

STATEMENT OF APPEAL

APPEAL UNDER SECTION 47(1) AGAINST THE DECISION OF WEST LOTHIAN COUNCIL TO REFUSE TO
GRANT PLANNING PERMISSION IN PRINCIPLE FOR A

PROPOSED RESIDENTIAL DEVELOPMENT AND ASSOCIATED WORKS

AT

BROTHERTON FARM, LIVINGSTON

LPA REFERENCE 0648/P/14
DECISION DATE 25 MARCH 2015

JUNE 2015

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1 INTRODUCTION

- 1.1 This statement is written in support of an appeal to Scottish Ministers made under section 47 of the Town and Country Planning (Scotland) Act 1997 ("the Act"), against the decision of West Lothian Council ("the Council") to refuse planning permission, in respect of planning application reference 0648/P/14, for the reasons set out in the Decision Notice dated 25th March 2015 (document AD3).
- 1.2 The planning application was submitted to the Council by Gladman Developments Limited and [REDACTED] ("Gladman" – the Appellant) on 1st September 2014 seeking planning permission in principle for a proposed residential development with open space, access, landscaping and associated works on 12.4 hectares of land at Brotherton Farm, Livingston ("the Site"), registered on 15th September 2014 by the Council. The application was reported to the Planning Committee ("Committee") on the 25th March 2015, who were minded to refuse the application in accordance with the officer's Report to Committee (document CM1). As the Council officers considered the proposal a significant departure from the development plan, the application was referred immediately thereafter to a meeting of the full council of West Lothian Council, who elected to confirm the refusal.
- 1.3 The site and development proposal are described in detail in the original submission and it is not necessary to repeat that description or analysis in this document. The original submission (OS1 – OS24), form part of the supporting documents to this appeal statement. The following documents are taken 'as-read' in forming part of the grounds of appeal.
- 1.4 Gladman contests the Council's decision to refuse planning permission and appeal to the Scottish Ministers to grant planning permission in principle for this proposal. The grounds of appeal are set out in this Statement.

2 APPEAL SITE AND PROPOSAL

- 2.1 The appeal site measures 12.4 hectares of land located to the west of Livingston, forming part of a farm holding owned by [REDACTED]. The proposed development area has been selected within the wider land holding due to its natural enclosure within the existing landscape; bounded to the east by the Wilderness woodland, and to the west by open farmland, Limefield Glen and Polbeth beyond. The southern boundary meets the A71 and is at present lined by mature trees, and an existing roundabout spur. To the north the ground rises beyond the appeal site to a ridgeline beyond the existing field boundary, which is used to define the northern boundary of the site.
- 2.2 The indicative masterplan (document OS3) details the residential development footprint, set within a generous network of open space and landscaping (existing and enhanced), vehicular access and community recreation and play facilities. The masterplan shows an indicative layout in order to illustrate the development capacity of the site, designed in accordance with key principles of Designing Streets.
- 2.3 Originally proposing some 180 units, the proposal was updated in January 2015 to allow for acoustic works to mitigate noise impacts from the A71. The development capacity of the site as proposed is now 150 units, to include 15% affordable housing provision.

