



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2015] CSIH 69  
XA136/14

Lord Eassie  
Lord Menzies  
Lord Malcolm

OPINION OF THE COURT

delivered by LORD EASSIE

in the appeal

by

RETAIL PROPERTY HOLDINGS LIMITED

Appellants:

against

(FIRST) RENFREWSHIRE COUNCIL; (SECOND) THE SCOTTISH MINISTERS

Respondents:

and

(THIRD) INTU PROPERTIES PLC

Interested party

**Appellants: Martin QC, Burnett; Burness Paull LLP**  
**First respondent: Mure QC; Brodies LLP**  
**Second respondent: Findlay; Solicitor to the Scottish Government**  
**Interested Party: Thomson QC, Smith; Morton Fraser LLP**

25 June 2015

## **Introductory**

[1] In this appeal brought under section 238 of the Town and Country Planning (Scotland) Act 1997 – “the 1997 Act” – a challenge is made to the validity of parts of the Renfrewshire Local Development Plan 2014 which was adopted by the first respondents, Renfrewshire Council – “Renfrewshire” – on 28 August 2014. The challenge is directed to the refusal of Renfrewshire to give effect to modifications recommended by the reporters appointed in terms of section 19(3) of the 1997 Act in connection with the examination of the proposed local development plan. The modifications in question are those recommended by the reporter in respect of issue 8 in the local development plan examination. That issue was concerned with provisions in the proposed Local Development Plan which designated or described Braehead as a “town centre” in terms of the network of “strategic centres” set out in Schedule 12 in the Glasgow and Clyde Valley Strategic Development Plan 2012 – “the SDP 2012”. The modifications proposed by the reporter and rejected by Renfrewshire were to the general effect that Braehead should not be so designated as a “town centre”. Put very shortly, the appellants maintain that the relevant provisions of the 1997 Act and subordinate legislation obliged Renfrewshire to give effect to those modifications.

[2] At the conclusion of the hearing of the appeal on the summer roll and in light of the dependency of other legal proceedings respecting certain planning consents granted by Renfrewshire following their adoption of the Renfrewshire Local Development Plan the court was invited to give, if possible, an immediate decision. Following a short adjournment the court was able to accede to that invitation and intimated its decision that that the challenge in question was sound and that the Renfrewshire Local Development Plan 2014 fell to be quashed in part in so far as it designated Braehead as a town centre. The interlocutor pronounced on 25 June 2015 incorporates by way of a table in an appendix the

particular provisions of the Renfrewshire Local Development Plan which are to be held as delete. For convenience, that appendix is reproduced as Annex 1 to this Opinion. In giving its oral decision the court stated that it would give later written reasons for that decision.

This we now do.

### **Background to the dispute**

[3] As is widely known, Braehead is situated on the south bank of River Clyde to the north east of the town of Renfrew and immediately to the west of Shieldhall. In general terms, it is an area formerly occupied by industries which fell into disuse but in relatively recent times it has been the subject of large floor space retail developments and indoor commercial leisure development with some business park usages.

[4] The SDP 2012 is the strategic development plan which replaced the former structure plan for the area. It was the outcome of *inter alia* the collective deliberation of the various local planning authorities in the area covered by the strategic plan. As part of the spatial development strategy of the SDP 2012, a number of “strategic centres” were identified. Those centres are listed in Schedule 12. Most of the strategic centres are there described under the column headed “current planning status – dominant roles and function” as being “town centre” with varying additional descriptions. But Braehead is described in that column not as a town centre but as “commercial centre with retail, leisure, commercial employment and business”.

[5] In drawing up the proposed local development plan for its area Renfrewshire adopted a policy of according to Braehead the status of a “town centre”. That policy, while actively endorsed by the owners of Braehead – the “interested party” in this appeal – was opposed by a number of other parties including the Glasgow City Council and other local

planning authorities, a number of commercial enterprises (including the appellants), the Paisley West and Central Community Council and certain individuals.

[6] The designation of a location as a “town centre” is not a mere matter of semantic labelling. It has important planning - and hence commercial, social and environmental – consequences. Those flow in particular from the planning policy known as the “sequential approach” described in paragraph 15ff of Scottish Planning Policy SPP 8 – “Town Centres and Retailing”<sup>1</sup>. In essence, in considering any application for retail or commercial development, the sequential approach requires preference to be given to (i) a town centre site, followed in turn by (ii) an edge of town centre site, (iii) other commercial centres within the development plan and lastly (iv) out of centre sites in locations easily accessible by a choice of mode of transport.

