



Duntrune Ltd

Application for review: Erection of Crematorium Building and associated Parking, Access, Turning Space, Landscaping and Boundary Enclosures at Land North-East of Duntrune House, Duntrune

Planning Application Ref: 20/00830/FULL: DMRC-4-22

Statement on National Planning Framework 4

Brodies LLP
31-33 Union Grove
Aberdeen AB10 6SD
T 01224 392 242
F 01223 392 244
DX.AB10
FAS 3330

TABLE OF CONTENTS

1 Introduction and Summary..... 3

2 NPF 4 status 3

3 Assessment of the Application against NPF4 and comments on the Council's Statement..... 4

4 Conclusion 10

5 Additional documents 10

1 Introduction and Summary

- 1.1 At its meeting on 31 January 2023, the Development Management Review Committee (DMRC) deferred determination of the application by Duntrune Ltd (the Applicant) for a review of the refusal of planning permission for the Erection of Crematorium Building and Associated Parking, Access, Turning Space, Landscaping and Boundary Enclosures at Land North-East of Duntrune House, Duntrune pending receiving comments from both Angus Council ("the Council") and the Applicant on the proposed development's compliance with National Planning Framework 4 (NPF4) and Policies 1, 13 and 29 in particular.
- 1.2 A Procedure Notice was issued requiring the Council to provide its statement on NPF4 in the first instance and then providing the Applicant with the opportunity to make its statement and to respond to the Council's statement.
- 1.3 This is the Applicant's statement on NPF4. It demonstrates that when the correct interpretation and weight is given the terms of NPF4, read as a whole, the application accords with NPF4 and as such, there is a presumption in favour of granting consent. Should DMRC consider that the application offends NPF4, the Applicant submits that the material considerations which it has previously highlighted would justify departing from the development plan and granting consent.
- 1.4 This statement also highlights legal errors in the Council's assessment of the application against NPF4. The Council's assessment of the application as a significant traffic generating development, which underpins all of its grounds for concluding that the application breaches NPF4, is also at odds with the opinion of the DMRC's independent planning adviser and the Council's own Roads Department.

2 NPF 4 status

- 2.1 NPF4 was adopted on 13 February 2023 and as of that date, it became part of the development plan for Angus, along with the Angus Local Development Plan 2016. The strategic development plan (SDP), TAYplan ceased to have effect and all statutory supplementary guidance adopted pursuant to the SDP has also been superseded.
- 2.2 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.
- 2.3 When determining a planning application under Section 25, the decision maker is required to assess the proposal against potentially competing policies in the development plan and then "*decide whether in the light of the whole plan the proposal does or does not accord with it*" (*City of Edinburgh Council v Secretary of State for Scotland [1997] 1 W.L.R. 1447*) (Document D58). The court has also confirmed that "*As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another*" (*Tesco Stores Ltd. v Dundee City Council [2012] UKSC 13*) (Document D59).

- 2.4 That approach equally applies to NPF4 now that it forms part of the development plan. This is confirmed at page 98 which advises that the policies should be read as a whole and it is for the decision maker to determine what weight to attach to policies on a case by case basis.
- 2.5 Section 24(3) of the 1997 Act confirms that in the event of any incompatibility between a provision of NPF4 and a provision of a local development plan, whichever of them is later in date shall prevail. As NPF4 post-dates the Angus LDP, the provisions of NPF4 will prevail for the purposes of the current review. This is acknowledged by the Council in their Statement on NPF4. This legal approach was confirmed by the Chief Planner in her letter providing transitional guidance on NPF4.
- 2.6 It should be noted, however, that while the weight to be attached to policies is for the decision-maker, the interpretation of policies is a legal matter (*Tesco Stores Ltd, supra*).

