

A comment on Michael Pacione's 'The power of public participation in local planning in Scotland: the case of conflict over residential development in the metropolitan green belt'

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Introduction

Michael Pacione's article published in this journal in 2014 correctly notes that the *Planning (Scotland) etc. Act 2006* ('the 2006 Act') has, contrary to the Scottish Government's claimed intentions, enormously restricted the opportunities for communities to engage in the planning system, resulting in widespread disillusion and resentment. However, Pacione makes a number of notable factual errors and, to use a good Scots term, seems to get himself into a bit of a 'guddle' (a messy confusion) in failing to identify the fundamental distinction between the statutory procedures governing consultation on, and adoption of, local development plans and those governing the submission and determination of planning applications.

The purpose of this commentary is to identify and correct the errors in the Pacione paper and, in so doing, shed some light on the operation of the Scottish land use planning system pre and post 2006. After that I revisit the examination of the East Dunbartonshire Local Plan 2 ('EDLP2') in 2011 (which provides the material for much of Pacione's case study on the Redmoss Farm site in Milton of Campsie near Glasgow) (East Dunbartonshire Council 2012).

Finally, I bring the position up to date by examining the Reporters' examination into the subsequent 2015 East Dunbartonshire Local Development Plan ('EDLDP') (East Dunbartonshire Council 2015). In passing, I should add that I am not particularly familiar with the East Dunbartonshire area and I have never visited Redmoss Farm. My research into the scrutiny of the two local development plans ('LDPs') is based on published documents available through the internet.

The pre 2006 Scottish planning system

Pacione contends that "...the central aim of the modernisation (of the Scottish planning system in 2006) was to establish a plan-led system in which national, strategic and local plans set out clear priorities and guide individual planning decisions..." (p. 35). In fact, the so-called plan-led system had already been introduced in Scotland in two discrete stages: first through the enactment of the *Planning and Compensation Act 1991* ('the 1991 Act') and then through the *Town and Country Planning (Scotland) Act 1997* ('the 1997 Act'). Of course, the 2006 Act did give statutory status to the National Planning Framework, a national spatial strategy first introduced in 2004 and intended to provide a framework for the development of nationally important infrastructure. However, its role in guiding the determination of the

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vast majority of individual planning applications is little more than marginal.

Prior to the introduction of the 1991 Act and the 1997 Act the system was far more discretionary as regards to whether a council needed to prepare a local plan and to the weight that should be attached to its provisions when determining a planning application. Thus under s.9(1) and s.9(2) of the *Town and Country Planning (Scotland) Act 1972* ('the 1972 Act') a council could prepare a local plan if it thought it necessary having regard to such matters as population changes and the need to accommodate new development pressures.

For readers unfamiliar with UK town planning terminology a local plan is a document containing policies accompanied by a detailed map identifying what sort of land uses should be permitted on which sites. Many of Scotland's then 53 district councils (since 1994 there have been 32 unitary/district councils) prepared local plans for small areas within their jurisdiction rather than 'district-wide' local plans. In determining planning applications brought forward in areas not covered by formal local plans councils would rely upon national planning policy guidance and circulars published by the Scottish Office/Scottish Executive, relevant policies in the top-tier structure (i.e. strategic) plan (one prepared by each of the former 9 regional councils, also disbanded in 1994) and upon informal non-statutory plans.

In determining a planning application s.26(1) of the 1972 Act stipulated that the council merely had to "...have regard to the provisions of the development plan, so far as material to the application, *and* (my emphasis) to any other material considerations...". For the avoidance of doubt, a planning application is a formal request made to a council for permission to undertake building or engineering works in, on, over or under land or institute a material change of use such as changing an office to a shop. As Pacione notes, an unsuccessful applicant can appeal to the Minister against a refusal. Some argued that prior to 1991 council planning decisions were too often overturned by the Minister on appeal on the grounds that the 'other material considerations' forwarded by the developer (such as an inadequate housing land supply) justified setting aside the restrictive local plan policy (MacGregor and Ross 1995).

Following the introduction of the 1991 Act and then the 1997 Act this position changed dramatically.