### **The reporter’s decision**

[7] The provisions of the proposed Renfrewshire Local Development Plan respecting the designation of Braehead as a town centre were the subject of issue 8 in the wider report submitted by the panel of reporters following the examination.<sup>2</sup> The reporter responsible for issue 8 was Karen Haywood BSc, M Phil, MRTPI. In treating issue 8 she first sets out the summary of the representations in support prepared by Renfrewshire, namely the representations from the interested party (Intu Properties plc). She thereafter sets out the similarly prepared summary of the representations made by the 13 parties objecting to or questioning the proposal to designate Braehead as a town centre. Those summaries are

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<sup>1</sup> The Scottish Executive, August 2006

<sup>2</sup> Report dated and submitted to Scottish Ministers on 4 June 2014: pages 48-72.

followed by the summary of Renfrewshire's reasons for so designating Braehead and its response to the objections.

[8] The reporter's conclusions on the evidence and materials before her are to be found between pages 64 and 70 inclusive of the report. In short summary the reporter begins by noting the various features to be found in the traditional town centre, particularly the mix of uses including civic, educational and residential uses; the proximity of other residential areas, making the centre accessible on foot or by bicycle; and the centre's focus for public transport routes. The reporter then notes the description of a town centre in SPP 8 (which is largely in similar terms) and the distinction drawn by SPP 8 between a town centre and a "commercial centre". The reporter then finds as a fact that the area identified in the proposed Renfrewshire Local Development Plan as "Braehead town centre" does not have a diverse mix of uses or attributes; it lacks any civic or educational uses and has no houses; and it is not integrated with any nearby residential areas, pedestrian or cycle access from those areas being difficult. Having observed that Braehead does perform certain town centre functions in relation to the wider riverside area in providing shops and commercial leisure facilities, the reporter observes that more is required. She accepts the point made by Renfrewshire that Braehead (which includes a covered shopping mall and the Xscape leisure business) is not the same as some other commercial centres such as the Abbotsinch or Phoenix retail parks. She then continues<sup>3</sup>:

"However, as Scottish Planning Policy points out, examples of commercial centres include out-of-centre shopping centres, commercial leisure developments, mixed retail and leisure developments, retail parks and factory outlet centres. In my view Braehead is a commercial centre of the mixed retail and leisure development type. I do not consider it to be a town centre. Instead, I consider the area to be a commercial centre located within the Glasgow conurbation, outwith any town centre."

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<sup>3</sup> Paragraph 5, page 65

[9] Having reached that view of how, in light of the factual situation, Braehead should be classified the reporter next considers the rationale for applying a sequential approach to applications for planning permission for retail or commercial development. In paragraph 6<sup>4</sup> she writes:

“It seems to me that the rationale for the sequential approach as explained in Scottish Planning Policy stems from a recognition that traditional town centres find it very difficult to compete with out of centre modern shopping centres. There are many reasons for this, including a lack of suitable large sites for modern retailing in traditional town centres, multiple land ownerships, or a lack of, or expensive car parking facilities. At Braehead none of the shortcomings apply. As Scottish Planning Policy says, retail and leisure uses are fundamental to the concentration of other uses located in town centres. I believe this is why it is important to ensure that any proposals for expansion of retail and leisure floor space in an out of centre location are undertaken in the full knowledge of their potential impact on the network of centres.”

[10] From there the reporter goes on to note *inter alia* the dominance of Braehead as a commercial centre; the higher status conferred on Braehead as a commercial centre by reason of its being a “strategic centre” in the SDP 2012; and the absence of any explanation how, as a town centre, Braehead would relate hierarchically with Glasgow city centre or Paisley town centre. In paragraph 11 the reporter writes

“In response to the representations above Renfrewshire Council states that it ‘*would not wish to see development in any one centre cause a detrimental impact on another*’. This is a laudable aim and one which I endorse. It is difficult to see how the council intends to achieve it, though, when town centre status at Braehead would mean that any proposals for retail expansion would avoid the need for a sequential approach or any analysis of retail impact on other centres in the Renfrewshire network.”

The reporter thereafter notes and discusses the absence of any evidence of the retail impact on other centres of further expansion of retail space at Braehead. While accepting the desirability of improvements in the public realm and civil space, approval of the proposed

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<sup>4</sup> page 65

plan would require its proposals to be supported by evidence of qualitative and quantitative need for more retail space at Braehead and evidence of the sequential approach to Glasgow city centre and other strategic centres, which evidence is absent.

[11] The reporter next considers the invocation by Renfrewshire Council of the designation in an alteration to an earlier structure plan of Ravenscraig as being a town centre. For a number of reasons, which she details, including the fact that Braehead is not designated in the SDP 2012 as a town centre, the reporter concludes that there are significant and relevant differences between Braehead and Ravenscraig.

[12] Recognising the desirability of Braehead developing some greater diversity of uses in order to become more like a town centre the reporter then considers whether designation as a town centre is necessary for that to be achieved. For the reasons which she gives<sup>5</sup>, she concludes that it is not. And finally the Reporter addresses a number of miscellaneous points. She accordingly recommended the making of various textual modifications to the proposed Renfrewshire Local Development Plan to remove any designation of Braehead as a town centre.