3 Assessment of the Application against NPF4 and comments on the Council's Statement

- 3.1 As the Council's Statement notes, there are no specific policies in NPF4 on dealing with applications for crematorium developments. That is not unusual for a development plan. It cannot have policies for every different type of development or use.
- 3.2 The Council's Statement acknowledges that crematorium developments can generate employment and provide an important and necessary service for the community. NPF4's policies and strategy on economic development, particularly rural development, and community wellbeing are therefore particularly relevant to the Applicant's proposed development.
- 3.3 Part 1 of NPF highlights that people living in Scotland have very different life chances, at least partly as a result of where they live. Page 11 of NPF4 confirms that in rural areas the approach to local living will be shaped by local context. Page 13 of NPF4 advises that the Scottish Government's strategy and policies support development that helps to eliminate discrimination and promote equality. The spatial strategy must support a just transition with development tackling social, economic and health inequalities.
- 3.4 Page 16 confirms that planning will play a key role in creating a globally competitive, entrepreneurial, inclusive and sustainable economy, with thriving and innovative businesses, quality jobs and fair work for everyone. It stresses the need to be flexible to facilitate future business and employment that benefits communities and improves places.
- 3.5 The Scottish Government's strategy is to build a wellbeing economy that benefits everyone, and every place, in Scotland to create a society that is thriving across economic, social and environmental dimensions, and that delivers prosperity for all. Actively enabling rural development is seen as key in achieving rural revitalisation; a target of the national spatial strategy set out in NPF4.

- 3.6 In implementation of the strategy, Policy 25 supports development proposals which contribute to local or regional community wealth building, which can include improving community resilience, reducing inequalities and creating new local firms and jobs.
- 3.7 Despite acknowledging that crematorium developments provide employment and are a significant and important community service, the Council's Statement fails to assess the proposals against the underlying aims and strategies of NPF4 and fails to identify Policy 25 as relevant to the application. This is one of many flaws in the Council's approach and reflects a failure to consider NPF4 holistically, as a decision-maker is required to do.
- 3.8 The Applicant submits that Policy 25 and the Scottish Government's strategy should carry significant weight when determining its application. The inequality and different life chances depending on where you live, which NPF4 highlights and seeks to address, lies at the heart of the proposed development. Indeed, it could be said that in Angus it is a case of in death, as it is in life.
- 3.9 As the Applicant has already highlighted, Angus residents are faced with the highest cremation charges in the UK; with the costs in Dundee being joint third highest. The disparity between the costs of cremation in Friockheim and the rest of the UK was mentioned by the Sunday Times as recently as 13 February 2023 (Document D60). Those affected by the high cremation charges are also most likely to be those who are least able to travel further afield to access cheaper cremation services.
- 3.10 As highlighted in the Applicant's earlier submission, the CMA has identified the planning process as the biggest barrier to reducing cremation costs and inequality. Granting consent for the Applicant's proposed crematorium would help to address funeral poverty in the area and start to eliminate the discrimination which the Angus community currently experiences. Approving the development would also align with the Scottish Government's aim to tackle social and economic inequalities while encouraging a competitive and entrepreneurial, inclusive and sustainable economy.
- 3.11 It is submitted that the application is supported by Policy 25 and approving the application would send a strong message of intent by Angus Council to reduce the current inequalities which its constituents endure and that it welcomes and supports new local businesses.
- 3.12 The officer also, incorrectly in the Applicant's opinion, considers that the application is contrary to Policy 29 as it would generate significant vehicle movements. This focus on the proposals being a significant traffic generating development underpins all of the Council's assessment of the application against NPF4.
- 3.13 It must be borne in mind that Policy 29 encourages rural economic activity, innovation and diversification. It supports development that contributes to the local rural economy and provision of essential community services.
- 3.14 The Applicant would make two initial points in response to the Council's claim that Policy 29 is breached.

- 3.15 The first is that there is no reference in the policy to a breach occurring if a development generates significant traffic. Policy 29(b), which the officer quotes in bold type, requires consideration to be given as to how the development will contribute towards local living and take into account the transport needs of the development as appropriate for its rural location. It makes no reference to the significance of the traffic. It is submitted that this reflects the fact that it is inherent in rural development that there will be a greater reliance on vehicles than in an urban location.
- 3.16 As noted above, while the weight to be attached to policies is for the decision-maker, interpretation of policy is a legal matter, and open to review by the courts. It is submitted that a correct interpretation of the policy requires the DMRC to have regard to the transport needs of the development given its rural location. That has been done.
- 3.17 The proposal is intended to serve an existing, mainly rural, community. Those living, and dying, in rural communities still require the services of a crematorium. As such this proposal will not increase the community's demand for these services. The proposal will not lead to additional vehicles taking to the roads. Rural Angus mourners are already having to travel to attend cremations. Rather it will bring a crematorium closer to the existing rural community and thus reduce the mileage travelled.
- 3.18 The Roads officers accepted the transport needs of the development.
- 3.19 The second point is that the view on traffic generation set out in the Council's Statement is not shared by the DMRC's independent planning adviser who brought Policy 29 to the Committee's attention. She advised at the meeting on 31 January that the development was not a significant traffic generating development. That was also the view of the Council's Roads' officers when consulted on the application.
- 3.20 As mentioned above, the alleged significant traffic generation is a thread which runs throughout the Council's consideration of NPF4. The Council's Statement claims that because of the alleged significant vehicle movements which would be generated by the development and the alleged inaccessibility by a choice of sustainable transport modes, the development conflicts with Policies 13 and 14 of NPF4. Again, this is disputed by the Applicant.
- 3.21 As noted above, the Applicant's transport assessment has demonstrated that the development is not a significant travel generating use, which has been accepted by the Roads' officers and the DMRC's independent planning adviser.
- 3.22 The Policy Intent for Policy 13 is to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably. The text makes it clear that consideration must be given to the type of development when considering sustainable transport requirements and the characteristics of the area.
- 3.23 Further, Policy 13 needs to be read along with the desire to encourage rural development under Policy 29 and the nature of the development.

