.

42. I accept that the wider re-development site provides the surrounding context for the church. This context will obviously significantly change because of the overall re-development. I have no doubt, that any viewer would be aware of block 1 and the rest of the development, including the new retail development. However, this is an inevitable consequence of the re-development of the former school site. This re-development, would in my opinion, improve the context compared to the current vacant and derelict appearance. It is commonplace for listed buildings in urban areas to have adjacent buildings of varying scales and styles.

43. I agree that 4 South Crosshill Road, block 1 and block 6 are within the wider setting of the B listed library. There is a historical association with the library (formerly a school) and 4 South Crosshill Road (the headmaster's house) and there is inter-visibility with the rear of the library.

44. However, the B listed library's principle elevation is from Kirkintilloch Road. The building was clearly designed for this to be so. The rear elevation is secondary, has been more recently altered and of no particular importance in terms of appreciating the building's architectural or historic interest. I do not consider blocking views to the rear of the library to be harmful to its overall setting and would image such views would have similarly been restricted before the school buildings were demolished.

45. I do not consider 4 South Crosshill Road to be derelict or detract from the amenity of the area. However, for the same reasons as above, I do not consider that its removal would have any detrimental impact on the setting of the library.

46. At their nearest points, block 1 and block 6 are approximately 19 metres and 21 metres from the rear of the library respectively. The cross section 5 and 6 (see plan 1352-Lou 9-2D) shows the height of block 1 to be approximately 75 metres above datum, whereas the roof ridge line of the library to be approximately 71.5 metres above datum.

The eaves height of block 6 has approximately the same height as the library roof ridge line. None of these dimensions indicates to me adjacent buildings out of scale or excessively dominating the B listed library. The clock tower on the library, at a total height of approximately 77 metres above datum would remain the tallest and most prominent element.

47. I accept that from the far side of Kirkintilloch Road, glimpses of the upper storeys and roofs of block 1 and 6 would be possible. However, these would form a relatively minor part of the view in contrast with the closer and impressive main elevation of the library. I conclude that neither block 1 nor the demolition of 4 South Crosshill Road would have a detrimental impact on the setting of the B listed library. I therefore find no breach of Policy 10.

b) Demolition of 4 South Crosshill Road

48. Although the council does not articulate it in such a direct form, I take it from its appeal statement that it agrees with the many objections from local residents and the community council to the proposed demolition of 4 South Crosshill Road. The local MSP has also made representations. In paragraphs 70-72 below, I consider a related but different point, that a decision on this appeal could prejudice the outcome of a review of conservation area boundaries.

49. As a matter of fact, 4 South Crosshill Road is not a listed building or located within a conservation area. Demolition could take place at any time without recourse to the council. From planning case law, this would be referred to as the default position. The council has argued that listed building consent would be needed because the demolition would affect the setting of the library. This is a mistaken interpretation of the law. Listed building consent would only be required if 4 South Crosshill Road was within the curtilage of the library. The council has made no such claim and in any event, I consider that it is clear that both buildings have independent curtilages.

50. Planning case law has established that the so called default position (what could be undertaken without express consent) is a vitally important material consideration. The reason this is so, is because irrespective of any decision I may take, 4 South Crosshill Road could be demolished. Therefore, attempting to refuse planning permission solely to prevent demolition would have no practical effect.

51. In addition, it is clear from the appeal submissions that discussions over the redevelopment of the site (which have always included 4 South Crosshill Road) have been ongoing for several years. Planning permissions have been granted and masterplans prepared. The council has therefore had many opportunities to signal any desire to retain 4 South Crosshill Road if it thought that was necessary to make re-development acceptable. The council has not drawn my attention to any measures it has undertaken in this regard.

52. On the contrary, I note that the allocated site in the proposed local development plan (which again includes 4 South Crosshill Road) includes notes for various requirements including the protection of the settings of the two listed buildings. There is no requirement to retain 4 South Crosshill Road.

