



FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2021] CSIH 49
XA76/20

Lord President
Lord Menzies
Lord Turnbull

OPINION OF THE COURT

delivered by LORD CARLOWAY, the LORD PRESIDENT

in the appeal under section 239 of the Town and County Planning (Scotland) Act 1997

by

WEST DUNBARTONSHIRE COUNCIL

Appellants

against

THE SCOTTISH MINISTERS

Respondents

and

BARRATT HOMES WEST SCOTLAND

Interested Parties

Appellants: Armstrong QC; Anderson Strathern LLP
Respondents: P Reid; Scottish Government Legal Directorate
Interested Parties: J dC Findlay QC, Colquhoun; Burness Paul LLP

5 October 2021

Introduction

[1] The appellants challenge a decision of the respondents' reporter to allow an appeal by the interested parties against, in effect, a refusal of planning permission for a residential development on 8.9 hectares (22 acres) of disused fields running northwards towards the

Kilpatrick Hills on the north side of Dun tocher, Clydebank. The site is known as Duntiglenan Fields and the proposal has an indicative capacity for 99 dwellings.

Technically, the appeal related to a failure to determine the application for permission, but in submissions to the reporter the appellants maintained that the application should be refused. The reporter granted planning permission in principle. The appeal raises a sharp point about whether the reporter misapplied Policy 8 of the strategic Clydeplan by holding that it applied when there was a shortfall in housing land supply in only part of: (i) the appellants' area of West Dunbartonshire; or (ii) the housing submarket area of Greater Glasgow North and West which was defined in the Clydeplan.

[2] The site has a significant planning history. On two occasions, a reporter appointed by the respondents who was examining the appellants' proposed local development plan has either recommended, or at least made it clear, that the site ought to be released for residential development. The appellants rejected these indications for reasons which, in planning terms, might be said to be, at best, flimsy.

[3] For ease of reference, the following acronyms are occasionally used:

D&VL	Dumbarton and Vale of Leven
GGNW	Greater Glasgow North and West
HLR	Housing Land Requirement
HLS	Housing Land Supply
HMA	Housing Market Area
HSMA	Housing Sub-Market Area
HST	Housing Supply Target
LDP	Local Development Plan
SDP	Strategic Development Plan
SPP	Scottish Planning Policy

National and Regional Planning Policy

Scottish Planning Policy

[4] The Clydeplan is the second strategic development plan for the Glasgow and Clyde Valley region. Policy 8 of the Clydeplan (*infra*) implements a key principle of Scottish Planning Policy. This is that the planning system should identify:

“a generous supply of land for each housing market area within the plan area to support the achievement of the housing land requirement ... maintaining at least a 5-year supply of effective housing land at all times” (SPP, para 110).

Geographical areas where the demand for housing is relatively self-contained should be identified (para 111) as “functional housing market areas”. These may overlap and will rarely coincide within local authority boundaries. There should be “cooperation between authorities where strategic planning responsibilities and/or housing market areas are shared” (para 112).

