

Notice of Review

Land Between Condor Drive and Keptie Road, Arbroath

**Planning Permission for
Erection of Two Dwellinghouses
Planning Application Ref. 22/00176/PPPL**

**Additional Statement on National Planning Framework 4 (NPF4)
on behalf of**

Carswell Properties Limited

April 2023

Emac Planning

- 1.0 Introduction and Executive Summary**
- 2.0 NPF4 Status**
- 3.0 Assessment of the Application Against NPF4**
- 4.0 Assessment of the Application against NPF4, i.e. with reference to the Council's statement (using the Council's statement headings)**
- 5.0 Conclusion**
- 6.0 Additional Documents**

Appendix 1: Ledingham Chalmers letter to Angus Council dated 4th April 2023

1.0 Introduction and Executive Summary

- 1.1 At its meeting on 9th March 2023, the Development Management Review Committee (DMRC) deferred determination of the application by Carswell Properties Limited (the Applicant) for a review of the refusal of planning permission for the Erection of Two Houses on Land between Condor Drive and Keptie Road, Arbroath pending receiving comments from both Angus Council (the Council) and the Applicant on the proposed development's compliance with National Planning Framework 4 (NPF4).
- 1.2 A Procedure Notice was issued requiring the Council to provide its statement on NPF4 in the first instance and then provide the Applicant with the opportunity to make its statement and to also respond to the Council's statement within 14 days.
- 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 errors, or at least misinterpretations, in the Council's assessment of the application against NPF4.

2.0 NPF 4 status

- 2.1 NPF4 was adopted on 13 February 2023 and it became part of the development plan for Angus, along with the Angus Local Development Plan 2016 (ALDP).
- 2.2 This statement should therefore be read alongside the applicants previously submitted Notice of Review Statement dated December 2022, which sets out the relevant policies of the ALDP.
- 2.3 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.
- 2.4 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).
- 2.5 That approach equally applies to NPF4 now that it forms part of the development plan. This is confirmed at page 98 of NPF4 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.
- 2.6 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 this 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.
- 2.7 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*).

3.0 Assessment of the Application against NPF4

- 3.1 The proposal is on a vacant windfall site that lies within the settlement boundary of Arbroath. NPF4 is required by law to contribute to 6 varied outcomes. Relevant to this proposal is the very first outcome *“Meeting the housing needs of people living in Scotland”*. Whilst this is a modest proposal of two houses, it is an appropriately planned and located proposal, which can assist in meeting this policy outcome in an entirely appropriate location.
- 3.2 One of the main policy drivers within NPF4 is the principle of local living and 20 minute neighbourhoods (Policy 15). The stated intent of Policy 15 is to *“encourage, promote and facilitate the creation of connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options”*. The appeal site provides for a pair of modest semi detached units on a bus route and close to local amenities. Due to the sites integrated location within the predominantly residential local environs, it is clear that the residential use would integrate well within the existing urban form. As one would expect at this popular residential location, there are also good public transport and pedestrian / cycle links providing convenient access to local services and recreational opportunities. In short, in accordance with the stated policy 15 outcome, the proposal is *“planned to improve local living in a way that reflects local circumstances”*. The proposal is therefore in conformity with the policy intent and policy outcomes of NPF4 Policy 15 ‘Local Living and 20 Minute Neighbourhoods’.
- 3.3 In summary, the proposal conforms with Policy 15 in that it is a development proposal that contributes to local living, including being within an established 20 minute neighbourhood, that has given consideration to the established settlement pattern.

4.0 Assessment of the Application against NPF4, i.e. with reference to the Council’s statement (using the Council’s statement headings)