53. The appellants claim that keeping 4 South Crosshill Road would result in a significant change to the scheme so that the project would no longer be viable. The

council's planning officials have accepted this explanation. I would expect the council's planning officials to be very familiar with the history of this re-development project, the wider site, changes to development objectives, ownership, developers and layouts. In my experience, it would not be surprising that late changes to fundamental development constraints would negatively affect the deliverability of the overall development.

54. Finally, I also agree with the conclusions of the Development Quality Report that whatever harm there may or may not be with the demolition of 4 South Crosshill Road, this has to be balanced against the benefits of delivering the re-development of a longstanding vacant site, in a highly accessible location adjacent to the town centre.

55. I accept that all those representations seeking the retention of 4 South Crosshill Road are genuinely expressing a legitimate opinion. However, I fear that those who express that opinion are either unaware of the legal and commercial realities or do not consider them important. In my decision, I have to consider such matters. All in all, refusing planning permission because of the proposed demolition of 4 South Crosshill Road would be ill founded. Like the council's planning officials, I find no breach of Policy 10.

56. As granting planning permission would mean 4 South Crosshill Road would be demolished, I consider that it is reasonable to attach a planning condition requiring the building to be surveyed, recorded and the information to be placed in a public archive prior to its demolition. The architectural and historic information would not therefore be entirely lost.

Whether there is sufficient school provision to accommodate the proposal

57. Another reason for refusal was that there was a lack of capacity in local schools to accommodate children from the proposal. Concern more generally about a lack of school capacity was also a matter raised in many of the representations.

58. However, the council, as both planning authority and education authority is expected to ensure that there is adequate school capacity to accommodate new development. The council would need convincing evidence to refuse planning permission due to the lack of school capacity on a site identified by itself as being suitable for residential development.

59. There is no dispute that some schools in Bishopbriggs are over 90% capacity. However, the council's normal approach when this occurs is to seek financial contributions to address the lack of capacity. In my experience, where a council has concerns over education capacity it would justify its position. This would typically include information showing the actual capacity of the relevant schools, future roll projections (including committed development and any new proposal) and an analysis as to why extensions or other such management measures to increase capacity are impractical.

60. The council has provided me with no such evidence. The council's appeal statement only says, *"....the Planning Board in its role as the Planning Authority, took an opposing view and did not consider the payment of developer contributions, in this instance, to sufficiently address the increased demands on local education provision in the local area."* In the absence of any detailed evidence, I have no other option but to fall back on the advice of the council's School Planning and Improvement Manager. That advice is that a developer contribution, as is current policy, should be sought. I also note that in the internal memo the School Planning and Improvement Manager states, *"...if you require the figures*

provided to previously for this development, I can send these on again.” It would therefore appear that the relevant council department has done a detailed analysis but the council has chosen not to provide that analysis to me.

61. I can only conclude that a financial contribution would address the need generated by the development. Therefore, subject to a planning obligation for the sum specified in the Development Quality Report, I can see no justifiable basis for the council’s fourth reason for refusal.

Development plan conclusions

62. The council, subject to conditions and an appropriate planning obligation accepted that the proposal complied with most of the relevant planning policies. It only took issue with Policies 2, 4, 10 and 20. For the reasons set out above, again subject to conditions and a planning obligation, I can find no breach of these policies. I therefore find that the proposal complies with the policies of the development plan. Indeed, I would go further, the delivery of the combined retail and residential development would make an important contribution to achieving the council’s published planning objectives for Bishopbriggs.

Material considerations

East Dunbartonshire Proposed Local Development Plan 2 (LDP2)

63. LDP 2 was published for comment between October 2020 and January 2021. The council will need to consider the representations made and it is then likely that there would have to be an examination before the plan could be adopted. Nonetheless, as the proposed local development plan is intended to represent the considered view of the council, I consider that LDP 2 can be a material consideration.

64. An important argument made by the council (and others) is that LDP 2 allocates the site for 120 residential units, which is significantly exceeded by the appeal proposal for 158 residential units. However, this is an unfair reading of what LDP 2 actually says. The heading to the column where 120 is entered is titled *“indicative capacity”*. The word *“indicative”*, clearly implies that the figure is not definitive. The note also states, *“capacity to be determined through agreed masterplan.”*

65. Irrespective of what has or has not been agreed in a masterplan, the definitive capacity of a site can only be established by a grant of planning permission. The appellants have drawn my attention to other housing sites in East Dunbartonshire where the final site capacity exceeded those indicated in the development plan. I agree that this is a common occurrence throughout Scotland. There is nothing sinister or underhand in this occurring. It merely reflects the reality that establishing the final site capacity can only be completed once all the design and technical analysis has been completed.