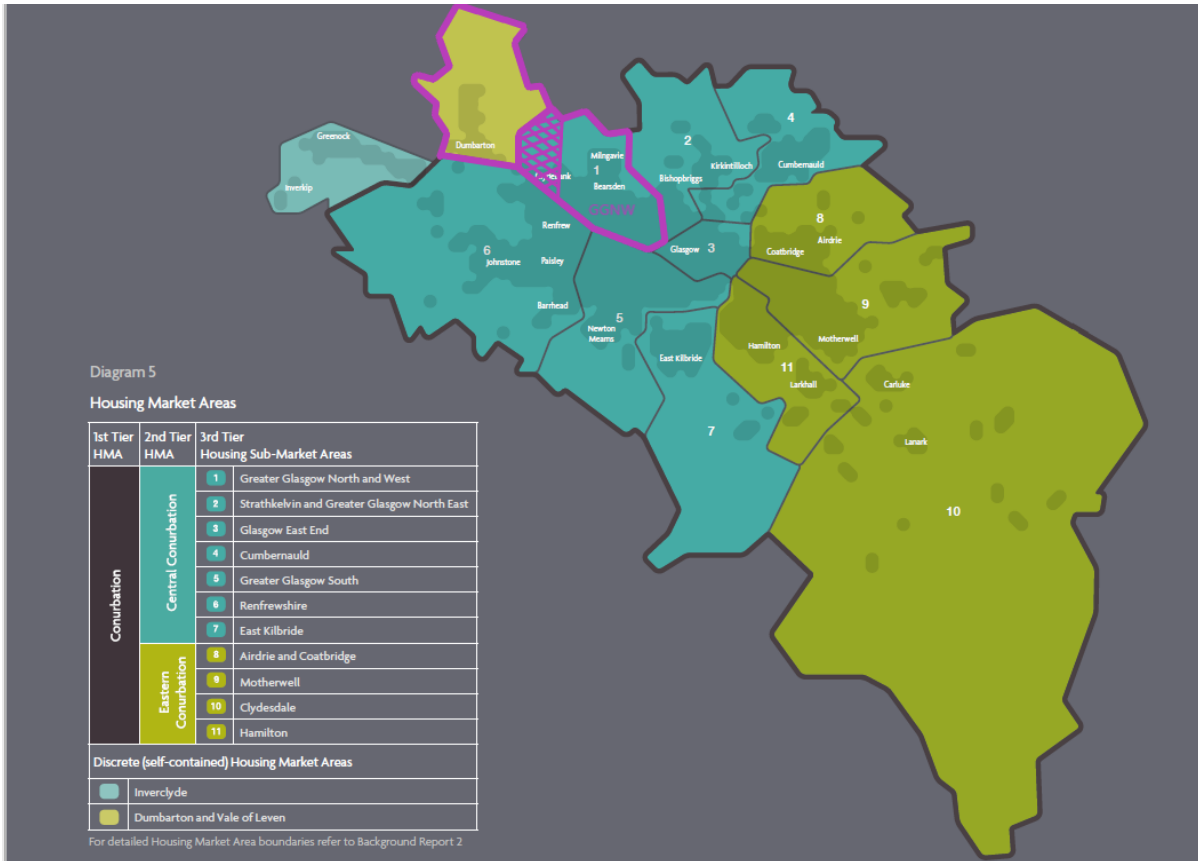
[5] SDPs set out Housing Supply Targets and Housing Land Requirements for: the whole plan area; local authority areas; and functional housing market areas (SPP, para 118; see *Mactaggart and Mickel Homes v Inverclyde Council* 2021 SLT 19, para [5]). They state the amount and locations of land to be allocated in local development plans, which must (Town and Country Planning (Scotland) Act 1997, s 16(6)) be consistent with the SDP. LDPs should (paras 119 and 120) allocate sites sufficient to meet the minimum five-year supply. A planning application must (para 125) be considered in light of whether the required minimum exists. If it does not, the presumption in favour of sustainable development becomes a “significant material consideration” (paras 32 to 35; see *Gladman Developments v Scottish Ministers* 2020 SLT 898 at paras [45]-[50]).

[6] Scottish Planning Policy was amended in December 2020 (Scottish Planning Policy-Finalised Amendments-2020), after the reporter's decision in this case, but the amendments were reduced in *Graham's The Family Dairy (Property) v Scottish Ministers* [2021] CSOH 74.

The Clydeplan

[7] The process of demarcating tiers and housing market areas began with the collection of data which related to levels of self-containment in the housing markets of 25 local authority sub-areas. Self-containment refers to the prevalence of households moving home within the same area. Each area was a sub-division of, and therefore lay wholly within, a single local authority area. In the Clydeplan, two areas with self-containment of 80%, namely Inverclyde and Dumbarton & Vale of Leven, were designated as discrete HMAs. The other areas were all merged to produce areas with a combined minimum of 65% self-containment.