3 OVERVIEW

- 3.1 The Council's reasons for refusal of the application are not accepted. It is submitted that the application accords with the Development Plan (in so far as relevant), constitutes sustainable development in accordance with the SPP (document PP8) and there are no material considerations to justify refusal. Gladman respectfully asks that Scottish Ministers uphold the appeal and grant planning permission.
- 3.2 West Lothian Council state 17 reasons for refusal of the application, and their summary of the proposal in the Report of Handling (document CM1) is as a major planning application that is significantly contrary to the development plan largely for the following reasons:
- development in the countryside
 - housing land supply
 - infrastructure
 - sustainability including accessibility
 - prematurity to the WLLDP
- 3.3 Section 25 of The Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. This is reinforced in Section 37 (2) of the Act, which requires that in determining planning applications, "the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations."
- 3.4 The Development Plan in this instance, is the Strategic Development Plan (SDP) for Edinburgh and South East Scotland (SESplan) (document PP12), approved by Scottish Ministers in June 2013, and Supplementary Guidance (document PP13), and the West Lothian Local Plan (WLLP), adopted 2009 (document PP14), which was produced under the Edinburgh and Lothians Structure Plan (revoked).
- 3.5 Whilst the WLLP forms part of the statutory development plan, it is over five years old and out of date as defined by SPP. It is not our position at this appeal that the proposal accords with all elements of the development plan, but that it does accord with those elements that are most relevant, in particular, it accords with SESPlan Policy 7. It is also our position that the proposal accords with national planning policy. As set out in more detail in the original submission, and later in this statement, SPP is a document that should be afforded significant weight in this appeal. It is notable that the Council gave limited weight to its terms in consideration of the application. The Report of Handling makes no reference whatsoever to the presumption in favour of development that contributes to sustainable development. The Council does not reference Scottish Planning Policy in its' reasons for refusal.

3.6 It is clear from the Council's Report to Committee that there are no technical issues that would preclude development. There were no objections to the proposal from external consultees Scottish Water, SNH, WoSAS or SEPA (under Consultation Responses). The Council's Roads & Transportation department (document CRS), Contaminated Land Officer and Environmental Health departments have no objections to the proposal, subject to condition. The Council's Education Planning Department confirmed that its' objection could be addressed by a contribution being made to school infrastructure (see document CR2). The officer's Handling Report brought in new submissions, without previously advising the appellant of the updated position from the education department dated 12 March 2015 (document CR2) in respect of logistics and costs that will be addressed in this statement.

3.7 As set out in the original submission, considerations material to the determination of this appeal are set out as follows:

- SESplan and Supplementary Guidance (documents PP12-13)
- Scottish Planning Policy: June 2014 ("SPP") (document PP8)
- Planning Advice Note 2/2010: Affordable Housing and Housing Land Audits (document PP10)
- NPF3 (document PP9)
- West Lothian Council LDP Main Issues Report (documents PP2-3)
- West Lothian Council Housing Land Audit 2014 (document PP1)
- Planning Appeal Decisions

4 DEVELOPMENT PLAN

4.1 Context

4.1.1 Section 25 of The Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. This is reinforced in Section 37 (2) of the Act, which requires that in determining planning applications, “the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.”

4.1.2 Taking account of the direction of Lord Clyde in the case of *City of Edinburgh Council vs. Secretary of State for Scotland and Others*, 1997 S.C.L.R. 1112, that it is:

“necessary for the decision maker to consider the Development Plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the Development Plan which is relevant to the application or fails properly to interpret it. He will have to consider whether the development proposed in the application before him does or does not accord with the Development Plan. There may be some points in the plan, which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether, in light of the whole plan, the proposal does or does not accord with it. He will also have to identify all other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the Development Plan should not be accorded the priority which the Statute has given to it. And, having weighed these considerations and determining these matters, he will require to form his opinion on the disposal of the application”.

4.1.3 The Development Plan in this instance, is the Strategic Development Plan (SDP) for Edinburgh and South East Scotland (SESplan), approved by Scottish Ministers in June 2013, and Supplementary Guidance, and the West Lothian Local Plan (adopted 2009), which was produced under the Edinburgh and Lothians Structure Plan 2015 (revoked).

4.2 Strategic Development Plan: SESplan and Supplementary Guidance

4.2.1 The policies relevant to this appeal are set out and assessed in the Planning Statement (document OS4) however the key considerations are summarised here.

4.2.2 **Policy 5 Housing Land**, and associated Supplementary Guidance (SG) sets out the requirement for each planning authority during each period of the plan. This is stated as a requirement for land to be allocated so as to enable the total number of houses to be built... including on land which is currently committed for housing development. West Lothian Council are required to ensure that a total of 11,420 new homes are built in the period 2009-2019 and 6,590 in 2019-2024 (18,010 in total to 2024).