NPF4 approach to development on greenfield land

- 4.1 Much now appears to be made by the Council regarding their interpretation of the land as a ‘greenfield’ site and the fact that it is not allocated for development within the ALDP. The fact is, the site is not allocated for any use, including open space use or identified as a greenfield site. The officers previously claimed that the site was open space, and whilst it is not and never has been allocated as open space, officers appear to be moving from that position and are now claiming it is a greenfield site. It is not. It is fact that it is identified as white land within the ALDP proposals map, i.e. there are no ALDP proposals or land use designation for the site. It should not be in the control of the planning department to arbitrarily allocate land as open space. This is required to be identified in the LDP (and as now required by NPF4). This has due democratic process of consultation and approval to follow, i.e. prior to LDP adoption.
- 4.2 Whilst the land directly to the north has the appearance of a common grassed amenity area and is joint third party ownership with no general public rights, the application site is completely separate and in individual private ownership. There are no rights of common access and the site is clearly fenced off from the open space area to the north. (*Reference: Appendix 1 Ledingham Chalmers letter to Angus Council*). It is therefore differentiated from the area to the north through clear boundary demarcation, character, land use and ownership, which is all reflected by the minimum level of public interest / neighbour objection to these proposals. It is a clear material consideration therefore that the subject land is not and never will be public open space or greenfield land. The case officers report of handling, and now repeated in the NPF4 statement, simply ignores this point.
- 4.3 Usefully, the ALDP covers the scenario for sites that emerge as potential development proposals, whilst not identified for a specific land use within the development plan. They are called “Windfall Sites and when looking for an ALDP definition of the subject land it is clearly a ‘Windfall Site’. ALDP Appendix 1 – Glossary, defines Windfall Sites as *“Sites which become available for development unexpectedly during the life of the development plan and so are not identified individually in the plan”*. That is clearly the case with this site.

- 4.4 The ALDP confirms on page 18 that *"In addition to allocated sites and existing sites with planning permission there may be other currently unidentified sites suitable for residential development. To provide additional flexibility in the Housing Land Supply the ALDP supports appropriate 'Windfall Sites' within development boundaries to come forward"*. This is the exact premise which, in principle, supports this application, which as a smaller scale opportunity site within an existing settlement boundary, is also supported by Policy 16 of NPF4. For officers to dismiss the site as a 'greenfield site' is simply a misdirection of planning classification and ignores the ALDP windfall definition and NPF4.
- 4.5 ALDP goes on to state that all sites *"allocated for housing and windfall / opportunity sites which come forward will be expected to deliver a mix of house types and tenures to meet the housing needs of the area"*. (Page 18). *"...other windfall sites that emerge through the life of the ALDP may be suitableand this would support the creation of more sustainable communities through co-location of compatible uses, potentially reducing the need to travel"*. (page 18). The appeal site provides for a pair of semi detached units on a bus route and close to local amenities. Rather than being against greenfield policy, the construction of a pair of semi detached houses on the subject land actually delivers housing in a sustainable urban location, thereby reducing the need to allocate further edge of settlement greenfield land for housing.
- 4.6 In the context of these proposals, the officers reference to NPF4 Policy 9 and its interpretation is therefore simply incorrect and should therefore carry no weight in this decision making process. Policy 9a) Confirms that development proposals that will result in the sustainable reuse of vacant land, such as this, will be supported.

NPF4 approach to blue and green infrastructure

- 4.7 The officers also place an incorrect assertion on the NPF4 approach to blue and green infrastructure. ALDP Policy PV2: Open Space Protection and Provision within Settlements seeks to protect existing open space areas, there is no disagreement on that point. The application site is however not an existing open space area. The subject land does not constitute publicly accessible and usable amenity green space. Indeed, it is identified as white land within the ALDP proposals map. As referenced above and worthy of repetition, whilst the land directly to the north has the appearance of a common grassed amenity area and is joint third party ownership with no general public rights, the application site is completely separate and in individual private ownership. There are no rights of common access and the site is clearly fenced off from the open space area to the north. (*Reference: Appendix 1 Ledingham Chalmers letter to Angus Council*). It is therefore differentiated from the area to the north through clear boundary demarcation, character, land use and ownership. It is a clear material consideration therefore that the subject land is not and never will be public open space. The case officers report of handling simply ignores this point. The site does not therefore fall to be considered under ALDP Policy PV2. The Officers statement on NPF4 simply ignores the ALDP context and again, without justification, also seeks to ignore the use, boundary and surface treatments, lack of public accessibility and third party ownership of the land.
- 4.8 Whilst not material to this decision making process, the applicants also feel compelled to comment on the officers statement *".....despite recent action taken to fence off the area without the benefit of planning permission"*. Following complaints from the Police and SSE relating to children playing football, the area was reasonably fenced off in February 2022. Since then, if the Councils officers considered that the fence required planning permission, contact could have been made with the owner / current applicant, either following erection of the fence or indeed through this current application process. No such contact has ever been made and we can only conclude that no complaints have been received.
- 4.9 The proposal does not conflict with NPF4 Policy 20 regarding blue and green infrastructure. Policy 20, also in reference to land allocations, requires the identification of blue or green infrastructure within the relevant section of the LDP, i.e. as referenced previously.