[8] The Clydeplan encompasses eight local authority areas, including that of the appellants. These areas are consolidated into a 1st Tier Housing Market Area (the Conurbation), which stretches from Clydebank, through Glasgow to South Lanarkshire, and the two discrete HMAs. The Conurbation is divided into two 2nd Tier HMAs (the Central and Eastern Conurbations). These are in turn sub-divided into eleven 3rd Tier Housing Sub-Market Areas. Seven of these are within the Central Conurbation and four within the Eastern Conurbation. This is all illustrated in the Clydeplan's Diagram 5 as follows:



[9] Greater Glasgow North and West is a HSMA within the Central Conurbation. The cross-hatched area is the part of GGNW which is within the appellant's local authority area. The balance of the appellants' area comprises the discrete D&VL HMA. The northern part of that includes an element of the Loch Lomond and Trossachs National Park where housing is not available. The rest of GGNW (ie that element which is not in the appellants' area) is made up of parts of East Dunbartonshire and Glasgow City. The Clydebank part of GGNW is in the appellants' area. The Milngavie and Bearsden parts are in East Dunbartonshire.

[10] Schedule 8 of the Clydeplan sets out the Housing Land Requirements for each local authority area across the plan period (2012 to 2029). In order to calculate an HLR, the relevant Housing Supply Target is increased by between 10 and 20%, to provide for the "generous supply" required by SPP (para 110). Schedule 10 sets out the surplus or shortfall of private sector housing for each local authority area. Schedule 9 does the same (ie for the

private sector) for each housing market tier and each sub market area. One HSMA (not GGNW) had a shortfall.

[11] Policy 8 of the Clydeplan provides:

“Housing Land Requirement

In order to provide a generous supply of land for housing and assist in the delivery of the [HSTs] ... Local Authorities should:

- make provision in [LDPs] for the all tenure [HLR] by Local Authority set out in Schedule 8, for the Private [HLR] by [HSMA] set out in Schedule 9 and for the Private [HLR] by local authority set out in Schedule 10;
- allocate a range of sites which are effective ... in the plan periods to meet the [HLR] for each [HSMA] and for each Local Authority, ... up to year 10 ...;
- provide for a minimum of 5 years effective land supply at all times for each [HSMA] and for each Local Authority ...

...

Local Authorities should take steps to remedy any shortfalls in the five-year supply ... through the granting of planning permission for housing developments, on greenfield or brownfield sites, subject to satisfying each of the following criteria ...”

Five criteria, which are designed to take account of competing policy considerations, are described. The development must: (1) help to remedy the shortfall in supply; (2) contribute to sustainable development; (3) be in keeping with the character of the settlement and the local area; (4) not undermine green belt objectives; and (5) have the developer commit or fund any additional required infrastructure.

Local Planning Policy

The Unadopted LDP 2

[12] The appellants’ first (and last) LDP was adopted in March 2010. The examination report on that LDP had accepted the appellants’ position that the site should not be allocated

for residential development. The appellants published an initial version of a new proposed LDP (LDP 2) in September 2013. In this, the site was allocated (Sch 4) for residential development. In February 2014, the appellants deleted the allocation, notwithstanding their acceptance that the site's exclusion would result in a shortfall in the HLS. A modified version of the LDP was produced in March 2014. In January 2015 the examination report on LDP 2 recommended (issues 16 and 17) the allocation of the site as residential. The reporter held that there was a short-term shortfall in the appellants' area. There were no unacceptable environmental or other impacts in relation to the site (para 39). It was the only site which could reasonably be expected to deliver housing by 2020. The appellants obtained legal advice that, should the respondents agree with their reporter, as they later did, there would be no grounds for declining to allocate the site for housing. The recommendation was binding on the appellants except in certain defined circumstances (see the Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009). In March 2015 the appellants told the respondents that they would not adopt LDP 2 on the ground that it did not comply with the Clydeplan.

[13] By letter dated 2 June 2015, the respondents directed the appellants not to adopt LDP 2 without allocating the site, as it was required in order "to address the requirements of Scottish Planning Policy and to enable delivery of the strategic housing requirement for private sector housing in the period to 2020." Standing the statutory obligation to produce an updated LDP every five years, that could reasonably have been interpreted as leaving the appellants with little choice. On 24 June 2015 the appellants refused to follow the direction.