- 4.2.3 **Policy 6 - Housing Land Flexibility** – establishes the duty of each SESplan planning authority to maintain a five year effective housing land supply at all times, in line with the requirements identified in the SG (as above). The latest position for West Lothian can be calculated according to the Housing Land Audit 2014 (document PP1) as follows:

	2009-2019
Housing Requirement 2009-2019	11,420
Actual Completions 2009-2013/14	2,440
Net Requirement (for remainder of plan period)	$(11,420-2440)= 8980$
Annual Requirement from 2014	$(8980 \div 5) = 1796$
5 Year Annual Supply Requirement	$(1796 \times 5) = 8980$
Effective Housing Land Supply 14/15-18/19	4799
Actual Shortfall	$(8980-4799) = 4181$
Number of years supply	2.67
Percentage of 5 Year Requirement Being Met	53%

Figure One: West Lothian Five Year Housing Land Supply (based on 2014 Housing Land Audit)

As shown in Figure One, and in Appendix H to this statement, the appellant's five year housing land supply variance analysis demonstrates a clear shortfall in the effective housing land supply.

- 4.2.4 **Policy 7 - Maintaining a Five Year Housing Land Supply** – states that planning consent may be granted for development of a greenfield site either within or outwith the identified Strategic Development Area in order to maintain a five years' effective housing land supply, wherein it can be satisfactorily demonstrated that;

- The development will be in keeping with the character of the settlement and local area;
- The development will not undermine greenbelt objectives; and
- Any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

- 4.2.6 The Spatial Strategy of the SDP establishes West Lothian as a Strategic Development Area, wherein there is to be a specific emphasis on the implementation of existing committed developments for which the completion of new transport and other infrastructure is required. West Lothian is noted as having 22,300 housing units committed in previous development plans. Paragraph 22 notes "while the recent economic downturn has affected delivery of and demand for housing, it is particularly important in supporting economic growth and recovery to ensure that sufficient land is allocated and available for housing development in the period to 2024." Recognising that there is a significant amount of land currently allocated or with planning permission across the SESplan area, this should be reviewed through the LDPs, and (Paragraph 23) "where necessary, alternative sites will be allocated, and a five years' effective supply will be maintained at all times to ensure that delivery is not unnecessarily constrained."

- 4.2.7 It is now well established, through correct interpretation of SPP, the requirement placed on planning authorities to provide an up to date development plan and five year housing land supply at all times. When it comes to assessing proposals for residential development in the countryside, the clear policy pathway

in such circumstances leads to the SPP presumption in favour of development that contributes to sustainable development, and to SESplan Policy 7, and its criteria.

4.2.8 As set out in this statement, the most up to date components of the development plan as applicable to this proposal, will be SPP and SESplan and the Supplementary Guidance, given the status of WLLP 2009.

4.2.9 In meeting the tests of SDP Policy 7;

i. As detailed in the accompanying Landscape and Visual Assessment, and Design Statement, the proposal has been designed to ensure it will be complementary and appropriate to its setting, both in scale and character.

ii. The appeal site does not fall within the green belt, and will not undermine green belt objectives.

iii. As noted, there are no infrastructure requirements in terms of roads, drainage or water. We can confirm that all costs relating to other infrastructure necessitated by the development will be met by the developer.

4.2.10 As set out in the supporting information to the application, the proposal accords with SESPlan Policy 7, which is the development plan policy most relevant to the determination of this appeal.

4.3 West Lothian Local Plan 2009 (WLLP)

4.3.1 The Local Plan, adopted in 2009 (now over five years old), is based upon the superseded Structure Plan. This is taken as being out of date by virtue of its age, and as set out in the Planning Statement and further in this statement, a position of significant shortfall in the five year effective housing land supply.