NPF4 approach to development of quality housing

- 4.10 The applicants agree with the officers statement that *"NPF4 seeks to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes in the right locations"*. The

officers however thereafter fail to expand on NPF4's support for the reuse of vacant land within settlement boundaries that lies within a 20 minute neighbourhood.

- 4.11 This is one of the fundamental issues in the East Angus Housing Market Area, which includes Arbroath. Whilst the ALDP supports windfall development, the annual Housing Land Audit 2022 confirms that only 12 units were completed on windfall sites, the lowest number in any of the four housing market areas. That is due to the lack of windfall opportunities, therefore when one presents itself in a sustainable location, the opportunity should be taken to deliver community required housing in a sustainable location.

NPF4 approach to design, quality and place

- 4.12 The officers merely seek to repeat points made in their Report of Handling and rebutted by the applicant through their NoR Statement. In summary, the officers report of handling is critical of the proposal in that it is "*generally only capable of meeting minimum spatial standards*". The officers now, contradictorily, claim through this further statement that the plots are below the minimum standard. Two points emerge from this. First is that if a proposal meets minimum standards, which this does, then it can be considered acceptable. That is already confirmed within the officers Report of Handling. Second, this is an application for planning permission in principle and the indicative layout merely establishes that minimum standards can be met. If planning permission in principle is granted then appropriate conditions can be imposed to ensure that at least minimum standards are adhered to in any subsequent detailed application. The proposals do not therefore offend NPF4 Policy 14 in relation to design. Finally, the application site, i.e. for the pair of semi detached houses, covers an area of 540 sq metres, therefore in relation to the local environs, the proposals are consistent with the local development pattern in terms of density and plot size. Comparably, plot sizes in the immediate vicinity of the proposals are as follows:

- 6 Condor Drive – 279sqm
- 8 Condor Drive – 244sqm
- 10 Condor Drive – 227sqm
- 15 Condor Drive – 208sqm
- 17 Condor Drive – 212sqm
- 19 Condor Drive – 259sqm
- 119 Keptie Road – 222sqm
- Camperdown Drive & Falkland Drive – predominantly between 250 – 260 sqm

Other Policy Considerations

- 4.13 The officers statement on NPF4 confirms that the proposal does not raise any significant issues when considered against other policies of NPF4. Matters relating to climate mitigation and adaptation, biodiversity enhancement, and management of waste could be addressed by planning condition. The roads requirements set out in the Report of Handling could also be addressed by planning condition. The applicants concur.

5.0 Conclusions

- 5.1 The applicants concur that as with any application, proposals can attract support from some NPF4 policies and perhaps not with others. It has long been understood that policies within a development plan, of which NPF4 now forms part, may conflict with each other and in some case be irreconcilable. As with all Development Plans, NPF4 requires to be read as a whole. The weight to be attached to the policies is a matter for the decision maker. The problem with the officers NPF4 submission is that it only places weight on those policies which it considers the proposal breaches, contrary to the intention of NPF4.
- 5.2 In this case, the principle of developing new housing on a vacant windfall site is consistent with the NPF4 spatial strategy and does not conflict with other relevant policies that the officers raise relating to the development of greenfield land, blue and green infrastructure, quality homes or design, quality and place.

5.3 As set out in the applicants earlier submissions, material considerations also support the grant of consent.

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

6.0 Additional Documents

6.1 In support of this statement on NPF4, the applicant submits the following additional document.

- Appendix 1: Ledingham Chalmers letter to Angus Council dated 4th April 2023

Appendix 1: Ledingham Chalmers letter to Angus Council dated 4th April 2023

ledingham|chalmers_{LLP}

FAO Sarah Forsyth
Committee Officer
Angus Council

ForsythSL@angus.gov.uk

www.ledinghamchalmers.com

Solicitors
Johnstone House
52-54 Rose Street
Aberdeen
AB10 1HA

Tel: +44 (0)1224 408408
Fax: +44 (0)1224 408407
DX: AB15 Aberdeen

Julie.hamill@ledinghamchalmers.com
Direct: +44 (0)1224 408593

Our ref: JHVCARS
Your ref:
Date: 04 April 2023

Dear Sirs

Application No: 22/00176/PPPL – DMRC – 16 - 22

We refer to the above and to decision of the Development Management Review Committee at their meeting on the 9th March 2023 and would advise that Carswell Properties Limited purchased this plot as part of a package of three undeveloped plots in October 2007. The plot that is included in these proposals is in individual private ownership and there are no legal rights of access or use by any other parties or the public over this land.

Yours faithfully



Julie A Hamill
Senior Solicitor