

The Proposed Renfrewshire Local Development Plan – Recommended modifications that Renfrewshire Council have accepted and the modifications declined to be made.

### **Modifications to the Proposed Renfrewshire Local Development Plan**

The modifications accepted and made to the Proposed Renfrewshire Local Development Plan (Proposed LDP) are found in Appendix 1, indicating that Renfrewshire Council have accepted the majority of the recommended modifications with the exception of those modifications as set out in Issue 8 – Braehead.

### **The modifications not made to the Proposed Renfrewshire Local Development Plan**

In accordance with Regulation 2 of the Town and Country Planning (Grounds for declining to follow recommendations) (Scotland) Regulations 2009 (2009 Regulations) and Section 19(10)(a)(i) and 19(12) of the Town and Country Planning (Scotland) Act 1997 (the Act), Renfrewshire Council decline to make the modifications to the Proposed Renfrewshire Local Development Plan as recommended by the appointed person as set out in the Examination Report under Issue 8 – Braehead.

The grounds for declining to follow the recommendations, as set out in Regulation 2(c) of the 2009 Regulations are that the modifications are based on conclusions that the appointed person could not reasonably have reached based on the evidence considered in the course of the Examination under section 19 (3) of the Act. In this respect, clear errors were made by the appointed person these are as follows:

#### **The Reporter has misinterpreted and/or failed unreasonably to give any weight to certain relevant evidence available to her, and did not seek clarification on determining issues through the examination process**

Renfrewshire Council submitted evidence to the appointed person in respect of the Strategic Development Planning Authority's (SDPA) approach to Braehead in the Strategic Development Plan (SDP) process (including CD/02 and CD/27), to the effect that the status of individual centres (including Braehead) within the network was a matter for the relevant Local Development Plan (LDP) and local planning authority. Renfrewshire Council's evidence in this respect was consistent with the content of Strategy Support Measure 11 of the SDP. The appointed person made no reference to this strand of evidence within her conclusions. Moreover, the content of paragraphs 17 and 18 of her conclusions indicates her view that the SDPA would or did not support town centre status for Braehead within the LDP. In this significant respect, the appointed person has either misinterpreted/misunderstood the evidence before her, or failed unreasonably to give it any weight.

In paragraph 12, the appointed person states that 'I have been provided with no evidence that the designation of Braehead as a town centre and the proposed areas for expansion identified

on Figure 12 of the Proposed Plan have been based on any investigation into the qualitative and/or quantitative need for more retail space at Braehead.’ This is not a necessary requirement in respect of the designation of Braehead as a town centre. Any requirement for such evidence in respect of future development proposals at Braehead would be considered at the development management stage. In any event, notwithstanding the absence of any requirement for such evidence to be produced in support of the Proposed LDP, if the appointed person considered this matter to be a determining issue, as appears to be the case, she ought to have sought further evidence or comment thereon from the parties. Despite issuing two requests for further information/clarifications, the appointed person failed to seek further information on this point.

The appointed person erred in the statement set out in paragraph 25, where it is stated ‘town centre status at Braehead would mean decisions on *any* proposals for expansion would not be supported by any evidence on retail impact on other centres in the network.’ This statement is incorrect as expansion at Braehead, if strategic, would always require to be considered in line with the Spatial Development Strategy, Strategic Support Measure 11, and Diagram 4 – Sustainable Location Assessment set out in the SDP, as well as Policy C1 of the Renfrewshire Local Development Plan. Therefore the appointed person has misinterpreted or misunderstood how the Council would make an assessment of new development proposals that were strategic.

Furthermore, at paragraph 29, the appointed person erred by suggesting that town centre designation would negate the need for a retail impact analysis, benefiting the owners of Braehead. In terms of the SDP, retail development considered strategic would require consideration of the likely *impact* of the scale of development on the SDP Spatial Vision and Spatial Strategy. Therefore in the case of strategic retail proposals, impact would still require to be assessed.