4.3.2 Whilst the housing land element of the Local Plan is taken to be out of date, the Council continue to rely upon the development management aspects of the plan until such time as the WLLDP is adopted. As can be seen in the original submission, the relevant policies have been adhered to.

4.3.3 According to the adopted Local Plan, the appeal site is located within the Livingston Countryside Belt. In the recent Notice of Intention (document PP20) issued in respect of Planning Appeal PPA-210-2047, Ferrygate Farm, North Berwick, East Lothian, Reporter Richard Dent concluded:

“Paragraph 24. All-in-all, I conclude that the proposal complies with the relevant provisions of the development plan. As previously indicated, residential development of the appeal site is contrary to local plan Policy DC1 (Development in the Countryside). However, the terms of SESplan Policies 5, 6 and 7, the subsequently approved supplementary guidance contained in the Scottish Planning Policy render Policy DC1 out-of-date insofar as housing land provision is concerned. I have therefore regarded Policy DC1 as being of very limited weight in terms of providing land to meet the strategic housing requirement. This conclusion points to the granting of planning permission in principle and it is therefore necessary to determine whether material considerations suggest that permission should be refused.”

4.3.4 The Council's concerns regarding coalescence between the two settlements of Livingston and Polbeth can be alleviated by consideration of a number of factors:

- Visual and physical separation - as shown in Appendix F, there will be open greenfield separation between the two settlements with an average distance of around 450 metres.
- Context – both topographic and the vegetation pattern.
- Orientation of the built form in Polbeth, and that which is proposed.
- Character of the two areas being separate and distinct.

All of the above are key factors in demonstrating the lack of coalescence as a result of the appeal proposal.

4.3.5 Analysis of key views (Appendix E) representing the massing of the building and distances between the proposed, and existing buildings in Polbeth, further demonstrate the extent of physical separation.

4.3.6 In plan, both Polbeth and the nearest area of Livingston adopt a roughly similar development orientation – NE-SW - and pattern, but both are experienced differently from the A71 by the changing boundary treatment along the northern side of the A71. At Polbeth, the development is set back behind a stone wall but clearly visible, with the pattern of streets and buildings set perpendicular to the road being clearly evident. Passing The Wilderness towards Livingston, there is a strong planted edge to the north side of the A71, which tends to define the road corridor and limit views to the residential development set behind this, such that it is much less visually prominent. Both settlements are distinctly different in character, reaffirmed by the different boundary treatments to the A71.

4.3.7 West Lothian Finalised Local Plan, Report of Inquiry, March 2008, (page 2.175 Site 16 Brucefield Industrial Park, Limefield, Livingston) – Document PP16)

At the time of considering the proposed allocation of land to the south of the appeal site for housing, West Lothian Council raised many of the same issues as this appeal case. Whilst the Brucefield site was a proposed change from employment to residential allocation for the development of 170 houses, significantly comparable points were made by the Reporters at that time (2008), accepting that:

- Regarding infrastructure, we note WLC's concerns about the capacity of schools throughout West Lothian. However, in terms of schools that would serve the objection site, there are options that could be considered, if necessary, to allow the proposal to be accommodated...furthermore, it is probable that not all allocated housing sites in WLLP would be developed, and there is also a possibility of phasing. The proposals would not generate a large number of pupils at any school, and it seems that there must be a prospect of there being sufficient educational capacity to absorb them in the infrastructure available without undue disruption, even when account is taken of the other small housing releases recommended. We do not believe that the allocation of the site for housing would generate such difficulty and uncertainty in the planning of educational provision in the area that it would make the proposal unacceptable...In this case, we therefore do not regard educational infrastructure as being a barrier to the development of the objection site for housing (5.110).
- The site contributes to the space between Livingston and Polbeth. However, it is separated from the countryside to the north and south by the A71 and railway line respectively. We therefore

consider that its contribution to the character and amenity of the countryside at this location is limited (5.111).