[14] Sundry correspondence failed to break the stalemate; the appellants maintaining that the allocation of what was a greenfield site was unnecessary and that it should not be released as a housing opportunity (Planning Committee, 23 March 2016, para 3.5). The

appellants' planning officials recommended adopting LDP 2 with the site allocated because, it was "required to enhance the quantity and quality of the housing land supply in West Dunbartonshire and Clydebank in particular" (Planning Committee, 27 April 2016, para 4.14). The appellants instructed their officials to prepare a new LDP 2, which would not be adopted until at least nine years after the 2010 LDP, notwithstanding the requirement to do so every five years. The appellants published the new LDP 2, excluding the allocation of the site. This stated (para 6.2) that there was no net shortfall in the HLS of West Dunbartonshire.

[15] In December 2016, Taylor Wimpey applied for permission to develop 99 houses on the site. This application was refused in May 2017 as contrary to the development plan (ie the Clydeplan 2012 and the 2010 LDP), because it would be within the green belt. That decision was not appealed. The new Clydeplan came into force on 24 July 2017.

The new adopted LDP 2

[16] On 30 May 2019, the appellants submitted the new proposed LDP to the respondents. The respondents' examination reporter was concerned about the absence of any analysis which demonstrated its consistency, in terms of meeting the HLRs for the D&VL and GGNW HSMA within the Clydeplan. He issued an information request to the appellants on 16 December 2019. This asked (p 3) for:

"i. Commentary as to whether Policy 8 and Schedule 9 of Clydeplan require the LDP to demonstrate that the housing land requirement can be met at housing market/housing sub-market area level?

...

iii. Supply the evidenced figures to demonstrate that the housing land requirements set out in Schedule 9 of Clydeplan will be achieved."

The reporter was in effect asking for the appellants' view on whether the new LDP 2 demonstrated how the HLRs for the D&VL and GGNW HSMAAs could be met and to provide the relevant data.

[17] The appellants' response of 13 January 2020 contained alternative submissions. They maintained first that there was no shortfall in the HLS for the appellants' part of GGNW (ie Clydebank). In order to calculate a notional HLR for that part, the D&VL HLR could be subtracted from the West Dunbartonshire HLR. Detailed calculations were provided to support the position that there was a surplus in the HLS for this, ie the Clydebank area. This argument was rejected by the reporter, who found that there was a significant shortfall in that area of 471 units (*infra*).

[18] The alternative submission was that the Clydebank was part of the wider HSMA of GGNW, which, overall, had a surplus. Housing demand and the house buyer market were mobile and flexible. The Clydeplan did not stipulate the proportion required from each local authority when there were overlapping SMHAs. It set out the HSTs and HLRs at both HMA and local authority areas as a requirement of SPP. If there was a small deficit in the HLR, as set out in the Clydeplan, it could be made up from a surplus elsewhere in GGNW.

[19] On the third part of the further information request ((iii)), no evidenced figures for there being a surplus, beyond the reference to Clydeplan Monitoring Reports, were given. Homes for Scotland responded by enclosing its submission to East Dunbartonshire Council's LDP that there was a shortfall in GGNW and, latterly, emphasising that there was a shortfall in Clydebank under reference to the recently agreed 2019 Housing Land Audit.

[20] The examination report on the new LDP 2 acknowledged that there was a strong case for reducing the identified shortfall in HLS in the Clydebank area and that its existence might outweigh any negative effect on the landscape. The reporter did not recommend the

allocation of the site for residential purposes because he had not seen comprehensive environmental information and the local community had not had a recent opportunity to express its views. LDP 2 had set out to demonstrate that the HLRs were exceeded across the plan area. However, there was no separate analysis of the HLRs for the D&VL HMA and the GGNW HSMA, as required by Policy 8 and Schedule 9 of the Clydeplan. Although LDP 2 did not have to include tables demonstrating how the HLRs had been met, the examination reporter did have to satisfy himself that the strategic requirements had been satisfied.

