

WEST DUNBARTONSHIRE COUNCIL

Report by Planning, Building Standards and Environmental Health Manager

Planning Committee: 19th April 2023

DC22/049/MSC: **Planning appeal decision - Approval of matters specified in conditions 1, 3, 5 and 7 of PPiP approval DC19/203 for the erection of 99 dwellinghouses, formation of access, landscaping, open space, SUDS and associated infrastructure at Farm Road, Duntocher, Clydebank**

1. Purpose

- 1.1** The purpose of this report is to advise the Committee of legal advice received in respect of the above appeal decision.

2. Recommendation

- 2.1** It is recommended that the Committee note that the legal advice received by the Council is that there are no grounds for challenging the appeal decision.

3. Background

- 3.1** In September 2020, planning permission in principle was granted on appeal for a residential development subject to seven planning conditions with an indicative capacity of up to 99 dwellinghouses. The Council made an appeal to the Court of Session against this appeal decision. The Council's appeal was dismissed. The Council subsequently sought permission to appeal this matter to the Supreme Court, but this was refused.
- 3.2** Planning application DC22/049/MSC considered the details in respect of the matters specified in conditions 1, 3, 5 and 7 of the planning permission in principle. Condition 1 addresses a variety of details including the site layout, siting and design of the proposed houses, access arrangements, car parking, levels, landscaping, garden space and provisions for waste. Condition 3 addresses the requirement for an updated habitat survey and condition 5 addresses flooding and drainage details. Finally, condition 7 relates to the provision of bus stops on Craigielea Road and associated footpath connections.
- 3.3** The application for matters specified by condition was refused by the Planning Committee in October 2022 as it was not considered that proposal layout and design of the development achieved the right development in the right place, did not achieve housing that is of a high-quality, adaptable, and designed to be suitable for a mix of occupants, failed to achieve a layout that is of a high quality and easy to move around and failed to demonstrate the six qualities of successful places. The Committee further considered that the development would detract from both the local amenity and from the overall character of the local settlement and the adjoining Kilpatrick Hills.

- 3.4** Following the refusal of the matters specified by condition application, the applicant submitted an appeal together with a claim for award of expenses to the Directorate for Planning and Environmental Appeals. The appeal decision was published on 31st January 2023. The Reporter upheld the appeal and granted the application for matters specified by condition. A partial award of expenses in the appellant's favour was also allowed.

4. Main Issues

- 4.1** The March Planning Committee requested that an external legal opinion be sought on whether there were grounds to challenge the appeal decision by the Reporter. An opinion was therefore sought from Counsel who advised that there was no stateable ground of appeal as he did not think that the appeal Reporter's conclusions could be considered unreasonable. This brings the appeal process to a conclusion.

5. People Implications

- 5.1** There are no people implications associated with this report.

6. Financial and Procurement Implications

- 6.1** The costs of the external legal advice will be met from the Planning and Building Standards budget. At the time of writing the report the invoice for the legal advice has not been received by the Council.

7. Risk Analysis

- 7.1** There are no risks associated with this report.

8. Equalities Impact Assessment (EIA)

- 8.1** There are no equalities issues associated with this report.

9. Consultation

- 9.1** Statutory consultation was undertaken during the consideration of the planning application.

10. Strategic Assessment

- 10.1** The appeal decision is considered to have no implications in terms of the strategic priorities.

Pamela Clifford
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Date: 19th April 2023

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Appendices: None

Background Papers:

1. Planning Committee report – DC22/049/MSC
2. Planning appeal decision PPA-160-2039 - [Scottish Government - DPEA - Case Details \(scotland.gov.uk\)](https://www.scotland.gov.uk/topics/dpea/cases/PPA-160-2039)

Wards affected: Ward 4 (Kilpatrick)