### **The legislative texts**

[13] Following amendments to the 1997 Act effected by the Planning etc (Scotland) Act 2006, a local planning authority is no longer wholly free to accept, reject or modify recommendations made by a reporter following the procedure for examination of a proposed local plan, as was formerly the case. Section 19 of the 1997 Act now provides:

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<sup>5</sup> See, in particular, page 69 at paragraphs 28 and 29

“(8) On completing his examination under subsection (3) the appointed person is to—

(a) prepare a report—

(i) setting out, and giving reasons for, his conclusions and recommendations (which may include recommendations for amendments to the proposed local development plan), and

(ii) as to the matters considered by him under subsection (4),

(b) submit it to the planning authority,

(c) .....

(d) .....

(9) .....

(10) The planning authority are, on receiving a report submitted under subsection (8)(b)—

(a) to make—

(i) (except in so far as they decline to do so, on such grounds as may be prescribed for the purposes of this sub-paragraph) such modifications, if any, to the proposed local development plan as the appointed person recommends, and

(ii) such other modifications to it, if any, as appear to them to be requisite having regard to the report.

(b) to publish the modifications made, together with the proposed plan as modified (or, if no modifications are made, to publish the proposed plan) in such manner as may be prescribed,

(c) in so publishing the proposed plan (whether or not modified), to advertise their intention to adopt it, and

(d) to notify each person who made representations under section 18 that the proposed plan has been published and of where a copy of it is available for inspection (and at what reasonable times).

(11) But the authority may, before complying with subsection (10), secure the carrying out of an environmental assessment (within the meaning of the Environmental Assessment (Scotland) Act 2005 (asp 15)) in relation to the proposed plan as so modified; and if they do so then paragraph (a) of that subsection is to be construed as subject to the qualification that any modification made must, in the opinion of the authority, be acceptable having regard to that assessment.



(12) The planning authority are, within 3 months after receiving a report submitted under subsection (8)(b), to send to the Scottish Ministers a copy of each of the following—

- (a) the modifications, if any, made under sub-paragraph (i) of subsection (10)(a),
- (b) where a modification recommended by the appointed person is not made, a statement setting out the recommendation and explaining (by reference to the grounds prescribed for the purposes of that sub-paragraph) why it is not made,
- (c) the proposed plan (whether or not modified),
- (d) the report,
- (e) any environmental assessment carried out by virtue of subsection (11), and
- (f) the advertisement mentioned in subsection (10)(c).” [Emphasis added]

The rôle of the Scottish Ministers in the adoption of the local plan is covered *inter alia* by section 20 of the 1997 Act which provides:

**“20 Constitution of local development plan**

- (1) On being adopted by the planning authority the proposed local development plan is constituted as the local development plan.
- (2) But subsection (1) is subject to any direction made under subsection (7) and does not apply if such adoption is in contravention of subsection (3) or (6) (the reference to subsection (3) including a reference to subsection (3) as applying by virtue of a direction made under subsection (4)).
- (3) A proposed local development plan is not to be so adopted before a period of 28 days has elapsed after the planning authority's intention to adopt it is advertised under section 18(4)(c) or 19(10)(c).
- (4) The Scottish Ministers may, as regards a particular proposed local development plan submitted to them, direct that subsection (3) is to apply as if, for the period mentioned in the subsection there were substituted such longer period as is specified in the direction.

(5) At any time during the period mentioned in subsection (3), or as the case may be specified in a direction under subsection (4), the Scottish Ministers may, if it appears to them that the proposed plan is unsatisfactory, direct the authority to consider modifying it in such respects as are indicated in the direction.

(6) A planning authority given a direction under subsection (5) are not to adopt the proposed plan unless—

- (a) they satisfy the Scottish Ministers that they have made the modifications necessary to conform with the direction, or
- (b) the Scottish Ministers withdraw the direction.

(7) At any time before a proposed local development plan submitted to the Scottish Ministers has been adopted by the planning authority, the Scottish Ministers may direct that the proposed plan is to be constituted not on being so adopted but if and when approved by the Scottish Ministers.”