66. The important issue is not whether a stated indicative capacity has been exceeded but whether the final design (irrespective of the actual number of units) is acceptable in planning terms. I have assessed the concerns of the council under the policies of the current LDP and found nothing in the appeal proposals to be materially harmful.

67. LDP 2 uses a different structure to the current LDP. However, I see no fundamental change in spatial strategy and many of the policies are expressed in similar terms. If

anything, LDP2 places greater emphasis on sustainability. Unlike the current LDP, LDP 2 specifically allocates the appeal site for residential development. Overall, I consider LDP 2 is a material consideration that points in favour of granting planning permission.

Scottish Planning Policy

68. Scottish Planning Policy was only recently amended in December 2020. It introduces a presumption in favour of sustainable development. Whether a proposal amounts to sustainable development should be based on the principles set out in paragraph 29. I note the similarity between these principles and the list of matters set out in Policy 1. Whether a proposal overall is considered to be sustainable development is a matter of judgement that has to be taken in the round.

69. In my judgement, a proposal that re-develops currently vacant land, in a highly accessible location, adjacent to a town centre and without unacceptable environmental impacts would be widely regarded as sustainable development. I conclude that Scottish Planning Policy is an important material consideration in favour of granting planning permission.

Heritage consultation

70. From the representations I have received, it would appear that the council is currently consulting on proposed changes to conservation area boundaries in East Dunbartonshire. It has been suggested to me that this decision could prejudice the outcome of this process.

71. The council must have been aware of the architectural and historic merits of 4 South Crosshill Road from the beginning of the development process of this site, which has been ongoing for several years. The council must also be aware of the position of the current owners of 4 South Crosshill Road. I note that the council has chosen to submit no evidence in relation to the appellant's report entitled "*Removal of 4 South Crosshill Road, Bishopbriggs.*" The boundary of a conservation area is entirely a matter for the council, although I note that the council would have to consider all the representations received.

72. In any event, even if 4 South Crosshill Road was included within a conservation area, that would not of itself prevent demolition. It would only mean that consent would be required. Again, the council would have to fairly consider the terms of any application. If consent were refused, then there would be a right of appeal. Overall, I find that there is too much uncertainty to attach much significance to the potential outcome, as at this stage, even the council must be unaware.

Community objections

73. I received a large number of objections from local residents and their representatives including the community council and the local MSP. The most commonly mentioned concern was the proposed demolition of 4 South Crosshill Road. However, other matters raised were similar to the concerns of the council and included traffic generation, design and the lack of available infrastructure.

74. In essence, the objections were arguing for a completely different design concept - one of a far less intensive form of development. Any re-development of the site would have

some impacts upon the surrounding area but I accept that a form of development could be designed to have less overall impacts than the appeal proposal.

75. However, the decision I have to make is not whether there are superior alternatives but whether the proposal before me complies with the provisions of the development plan and avoids demonstrably harmful impacts. For the reasons I set out above, I find that the proposal does comply with the planning policies of the council and, subject to conditions and an appropriate legal agreement, has acceptable impacts overall. I have also identified a number of planning benefits of the proposal.

76. I do not seek to diminish the concerns expressed. However, within the legal framework that I have to make my decision, I do not find that the community objections are sufficient to outweigh the other considerations.

77. I accept that during the construction of the proposal, local residents will experience various forms of disturbances and inconveniences. However, the construction process is over a relatively limited period, disturbance can be mitigated by appropriate planning conditions and in any event, is an inevitable consequence of identifying an area for re-development.