[21] The examination reporter agreed with the appellants' method of calculating the notional Clydebank HLR by subtracting the D&VL HLR from the West Dunbartonshire local authority area HLR. An alternative would have been to subtract the equivalent notional HLRs for East Dunbartonshire and Glasgow City (ie those local authorities' parts of GGNW) from the GGNW HLR. Another was to seek to achieve an agreement between the three local authorities on the sub-divisions of the GGNW HLR for which each would be responsible (in effect creating sub-HSMAs). No such agreement had been reached. The solution adopted was the only practicable one.

[22] The reporter held that there was a shortfall of 471 units in the Clydebank area for the period 2019 to 2024. This was over half of the Clydebank HLR: ie it was not a small deficit. The reporter recommended that the appellants should take action to resolve the short-term shortfall. He drew attention to LDP 2 Policy H1 which required a five year effective supply of housing land across the local authority area and each housing market area to enable delivery of the strategic HLR.

[23] On 19 August 2020, the appellants approved LDP 2 as modified. The appellants accepted the reporter's amendment of the figures, including the private sector shortfall of

471 units. The appellants had expected to have been able to adopt LDP 2 on 23 September 2020. After the appeal to the court had been lodged, the respondents directed the appellants not to adopt LDP 2 without making certain amendments relating to housing land supply generally.

The Appeal to the Reporter

[24] The reporter identified several issues as relevant in the appeal. The first was whether there was an adequate HLS in the appellants' local authority area. The Clydeplan and the 2010 LDP were identified as the applicable development plan. The reporter recognised the age of the LDP immediately and commented that its vintage might result in the application of the presumption in favour of development (SPP para 33). In anticipation of its formal adoption on 23 September, the new LDP 2 was regarded as a material consideration of considerable weight.

[25] The reporter explained that, although Schedule 9 of Clydeplan did not state a figure for the appellants' part of GGNW (ie Clydebank), the matter had been dealt with in the new LDP 2 examination report. Paragraph 17 of the report merits rehearsal:

“... I see no reason to disagree with that approach ... Policy 8 of Clydeplan requires local authorities to make provisions in [LDPs] for all-tenure [HLR] by local authority, as set out in Schedule 8; for the private [HLR] by **[HSMA], as set out in Schedule 9** (*reporter's emphasis*); and for the private [HLR] by local authority, as set out in Schedule 10. To what extent it is necessary to disaggregate the [HSMAs] in Schedule 9 is open to question; although I appreciate that a failure to meet the requirement in one part of the sub-market area might lead to an overall failure for the whole area. I have no information on the housing land situations in the rest of [GGNW], which includes parts of Glasgow and East Dunbartonshire Council areas.”

Whereas the strict requirement in Policy 8 was for LDPs to meet the HLRs for HSMAs, there was no information to indicate whether sufficient land had been allocated to meet the requirement for GGNW. In a key passage (para 34), the reporter stated:

“... I accept (as appear to have the parties involved in the LDP2 examination), that failure to meet the required provision in Clydebank is likely to mean that the overall provision has also not been met.”

The respondents accepted in this appeal that the assertion quoted in parenthesis was incorrect. The appellants had not accepted that a shortfall in the notional Clydebank sub-HSMA would result in a shortfall in either West Dunbartonshire or the GGNW HSMA. It was clear, from the response to the further information request, that their position was that a shortfall in Clydebank could be made up through what they described as a healthy surplus elsewhere in GGNW.

[26] Based on the calculations in the examination report, the reporter held that there was, at best, a maximum of 3.4 years’ supply relative to the Clydebank sub-HSMA HLR. The implication of that was that the appellants should take steps to remedy the shortfall. The interested parties’ proposed development fulfilled each of the five criteria. The development did not conflict with green belt objectives in view of what had been said on these matters in the 2015 and 2020 LDP examination reports. The reporter’s reasoning was prefaced in these terms (para 51):

“Notwithstanding the continued identification of the appeal site in the green belt in LDP2, policy 8 of Clydeplan states that permission may be granted for new housing developments to remedy a shortfall in the five-year supply of effective housing land provided that they would not undermine green belt objectives.”

The shortfall in the Clydebank sub-HSMA constituted a significant material consideration to which the appellants did not object. The reporter concluded that (para 116):

“...the contribution that the development would make to help meeting the identified housing land shortfall in Clydebank is a significant material consideration that justifies granting planning permission in this case”.