[14] The prescribed grounds on which alone it is open to a local planning authority to refuse to follow the recommendations of a reporter are set out in the Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009 - “the 2009 Regulations”<sup>6</sup>. The material provisions of the 2009 Regulations relevant to this appeal are:

**“2. Grounds for declining to follow recommendations**

The grounds, for the purposes of section 19(10)(a)(i) of the Act, on which a planning authority may decline to make modifications to a proposed local development plan as recommended by an appointed person are—

- (a) the modification, if made, would have the effect that the proposed local development plan would not be consistent with—
  - (i) the National Planning Framework;
  - (ii) the strategic development plan for the land to which the proposed local development plan relates; or

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<sup>6</sup> SSI 2009/53

- (iii) any plan adopted as a National Park Plan under section 12(7)(a) of the National Parks (Scotland) Act 2000 for such land;
- (b) that the adoption of the local development plan as so modified would not be compatible with the requirements of Part IVA of the Conservation (Natural Habitats, &c.) Regulations 1994;
- (c) the recommendation in respect of the modification is 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."

[emphasis added]

### **Renfrewshire's reasons for rejecting the recommendations**

[15] In accordance with section 19(12) of the 1997 Act, on 3 July 2014 Renfrewshire wrote to the Scottish Ministers advising that they proposed to adopt the proposed Renfrewshire Local Development Plan with the modifications recommended by the reporters other than those recommended in respect of issue 8 (Braehead).

[16] In that communication, reflecting the earlier terms of a report by officers of Renfrewshire to the councillors composing the Planning and Property Board, Renfrewshire summarised its reasons under these bullet points:

- “
  - 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.
  - 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.
  - The recommendation by the Reporter is contrary to the intention set out in the Glasgow and the Clyde Valley Strategic Development Plan, in that the Reporter's approach denies the LDP the opportunity to take forward the delivery of a Network of Strategic Centres.
  - The Reporter has applied the wrong test to determine Braehead's status, by using a 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.

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

Further detailed discussion was provided by way of amplification of those heads in the communication from Renfrewshire to the Scottish Government but we do not think it necessary to set out that detail, particularly in light of the argument as advanced by counsel for Renfrewshire.

### **The statutory construction issue**

[17] At the forefront of the submissions advanced by counsel on behalf of Renfrewshire was the contention that in deciding whether to accept or reject a recommendation from an appointed person- i.e. the reporter- a local planning authority was engaged in the exercise of a planning judgement. Thus if there were any issue whether, if made, the modification or modifications recommended by the Reporter would not be consistent with the strategic development plan, that was a matter for the judgement of the local planning authority in question. Similarly, whether the recommendation was based on a conclusion or conclusions which the reporter could not reasonably have reached on the evidence considered in the course of the examination was also a matter for the judgement of the local planning authority. The local planning authority in question was entitled to reach its own view – in the exercise of its own planning judgement – of what would not be a reasonable conclusion for the appointed person to have reached. Accordingly, so ran the submission, the appeal in the present case was an appeal confined to a review, essentially on what might by way of

shorthand be termed "*Wednesbury*" irrationality, of Renfrewshire's exercise of a judgement on the Reporter's recommended modifications.

[18] We were unable to accept this submission. As counsel for the appellants pointed out, section 19(10) of the 1997 Act imposes an obligation on a local planning authority to make the modifications to the proposed local development plan recommended by the appointed person. There is no discretion or exercise of judgement envisaged: the local planning authority may only decline to perform that obligation if one or more of the prescribed grounds exist. Nor, in our view does section 19(12)(b) confer any margin of appreciation or judgement on a local planning authority. That subsection is a procedural provision requiring the local planning authority to explain upon which ground or grounds they rely when not fulfilling the duty otherwise imposed on them by section 19(10). It may also be noted, in contrast, that section 19(11) specifically provides for the exercise of judgement on the part of the local planning authority where a subsequent environmental assessment has been obtained.

[19] Nor, in our view, is an area of planning judgement or discretion afforded to a local planning authority by the 2009 Regulations. We consider that the grounds prescribed by regulation 2 of the 2009 Regulations constitute essentially objective criteria. By way of example, whether the conclusion reached by the appointed person was one which no reasonable reporter could have reached on the evidence before that reporter is to be judged objectively, the ultimate arbiter being the court. The conclusion reached by the appointed person may of course often involve the exercise of planning judgement on the part of that appointed person. But in our view counsel for the appellants were correct in their submission that as respects the exercise of planning judgement the final stage for the exercise of planning judgement lies with the appointed person. Properly construed, the

terms of regulation 2 of the 2009 Regulations do not provide for a further layer of judgement or discretion on the part of the local planning authority.

[20] We were referred to various passages in the preparatory or policy documents, namely the Scottish Executive White Paper “Modernising the Planning System”<sup>7</sup> and the Planning (etc) (Scotland) Bill 2006 Policy Memorandum. Reference was also made to paragraphs 92 ff of Planning Series Circular 6/2013. In our view, all of the passages to which we were referred are supportive of the construction of the legislative and regulatory texts advanced by counsel for the appellants, with which we agree.