The conclusions set out in Issue 8 – Braehead do not reasonably support the appointed person’s view that Braehead is a commercial centre of mixed retail and leisure development type and that it is not a town centre. The conclusions were unreasonably reached given the appointed person’s views that are presented in other sections of the conclusion. These are as follow:

- Braehead has a good range and quality of shopping and wider economic and social activity in the day and evening;
- It has good accessibility by car, and it also has good public transport accessibility by bus;
- Braehead does perform certain town centre functions for the wider Riverside area;
- Braehead is not the same as other commercial centres like the Abbotsinch or Phoenix retail parks;

- ‘Strategic Centre’ is not a term referred to in Scottish Planning Policy (it is therefore clear that Braehead is set apart from other commercial centres, having become an exceptional case);
- Paisley and Braehead (and other centres in the network) have complementary roles;
- The retail capacity assessment concludes that Glasgow City Centre would continue to enjoy supremacy as the region’s principle shopping destination and that no other centres would face any undue pressure or difficulty as a result of particular proposals;
- The areas for potential expansion at Braehead should be identified on Figure 12 of the LDP, it is accepted that the desirable improvements in the public realm and civic space would need to be funded in some way;
- The objective that Braehead should develop a town centre character, as envisaged in the SDP should be supported;
- Centres such as Silverburn (Pollock) and Glasgow Fort (Easterhouse), superficially at least, have a lot in common with Braehead;
- The designation of strategic centre in the SDP and the Proposed LDP confers a certain status;
- The development of Braehead shopping centre, Xscape and the adjoining retail warehouse park, the other business premises and the houses that have been recently constructed in the general area have had considerable regeneration and economic benefits;
- There would also be economic benefits in terms of the creation of jobs at Braehead.

In light of these various conclusions, the appointed person’s overall conclusion that Braehead does not merit town centre status is unreasonable/perverse.

Lastly, Renfrewshire Council submitted evidence to the Examination to the effect that Ravenscraig established a precedent for the designation of an area as a town centre in circumstances where a town centre did not yet exist on the ground. The appointed person erred in rejecting this comparator. Paragraphs 19 and 20 set out what the appointed person describes as ‘important differences between Ravenscraig and Braehead’, referring to capacity, quality and distinctiveness of retail facilities, links with existing centres along with evaluation of the impact on other centres. In this respect, the appointed person made two errors based on her misunderstanding and/or misinterpretation of the evidence before her.

In the first place, Ravenscraig's town centre status was assessed under the Glasgow and the Clyde Valley Joint Structure Plan 2000. The Structure Plan (as altered) through Strategic Policies 1, 3, 5, 9 and 10' set out a different approach to that contained in the current SDP. Strategic Support Measure 11 of the SDP (in the case of Braehead) does not require the same approach, and requires development proposals to be in line with the Spatial Development Strategy and Schedule 12 – Network of Strategic Centres. Against that background, the distinctions drawn by the appointed person are not relevant to the issues under consideration.

Secondly, when considering the case of Ravenscraig, the appointed person relied on her erroneous understanding of the SDPA position (described above) where she failed to recognise that the status of individual centres had been delegated by the SDP to the LDP.

For both these reasons, on the basis of the evidence led, she has erred in giving no weight to the comparator/precedent of Ravenscraig. This is particularly significant given her opening conclusions that Braehead does not currently comprise a town centre.

**The Reporter relied upon (i) a perceived lack of analysis of retail capacity and (ii) a lack of evidence on demand context. However these issues were not raised by the Reporter as matters that were considered significant and on which further input from the parties was required**

In paragraph 13, the appointed person refers to the planning application for Braehead, which is still to be fully considered by the Council. It is stated that assessment of the detailed retail capacity for the current planning application has not been 'subject to any independent critical analysis.' Having identified retail capacity as significant, the appointed person has erred in according no weight to retail capacity evidence that was provided as part of the examination. In the first place, given that (i) no contradictory evidence was before the appointed person in this respect, and (ii) she identified no defects within the available evidence, her approach was unreasonable and flawed. Secondly, given that the retail capacity evidence was before her as part of the Examination, she herself had the opportunity to subject it to independent scrutiny. Lastly, the appointed person should have sought further comment from the parties in writing or verbally at the hearing but failed to do so. Accordingly the appointed person failed to follow the principles of natural justice/failed to make sufficient enquiry into a determining matter which is considered significant.