Under s.18A of the 1972 Act (as amended through s.58 of the 1991 Act) Parliament stipulated that the determination of a planning application "...shall be made in accordance with the plan *unless* (my emphasis) material considerations indicate otherwise". The courts have held s.18A to mean that the 'material considerations' limb is very much secondary in performing the calculus as to whether or not to grant planning permission; the provisions of the council's local plan will be respected in any appeal situation so long as it is up-to-date and relevant. Later, under s.11(1) of the 1997 Act, councils were required to produce a district-wide local plan to replace the near chaotic patchwork quilt of area local plans and informal non-statutory plans that had developed post 1972.

Taken together these two important statutory changes created the plan-led system in Scotland. Expressed in textbook terms, the upper tier regional strategic authority was required to prepare a structure plan, which would set out both the scale and the broad location of new development required over a 10–15 year period (e.g. the Glasgow and Clyde Valley Joint Structure Plan 2006 (GCVJSP 2006) allocating (say) 2000 houses in East Dunbartonshire 2006–2016). Once this was in place the lower-tier district councils—such as East Dunbartonshire—were expected to prepare a local plan that conformed to the parameters established by the structure plan and translated district-wide (or sometimes town specific) development totals into site specific allocations (e.g. 120 houses on field X in the village of Milton of Campsie). Following approval of the LDP owners of the allocated sites and associated developer interests would submit a planning application seeking permission to construct the scheme as proposed in detail in accompanying drawings/elevations and site plans (setting out, *inter alia*, the disposition of the buildings, the means of access, building materials, landscaping arrangements and so on).

The 2006 planning reforms

Following the advent of devolution and the establishment of a Scottish Parliament in Edinburgh the new Labour/Liberal Democrat administration embarked on a process of reforming the planning system. Although the system, as presented above, seems to have a

distinctly logical quality, progressing as it does sequentially from top tier strategy via a local plan to a planning application and final planning permission, it was nevertheless viewed by many, in particular developer and landowner interests, as being unduly cumbersome and slow in its operation, hindering economic growth.

Most of the concern revolved around the time taken to prepare the upper and lower tier development plans, typically three or more years for each. At each stage of preparation—draft version and deposit version—the 1972 Act and then the 1997 Act provided an opportunity for the public (and other interests, including competitor developers) to make objections, and to have those objections ventilated at a quasi judicial public inquiry if they so chose. The alternative format—which was generally regarded as being less effective for objectors—was to have the objections considered through written representations (or ‘on the papers’). The advent of the plan-led system meant that the prospect of obtaining permission for development of a non-allocated site via submission of a ‘speculative’ planning application (i.e. an application for a proposal inconsistent with the development plan) was highly remote. Thus, securing an LDP allocation took on enormous significance for developers requiring a supply of land to build on.

The time taken in hearing objections through a public inquiry was a particular cause of concern for the authors of planning reform (Scottish Executive 2003). At these inquiries, objectors would be able to present their case orally and cross-examine the council’s case. Those with sufficient financial resources—or access to *pro bono* assistance—could enhance their prospects for success through deploying expert witnesses and legal representation. The requirements of natural justice—by which all interested parties have to be accorded a fair hearing—meant that such inquiries frequently lasted in excess of 4–5 months (with further time taken by the Reporters to draft their findings and recommendations).

As Pacione notes (p. 37), the 2006 Act withdrew the automatic rights for objectors (the 2006 Act re-labelled ‘objections’ as ‘representations’ in an effort to encourage interested parties to make positive as well as negative comments to proposed LDPs) to demand that their case be heard through a public inquiry. This fundamental diminution in rights occurred despite the Scottish Executive having given

a categorical assurance during pre-legislative consultation that this would not happen. Instead, the choice as to the form of the examination (the new name for the process of scrutiny) is now at the discretion of the planning Reporter and can take place through an informal public hearing, a (formal) public inquiry or, as is invariably the case, through written representations. However, Pacione is mistakenly referring to the rights of those objecting to planning applications that are appealed following refusal, and not to those making representations to a proposed LDP. As already noted, the LDP allocation is invariably a necessary stage *en route* to securing a planning permission—but it is not synonymous. For completeness and clarification, a third party objector to a planning application has never had the right to insist on any particular format for the determination of a planning appeal. It has always been a decision in the hands of the council and the appellant (see s.48(2) of the 1997 Act¹ and, before that, s.33(4) of the 1972 Act).