- Although there is the prospect that children may have to be transported to some of the schools, we note that this already applies to the village and to other villages in the catchment areas of the schools involved, and do not consider that it outweighs other factors. We also note that there is likely to be some bussing of children from the CDA allocations to local schools (5.112).

4.4 The Wilderness Woodland

- 4.4.1 The Wilderness woodland, adjacent to the eastern boundary of the appeal site, is a heavily wooded valley with pathway access, owned and managed by the Woodland Trust. The WLLP allocates this area as Safeguarded for Open Space (COM2) and an Areas of Special Landscape Control (ENV21).



Figure Two: Extract from WLLP Proposals Map (document PP15) – appeal site and context

- 4.4.2 In June 2013, WLC published their Local Landscape Designation Review (document PP6) report in accordance with Scottish Planning Policy, which reviewed existing AGLVs and ASLCs within West Lothian and identified candidate Special Landscape Areas (SLA) for inclusion in future local development plans. The Wilderness, currently designated a ASLC, is not included as a candidate SLA within the review report, indicating that it was not considered to possess the relevant landscape qualities and characteristics appropriate to the proposed SLA designation. Consequently, in accordance with the process of formal adoption of SLAs outlined in WLC Main Issues report – paragraphs 3.175 and 176 – The Wilderness would no longer be classified as a local landscape designation in the forthcoming Local Plan. The Committee report entirely fails to recognise this situation and consequently places unnecessary importance on its local value and on the magnitude of any perceived impacts on it resulting from the proposed development.
- 4.4.3 The existing burn within the development site, extending from The Wilderness, is retained within a generous band of open space, which also connects with the extensive parkland areas around the edges of the site, including a specific buffer to the western boundary adjoining the Wilderness. The combination of these areas will continue to retain a wildlife connection to The Wilderness, which then connects northwards to the Almond Valley. The proposed development site would not adversely impact on the connectivity of The Wilderness to the Almond Valley.

4.5 Development Plan Summary

- 4.5.1 The development plan in the case of West Lothian Council is SESplan, and an out of date Local Plan. There is a shortfall in the five year housing land supply. As set out in our Grounds of Appeal, the primary documents for assessment of the appeal proposal are SESPlan (Policy 7) and SPP.
- 4.5.2 In so far as the WLLP may be considered relevant, the appeal proposal lies within the Countryside Belt, however the issues it is designed to protect are not affected by the proposal, and in effect, this policy in respect of development outwith the settlement boundary (greenfield) is superseded by SESPlan and the SPP.
- 4.5.3 SDP Policy 7 provides clear direction on action to be taken in the event of a shortfall in the five year housing land supply; providing criteria for granting planning permission on greenfield sites (and in effect covering many of the same issues as WLLP Countryside Belt policies). The proposal accords with SESPlan Policy 7.
- 4.5.4 The appeal proposal is therefore compliant with the relevant policies in the development plan and there is therefore a presumption in favour of granting Planning Permission unless material considerations indicate otherwise.

5 MATERIAL CONSIDERATIONS

5.1 Scottish Planning Policy (SPP)

5.1.1 Published in June 2014, SPP (document PP7) is material to the determination of this appeal, as follows:

- A presumption in favour of sustainable development.
- Maintenance of a five-year effective housing land supply at all times.
- The issue of prematurity in decision making.
- Emphasis on good design and placemaking.
- Guiding principles which help to achieve the right development in the right location.

5.1.2 Housing Land Supply: there is an obligation through SPP that planning authorities should identify, provide and maintain at least a five year supply of effective housing land at all times. Where this level of supply is not maintained, in the first instance, SPP sets out that the local plan shall be considered out-of-date (paragraph 125) with regard to policies concerning the supply of housing land. This paragraph then directs the decision maker to paragraphs 32 – 35. Paragraph 33 guides the decision maker in cases where the development plan is out-of-date (as paragraph 125 tells us it is in this case). Paragraph 33 is clear that the *“presumption in favour of development that contributes to sustainable development will be a significant material consideration”* and that decision makers should take in to account *“any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies”*.