Submissions

Appellants

[27] The appellants' central contention was that the reporter's reasoning was erroneous in so far as it suggested that a shortfall in the HLS in one part of an HSMA triggered the remedial mechanism in Policy 8 of the Clydeplan. Only HSMAs as a whole and local authority areas were referred to in Policy 8. HSTs and HLRs were applied only to these areas in the schedules. Schedules 9 and 10 did not identify sub-units of HSMAs. The Clydebank sub-sub-market area was not mentioned in the Clydeplan. As the respondents now accepted, the reporter was wrong about the appellants' concession that a shortfall in Clydebank meant there was likely to be a shortfall in GGNW HSMA. That had been the only basis for his conclusions. He acknowledged that he had no information on that part of the GGNW HSMA beyond the appellants' element.

[28] A notional shortfall in the Clydebank area could be a material consideration, but it had no significance beyond that. The decision appeared to recognise that a shortfall in Clydebank was only that and therefore not a trigger for a consideration against the five criteria. This contradicted the earlier analysis and conclusions. Such a shortfall could not, at that stage of the decision, also be a material consideration. That would be double-counting. There had been no basis upon which to conclude that a failure to meet the Clydebank notional HST meant that the overall requirements of the Clydeplan had not been met. From figures now produced (Housing Land Monitoring Report 2018 Tables 2 and 3) there was a surplus in the GGNW HSMA. The appellants had had no prior notice that this would be regarded as a determinative issue. If they had had notice, they could have led evidence to show that there was no shortfall.

Respondents

[29] The reporter's decision to follow the approach of the new LDP 2 examination

reporter was entirely appropriate. The appellants could have presented evidence about the overall position in the GGNW HSMA, but they had told the examination reporter to look at the Clydebank area in order to derive its required contribution to the HLR in GGNW. They did not ask the reporter to take a different approach. There was an obvious logic in the calculation which had been advanced by the appellants during the examination. Its purpose was to establish a requirement. The use of “shortfall” was in the context of the application of Policy 8 to GGNW. That was justified by the reporter taking a flexible approach to Policy 8 (*Tesco Stores Ltd v Dundee City Council* 2012 SC (UKSC) 278, para [18]). Otherwise, any shortfall in Clydebank would be entirely masked. On the appellants’ approach, the HLR for GGNW was met entirely from sites outside West Dunbartonshire. The West Dunbartonshire HLR was met entirely in D&VL. There would be no remedy to address a shortfall in Clydebank. Although the reporter was wrong to suggest that the appellants had agreed that a shortfall in Clydebank alone could trigger the remedial provisions of Policy 8, that did not matter because it could do so in any event.

[30] The approach of both the new LDP 2 examination reporter and the appeal reporter had been to identify the requirement for the Clydebank area by subtracting the D&VL HMA from that of West Dunbartonshire as a whole. That resulted in an HLR for Clydebank of 1,030 (2012-24) and 430 (2024-29). For the period 2019-24 the LDP 2 reporter found a shortfall in the private HLS of 471 and the appeal reporter agreed with that. The appellants had not complained about the approach of the LDP 2 reporter and had accepted that there was a significant short term shortfall in Clydebank.

Interested Party

[31] The reporter had correctly identified that Policy 8 of the Clydeplan required local

authorities to make provision in LDPs for HLRs by HSMA (schedule 9) and local authority areas (schedule 10). The problem which arose was that, although most of the appellants' area was within the D&VL HMA, Clydebank fell within the GGNW HSMA. The Clydeplan provided no assistance on how to approach a possible shortfall in Clydebank. The reporter had the assistance of the findings of the new LDP 2 reporter on the same issue and had the parties' representations on it. The appellants had not criticised the LDP 2 reporter's approach which had found a shortfall in the Clydebank area. It was important to remember that the terms of an SDP were statements of policy and not legislation (*Hopkins Homes v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865 at para 25). The courts should respect the reporter's expertise and start from a presumption that he had correctly understood the policy framework. It was the reporters who had the primary responsibility to resolve disputes about the practical application of policy.