Probably unbeknown to him, in his discussion on hearings Pacione inadvertently segues between a discussion about the determination of planning application appeals (which are dealt with under s.47 of the 1997 Act) and one about the consideration of objections into a draft LDP (which are dealt with under s.15 of the 1997 Act). Thus, in discussing the ‘examination’ of a draft LDP he states: “Most *appeals* (my emphasis) are now decided by written representations” (p. 37). But an *examination* of an LDP is not an ‘appeal’ into a planning application refusal; it is instead a consideration of representations made to a council’s proposed LDP.

This confusion over the distinction between an objection/representation to a draft LDP and an objection to a planning application (and between an LDP allocation and a planning permission) is continued further on in the article. At p. 39 Pacione refers to house builders submitting “...further planning *applications* (my emphasis) to develop the Redmoss Farm site in their 2010 *representations* (my emphasis) on the Local Plan 2....”. At p. 40 Pacione confusingly

¹ “Before determining the appeal the Secretary of State shall, if either the appellant or the planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose” (s.48(2) of the 1997 Act).

refers to “...the earlier 2005 Local Plan *application* (my emphasis) to build exclusively ‘executive homes’ on the site...” (a reference to an objection made by a landowner against the 2005 East Dunbartonshire Local Plan for its failure to allocate his site for development). At p. 50 Pacione mistakenly, and again confusingly, talks of “...*appeals* (my emphasis) against the local plan...” whereas he is presumably referring to representations submitted by developer interests to the council’s LDP proposals (one cannot *appeal* against an LDP).

Further on in the article at p. 44, Pacione correctly notes the introduction under s.11 of the 2006 Act of the need for applicants for planning permission for developments over a certain size to engage in ‘pre-application consultation’. This procedure was introduced in order to try and identify potential areas of dispute between the applicant and the community before all of the details of a proposal had been finalised and set out in a planning application (Scottish Executive 2005). However, at p. 45 Pacione states that the process of formulating an LDP commences with ‘pre-application consultation’, which is, of course, wrong since this procedure has nothing to do with that of LDP preparation. Again, Pacione has confused and mistakenly conflated two entirely separate statutory regimes: one governing the formulation of an LDP and the other governing public engagement on a planning application.

These mistakes cannot be dismissed as being merely terminological or cosmetic. They suggest a significant lack of understanding of the workings of the planning system, something which might be expected from a lay person such as respondent R46 (see p. 50) in Pacione’s survey who mistakenly talked about the developer *appealing* (my emphasis) against the local plan. Indeed, these misunderstandings might have impacted upon the validity of Pacione’s survey findings. In discussing the use of pre-application consultations in the Redmoss area of Lennoxton/Milton of Campsie, East Dunbartonshire (p. 44) Pacione quotes a member of the community who stated that: “I’ve never heard of this. No one has told me about this...” (R87). My own investigation via East Dunbartonshire’s web site indicates that there have been no planning applications submitted for any major development at Milton of Campsie post 2006. Depending upon the level of planning activity in the wider area (and the respondents might have been

talking more generally) it is possible that no pre-application consultations have been held—which might explain why some of those interviewed were unaware of them.

Of course, I would accept that within a plan-led system securing an allocation for some form of specified end use—such as housing—within the local development plan is generally a preliminary to securing a consent later on for the same use through a planning application (a point made in the Scottish Executive 2005 White Paper—see above). But there is a separation of plan from permission and this does have strong practical implications. A developer securing an allocation will still have to go through the hoops previously explained to gain a planning permission and might also have to enter into a ‘planning obligation’ (s.75 of the 1997 Act) to fund construction of off-site infrastructure such as highway improvements. In other words, there are further stages beyond securing a development plan allocation that must be completed before any sods of turf can be cut and construction started.

The East Dunbartonshire Local Development Plan 2

As Pacione alludes to in his paper (albeit with less than satisfactory clarity), East Dunbartonshire Council commenced preparation of its new LDP, (EDLP2, to replace the 2005 East Dunbartonshire Local Plan - shortly after the adoption of the GCVJSP 2006 (p. 39). This structure plan set out the development strategy for the eight constituent local authorities within the Glasgow conurbation. In regard to East Dunbartonshire the projected housing requirement was quite modest.

At the initial stage in March 2007 East Dunbartonshire DC produced a Main Issues Report outlining development options for its emerging LDP. Following publication of a draft LDP and receipt of representations an examination was held by four appointed planning Reporters. Their findings and recommendations were published in June 2011, with the plan finally being adopted in October 2011. As Pacione correctly notes, since 2006 the Reporters’ recommendations have been, de facto, binding on the council in virtually all instances.

