



FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2025] CSIH 17
XA49/24

Lord President
Lord Doherty
Lord Clark

OPINION OF THE COURT

delivered by LORD PENTLAND, the LORD PRESIDENT

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

by

J29 (SCOTLAND) LIMITED

Appellant

against

THE SCOTTISH MINISTERS

Respondents

Appellant: N McLean (sol adv); Brodies LLP
Respondents: A Sutherland; Scottish Government Legal Directorate

3 June 2025

Introduction

[1] On 19 March 2019 Renfrewshire Council granted the appellant's application for planning permission in principle (PPiP) for a multi-use development near Junction 29 of the M8 motorway. The site lies to the south of the St James Interchange near Burnside Place in Paisley. The site was overgrown vacant land, which was formerly part of a wider masterplan for development of the area. It had, however, remained undeveloped for many years due to economic constraints. The proposed multi-use development comprised a range

of various land uses including housing, a hotel, public houses and restaurants, business facilities, general industrial facilities, storage and distribution facilities and a long stay car park. As is usual, the PPiP was made subject to a number of detailed suspensive conditions. These required to be complied with before any development could begin. On 10 August 2022 the appellant applied to the Council for approval of matters specified in certain of the conditions, essentially to construct housing and an access road on part of the site. We shall refer to this application as the AMSC. The Council refused the AMSC on 21 March 2024. The appellant appealed against the refusal to the Scottish Ministers. They appointed a reporter. By a decision dated 14 August 2024 the reporter dismissed the appeal. The appellant now invites this court to quash the reporter's decision on the ground that it is not within the powers of the Town and Country Planning (Scotland) Act 1997 (see section 239(1)(b)(i)); in particular, that he erred in law by concluding that the AMSC fell outside the scope of the PPiP, that he failed properly to interpret the conditions of the PPiP, and that his reasoning and conclusions were inadequate.

Planning permission in principle

[2] Under section 59 of the 1997 Act (as substituted by section 21 of the Planning etc. (Scotland) Act 2006) planning permission in principle is defined as:

“...planning permission (granted in accordance with the provisions of regulations or a development order)—

(a) in respect of the carrying out of building, engineering, mining or other operations in, on, over or under land, and

(b) subject to a condition, imposed under section 37(1)(a), that the development in question will not be begun until certain matters (which may, but need not be, particularised in the application) have been approved by the planning authority or as the case may be the Scottish Ministers.”

[3] The concept of planning permission in principle replaced the earlier system of outline planning permission and approval of reserved matters. An application for PPiP necessarily contains less detail than an application for detailed planning permission. In particular, it does not require plans and drawings, other than a location plan; does not require a design or design and access statement; but requires to describe the location of the access points to the development from a road (Collar, *Planning*, 5th ed (2023) paragraph 5.05; Planning Circular 3/2022, *Development Management Procedures* (Scottish Government, 2022) paragraphs 3.7–3.9).

[4] Regulation 12 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 governs the procedure for seeking approval, consent or agreement required by a condition imposed on a grant of PPiP. An AMSC is not an application for planning permission. The aim of the provisions in the 2013 Regulations is to ensure that an opportunity is provided for consultation to take place at the stage when the key details of a development which has previously been approved in principle are submitted (Planning Circular 3 of 2022, paragraph 3.15).