[21] Counsel for the interested party did not adopt or advance Renfrewshire’s contention that the decision whether to decline to give effect to a reporter’s recommendation involved an exercise of judgement on the part of the local planning authority concerned. The argument for the interested party was, rather, to the effect that the reporter in the present case had materially misunderstood and had thus misinterpreted the provisions of the SDP 2012. That contention was also advanced by counsel for Renfrewshire along with other criticisms of the reporter’s decision. However, if the contention that the reporter had misunderstood and misinterpreted SDP 2012 were not well founded, we did not understand counsel to submit that the other criticisms of the reporter’s decision which were advanced by Renfrewshire were such as to amount to a contention that the decision was irrational in the “*Wednesbury*” sense. Those criticisms essentially constituted grounds upon which, in the exercise of what was said to be their own planning judgement, Renfrewshire were entitled to form the view that having regard to the planning merits the modifications recommended by the reporter were not reasonable and appropriate. For completeness, we would record that

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<sup>7</sup> June 2005

counsel for Renfrewshire made clear that, in so far as the second bullet point in Renfrewshire’s reasons seemingly complained of some procedural deficiency on the part of the reporter, that complaint was not one which he would advance.

### **Interpretation of the SDP 2012**

[22] As we have just mentioned, it was contended on behalf of the interested party, and also on behalf of Renfrewshire, that the reporter’s decision was fundamentally flawed because she had materially misunderstood the SDP 2012. In other words, the modifications recommended by her would not be consistent with the SDP 2012 and also, on that account, would be a conclusion which she could not reasonably reach (cf regulation 2(a)(ii) and 2(c) of the 2009 Regulations).

[23] The particular feature of the SDP 2012 which, it was said, the reporter had misconstrued was the entry referring to Braehead in Schedule 12 in the plan. The principal heading to Schedule 12 is:

**“Network of Strategic Centres; roles and functions; Managing Change”.**

The schedule is then arranged in four columns headed respectively, from left to right:

**“Strategic Centre”;**

**“Current Planning Status: Dominant Roles and Function”;**

**“Challenges”;** and

**“Future Actions”**

The entries appropriated to Braehead in the second third and fourth columns are respectively:

(*column 2*) **“Commercial centre with retail, leisure, commercial, employment and business”;**

(*column 3*) “To diversify the roles and functions of the centre in support of the Clyde waterfront regeneration initiative. To incorporate a range of functions including residential, civic, transport and leisure sectors in order to maintain the sustainability of the centre and wider regeneration programme thereby contributing to a Strategic Development Priority – Clyde waterfront”;

and

(*column 4*) “Bring forward a masterplan for further regeneration of the centre and wider environment”.

Other strategic centres listed in Schedule 12 are described as being town centres. Thus, purely by way of illustration in the case of Coatbridge the entry in the second column reads “town centre with civic and community retail, employment and business”; the third column reads “Retail contraction” and the fourth column reads “Development of 2nd generation Town Centre Action Plan to pursue diversification and regeneration opportunities”. The text in SDP 2012 relating to that Schedule 12 is reproduced in Annex 2 to this opinion.

[24] The argument advanced by Mr Thomson for the interested party to the effect that the reporter was in fundamental error in her understanding of the SDP 2012 contained two limbs. First, it was contended that the SDP 2012 did not give Braehead the status of a “commercial centre”. The reference in the heading to the second column of Schedule 12 to “Current Planning Status” was a reference to the past, historical situation under the former structure plan. The new SDP 2012 did not make any provision for the status or designation of any strategic centre. That was entirely a matter for the local development plans.

[25] The second limb of Mr Thomson’s argument was to the effect that the reporter had failed to appreciate that the terms of the SDP 2012 made it inevitable that the local development plan should designate Braehead as a town centre. That inevitability, he submitted, followed from the list of “challenges”; and the need for further retail



development to take place in order to fund the other developments in the “challenges”.

That in turn required town centre status.

[26] We were not persuaded by this argument. We do not consider that the adjective “current” in the heading to the second column must in effect be read as “past” or “previous” and that the SDP 2012 thus omitted any description of the status which should prevail for any part of the currency of that new plan. The contention that the adjective “current” reads as “past” or “previous” implies that the drafters of the plan included in material provisions of the plan terms which would cease to have any operative or practical effect on the moment of adoption. Further, the argument for the interested party presents the difficulty of relying on the terms of Schedule 12 of the SDP 2012 to confer on Braehead the status of a strategic centre while yet setting aside other parts of that schedule. It may also be observed that counsel acknowledged that at no point in the proceedings before the reporter had it been suggested by any party that the reference in Schedule 12 to the current status was purely historical and had no continuing operative effect. We therefore consider that the first limb of Mr Thomson’s argument is unsound. But, in any event, it is apparent from her decision that in reaching her conclusion that Braehead should not be designated in the local development plan as a town centre the reporter also proceeded upon grounds other than the terms of Schedule 12 and did not regard herself as constrained or bound by those terms to reach a conclusion which she would otherwise not have reached.