The four Reporters identified 73 discrete ‘issues’ within the representations to investigate (DPEA 2011). During the parliamentary scrutiny of the *Planning etc. (Scotland) Bill 2005* the Chief Planner (a senior civil servant within the Scottish Executive) told the MSP members of the Communities Committee that controversial or complicated development proposals within draft LDPs would probably be examined through a public inquiry rather than through written representations or an informal public hearing (Mackinnon 2006). This has proved, however, to be very far from the case.

None of the 73 issues into EDLP2 was examined through a public inquiry but, as Pacione correctly notes, a public hearing was held into the issue of housing land supply i.e. the amount of additional development land that was required in the LDP to fulfil the housing provision requirements stipulated in the GCVJSP 2006. Typically representations to an LDP’s development proposals can be said to fall into one of two categories. An interested party (typically a developer/landowner) might object because the council *has not* identified a specific site for development, arguing that it is required to fulfil the plan’s requirements and that the site is suitable. Alternatively, an interested party (typically a local resident or a rival landowner/developer) might object because the council *has* identified a specific site for development, arguing that the development is not required and/or that the site is unsuitable. In either case, only representations which are based upon sound planning reasons grounded in law or policy are likely to have any chance of persuading the Reporters to agree to amend the plan.

Like most large cities in the UK, Glasgow is surrounded by a green belt in which there is a strong policy presumption against virtually all forms of development. Because outer suburban areas, such as in East Dunbartonshire, are often scenically attractive they are coveted by house builders who are keen to see pockets of land released from the inner boundary of the green belt for development. Sagas surrounding repeated attempts by developers to prise a site out of the green belt are common around the edge of cities across the UK. The plan-led system means that once the LDP is adopted there will be virtually no prospect of securing consent for development through the speculative planning application route. For this reason, many of the objections lodged into the EDLP2

were from agents representing landowners and developers frustrated at the council’s failure to release more land for development.

Among the many representations made was that by representatives of Bellway Homes Ltd (‘Bellway’) who contended that the 9 ha site at Redmoss Farm should be allocated in the LDP for the development of 190 affordable housing units [Pacione again refers to these representations erroneously as “...applying for *planning permission*...” (p. 40)]. A landowning developer will obviously seek to secure a development allocation through the LDP review route although, of course, it may also submit a speculative planning application in the hope that (assuming the council issues a refusal) the Minister might find reason to grant permission on appeal. Indeed, as Pacione notes, there had been an unsuccessful speculative application and appeal for housing development at Redmoss 1988–1990.

Bellway’s principal objection to the LDP was that the council had failed to provide sufficient land for affordable housing and that the Redmoss site could be sensitively developed for such purposes (i.e. it was needed and it was suitable). Moreover, the developer was also willing to enter into a planning obligation (s.75 of the 1997 Act) to fund the creation of a nature reserve on part of the site. In its written rebuttal the council contended that the 39 sites identified for affordable housing in its LDP met the quantitative requirement laid down in the GCVJSP 2006 thus obviating any need to alter established green belt boundaries to release more development land at Milton of Campsie. As Pacione notes, in his findings and recommendations regarding the representations made by Bellway against the non-allocation at Redmoss, the Reporter held that: “Overall, I consider the scale and location of the green belt release so significant as to undermine the structure plan metropolitan strategy. These considerations are not outweighed by the need for additional affordable housing sites” (para 39; p. 195).

Redmoss Farm was one of 23 sites where the Reporter upheld the council’s position, rejecting the representations from developers/landowners for more sites to be brought forward. For example, representations for the release of sites for development at Antermony Road, Birdston Road Baldoron House and East Baldoran Farm (all in Milton of Campsie and close to Redmoss Farm) were rejected. However, the

Reporters did agree to modify the LDP by designating sites at Kelvin View (Torrance), West Baldaron Farm (Milton of Campsie), Meadowburn Avenue (Lenzie) and Claddens East (Lenzie) for modest levels of housing (I will develop the issue of development additions in the next section). Like most other LDP examinations conducted in Scotland under the post-2006 system, the report into the EDLDP2 recommended very few changes. This might well be taken as an endorsement of the principle of local democracy since it is the elected district council's plan that has been supported. However, it raises important questions about the appropriate geographical scale for decision making as many of the development proposals within the plan may well have been subject to considerable, but ultimately futile, opposition from local communities (a point recognised by Pacione).