Material consideration conclusions

78. I consider that the policies of the proposed local development plan and Scottish Planning Policy weigh in favour of granting planning permission. The outcome of the heritage consultation is too uncertain to be of significance. I accept that there is a significant body of local opinion that seeks a different form of development. However, this body of opinion, in my judgement, is not sufficient to outweigh a compelling case, established over many years for the development in planning terms. Overall, I consider that material considerations support the proposal.

Planning obligations and planning conditions

79. The council does not dispute that a financial contribution for offsite open space or that a legal agreement is required to secure the affordable housing. The council did consider that the financial contributions for road and school improvements would be insufficient to address the harm created by the development. For the reasons set out above, I find that the council was unable to justify its position. I consider that the requirements set out in the Development Quality Report are necessary to make the proposal acceptable and comply with circular 3/2012.

80. I will therefore delay issuing my decision for a period of 13 weeks to enable the council and appellant to agree a planning obligation or similar appropriate arrangement. If after this period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation. For the avoidance of doubt the matters and sums to be included are:

- Open space contribution of £48,980
- Education contribution of £268,812.27
- Route corridor contribution of £165,000

- The delivery of 40 units as affordable housing in perpetuity

81. The Development Quality Report also sets out proposed planning conditions. The appellant agrees that these conditions are necessary and complies with the relevant circular. I also agree with the suggested conditions. However, as discussed above, I have added an additional condition requiring the survey and recording of 4 South Crosshill Road prior to demolition and have added an additional requirement regarding maintenance to the proposed landscaping condition.

Overall conclusions

82. For the reasons set out above, I consider that the proposal complies with the provisions of the development plan and the council has failed to demonstrate any material planning harm. In my judgement, material considerations also weigh in favour of granting planning permission. I accept that there is a significant body of local opinion that seeks a different form of development. However, for the reasons I have explained, whether there is or is not a superior alternative is not part of the framework within which I must make my decision. I have considered all other matters raised, but there are none that would lead me to altering my conclusions.

Dan Jackman

Assistant Chief Reporter

Schedule 1 - List of conditions

1. Prior to the commencement of development a Construction Methodology Statement (CMS) shall be submitted for the written approval of the Planning Authority. The CMS shall include details of haulage routes, location of site compound, material storage areas, location of on-site parking for construction workers vehicles, vehicle wheel wash facilities/road brush provision and details of the signing of the site access. The CMS shall be implemented for the duration of construction as finally approved.

Reason: In the interests of road safety and residential amenity.

2. During the periods of construction, all works and ancillary operations which are audible at the site boundary, or at such other places as may be agreed with the Council, shall be carried out only between the hours of 8.00 a.m. and 7.00 p.m. Monday to Friday inclusive; 8.00 a.m. and 1.00 p.m. on a Saturday and at no time on a Sunday, or on a National Bank Holiday

Reason: To protect neighbouring residential properties from noise at unsociable hours.

3. Prior to the commencement of works on site a plan indicating all proposed boundary treatments across the site shall be submitted for the written approval of the Planning Authority. Thereafter these shall be implemented on site as finally approved.

Reason: To ensure boundary treatments are adequate in terms of visual amenity and residential amenity.

4. Prior to the commencement of works on site details of the proposed cycle shelters shall be submitted for the written approval of the Planning Authority. For the avoidance of doubt these shall be fully enclosed and lockable. Thereafter the cycle storage shall be implemented on site as finally approved.

Reason: To ensure adequate cycle parking is provided on site.

5. The mitigation measures detailed in the approved Noise Impact Assessment (PL28 and PL44) shall be implemented in full in all relevant properties.

Reason: To ensure an adequate level of internal noise is achieved in all proposed residential properties.

6. The mitigation measures for controlling dust during construction as detailed in Appendix 2 of the Air Quality Assessment (PL29) shall be implemented in full for the duration of construction.

Reason: To minimise harm to air quality during the construction period.

7. Remediation of the site shall be carried out in accordance with the approved Remediation Strategy (PL100). A verification report on these works shall be submitted for the written approval of the Planning Authority and validated prior to the occupation of each relevant plot.

Reason: To ensure contamination present on the site is adequately mitigated.