The PPiP and the AMSC

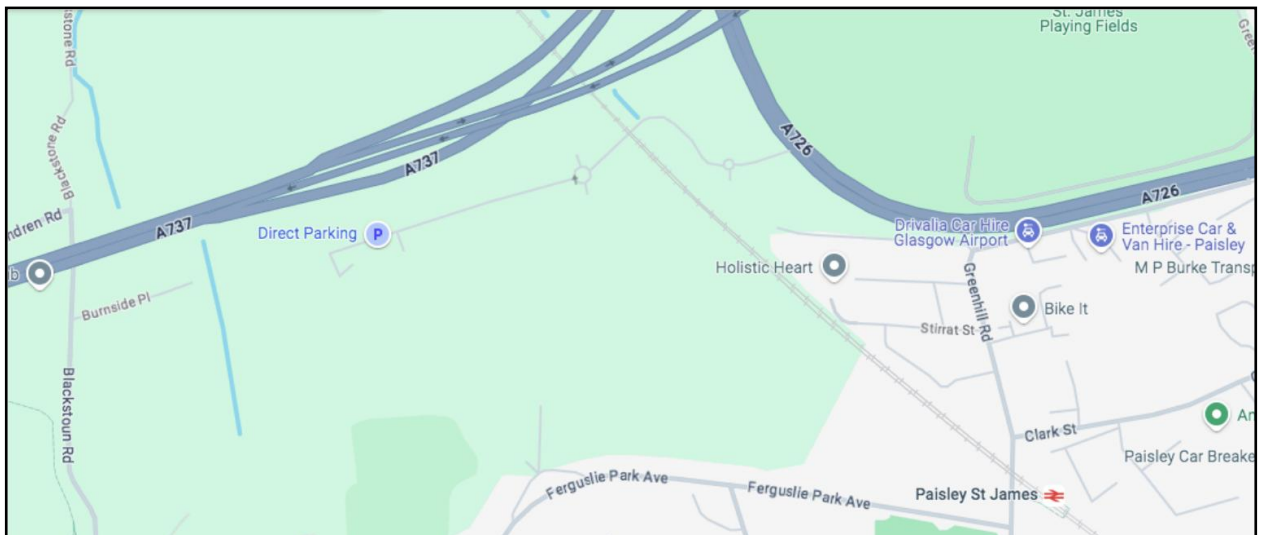
[5] Condition 2 of the PPiP required that before development commenced in any development area or phase, a written application and plans for the development within that area or phase, in respect of a series of specified matters, was to be submitted to, and be approved by, the planning authority. The matters specified included: (g) access and parking arrangements, including the provision of any new roads and junctions; and (h) the layout of the site.

[6] Condition 3 provided that, in accordance with the approved Indicative Masterplan drawing, the consent comprised certain specified maximum development areas for the various use classes approved for development. The reason given for this condition was stated to be in order to define the permission and to allow the planning authority to retain effective control, to ensure that the scale of the development did not exceed that assessed by the supporting transport assessment and to ensure that the scale and operation of the proposed development did not adversely affect the safe and efficient operation of the trunk road network.

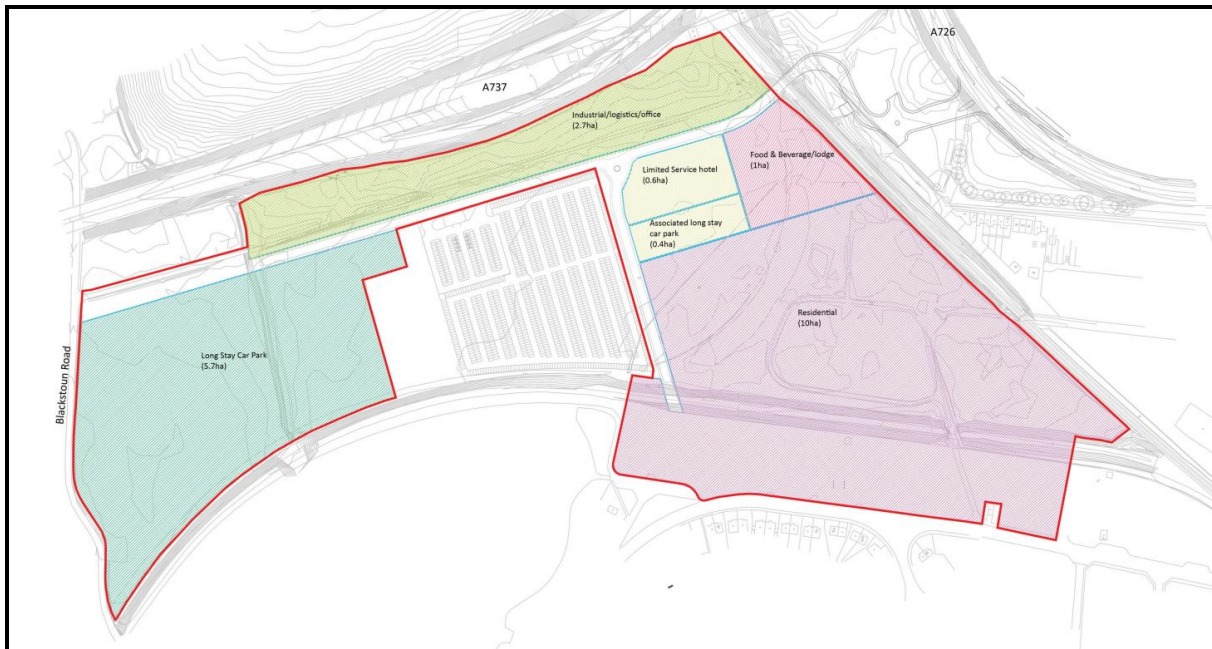
[7] Condition 4 required that the detailed submissions required by condition 2 should include full drainage impact assessments. Condition 6 provided that the development of any area or phase was not to be brought into use until a noise assessment had been submitted and approved by the planning authority.

