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17 August 2023

DPEA ref: PPA-230-2387
Planning Authority ref:21/05901/PPP

Dear Ms Anderson,

PLANNING PERMISSION APPEAL: LAND 131 METRES SOUTHEAST OF 119 FERNIEHILL DRIVE EDINBURGH EH17 7DD

Thank you for inviting APRS to submit comments to the reporter on the relevance of the Mossend decision to the determination of this appeal.

We note that Ministers had recalled the residential development appeal at Mossend, West Lothian (PPA-400-2147) for their own determination as it raised national issues in relation to the application of NPF4 and the correct interpretation of the development plan in relation to the permitting of houses on unallocated sites.

Submissions in the Mossend case for the appellant directly challenged the application of elements of NPF4 Policy 16 prior to adoption of 'new style' LDPs and sought approval seemingly on the basis of planning policies from SPP 2014 despite these ceasing to have effect in February 2023. However, the Reporter and Ministers agreed in the Appeal Report and Decision that NPF4, including policy 16, applied from its adoption in February 2023, and after the same date SPP 2014 and SESplan were not relevant to planning decisions. This view supports our previous submissions and we will not restate them here.

Unallocated sites

As, like Mossend, Ferniehill is an unallocated site, many of the arguments used in the Mossend decision are relevant here. In the case of Ferniehill the development plan now comprises NPF4 and Edinburgh LDP (adopted 2016). The new Edinburgh Cityplan 2030 is currently at Examination and the site is once again not allocated in the proposed plan.

Green Belt

One point of difference between the Mossend decision and Ferniehill, is that the Ferniehill site is designated Green Belt in both the LDP 2016 and Cityplan 2030. In line with the Mossend

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decision, (ie NPF4 applies to the whole of Scotland whether or not a “new-stye” LDP exists for the area) our view is that NPF4 policy 8 is relevant and the application is not supported. We note that the applicant at Ferniehill has previously made the argument (see Excerpt below) that policy 8 is not relevant because the LDP is ‘old-style’. We would note that NPF4 policy 8 just says “a) Development proposals within a green belt designated within the LDP will only be supported if...” and then gives various specific exceptions none of which apply to this application. There is no implication in NPF4 that an LDP adopted prior to NPF4 would not meet this policy clause.

Excerpt from the Appellant’s Agent’s comments on the Council’s submission (6 March 2023) following “NPF4 transitional arrangements” - uploaded to DPEA website on 22 March:

As we have explained in our previous submissions (see response to FIR of 13 December 2022 in particular), Policy 8 is not a relevant policy for the purposes of this appeal. Read objectively (as required by the law) there can be no doubt that Policy 8 provides instruction to decision makers on applications for development in a green belt designated in compliance with NPF4. It does not apply to the existing green belt (which of course is subject to its own LDP policy that reflects the context in which it was designated and the purpose it fulfils).

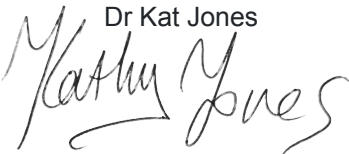
Biodiversity and Recreational Use

A further difference within the Mossend case is that the Ferniehill site is not non-prime agricultural land but a mix of semi-natural habitats, including scrub and woodland supporting a wide range of species both above and below ground in a peri-urban situation. Building around 150 houses on the site will clearly not contribute to the enhancement of biodiversity as NPF4 policy 3 requires. It is well used by local people for recreation as indicated by the obvious network of informal paths.

Appeal Rights and the Development Plan

We would note that local community members affected by this application, unlike the developer, have no right of appeal in the current planning system. Scottish Government have long said that the Scottish Planning System is plan-led, and that “front-loading” community input through communities engaging with the LDP process will ensure fairness in the system. In this case, which has spanned several public consultations on both the proposed LDP and NPF4, the proposal is clearly contrary to the current development plan (adopted LDP and NPF4) and involves a site which is unallocated in the proposed LDP (currently at Examination), and therefore the appeal should be dismissed.

Dr Kat Jones



Director
APRS

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