8. Prior to the commencement of works on site a revised landscape plan and scheme shall be submitted for the written approval of the Planning Authority showing the following:

- Further planting between the parking bays at Plots 56-64
- A scheme for the selection and re-use within the landscaping of an appropriate section of the bomb damaged railings currently on the southern boundary of South Crosshill Road. This shall include some form of interpretation to explain their significance.
- Re-use of stone or other architectural features of 4 South Crosshill Road in the landscaped area adjacent to Block 6
- Full details of two equipped play areas within the site, one in the eastern parcel and one in the western.
- Small public realm areas at the interface of the development with; the Bishopbriggs library and the adjacent supermarket.
- Reduced tree planting in the vicinity of the watercourse realignment
- Wildflower plugs within the wildflower meadow areas.
- Larger marginal plants to be included adjacent to the watercourse realignment.
- Maintenance schedule and future maintenance arrangements

Thereafter the landscape plan shall be implemented as finally approved within the first planting season or within 6 months of completion of the development, whichever is the sooner.

Reason: To ensure the site is adequately landscaped in the interests of biodiversity and visual amenity.

9. Prior to the commencement of works on site an energy statement shall be submitted for the written approval of the Planning Authority. This shall demonstrate how the site meets the requirements of Local Development Plan Policy 15 with regards to low and zero carbon technologies. Thereafter the measures identified in this statement shall be implemented on site prior to the occupation of each dwelling.

Reason: To ensure the development complies with the requirements of the Local Development Plan with regards to energy use.

10. The recommendations of the Species Protection Plan (PL31) shall be implemented in full during and post construction. For the avoidance of doubt this includes:

- The appointment of an Ecological Clerk of Works
- Pre-start checks for badgers
- Erection of a protection zone for badgers prior to work commencing
- Tree felling outwith the bird breeding season (March to August)
- Pre-start checks for bats by a suitable qualified individual before demolition or tree felling.
- Suitable gaps in fencing to ensure badger and hedgehog movement through the site.
- Installation of bat boxes
- Installation of bird nest boxes

Within six months of the completion of the first dwelling a verification report shall be submitted for the written approval of the Planning Authority demonstrating how all of these requirements have been met on site.

Reason: To ensure adequate protection and mitigation is in place for protected species that may be present on the site.

11. The recommendations of the Flood Risk Assessment (PL23) shall be implemented in full. In addition the following information is to be submitted for the written approval of the Planning Authority prior to the occupation of the first unit:

- All necessary CCTV surveys and jetting of Scottish Water Sewers is to be undertaken by the applicant and a copy submitted to East Dunbartonshire Council.
- A revised overland flow diagram showing only the proposed ground levels, road/footway levels and finished floor levels.
- A plan indicating dry pedestrian escape routes in the event of flooding.
- Details of the management and drainage of overland flows within the southern boundary of the site
- Details of the maintenance/adoption of the open section of burn diversion

Reason: To ensure adequate mitigation is in place to prevent flood risk.

12. Prior to the commencement of works on site a revised site plan shall be submitted showing the size and location of two equipped play areas within the site, totalling at least 400 square metres, and the details of the proposed play equipment. Thereafter the play areas shall be constructed and opened for use prior to the occupation of the last unit on site.

Reason: To ensure adequate play equipment is provided across the site.

13. Prior to the occupation of the final unit on site the approved drainage plan shall be implemented in full. In addition to this the following information shall be provided for approval prior to the commencement of works on site:

- Detailed cross sections of the porous paving and filter trenches.
- Consideration given to raingardens as an alternative to tree pits.
- Maintenance schedules for drainage features clearly identifying responsibilities for each.

Reason: To ensure adequate drainage is provided across the site.

14. Before any development commences a scheme shall be submitted and approved in writing setting out a programme for how 4 South Crosshill Road would be surveyed, recorded and details retained in a publically accessible archive. Upon written approval, the scheme shall be implemented unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure that details of 4 South Crosshill Road are recorded and kept in a publically accessible archive before demolition.

Schedule 2 – List of approved drawings. *Note – The Reporter would be grateful for the appellant and council to agree the finalised list of approved drawings (i.e. not including plans amended during the planning process) so that a correct list can be included in the final decision.*