[8] The plans and drawings relevant to the PPiP approval were listed in a paper apart and were stated to form part of the decision notice. The approved plans comprised (a) a “Masterplan Site Area”, which showed the overall site boundaries and (b) an “Indicative Masterplan”, which served to break down the overall site into areas for specific uses and to specify maximum development areas for each of the uses approved in principle.

[9] The general location of the area is shown in the following plan:



[10] The Indicative Masterplan is shown here:



[11] The AMSC related to a proposed residential development, including its access, which would occupy an area of approximately 6.7 hectares towards the east of the wider development site area. The residential development would be accessed from Ferguslie Park Avenue via the road which previously provided access to a now demolished housing scheme situated to the north of the former railway line. The access road would lead to a T-junction within the proposed residential development, which itself would be formed around a series of new interconnecting roads. This phase of the overall masterplan development would include a mixture of two to five bedroom properties consisting of 25 three-storey townhouses and 155 two-storey houses contained within a variety of detached, semi-detached and terraced house types.

[12] The detailed layout submitted in support of the AMSC is shown here:



The Council's reasons for refusal of the AMSC

[13] By decision notice dated 21 March 2024 the Council refused the application for two reasons. The first related to impact on educational infrastructure due to the capacities of local schools. This reason is no longer relevant as the reporter did not support the Council's reasoning on the point. The second reason for refusal was that the proposed development did not provide suitable integration and connectivity with the surrounding area given its reliance on a single access point from Ferguslie Park Avenue to the south. It was therefore contrary to national and local planning policies.

The reporter's decision

[14] The reporter noted (paragraph 11) that the Council's Roads Department objected to the proposal primarily because the residential scheme would differ from the approved

Indicative Masterplan and would prevent a linkage from West March Road in the north.

Without this strategic link the department contended that the development would prohibit the future adoption of West March Road and the development of the land to the north end of the wider masterplan area. In not providing the strategic vehicular link, the opportunity would be lost to remove a series of identified traffic constraints within the area which would also support the investments taking place in Paisley Town Centre and reduce trips on the town centre circulatory traffic system, thereby reducing congestion while improving place and journey times. Without the link to the north the residential development would be a satellite or cul-de-sac, which failed to comply with national policy.

[15] There were accordingly two relevant matters relevant to assessment of the appeal: the single point of vehicular access to the residential development; and the appellant's failure to deliver or safeguard the route of the strategic road link as depicted within the Indicative Masterplan.

[16] The Masterplan identified specific areas for each of the uses approved in principle. It was directly referred to in condition 3 of the PPiP wherein the maximum development area for each of the approved uses was defined. The Masterplan also depicted a reconfigured primary road network with West March Road extending westwards to connect with Burnside Place and beyond to Blackstoun Road. The reconfiguration of West March Road was also shown to include a realignment, which would result in the removal of the existing roundabout and the formation of a new roundabout junction at the northeast corner of the existing long stay parking area where it met the development site. A connecting road was shown on the Masterplan to extend southwards from the new roundabout between the existing parking area and the areas within the development site marked for hotel and

residential uses. The areas identified for the roads infrastructure on the Masterplan were discrete from the areas identified for the approved uses.