- 3.24 Attending a cremation cannot be considered to be everyday travel which reduces the applicability of the policy to the development. As stated above, the rural community which will be served by the development is already having to travel to attend cremation services in Dundee or Friockheim or further afield. This proposal will provide many people with an alternative, more local, crematorium, which will provide greater accessibility and reduce travel time and thus CO2 emissions. The development will therefore also help in meeting the Scottish Government's decarbonisation target of reducing the number of kilometres travelled by car by 20% by 2030.
- 3.25 In addition, the Applicant has proposed measures consistent with Policy 13(b) in terms of extending the bus service; providing electric vehicles and charging points; and proposing improvements on the public road network.
- 3.26 It is submitted that when considered in the round, the proposal complies with the key aspects of Policy 13.
- 3.27 The Council's Statement seeks to draw similarities with the refusal of application 07/00160/OUT (Document D54). This is a decision which predates NPF4 by 15 years and as such its relevance in policy terms is extremely limited. Further, as set out in the Applicant's Review Statement, that development included not just to a crematorium, but a cemetery and associated licensed public house/restaurant with parking for 200 cars on Linlathen Estate in Dundee. It was also a very different site and size: extending to 12 hectares of prime agricultural land with two scheduled ancient monuments (SAMs) within the site and a listed building located nearby, all of which would be detrimentally affected.
- 3.28 It was not the lack of availability of bus transport for people attending funerals which was an issue for the Reporter in that appeal. It was the lack of a bus service for those people visiting the cemetery or memorials on a regular basis.
- 3.29 In these circumstances, it is submitted that the Linlathen decision cannot be used to justify refusal of the application on the grounds of a breach of NPF4.
- 3.30 It is the claimed dependency on cars and lack of sustainable transport options that forms the basis for the Council's claim that Policy 14 on design, quality and place is contravened. The Council has not refused the application on design grounds. The Applicant has explained the requirement for a rural location and designed the development to be sensitive to its required location, nature and size required.
- 3.31 The Council's Statement claims that the development is also contrary to Policy 5 on the grounds that the site is greenfield. This is another flaw in the Council's assessment. That is not a correct interpretation of Policy 5.
- 3.32 Policy 5 seeks to protect valued soils. As confirmed in the original Report of Handling, the development is not on prime agricultural land. Nor is it peatland. Nor is it on land of lesser quality that has been

identified in the LDP as culturally or locally important for primary use. None of the valued soils which are protected by NPF4 will be affected by the development.

- 3.33 The development has also been designed to minimise earth movement, making use of the existing contours on the site and locating the development as close to the existing road as possible to minimise the access requirements. That can be contrasted with the Linlathen development in Dundee to which the officer refers which proposed 750 metres of new road.
- 3.34 It is submitted that there is no breach of Policy 5.
- 3.35 The Council's Statement also claims a breach of Policy 9 as the application site is not brownfield land and has not been allocated for development, nor is it explicitly supported by policies in the LDP. Again, this conclusion is flawed.
- 3.36 Although the LDP predates NPF4, it still forms part of the development plan and requires to be read in conjunction with NPF4. Indeed, Policy 9 specifically directs the decision-maker to LDP policy which permits development on non-allocated greenfield land.
- 3.37 Policy DS1 of the current LDP permits development on greenfield land out with settlement boundaries where they are of a scale and nature appropriate to their location and where they are in accordance with relevant policies of the plan. Policy DS 1 supports development of greenfield land where there are no suitable and available brownfield sites capable of accommodating the development. The development must not result in adverse impacts on designated sites.
- 3.38 As mentioned in the original Application for Review, the Council accepts that the design of the building is of a scale and nature appropriate to the location and that there will be no adverse impacts on the natural, built or cultural environment. And the officer accepted that it is unlikely that there will be sites in a town centre or edge of centre location for the proposed use.
- 3.39 The Applicant provided a sequential assessment to show that there are no other suitable and available brownfield sites which should be preferred to the application site.
- 3.40 LDP Policy DS 1 therefore does explicitly support out of settlement development on greenfield land in specified circumstances with which the proposed development complies. The development therefore complies with NPF4 Policy 9.
- 3.41 The Council's Statement also claims that Policies 1 and 2 of NPF4 are breached.
- 3.42 Policy 1 is an over-arching policy which requires significant weight to be given to the global climate and nature crises. That does not mean that development in rural locations on greenfield sites cannot take place. The Policy Intent behind Policy 1 is to encourage, promote and facilitate development that addresses the climate emergency and nature crisis.
- 3.43 Policy 2 looks to minimise emissions from development.