East Dunbartonshire Local Development Plan 2016

Pacione's empirical study concludes with the Reporter's recommendation in May 2011 that the Redmoss Farm site should be excluded for development from the EDLDP2. But as stated earlier, there are many long running sagas surrounding attempts by landowners and developers to secure a favourable allocation through local plan reviews and, clearly, Redmoss falls into this category. With this in mind it is instructive to bring the situation up to date since the most recent chapter also says much about the impacts of planning reform in Scotland.

In May 2012 the Ministers approved the Glasgow and Clyde Valley Strategic Development Plan ('GCVSDP'). Like its predecessor, the GCVJSP 2006, the GCVSDP provides a strategic framework within which the constituent district councils each prepare their own LDP. Preparation of the EDLDP commenced with the release of a Main Issues Questionnaire in 2013. A year later, the Main Issues Report was published with Redmoss Farm identified by the council as a preferred site for development of up to 40 houses (East Dunbartonshire District Council 2014a). Reflecting the site's obvious environmental sensitivity and amenity value considerably more representations were submitted in regard to Redmoss Farm (160) than for any other proposed development site (see table of objection totals at pp. 49–53 of the council's report on consultation findings) (East

Dunbartonshire Council 2014b). Seemingly unperturbed by the adverse public reaction the council increased the proposed level of development to 80 units in the proposed EDLDP published in April 2015.

The examination into representations against the draft EDLDP commenced in 2015, with the findings and recommendations published in September 2016 (DPEA 2016). The Reporters identified 29 issues for investigation. Nine related to housing development strategies in the settlements of Bearsden, Milngavie, Bishopbriggs, Baldernock, Torrance, Kirkintilloch, Twechar, Lennoxton and Milton of Campsie. As with the EDLDP2 the issue of housing land supply, which is invariably the most contentious of issues aired at any LDP examination and is of overarching importance to the subsequent consideration of individual sites, was considered at a public hearing held in June 2016. All of the other issues, however, were considered through written representations.

The examination report underlines the strength of public opinion against the council's inclusion of Redmoss Farm for development. The Reporter acknowledged that a petition containing 333 signatures was submitted objecting to the council's plans. But notwithstanding the council's arguments in favour of the site's development the Reporter once again held that Redmoss Farm was not suitable for development. In his findings, Reporter Richard Hickman concluded: "I find that the allocation of Redmoss for development would be detrimental to locally rare habitat... There would be a loss of green space valued by residents and visitors. Therefore on balance I find that the affordable housing allocation at site 6.51 (i.e. Redmoss Farm) should be deleted from the plan".

One should not overlook the significance of this recommendation. Not only had the Reporter removed a site notated for development by the council (together with two other sites at Waterside Road, Waterside and the former recreation centre at Lennoxton), but he had also done this on the basis of evidence presented in the form of written submissions rather than via the generally more effective adversarial public inquiry mode. To gauge the significance of the recommendation to remove Redmoss Farm from the plan, it is instructive to note that examinations conducted into LDPs in Stirling, West Lothian, Angus, Fife, Midlothian, East Renfrewshire and Aberdeenshire between 2013 and 2017 resulted in no major housing development deletions. Unusually there were 5 sites of 50

houses or more removed from the Perth & Kinross LDP but these were more than offset by recommended development additions elsewhere within the district.

Similarly, there were development additions recommended by the Reporters examining the EDLDP. Representations lodged by developers/landowners into fourteen sites omitted by the council for development (Issue 28—‘Additional site Proposals’, pp. 532–666) were supported with recommendations that they be included in the LDP. Although most of the sites only had a capacity for a handful of houses several were significant in size including those at Bishopbriggs North/Crofthead (33 houses), Chryston Road (35 houses), Lennoxlea (53 houses), Birdston Road (53 houses) and, most strikingly, Braes O’ Yetts (200 houses). The net effect of these changes was to increase the housing land supply by 265 units over the lifespan of the LDP.