[17] The reconfigured road network was a key feature; it had been intentionally included in the Masterplan. It served to provide a framework for the development of the overall area covered by the PPiP. While the appellant contended that the proposed layout did not preclude future pedestrian and road connectivity to the north, both of the routes identified by the appellant in that connection would involve the passage of traffic through the residential development area with its associated traffic calming measures. Conversely, the road depicted on the Masterplan would not have those disadvantages as it would be to the west of the housing development.

[18] The reconfigured road layout was critical to the strategic objective of developing the site as a whole. While the appellant argued that there was no condition specifically requiring facilitation of the through route, it was relevant that the maximum size for each of the approved uses aligned directly with the layout in the Masterplan. This showed that consideration had clearly been given to ensuring that incompatible uses were not positioned in close proximity to one another. It was reasonable to conclude that there was a general expectation for future applications to honour the boundaries and locations of each of the approved uses and thus the areas of infrastructure around which the approved areas were arranged. The Council had anticipated that the ultimate site arrangement would reflect that set out within the Masterplan; this was clear from the report of handling in relation to the grant of the PPiP. The proposal would result in the development of land which was earmarked for infrastructure within the Masterplan, specifically the connecting route which would serve to link the Council land positioned to the south of the development area beside Ferguslie Park Avenue to West March Road in the north. The route of the road had been

intentionally excluded from the residential housing allocation to ensure that the strategic link could be realised.

[19] Regardless of the status of the Masterplan, any proposal to develop an area of land awarded planning permission in principle had to demonstrate effectively that it would not compromise the future delivery of the wider development area. It would not be appropriate for the strategic route identified within the Masterplan to pass through the residential development along roads which had been designed with local traffic in mind.

[20] In paragraph 21 of his decision the reporter drew together the determining issues as he saw them:

“Ultimately, I do not accept that the proposal accords with the wider planning permission in principle and I consider that the development as submitted would compromise the overall vision of the Indicative Masterplan approved by 18/638/PP (*sic*). I consider that the requirement in Condition 2 of 18/0638/PP to agree access and layout was intended to ensure that a suitable solution could be identified that would ensure the deliverability of all areas / uses approved. Having viewed the site and the wider masterplan area, I consider the fact that the appeal site encroaches on the defined route of the road to be a material consideration that weighs heavily against the proposal as I have been presented with no evidence that there are suitable alternative routes.”

[21] In paragraph 22 the reporter said this:

“Because this appeal relates to an application for the approval of matters specified by condition, the development plan does not have primacy. It is, however, material to my consideration of this case. Whilst development plan policies and related guidance may technically support single points of access to residential developments of fewer than 300 units as highlighted by the appellant, the suitability of such an access cannot be taken in isolation without having regard to the future viability of the wider area covered by the planning permission in principle approval. On balance, I do not find compliance with a policy regarding a single point of access to a residential development to outweigh the negative impacts identified.”

[22] In paragraph 23 the reporter set out his conclusion:

“In conclusion, I consider that the proposal as submitted does not properly consider the development of the wider area granted planning permission in principle, instead focusing upon only one discrete area. The Indicative Masterplan approved as part of 18/0638/PP presents one option through which the overall site could be developed.

The proposal would prevent the strategic approach set out within the approved Indicative Masterplan from being realised and no alternative scheme has been submitted to convince me that in granting approval for the proposal the development of the wider area would not be compromised as contended by the Roads Authority. I consequently agree with the council that the proposed development does not provide suitable integration and connectivity with the surrounding area.”

Appellant’s submissions

[23] The reporter erred in concluding that the PPiP required there to be a through road.

His reasoning and conclusion were ambiguous in the sense that they fell between two different categories of refusal: (a) a decision that the AMSC fell outside the boundaries of the PPiP and (b) a decision that the proposal was not supported by the development plan. He had not come down clearly in favour of either.

[24] The reporter refused the appeal because he did not accept that the proposal accorded with the wider PPiP and because the development as submitted would have compromised the overall vision of the Indicative Masterplan approved in the PPiP (paragraph 21). The determination of whether the AMSC fell within the boundaries of the PPiP involved interpreting the PPiP and applying the facts contained within the AMSC to the PPiP. It was a matter of legal interpretation and not an exercise of planning judgement. The reporter’s legal interpretation was flawed.

