

Dear Lynsey

Paul has asked me to reply on his behalf, and to say that his reasoning for referencing the court case was merely because he wanted it to be clear that councillors should, as he fully expected they would, consider the cases de novo and, as such, Local Development Plan 2 as the 'settled view' of the Council should be accepted as being a material consideration in line with Annex A: Defining a Material Consideration of Planning Circular 3/2013: Development management procedures.

In Annex A of Circular 3/2013 it sets out the basis for how to consider a planning application as follows:

"1. Legislation requires decisions on planning applications to be made in accordance with the development plan (and, in the case of national developments, any statement in the National Planning Framework made under section 3A(5) of the 1997 Act) unless material considerations indicate otherwise. The House of Lord's judgement on City of Edinburgh Council v the Secretary of State for Scotland (1998) provided the following interpretation. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.

2. The House of Lord's judgement also set out the following approach to deciding an application:

- Identify any provisions of the development plan which are relevant to the decision,*
- Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies,*
- Consider whether or not the proposal accords with the development plan,*
- Identify and consider relevant material considerations for and against the proposal, and*
- Assess whether these considerations warrant a departure from the development plan."*

Annex A then goes on to list material considerations that are relevant and that includes *"a proposed local development plan"*.

It will be for councillors to determine how much weight to attach to Local Development Plan 2, but Paul considers that, in the circumstances pertaining to this case, it should be afforded significant weight and warrants a departure from the development plan. That is further underlined by the fact that the adopted Local Development Plan is now more than 5 years old, having been adopted on the 26th of March 2015, and so Scottish Planning Policy would in other circumstances apply by saying that *"Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration"* (para 33). Paul considers that this development should be considered to be sustainable in that it complies with the new regime for housing in the countryside in Local Development Plan 2.

Regards

Donald Yellowley

the Annex A: Defining a Material Consideration