- 3.44 As set out above, the Applicant does not agree with the Council's claim that the development will primarily serve an urban area. It will serve a primarily rural community who have an existing need for cremation services and are being charged the highest costs in the UK for that service.
- 3.45 As set out in this Statement and the Applicant's previous submissions, there is a pressing need for another cremation facility in South Angus. Although the Council focuses on the vehicles which would travel to the application site, as set out above regard also has to be had to the fact that providing another crematorium in Angus will reduce the distance that some people in Angus currently require to travel to access the crematoria in Friockheim or Dundee and will therefore reduce both carbon emissions and the cost of the service provision.
- 3.46 As noted in various places, Xplore Dundee has indicated that it is willing to facilitate a bus stop at the application site and the Applicant proposes to operate an electric bus for collecting mourners.
- 3.47 In terms of design and construction, the proposals will require to comply with the latest version of Section 6 of the Building Standards which came in to force on 1 February 2023. These revised standards cover energy performance; CO2 emissions; overheating; and ventilation. These are the most stringent building standards yet and require a 73% CO2 emission reduction from the 2014 values for commercial properties.
- 3.48 The development will reduce emissions through inter alia:
- demonstrating high thermal performance
 - maximising storage of carbon through the predominance of timber in the construction of the building
 - incorporating waste heat recovery to provide heating and hot water, reducing carbon emissions
 - incorporating waste recycling
 - incorporating provision for buses & coaches within the layout
 - incorporating electric vehicle charging and electric vehicle collection service
 - providing online viewing of live services, thus reducing the need to travel
- 3.49 The DMRC requires to take a holistic view of the development's contribution to reducing carbon emissions. If that approach is adopted, rather than the Council's narrow focus, it is evident that the objectives of Policies 1 and 2 are met.
- 3.50 The Council references other NPF policies under "*Other development plan considerations*". It is understood that this is an acknowledgement that the proposals comply with Policies 3, 4, 6, 7, 18, 22 and 23. The Applicant would concur.

3.51 Indeed, the Council's conclusion admits that the proposal doesn't give rise to conflict with a number of detailed policies in NPF4.

4 Conclusion

4.1 NPF4 places considerable emphasis on using planning as a powerful tool to deliver change and address the cost crisis and longstanding social, economic and health inequalities. This objective underpins the policies which guide development.

4.2 It has been long understood that policies within a development plan may conflict with each other and be irreconcilable. NPF4 requires to be read as a whole. The weight to be attached to the policies is a matter for the decision-maker.

4.3 The Council acknowledges that the proposal complies with many of the policies in NPF4, but only places weight on those which it considers are breached.

4.4 The Applicant has demonstrated that the Council's reasoning for concluding that certain policies are breached is flawed and in certain instances is not supported by the DMRC's independent planning adviser, nor the Council's Roads officers.

4.5 The Applicant has set out its reasoning for why the proposals are considered to comply with NPF4 and respectfully calls upon the DMRC to place considerable weight on the social, economic and community benefits which the development will bring (the same benefits that have already been acknowledged by the Council).

4.6 As set out in the Applicant's earlier submissions, material considerations also support the grant of consent.

4.7 The DMRC is respectfully invited to overturn the officer's decision and grant consent for the development.

5 Additional documents

5.1 The Applicant submits the additional documents listed below in support of this Statement on NPF4.

D58	City of Edinburgh Council v Secretary of State for Scotland [1997] 1 W.L.R. 1447
D59	Tesco Stores Ltd. v Dundee City Council [2012] UKSC 13
D60	Sunday Times article dated 13 February 2023