[25] The PPiP did not require the delivery of a through road/linkage to West March Road, described by the reporter as “the strategic road link”. What he meant by “strategic” in this context was unclear. The Masterplan was “indicative” only. The residential phase was merely the first phase of a wider development and did not preclude future proposals for pedestrian and road connectivity. The requirement for a strategic link was not a condition of the PPiP nor was it delineated in the Masterplan. If it was a matter of determinative

importance to the development, it ought to have been made the subject of a condition (*Countesswells Development Limited v Scottish Hydro Electric Transmission plc* [2022] 4 WLUK 487). As there was no such condition the appellant was entitled to omit the strategic road link from the AMSC (*R v Hammersmith and Fulham London Borough Council Ex p. Greater London Council* (1986) 51 P&CR 120).

[26] The Council's decision to refuse the AMSC focused on the single access point to the proposed development, not a failure to deliver a strategic road link. An email dated 7 June 2023 from the Council to the appellant's agents stated that while there was a preference for a through road, the Council accepted that this was not a condition of the PPiP and that the omission of the through road in the AMSC was not a determining issue. The appellant was entitled to rely on this assurance. The reporter ought to have taken it into consideration. The appellant was entitled to certainty as to what was required when bringing forward the details of the development. There was no obligation imposed on the appellant to guarantee a strategic road link, nor its method of delivery.

[27] The respondents contended that the reporter had not concluded that the PPiP required a through road/linkage to West March Road. This was not a reasonable interpretation of his decision when read as a whole. If (contrary to the appellant's submission) he did not reach such a conclusion, his reasons were not adequately expressed. He failed to explain the factors he relied on in identifying the aspects of the AMSC (other than the requirement for a strategic link road) which fell outwith the boundaries of the PPiP. He did not explain why he considered that conditions 2 and 3 of the PPiP supported the conclusion that a through road/linkage was a requirement of the PPiP or otherwise prohibited the layout in the AMSC. Further, he did not provide an explanation of the extent

to which (if at all) the AMSC failed to comply with key policies under NPF4 and the Council's local development plan.

[28] The Masterplan could not at the same time require a through road/linkage to West March Road and be "one option" through which the overall site could be developed (paragraph 23). The reporter's reasoning was contradictory and irrational or, in the alternative, he failed to give proper adequate or intelligible reasons for the decision.

Respondents' submissions

[29] The reporter did not conclude that the AMSC fell outwith the boundaries of the PPiP, nor did he conclude that the PPiP required a through road/linkage to West March Road.

[30] The decision represented the considered exercise of planning judgement by the reporter. The appellant mischaracterised the reporter's lawful exercise of planning judgement as an error of law. The reporter's planning judgement was not contradictory or irrational. He provided adequate reasoning for his decision.

[31] The Council refused the AMSC because it did not provide "suitable integration and connectivity with the surrounding area given its reliance on a single access point" (*Report of Handling Application 22/0569/PP*, p 16). The application was not refused because it required to conform with (part of) the Masterplan. The reporter did not treat strict compliance with the Masterplan as necessary. Had he done so, the AMSC might have failed solely on the basis that part of the residential development fell outwith the area marked for such development on the Masterplan. Strict compliance was not part of the PPiP and the reporter did not treat it as such. The Masterplan was not a meaningless document in the context of the AMSC. It represented the wider vision for the development; it anticipated development

for a multitude of land uses. The reporter required to have regard to its objective in considering the cohesion of the entire development.

[32] The reporter was satisfied that there were two discrete roads infrastructure and connectivity issues raised by the Roads Department. The first was the single point of vehicular access to the residential development. The second was the appellant's failure to deliver or safeguard the route of the strategic road link as depicted in the Masterplan (paragraph 12). He considered that the areas identified for the roads infrastructure on the Masterplan were discrete from the areas identified for approved use. He concluded that this was a key feature of the Masterplan and was intentionally included so as to comply with local development policy. Consequently, the reporter considered that the reconfigured road layout was critical to the strategic objective of developing the site as a whole (paragraph 15).