5.1.3 The latest figures, taken from the Council’s Housing Land Audit 2014 (document PP1) demonstrates that there remains a figure of 8,980 units to be achieved in the period to 2019, translating to 1,796 units per year. Whilst completions during 2013 were improved at 615 units, there is clearly still a significant shortfall in delivery (see Appendix H: Five Year Housing Land Supply Analysis). As such West Lothian is currently failing to have sufficient supply to meet SESPlan targets, and face a considerable challenge to deliver 8,980 units in the next four years.

5.1.4 The projected number of new homes to be built across the catchment schools for this development i.e. Bankton Primary, St Ninians Primary, James Young High and St Margaret’s Academy is set out in Appendix I. This analysis shows a discrepancy between West Lothian’s predictions and those of the appellant. The discrepancy is not in terms of which sites are to be built but when they are projected to come forward. 4 scenarios have been considered for the required periods 2014-2022 (inclusive) and 2023-2030 (inclusive) these being:

1. The figures provided by the Council in their education response dated 13th November 2014,
2. The tables of sites and phasing provided by the Council following a Freedom of Information Request on 5th June 2015 (ref. 101004699115, document CO5),
3. All sites and phasing from the latest approved Housing Land Audit 2014 (including constrained sites) and;
4. All sites and phasing from the HLA 2014 excluding constrained sites.

This process clearly demonstrates that the projected housing land calculations across the school catchment areas have been significantly over-estimated by the Council. In turn these figures have fed into the forecasting for school places across the catchment schools which provide a distorted view on available space and flexibility to accommodate new housing developments.

- 5.1.5 Reference to the second SESplan HoNDA in the Council's Report to Committee insofar as it relates to this proposal is rejected as irrelevant and misleading to Members of the Council and should be given no weight in the consideration of this appeal.
- 5.1.6 Whilst recently confirmed as robust and credible, HoNDA2 was prepared in order to inform the Main Issues Report (MIR) in advance of the second Strategic Development Plan (SDP2) and subsequent Local Development Plans (LDPs) and Local Housing Strategies (LHSs). The numbers in HoNDA2 cannot be used to replace the housing land requirements approved by Scottish Ministers and all of the SESplan Councils in the last year. Until such time as Scottish Ministers confirm what housing supply target should be set in SDP2 and what margin of generosity should be added, the requirement that must be met is set out in SDP1 and its Supplementary Guidance. In accordance with the Act as set out, this proposal must be assessed in terms of the development plan and associated housing land supply targets, in this case as explicitly set out in SESplan SG.
- 5.1.6 The paragraph 33 reference to development that contributes to sustainable development leads the decision maker to the sustainability presumption set out in paragraphs 28 and 29. These paragraphs and the presumption reassert that the *"planning system should... [enable]... development that balances the costs and benefits of a proposal over the longer term"* and sets out thirteen principles which should guide policy-making and decision-taking. The original application submission sets out an evaluation of the proposal over the long term in accordance with those principles, and a more comprehensive assessment is contained in Appendix C to this statement.
- 5.1.7 The second part of the test in paragraph 33 is that *"decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits"*. It is clear from our original application (documents OS1-OS24), and further supporting information as part of this appeal, that there are no impacts arising from the proposal which are adverse, and that any impacts which do arise, are not of such significance that they outweigh (significantly or otherwise) the benefits of the development, particularly with regard to the delivery of an effective housing site, actively contributing to the effective housing-land supply for West Lothian.
- 5.1.8 Paragraph 34 sets out further considerations for cases in which the development plan is under review. It sets out that the decision maker may consider *"in some circumstances"* whether granting permission would prejudice the emerging plan. Paragraph 34 goes on to say that this will only be the case where the proposal is *"so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing"*

of new developments that are central to the emerging plan. Prematurity will be more relevant as a consideration the closer the plan is to adoption or approval."