[27] As respects the second limb of the argument, we were also not persuaded. In our view, if those who drew up and approved the SDP 2012 had considered that it was inevitable that Braehead should now have the status of a town centre it would have been readily possible for them to say so in terms, by express provision that Braehead should be accorded that planning status, or at least by some other clear indication, such as calling for a

“town centre plan” as is the case in certain other strategic centres which are described in Schedule 12 as a “town centre”. The terms of the schedule, and such references as may be found in the related text, all refer to Braehead as part of the waterfront regeneration strategy. There is no reference to Braehead as being a town centre. We therefore do not accept the submission that, properly construed, the terms of the SDP 2012 made inevitable the according of town centre status to Braehead in the local development plan. Counsel also submitted that, in practical terms, if Braehead were to be able to acquire the desiderated greater diversity of uses or functions, designation in the local development plan as a town centre was necessary. However, the reporter did indeed consider whether conferring the status of a town centre was necessary to produce the funding to achieve the challenges. She considered on the evidence before her and using her planning judgement that it was not.

#### **Conclusion on the validity of the Renfrewshire Local Development Plan 2014**

[28] In these circumstances we considered that it had not been demonstrated that the reporter had in any respect misconstrued or misunderstood the SDP 2012 or that the modifications proposed by the reporter would render the proposed local development plan inconsistent with the SDP 2012. More generally, notwithstanding the criticisms advanced by Renfrewshire, the decision reached by the reporter on the competing contentions before her was plainly one which she was well entitled to reach on the materials before her. Reasoned objections were advanced by a number of objectors, including other local planning authorities. The reporter supported her conclusion with a careful statement of her reasons. While her conclusion is one with which Renfrewshire disagrees, that, of course, does not mean that the conclusion is one which no reasonable reporter could reach. In these circumstances we considered that none of the prescribed grounds upon which Renfrewshire

might have been entitled not to adopt the reporter's modifications had been demonstrated.

The Renfrewshire Local Development Plan 2014 thus fell to be quashed in part in so far as it did not give effect to those modifications.

### **The rôle of Scottish Ministers**

[29] Counsel for the Scottish Ministers did not make any submission respecting the merits of this appeal. His position was one of disinterest or neutrality. However, he maintained that, strictly, it was unnecessary for the appellants to convene the Scottish Ministers. If the local planning authority were in error in its purported invocation of a prescribed ground or grounds for declining to follow the modifications recommended by the appointed person it would follow that the appeal succeeded, and the relevant part of the local development plan would be quashed, irrespective of the view taken of it by the Scottish Ministers.

[28] In order to discuss, and to give additional context to the appellants' decision to serve the appeal on the Scottish Ministers, in addition to Renfrewshire, it may be useful to note the response of the Scottish Ministers following the submission by Renfrewshire of the proposed local development plan and their decision not to accept the reporter's recommendations. By letter dated 21 August 2014 an officer on behalf of the Scottish Ministers wrote to

Renfrewshire:

**"TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
Notice of Intention to Adopt Renfrewshire Local Development Plan**

I refer to the letter of 3 July 2014 from Mary Crearie, Director of Development and Housing Services, certifying notice of Renfrewshire Council's intention to adopt the proposed Renfrewshire Local Development as modified. I further refer to my letter of 18 July 2014 notifying you of Scottish Ministers' direction that your authority may not adopt the proposed Renfrewshire Local Development Plan before 27 August 2014.

Scottish Ministers' decisions as to whether they will intervene at this stage of the development planning process are taken on a case by case basis and in light of the particular circumstances of each proposed plan. It is the responsibility of the planning authority to satisfy itself that they have complied with legislation, and in regard to this particular plan, compliance with section 19(10) of the Town and Country Planning (Scotland) Act 1997.

Scottish Ministers have considered the information provided and concluded that the Renfrewshire Local Development Plan would not be unsatisfactory to the extent that they would wish to intervene under section 20 of the above Act. Therefore the Council may proceed to adopt the plan in accordance with the provisions of the Town and Country Planning (Scotland) Act 1997, after 27 August 2014.

.....”

Counsel for the Scottish Ministers observed, respecting the terms of this letter, that it may have been that the Scottish Ministers found the issues difficult and therefore decided not to intervene. However, in his submission, there was no duty upon the Scottish Ministers to intervene. Section 20(5) of the 1997 Act gave to the Scottish Ministers a wide discretion as to whether they might exercise the default power conferred by that legislation.