[33] The reporter did not elevate the status of the Masterplan, nor did he interpret the PPiP in such a way as to require roads as depicted on the Masterplan. The reporter correctly treated the Masterplan as a significant document, but recognised that it remained indicative only and that strict compliance with it was not necessary. This was clear given that the reporter considered that the Masterplan presented just one option through which the overall site could be developed. He considered that the proposed residential development did not provide suitable integration and connectivity with the surrounding area (paragraph 23). This was the reason for the failure of the AMSC. His decision was a matter of planning judgement. The reporter was within his rights to treat the Masterplan as a significant document and to consider the likely effect of granting the AMSC on the site as a whole. The reporter made it clear that he was concerned about compromising the future of the development (paragraph 19). He was entitled to conclude, by exercising his planning judgement, that the layout of the proposed residential development was not acceptable.

[34] The reporter did not conclude that the PPiP required a through road/linkage to West March Road. His approach did not contradict the terms of the email dated 7 June 2023. He considered alternative methods of achieving connectivity as proposed by the appellant (paragraph 16). He did not consider them to be suitable due to the fact that they would pass through the residential area, which would incorporate traffic calming measures. The appellant and the Council had been in discussion about suitable access roads. The Council had considered that the matter could have been addressed relatively easily, but the Report of Handling for the AMSC indicated that proposals for access to the north of the development had not been taken forward by the appellant.

[35] The development in its entirety required a strategic approach. Part of that strategy was to ensure that there was the ability to deliver the development as a whole project (albeit in stages) and that the connectivity of the development was not compromised by any of the AMSC applications.

[36] The decision was not irrational, but the result of a legitimate exercise of planning judgement. The AMSC ran contrary to the totality of the vision contained within the Masterplan. Considered in its full terms the reader of the decision would not be left in any doubt about what material considerations were taken into account and why the appeal was refused.

Decision

[37] The legal principles governing determination of the appeal are clear and well-established. Section 239 of the Town and Country Planning (Scotland) Act 1997 empowers the court to quash a reporter's decision in certain prescribed and limited circumstances. To do so the court must be satisfied that the decision is outwith the

reporter's powers or that he has failed to comply with any of the Act's requirements. A reporter's decision will be outside his powers if he has improperly exercised the discretion entrusted to him or made a material error of law going to the root of the question for his determination. It will also be beyond his powers if he has taken account of an irrelevant consideration, failed to take account of relevant and material considerations, proceeded on a fact for which there was no evidential basis, or reached a decision which no reasonable person could have reached (*Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345, Lord President (Emslie) at 347-348).

[38] The court is thus concerned only with the legality of decisions made by a reporter and not with their merits or, in particular, with a planning judgement exercised by him. Such an exercise of judgement falls wholly within the reporter's sphere of discretionary decision-making and can only be challenged on the ground that it is irrational or perverse (*Tesco Stores v Environment Secretary* [1995] 1 WLR 759, Lord Keith of Kinkel at 764H and Lord Hoffmann at 780H).

[39] Issues of interpretation of planning policy, which are appropriate for judicial analysis, and issues of judgement in the application of that policy, which are within the province of the planning decision-maker, are fundamentally distinct. The two issues should not be elided (*Hopkins Homes Ltd v Communities Secretary* [2017] 1 WLR 1865 at paragraphs 26 and 73).

[40] An AMSC must fall within the boundaries of the relative PPiP and cannot be used to bring in matters outside the scope of the PPiP (*Inverclyde District Council v Secretary of State for Scotland* 1982 SC (HL) 64).

[41] Applying these principles to the circumstances of the present case, the reporter's decision is not vitiated by any material error in law. While it is possible to read some of the

earlier references in the decision as perhaps suggesting that the Masterplan was incorporated in the PPiP to a greater extent than specified in condition 3, the reporter did not in his final analysis determine the appeal on the basis of any such misunderstanding. Instead he reached his conclusion on the basis of an exercise of planning judgement, in which he took account of all the relevant considerations. The court has no power to interfere with such a judgement; it is a matter falling exclusively within the realm of the reporter's discretion. There was no argument advanced to the court that the reporter's decision was an irrational one or that he had erred in the exercise of his discretionary powers.