- 5.1.9 The appeal proposal cannot be considered premature to the LDP process in the way envisaged by paragraph 34 of SPP, as although the proposal will contribute to the effective housing supply in West Lothian, it is not so substantial at 150 units, against a total requirement of 11,420 units during the 2009-2019 period, nor would it give rise to cumulative effects which would undermine the plan making process by predetermining decisions about the scale, location or phasing of new developments that are central to the emerging plan.
- 5.1.10 In the context of the prematurity consideration, SPP refers to the granting of planning permission being prejudicial when a plan is under review. At the time of writing, West Lothian Council has yet to release their response to the Main Issues Report, and as such the LDP is a number of years away from adoption. Accordingly under Paragraph 34, the appeal proposal cannot be considered premature or prejudicial to the WLLDP.
- 5.1.11 In summary, when assessed against the relevant policies in SPP, the proposal offers significant benefits with regard to the delivery of well-designed, effective and sustainable site for housing, and can be accommodated within the existing social and physical infrastructure, against the context of a significant shortfall in the five-year housing-land supply, and thus an out of date development plan. These benefits are not outweighed by any adverse impacts.
- 5.1.12 The Council should have recognised SPP as a very key consideration in the determination of this planning application, having significantly more weight at this time than its out of date Local Plan.
- 5.1.13 Failure to properly apply the policy mechanisms as set out in SPP and SDP has resulted in a number of planning permission appeals relating to residential development in the SESplan area being recalled by the Scottish Ministers, with the Direction notices stating that "[The Direction] is given because Ministers consider the delivery of appropriate housing development... in accordance with... [SPP]... to be an issue of national significance" (document PP17).

5.2 Planning Advice Note (PAN) 2/2010

- 5.2.1 The key test of site effectiveness is an assessment against the criteria listed in Paragraph 55 of the PAN (document PP10).

"To assess a site or a portion of a site as being effective, it must be demonstrated that within the five-year period beyond the date of the audit the site can be developed for housing (i.e. residential units can be completed and available for occupation), and will be free of constraints on the following basis:"

Ownership: the site is in control of Gladman Developments and the landowner, who by prior legal agreement, will release the site for sale and development upon securing of planning permission. This process is well documented in the Gladman Delivery Model (document OS4: Appendix 3), which demonstrates actual turnaround times from securing consent to site start;

Physical: the site is free from abnormal constraints related to slope, aspect, flood risk, ground stability or vehicular access which would preclude its development. Full details are provided in the supporting documentation as follows;

- Site Investigation (OS19)
- Drainage Strategy and Flood Risk Assessment Type 1 (OS16)
- Drainage Impact Assessment (OS23)
- Transportation Assessment (OS9)

Contamination: the Preliminary Environmental Assessment Report (document OS19) by Goodsons Associates, submitted with the planning application:

Reviews the historical maps and indicates a relatively limited potential overall for the presence of contaminant sources. The site has remained undeveloped until the present day and is situated within open mixed farmland.

Deficit funding: No public funding would be required to support this development. The developer, through legal agreement with the Council, would undertake all necessary funding requirements; assessed by Gladman as economically viable under current market conditions;

Marketability: The site is of interest to mainstream house builders (confirmed in Appendix One of Planning Statement document OS4), who have confirmed their interest in delivering homes in the short term;

Infrastructure: Required infrastructure can be provided by the developer. To date provisions have been made in respect of education, transportation and recreational provision. In terms of water and drainage, Scottish Water (DIA) has confirmed capacity exists for both. The Utilities Report (document OS12) provides further details. All of the above can be dealt with by legal agreement, over and above which there are no issues that cannot reasonably be resolved and costs covered by the developer in order to facilitate development of the site; and

Land use: housing is the sole preferred use of the land in planning terms by the landowners and promoter (Gladman). The sustainability and marketability of the site make it a realistic and deliverable site for housing.

5.2.2 All of the above confirms the site's effectiveness according to the key tests.