[29] For his part Mr Martin, for the appellants, pointed out that section 19(12) of the 1997 Act required that the Scottish Ministers receive a statement of the reasons held by any local planning authority for not accepting the recommendation of a reporter when adopting the local development plan. The terms of section 20(5) of the 1997 Act clearly required the Scottish Ministers to apply their minds to whether the proposed plan was satisfactory; and that included a consideration whether the reasons given by a local planning authority for not accepting a modification recommended by the appointed person properly fell within one of the prescribed grounds. Should the Ministers reach the conclusion that the plan was unsatisfactory it was their duty to issue a direction to cure that dissatisfaction. Counsel further submitted that the letter of 21 August 2014 should be construed as meaning that the Scottish Ministers had found the plan to be unsatisfactory but had declined to issue any direction to cure that unsatisfactory state. If, as it now appeared to be suggested by counsel

for the Scottish Ministers, they had found the issue difficult and had not properly considered it, the Scottish Ministers were in breach of their duty. Furthermore if – as the letter of 21 August suggested - the plan had been found unsatisfactory in some respects the letter did not specify those respects and gave no reasons for not intervening. The statutory procedure had therefore not been properly followed through and the Scottish Ministers had not acted *intra vires*. It was therefore appropriate to convene the Scottish Ministers.

[30] At the outset we observe that the terms of the letter of 21 August 2014 are somewhat infelicitous in their lack of clarity or, indeed, their ambiguity. That said, we take the view that the scheme of the legislation is such as to confer on the Scottish Ministers a power to consider whether, in their opinion, a proposed local development plan is satisfactory, and, if in their opinion it is not, a power to direct that the proposed plan be modified to meet the Ministers' dissatisfaction. No doubt in assessing whether a proposed local development plan appears to them to be satisfactory, the Scottish Ministers may, and as a matter of good administration should, consider whether the local planning authority has proper grounds for declining to give effect to modifications recommended by an appointed person. But, in our view, while it may be that in a given case the administrative judgement may be open to criticism, the relevant provisions of the 1997 Act, particularly section 20, do not impose, as a necessary procedural step, a requirement on the Ministers to consider and adjudicate upon whether the reasons given by the local planning authority for rejecting the recommendation of the appointed person properly constitute a prescribed ground. The validity of a local development plan is not dependent on whether Scottish Ministers have or have not exercised the powers available to them under section 20(5). The appeal for which provision is made under section 238 is directed only to the validity of the plan in question. It does not provide for cassation of any decision of Scottish Ministers under section 20(5). Accordingly,

while by virtue of their superintendence of, and other functions in, the planning system it is appropriate that the Scottish Ministers receive service of the appeal for any interest they may have, it is not necessary that any order be sought respecting the exercise of their powers under section 20. Indeed, the appeal lodged by the appellants does not seek any such order, though it does advance a criticism of the approach of the Scottish ministers as expressed in their letter of 21 August 2014.

## Annex 1

**APPENDIX**

**The provisions of the Renfrewshire Local Development Plan 2014 specified in the table below shall be held to be delete:**

<b>Page n°</b>	<b>Location of the provision on the page</b>	<b>Text to be deleted</b>
[11]	In Figure 9, in the entry for "Old Govan Road, Braehead" and in the right-hand paragraph (under the column headed at the top "Opportunities")	The word "Town" where it appears in each of the fourth and sixth lines respectively
[14]	In the leftmost column, under the subheading "Strategic Centres" occurring below the heading "Renfrewshire's Network of Centres"	The word "Town", appearing between "Strategic " and "Centres" in the second line
[14]	In the first paragraph to be found under the heading "Clyde Riverside – Braehead, Renfrew, Erskine, Bishopton", located in the second column from the left	The first and fourth sentences
[14]	In the final sentence of the third paragraph under the heading referred to in the preceding entry in this table (located in the third column from the left)	The word "its", where it first occurs, and thereafter the words "to reflect its Identification as a new town centre in Renfrewshire"
[16]	Figure 11: in the leftmost column, under the heading "Strategic Centres"	The word "Town", where it appears between "Braehead" and "Centre"
[16]	Figure 11: in the third column of text from the left (under the column "Challenges/Opportunities") in the paragraph laterally appropriated to the entry for Braehead , referred to in the immediately preceding entry	The word "the", occurring in the first sentence

{16}	<p>Figure 11: in the far right hand column, at the foot of the page, in the paragraph</p> <p>appropriated to "Braehead Retail Park"</p>	<p>The word "Town", occurring between "Braehead" and "Centre" in the first line</p>
[17]	<p>Figure 12: in the key to the plan constituting the figure</p>	<p>The word "Town" in the three entries in the key in which it occurs.</p>
[5]	<p>Figure 4: Spatial Strategy</p>	<p>As applied to the location "Braehead" at the right hand side of the figure, the circular icon or symbol which is defined in the Key to the figure as "Strategic Town Centre"</p>



## Annex 2

28/59

## 4 Spatial Development Strategy

### Spatial Framework 3

#### Sustainable communities

##### Urban Centres

4.95 The SDS, with its focus on minimising carbon and development footprints through sustainability principles, requires a focus on the city-region's existing communities and their regeneration and renewal. Fundamental to such an approach are the future of urban centres. These are at the heart of how the city-region functions, as the core of communities and which are generally more sustainably accessible by public transport [Background Report 14].