[32] It must be possible to allocate an HLR of an HSMA between the relevant local authorities in order to determine whether the Policy 8 requirement which applied to each authority had been met. If allocation were not possible, the requirement to meet the HLR would rest on each authority, or not at all. A local authority could not demonstrate compliance unless it could maintain an effective supply for the HSMA within its own portion of that area.

[33] The LDP 2 reporter had identified the HLR for the D&VL HMA before considering the HLR for the Clydebank portion of the GGNW HSMA. He had then set out the appellants' method of calculating the HLR for Clydebank. He identified a requirement whereby Policy 8 could be applied in a sensible and practical fashion. He found that there was a shortfall and recommended that steps should be taken to remedy it on the basis that there would otherwise be a failure to comply with Policy 8. The appeal reporter adopted

this approach, having first sought the views of the parties upon it. He was told that the appellants had adopted the new LDP 2 as modified, thus accepting that there was a significant, but short term, shortfall within the Clydebank area. The appellants did not provide information on the GGNW HSMA or suggest a different approach to compliance.

Decision

[34] The purpose of paragraph 110 of Scottish Planning Policy is to provide a defined generous supply of land for each housing market area. If there is a distinct HMA identifiable, a generous supply for that area should be made available. Paragraph 111 refers to the need to identify “functional” HMAs. The general method by which this is achieved by the Clydeplan is to set out housing land requirements not only for each local authority area and any discrete HMA (ie Inverclyde and Dumbarton & Vale of Leven) but also for each housing sub market area which has been aggregated in the relatively rough and ready manner of merging various areas to create larger blocks with a minimum of 65% self-containment. The GGNW HSMA is an example of this, encompassing Clydebank, Milngavie and Bearsden. There is a degree of artificiality about this exercise when the situation on the ground is considered. This artificiality persists even when translated into a more practical form in Policy 8. Nevertheless, the policy intention remains clear. Where a functional HMA is identified, its housing land requirements ought to be calculated by the stipulated generous provision and met.

[35] If read literally, Policy 8 would be complied with by a local authority providing the required housing units to meet the HLRs specified in Schedule 8 to 10 in respect of the particular local authority area and each HSMA within that area. Such a reading would produce a workable result where the HSMAs were all wholly within the local authority's

area. A problem arises where, as often happens, the HSMA straddles one or more different local authority areas. In the absence of an agreement between these local authorities, how is the obligation under Policy 8 to be realised? Is each of these authorities to meet the HLR within its own area, irrespective of what the other authorities might have done? The answer to the latter question must be in the negative. When determining whether a particular authority has met its obligation, a reporter in a planning application ought to be provided with figures relative to all parts of the HSMA.

[36] Read strictly, in this way, the appellants could avoid contributing to the HLR of the GGNW HSMA if they were to prove that East Dunbartonshire and Glasgow City Councils had already produced a sufficient surplus for the GGNW HSMA in, for example, Milngavie and/or Bearsden. This may be legitimate if Clydebank, Milngavie and Bearsden were regarded, as the Clydeplan suggests, as a single HSMA when looked at together. The effect of this would be that no land need ever be allocated for housing, under this policy, for Clydebank as reliance could be placed on surpluses elsewhere. The same effect could be produced in different circumstances for either Milngavie or Bearsden.

[37] Although that type of situation might be acceptable, where relatively small shortfalls were found to exist in a particular area, whether the policy is being complied with can involve a question of whether, using his planning judgement, a reporter finds that a discrete HSMA exists in one or more of the areas described in the Clydeplan. As the reporter in the appeal put it, the matter (and it is one for planning judgement) becomes one of whether it is necessary to disaggregate the defined HSMA. If the reporter considered that it was necessary in a given situation, it becomes equally legitimate, if not imperative, when applying a flexible and practical approach to policy, to look at that disaggregated area as if it were an HSMA defined in the Clydeplan in its own right and to apply Policy 8 accordingly.