The inclusion of these sites following examination does raise important questions over the integrity of the process. Unlike Redmoss Farm, which the original plan sought to allocate for development (thus attracting large numbers of representations from concerned members of the community seeking to persuade the Reporters to recommend against the council’s proposal), these sites had not been identified in the plan for development. Consequently, the local residents—whom no doubt mostly wanted to see them protected—felt little need to make representations to the council to support the *status quo*. There was perhaps an implicit (but mistaken) belief amongst those residents that whilst the examination process might result in the plan being amended to *remove* a site earmarked for development it could not result in a site being *added* to the development list. Naturally, the council, seeking to defend its own plan, would rebut the arguments put forward by the developer/landowner objectors. However, whether it would have the same level of knowledge as held by local residents on such matters as local traffic conditions, the flora and fauna on the site and so on, as well as the sheer determination to ensure that all relevant matters were ventilated properly, is very much open to question.

Pacione contends that a deficiency of the Scottish planning system is that it allows landowners a “...right to submit planning applications for development that contravene the local development plan and can do so in perpetuity to the discomfort of the local community...” (p. 53). Keen to prevent this state of

affairs he correctly recognises that the community-right-to-buy powers under the *Land Reform Act 2003* provide no benefit where the landowner has no interest in selling and will want to hold the land in the hope of being able to secure eventual development value. But once again, his confusion over the distinction between a planning application and an LDP representation has led him astray in his argument. If he does recognise that Bellway is not submitting repeat planning applications but is instead engaging in the LDP preparation process is he really suggesting that developers, land owners and possibly even the local community should not be allowed to do this (presumably preferring instead that the content of the LDP be left at the entire discretion of the council)?

If that is the case then Pacione needs to be very careful over what he wishes for. Second time around it was the council, not the landowner or the house builder, that proposed Redmoss Farm for development within the EDLDP. Of course, the developer’s/landowner’s agents would no doubt have quietly lobbied the council over several years for the site’s inclusion within the emerging LDP but that is part and parcel of the process of plan generation. Notwithstanding his apparent support for council-led LDPs one must also assume that Pacione thinks that it is nevertheless legitimate for members of the public to object to a council’s proposals. Labelled as representor number 37 in the Reporters’ lengthy examination report, Professor Pacione submitted representations in regard to the council’s development proposals for Redmoss Farm on the grounds of: sustainable development (p. 494); placemaking (p. 496); green belt protection (p. 498); green infrastructure/open space (p. 501); land supply (p. 504); site assessment (p. 505); tenure mix (p. 506); landscape character (p. 507); nature conservation (p. 509); flood risk (p. 512); and planning process (p. 515). Had it not been for the persuasive powers of Professor Pacione and the 270 or so other listed representors then it is reasonable to assume that the Redmoss Farm site would have remained as a housing site within the EDLDP and might by now be fully developed.

Conclusions

What this commentary on Pacione’s paper has hopefully demonstrated is that all of the planning decisions

taken during the relevant period with regard to Redmoss Farm (and no doubt to most of the other sites mentioned in East Dunbartonshire) were made within the context of LDP reviews and not through the planning application or appeal process. This reflects the central importance of the LDP within the plan-led system which the Scottish Government has sought to promote since the introduction of the 1991 Act and the 1997 Act.

Because the LDP performs such a fundamental role in shaping the changes of Scotland's towns and cities it is imperative that there are genuine opportunities for all interested and willing parties to make a meaningful contribution to the formulation of its contents and to challenge the strategy put forward by the council. The changes brought about by the 2006 Act have resulted in the de facto removal of the local inquiry from the development plan scrutiny process. Now virtually all representations to LDPs are considered on the papers by planning Reporters sitting behind closed doors - with interested parties given no opportunity to orally state their case or put the council's case to proper test.

Demonstrating a causal link between the absence of an LDP public inquiry and the outcome of an examination into a particular issue raises the obvious counterfactual problem. To make a meaningful evaluation of the effectiveness of the written representation process one would have to go through the enormous volume of evidence tendered, identify what was relevant and then assess the extent to which the Reporter in his recommendation had correctly considered it. It is far beyond the scope of this commentary to undertake such an evaluation as regards the examination into EDLP2 (where the Reporters' summary alone extends to 357 pages) or EDLDP (where it extends to 669 pages). I have to acknowledge that the Reporter did not need a hearing or a public inquiry to help him identify the deficiencies of the council's proposals for development at Redmoss in EDLDP but, regardless, the removal of sites following representations from the local community is now virtually unheard of in Scottish planning.