In paragraph 30, the appointed person states that Braehead Properties has provided no evidence on potential retail impact on other centres. This is not a matter for the Examination of the LDP. However the appointed person did consider this to be a pertinent matter but failed to seek further representation or information regarding this point by written submission or at the oral session held to discuss Issue 8 – Braehead in line with the procedures as set legislation. Circular 6/2013 sets out that 'There may be issues of great significance where the Reporter feels that they have all the information they need to reach a conclusion without any further input.' Clearly

by her own admission the appointed person did not have sufficient information in respect of this issue.

In any event, although the retail assessment for the current planning application at Braehead was submitted as part of the Examination process, no decision has been made by the Council on detail of the planning application nor the retail assessment or any other supporting information. Braehead's town centre status in the Proposed LDP will not simply allow further retail expansion regardless of the particular circumstances. As indicated on page 16 of the Proposed LDP, the Council will only support such expansion where it furthers town centre status and the character of Braehead. The work on the masterplan continues.

**The recommendation by the Reporter is contrary to the intention set out in the Glasgow and the Clyde Valley Strategic Development Plan (the SDP), in that the Reporter's approach denies the LDP the opportunity to take forward the delivery of a Network of Strategic Centres and otherwise achieve the SDP's aims and objectives for Braehead**

Relevant provisions of the SDP in respect of Braehead are as follows:-

One of the dominant roles of Braehead identified in the SDP - Spatial Framework 3 – Sustainable communities is “regeneration”. The challenges identified by the SDP for Braehead are to “identify its roles and functions in support of the Clyde Waterfront Regeneration Initiative, and to incorporate a range of functions including residential, civic, transport and leisure, in order to maintain its sustainability and that of the wider regeneration programme. The SDP recognises at paragraph 4.101 that investment requires to be channelled towards each of the Strategic Centres (of which Braehead is one) in order to secure their roles and quality of offer amongst other things. As the appointed person recognises (and approves) at paragraph 15 of her conclusions, the SDP envisages that Braehead should develop a town centre character.

The appointed person's proposed modifications would in effect prevent the SDP's 'Future Actions' for Braehead (as referred to in the foregoing paragraph) from being achieved, again postponing this issue to the next SDP, which is contrary to the intention of the current SDP.

Furthermore, the Spatial Development Strategy, in particular Strategy Support Measure 11 in the SDP states 'Local Development Plans should be the primary vehicle for taking forward management and development of the Network of Centres.' This action also reflects the conclusions that were set out in the Examination Report on the SDP where the Reporter delegates the issue of management and development of strategic centres and expects the Renfrewshire Local Development Plan to address issues. The Council has been prevented from implementing this Measure in accordance with the provision as set out in Schedule 12 of the SDP.

At paragraph 24 the appointed person accepts that an intervention is required to give Braehead the character of a town centre. The Proposed LDP facilitates in providing a framework to achieve

these requirements with Figure 11 and identifying appropriate locations for new development and regeneration. Therefore, there is no impediment or evidence to prevent the appointed person from confirming that Braehead should be designated as a town centre in the LDP.

Provision of the range of town centre uses at Braehead as envisaged by the SDP would not be supported by Scottish Planning Policy (SPP) in the absence of town centre status. Thus failure to designate Braehead as a town centre in the LDP undermines and is inconsistent with the Strategic Development Strategy of the SDP.

In these circumstances and on the basis of the evidence before the Examination, the appointed person's conclusions and recommended modifications are unreasonable/perverse.

**The Reporter has applied the wrong tests to determine Braehead's status, by (i) using a development management test which would apply in the event of a retail application for an "out of centre" location rather than an appropriate test for designating a new town centre, and (ii) misconstruing the terms of the SPP**

Throughout her conclusions, the appointed person refers to and has relied upon development management tests (the sequential test; need; retail impact) which would be considered in the determination of certain applications for retail development (paragraphs 6, 12, 13, 19 and 20 of the Reporter's Conclusions). These tests (and the availability of evidence to satisfy them) were irrelevant to the appointed person's consideration of the status of Braehead as a town centre.