4.96 Urban centres support a diverse range of economic and social roles and functions. The traditional role of the urban centre is usually characterised by its retail and civic functions. However, the roles and functions of many urban centres are changing and evolving, as retail market demand and trends in society change. Centres are now multi-dimensional in nature and almost all offer common services and functions. The balance between these multiple roles differs and results in each individual centre possessing a range of different dominant roles.

4.97 The dominant roles can be viewed as a reflection of size, catchment population and distance and the diversity of their services, such as

- national and city-region economy: Glasgow City Centre
- regeneration, eg, Braehead, Easterhouse, Ravenscraig
- governance and civic, eg, Airdrie, Barrhead, Kirkintilloch, Paisley
- employment and business, eg, Hamilton, East Kilbride, Greenock
- retail, eg, Glasgow City Centre, Pollok, Braehead
- leisure and tourism, eg, Byres Road
- market town, eg, Lanark.

4.98 Some urban centres within the city-region, therefore, through scale, diversity, catchment and environment have taken on a more strategic role than others. Such centres possess, or should aim to possess, a balanced range of role and functions, eg, a retail role balanced by a leisure or cultural role. Underpinning this mix is accessibility by public and other sustainable transport modes and a key role as a public transport hub. The mix of roles and functions may give rise to further definitions that characterise the centre in strategic terms, eg, regional economic core, market town, regeneration catalyst, particularly following detailed consideration of their qualitative criteria. [Diagram 18](#) and [Schedule 12](#) identify a network of centres which, over the period to 2035, will be central to delivering the Spatial Vision through the SDS.

**4** Spatial Development Strategy  
Spatial Framework 3  
Sustainable communities

**Glasgow City Centre**

**Network of Strategic Centres**

**STRATEGY SUPPORT MEASURE  
11**

**4.99** Reflecting its focus as the employment, civic and cultural core of the city-region, the scale and reach of its catchment, its UK significance as a retail destination, its central accessibility by public transport modes, and its growing international role as a tourism destination, Glasgow City Centre is at the apex of the network, its strategic economic significance and diverse range of core functions setting it apart from all other urban centres. Its long-term future is fundamental to the economic well-being of the city-region and the SDS requires that its future is secured through continuing investment and modernisation.

**4.100** The SDS will also need the City Centre's fundamental strategic role to be safeguarded by the city-region's authorities during the exercise of their development management function and provision is made in the SDP's sustainability assessment (Diagram 4) to reflect that requirement.

**4.101** Under the sustainability-focused SDS, the wider network of strategic centres beyond the City Centre equally needs to be protected and enhanced, with a channelling of investment to secure their respective roles, improve their quality of offer, their diversity, their public realm and environment, and their continuing sustainable accessibility.

**4.102** The process of evolution and change will continue as the balance of role and function changes between centres.

**4.103** Many traditional town centres, through physical configuration, ownership and historic role and function, have been experiencing long-term decline as modern trends towards large floor-space retail units have resulted in the development of separate free-standing retail and commercial centres. If that decline, collectively a strategic issue for the city-region, is to be addressed, and the sustainable long-term future of traditional centres is to be secured, then active management measures need to be put in place by local authorities and centre managers. Radical and innovative management, new generation action plans, health checks and new funding models, need to be developed. In some instances, that need has already been identified.

**4.104** On the other hand, in more modern urban centres, their diversity of offer may be limited, their focus overly balanced towards a single aspect of a centre's role and function, their accessibility dominated by the private car, their public transport services less developed than in traditional centres and their public realm less developed. There is therefore equally a need to rebalance the offer of such centres to serve the wider needs of the communities that each serves. Equally in some instances, this deficiency is recognised and masterplans are coming forward to address the imbalance.

**4.105** Schedule 12 lists the network of strategic centres, their challenges and the range of interventions that will be required to support their long-term roles and functions. Local authorities, through their respective LDPs and related action programmes, need to take forward the interventions outlined in the Schedule.

**Network of Strategic Centres**

*Local Development Plans should be the primary vehicle for taking forward the management and development of the Network of Strategic Centres, in particular with provisions to arrest the decline of traditional town centres.*

*This planning should be in accordance with the principle (Diagram 4) of safeguarding and developing their key community role and diversity of function.*

*The long-term health and well-being of Glasgow City Centre is central to the Spatial Development Strategy and needs to be reflected in development management decisions of the local authorities.*