That is essentially what the new LDP 2 examination and the appeal reporters did. They did not misread or misapply the policy; it is clear that they knew what the policy said, what a literal interpretation of that policy would mean and what its practical effect would be. Rather they applied the desired flexible (*Tesco Stores Ltd v Dundee City Council* 2012 SC (UKSC) 278, Lord Reed at para [18]) and practical (*Hopkins Homes v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, Lord Carnwath at para [25]) approach in considering that Clydebank was a discrete HSMA, notwithstanding its somewhat random amalgamation in the Clydeplan within the GGNW HSMA and with West Dunbartonshire and Vale of Leven in the single local authority area under the appellants' control. The disaggregation of Clydebank as a distinct HSMA can hardly be regarded as a surprising one to those familiar, as the reporters would be, with the situation on the ground.

[38] In order to succeed in this appeal the appellants would have to demonstrate that the appeal reporter's decision to apply Policy 8 in this way was unreasonable. In order to do that, they would have to persuade the court that a literal or strict approach was necessary when the appeal reporter was deciding whether the proposed development was in accordance with the strategic Clydeplan (and the extant original LDP). They have failed to do this and on that principal basis the appeal must be refused.

[39] In addition, it ought to have been clear to the appellants that, sooner or later, a decision-maker would be required to make a finding on whether the minimum supply subsisted across the whole of the GGNW HSMA and that Policy 8 would be applied accordingly. The appeal reporter ought to have been assisted in this task, but he was provided with limited information on the HLS in the GGNW HSMA beyond the Clydebank area. The appellants object to the reporter recording that they accepted that there had been a failure to meet the required provision in Clydebank. The appellants place undue reliance on

this point. First, the relevant part of the report “(as appear to have the parties involved in the LDP2 examination)” is in parenthesis and is not critical to the reporter’s findings.

Secondly, the reporter, in following the LDP 2 examination reporter, found in fact that there was a shortfall in Clydebank and, realistically, in the absence of adequate information on the rest of the GGNW HSMA, the bigger the shortfall in Clydebank, the greater the *likelihood* of a shortfall in GGNW.

[40] The reporter proceeded on the basis of his finding that the shortfall in Clydebank corresponded to over half of its notional HLR. Land identified as effective for housing in the period 2019 to 2024 amounted to 418 units, whereas the notional HLR was 889. There was no shortfall in West Dunbartonshire as a whole only because in D&VL, which had an HLR of 163, there was a large over-supply of 719. In the original planning application and in the appeal to the reporter, the appellants and the interested parties mirrored the approach of the developers in the Carsemeadow appeal (Quarriers Village (PPA-280-2027-1, 25 May 2021)). Neither set out to address in detail the HLR across the whole of the GGNW HSMA. In the appeal to the reporter, the interested parties introduced a submission that there was a shortfall in the HSMA for Clydebank. The appellants’ response to that only addressed whether there was a shortfall in the notional Clydebank HLS. They did not advance the position adopted in the appeal to the court, that a shortfall in only one part of an HSMA did not trigger the remedial provisions of Policy 8.

[41] The examination report on the new LDP 2 was issued during the appeal process. The parties were invited to make submissions on the conclusions and recommendations of the examination reporter that were relevant to the issues raised in the appeal. One of the conclusions was that there was a substantial shortfall in the Clydebank area. It seems clear that, if the only factors to be balanced were HLS and the green belt, the examination reporter

would have recommended a modification to allocate the site for housing in LDP 2. If part of the appellants' position was that a Clydebank shortfall alone did not trigger Policy 8, they ought to have made a submission to that effect under reference to evidence of the HLS in the rest of the GGNW HSMA. The reporter had in effect been inviting them to do so. The appellants did not attempt to demonstrate that there was an effective HLS in the GGNW HSMA as a whole. The reporter did have some figures for existing land supply in GGNW from Schedule 9 of the Clydeplan, but they related to the position in mid-2017 and included a surplus in Clydebank. This material was out date by the time the reporter was making his decision in the second half of 2020. The reporter's ultimate reasoning, that the shortfall in Clydebank was sufficient to establish, as a matter of probability, a shortfall in the GGNW HSMA as a whole cannot, on this basis, be faulted. The appeal must also fail on this more formal basis.