What we can say is that four sites were *added* to the development land portfolio in EDLP2 on the basis of developer/landowner representations and a further 14 in EDLDP (Issue 28) where there was virtually no evidential input from the relevant local communities or residents. Although the council was on hand to fight the case against development on behalf of the

community, many will be immensely frustrated that they did not have their 'day in court' to cover any points missed by the council, and also to express the simple emotions associated with the protection of much cherished open spaces (Kirkintilloch Herald 2016).

In circumstances where the Reporter is minded to recommend that a site safeguarded from development in the draft LDP be re-allocated for development then there are very strong due process reasons to require that he hold a hearing or a public inquiry. Whilst the rules governing LDPs do allow interested parties to make *representations* to the council on any policies and proposals rather than simply *objections* against those policies which they do not like, the reality seems to be that communities will only become engaged in the process when they take umbrage to a proposal. In the absence of any significant volume of representations from the community the Reporters might conclude that no one is concerned, thus inevitably weakening the case for continued protection. It would be difficult to deny that the sheer weight of opinion—as well no doubt as good argument—was a material factor in the decision of the Reporter to recommend against the allocation of Redmoss Farm for development in September 2016. Indeed, the Reporter's recommendation to delete the Redmoss Farm allocation is a sign that there is still an element of responsiveness to community feelings within the system.

Pacione argues that planning reform has led to the centralisation of decision making in Scotland at the expense of its 32 elected district councils. To a large extent I disagree. Instead I would argue that planning reform has allowed councils to pursue frequently utterly unrealistic expansionist development strategies in the near certainty that the new light touch examination procedures will allow their LDPs to be approved without any significant amendments. Of course, there is an element of circularity in this argument since those LDPs are required to conform to central government planning guidance, such as the need for councils to provide a generous level of land for house building. But notwithstanding any disagreement over the identity of the beneficiaries of planning reform there can be little doubt, as Pacione recognises, that the victims are local communities. There is now a fundamental democratic deficit at the community level due to an undue emphasis on procedural

efficiency that needs to be corrected through the introduction of ‘...more meaningful local engagement...’ (p.55). Indeed, this view is echoed by an independent panel convened by the Scottish Government which found that the 2006 reforms have resulted in a fundamental loss of trust by many community councils in the planning system (Beveridge et al., 2016). Prior to the 2006 reforms the scrutiny of local plans was carried out largely in public whereas post reform it taken place almost entirely in private. That should make those engaged with Scottish planning extremely uncomfortable. Pacione’s article correctly identifies the fundamental shift in power away from communities brought about by the 2006 Act but, as I have shown, he makes many important factual errors along the way which I hope this commentary has helped clear up.

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References

- Beveridge, C., Biberbach, P., & Hamilton, J. (2016). *Empowering planning to deliver great places: An independent review of the Scottish planning system*. Edinburgh.
- Directorate of Planning and Environmental Appeals. (2011). *Report to East Dunbartonshire Council: Local plan examination—East Dunbartonshire Local Plan 2*. Falkirk: DPEA.
- Directorate of Planning and Environmental Appeals. (2016). *Report to East Dunbartonshire Council: Proposed East Dunbartonshire Local Development Plan Examination*. Falkirk: DPEA.
- East Dunbartonshire Council. (2012). *East Dunbartonshire Local Plan 2*. Kirkintilloch.
- East Dunbartonshire Council. (2014a). *East Dunbartonshire Local Development Plan*. Main issues report. Kirkintilloch.
- East Dunbartonshire Council. (2014b). *Local development plan main issues report: Report of consultation findings*. Kirkintilloch.
- East Dunbartonshire Council. (2015). *East Dunbartonshire Local Development Plan*. Kirkintilloch.
- Kirkintilloch Herald. (2016). *Plan to open up 14 green belt sites in East Dunbartonshire for housing*, p. 1. 22nd September. Kirkintilloch.
- MacGregor, B., & Ross, A. (1995). Master or servant? The changing role of the development plan in the British planning system. *Town Planning Review*, 66(1), 41–59.
- Mackinnon, J. (2006). *Oral evidence to the Scottish Parliament Communities Committee, Planning etc (Scotland) Bill: Stage 1*. Column 3359. 28th March. Scottish Parliament, Edinburgh.
- Scottish Executive. (2003). *Modernising public local inquiries: A consultation paper*. Edinburgh.
- Scottish Executive. (2005). *Modernising the planning system*. Edinburgh.