For example, at paragraph 12 of her conclusions, the appointed person states, 'There does not appear to have been any consideration of either the possibility of accommodating that need in Glasgow city centre or in any other town centre or of potential impact on the city centre or any other town centre.' These are not matters which should be considered in determining Braehead's status. The appointed person has applied the sequential approach which would have been required for a retail proposal at an out of centre location. In considering the current planning application for an extension to Braehead, the sequential test would be applied in line with SPP, but this is not the appropriate test for assessing town centre status within the LDP.

The appointed person then notes (paragraph 12) that the framework for development at Braehead set out in the Proposed LDP, i.e. Figure 12, *envisages* the sites that would accommodate expansion but has not scaled these. In making this criticism of the Proposed LDP, the appointed person has again erred, in that there was no requirement to scale the expansion at this stage. Policy C1 of the Proposed LDP and the accompanying New Development Supplementary Guidance details clearly what requires to be considered in determining such proposals for expansion. Therefore there is no requirement for the Proposed LDP, to set out in detail, the level of floorspace that would be acceptable at Braehead or any other centre in the network.

SPP (Feb 2010), paragraph 62, states 'The sequential approach should be used when selecting locations for all retail and commercial leisure uses unless the development plan identifies an exception.' Renfrewshire Council are not proposing development at Braehead, the Council are simply following SPP, by identifying Renfrewshire's Network of Centres, setting out the role and function of each centre and the hierarchy of centres. It is set out clearly in the Proposed LDP that Braehead's role and function is based on the changes that have happened over time, which is in accordance with both SPP and in line with the SDP. Renfrewshire Council consider that the primacy of the development plan should direct changes and land uses rather than individual planning applications. The LDP indicates where opportunities for development should happen. The detail of development is for consideration at the development management stage.

The appointed person also erred in paragraph 6 of the Reporter's conclusions where it states 'I believe this is why it is important to ensure that any proposals for expansion of retail and leisure floorspace in an out of centre location are undertaken in the full knowledge of their potential impact on the network of centres.' The Proposed LDP is designating the existing centre as a town centre within Renfrewshire's Network of Centres, therefore Policy C1 is the relevant policy, the test of an out of centre location is irrelevant.

At paragraph 9 of the Reporter's conclusions on Issue 8 – Braehead, having noted that Diagram 4 and Strategy Support Measure 11 of the SDP both seek to protect Glasgow City Centre, the appointed person states that 'The proposed local development plan does not explain how the hierarchy identified in Renfrewshire's Network of Centres would relate to the city centre and the city is not referred to in policies C1 or C2.' Strategic Support Measure 11 – Network of Strategic Centres and Diagram 4 – Sustainable Location Assessment are used to assess development proposals of a strategic nature. The appointed person has again erred in that both the policy and diagram in the SDP relate to development management decisions on development proposals, not the designation of Braehead as a town centre.

Separately, the appointed person purported to place significant reliance upon the terms of the SPP. In particular, she relied upon certain attributes of "successful town centres" referred to in paragraph 54 of the SPP. The appointed person erred in doing so in that she treated the list of attributes as being essential pre-requisites to the designation of a town centre, when no such test is contained within the SPP.

In paragraph 10 of her conclusions, the appointed person also expresses the view that Paisley Town Centre is the type of traditional centre which the approach advocated in Scottish Planning Policy is designated to protect. 'Traditional centre' is not a defined term in Scottish Planning Policy (Feb 2010) or in any other relevant policy document, yet the appointed person has been influenced by her own view of what a "traditional centre" comprises (and on which no evidence was led), and shaped her approach accordingly. However, there is no relevant test contained within the SPP in respect of "traditional centres". Therefore the appointed person has misinterpreted Scottish Planning Policy in relation to Braehead's status.

**The Reporter erred in her conclusion that town centre status for Braehead would not facilitate other development in the wider Renfrew North area**

The appointed person states that ‘There appear to be no proposals for cross funding and no planning obligations or other commitments by the centre owners or other parties in this regard.’ If this was a matter of concern to the appointed person, as appears to have been the case, she could have recommended modifications to the proposed LDP inserting such requirements, had she thought appropriate to do so. Furthermore the appointed person’s conclusion in this respect was unreasonable given (i) her separate conclusion that Braehead had already brought considerable regeneration and economic benefits, and (ii) the dominant “regeneration” role of Braehead as identified within the SDP, which impliedly recognised the positive benefits which development at Braehead would bring.