[42] The reporter did not interpret the PPiP as requiring a road or roads in the position depicted on the Masterplan. In paragraph 15 he correctly noted that the areas shown for roads infrastructure on the Masterplan were discrete from the areas identified for the approved uses. He considered that the reconfigured road network was a "key feature", which had been intentionally included in order to provide a "framework" for the development of the overall area. The reconfigured road layout was critical to the "strategic objective" of developing the site as a whole. It is clear from these parts of his decision that the reporter proceeded on the basis that the PPiP was intended to set the broad contours for orderly development of the whole site in a manner which would ensure *inter alia* the provision of suitable infrastructure, particularly an appropriate road network. He correctly treated the Masterplan as a significant document, but he did not elevate it to a status any higher than that.

[43] The fact that the reporter ultimately determined the appeal in the exercise of his planning judgement is clear from paragraph 19 of his decision where he stated that "regardless of the status" of the Masterplan he considered that any proposal to develop an element of land which had been awarded planning permission in principle must not

compromise the future delivery of the wider development area. The reporter then went on to consider the effect of the nearby St Mirren football stadium and the levels of traffic likely to be generated on match days. He addressed the issues of locally-based commercial vehicles passing through the residential development and of other types of traffic accessing the approved commercial and recreational areas, as well as airport parking (both existing and proposed). He considered the impact of traffic seeking an efficient route leading to the surrounding trunk road network. These were all matters of planning judgement.

[44] In paragraph 21 the reporter addressed his mind to the question of whether the AMSC was in accordance with the “overall vision” of the Masterplan. The reference to the overall vision is important. It demonstrates that the reporter was concerned to understand the fundamental aims and purpose of the PPiP. Having done so, he considered whether the AMSC would faithfully implement the aims and purpose of the PPiP. In his view it would not. He concluded that it would compromise delivery of the strategy for development reflected in the PPiP. In following through this approach, the reporter was clearly engaging in an exercise of planning judgement. This was quintessentially a matter for him. He made clear in the same paragraph that the purpose of condition 2, which concerned matters of access and layout, was to ensure that all the approved areas and uses were delivered. Having visited the AMSC site and the wider area, he formed the view that the encroachment of the road on the route shown in the Masterplan was a material consideration, which weighed heavily against approval of the AMSC. The reporter was entitled to regard the fact that there would be such encroachment as a material consideration and to give it such weight as he considered appropriate. The court cannot interfere with his decisions on these issues.

[45] In his conclusion in paragraph 23 the reporter considered the question of whether the AMSC properly took into account the need identified in the PPiP for development of the wider area. He correctly recognised that the Masterplan identified “one option” through which the overall site could be developed. The reference to the Masterplan identifying one option puts it beyond doubt that the reporter did not ultimately misdirect himself by treating the Masterplan as in some sense a mandatory document, with which strict compliance was essential when it came to subsequent consideration of detailed proposals for development.

[46] The reporter also took into account, as he was entitled to do, the fact that the appellant had not presented any alternative scheme such as to convince him that if he were to grant approval the development of the wider area would not be compromised. In reaching this conclusion, he was again making a judgement on the planning merits of the AMSC. In paragraph 16 of his decision the reporter evaluated and rejected certain potential future vehicular points of access to the north of the site; the appellant had made reference to these as possibilities in their appeal statement. The reporter held that both of these routes would involve the passage of vehicular traffic through the proposed residential development and its associated traffic calming measures. The road depicted on the Masterplan, in contrast, would not entail such disadvantages. This aspect of the reporter’s reasoning shows that he had regard to the overall objective of the PPiP to secure development of the whole site so as to provide appropriate integration and connectivity with the surrounding area.

[47] The final sentence in paragraph 23 succinctly sums up the reporter’s reasoning. He concluded that the AMSC did not provide “suitable integration and connectivity” with the surrounding area. In reaching this view, the reporter can again be seen to be engaging in an

exercise of planning judgement. It is not open to the court to review or interfere with such a judgement.

[48] At the end of the day, the court considers that the reporter was entitled to come to the conclusion, in the exercise of his planning judgement, that the layout of the proposed residential development was unacceptable, having regard to the vision for the development and the overall strategy extending to the wider area, all as reflected in the PPIp. He correctly identified the determining issues and adequately explained his reasons for reaching his conclusion. His reasons were intelligible and such as to enable the reader to understand why matters were determined as they were. His conclusions on the determining issues were clearly explained (*South Bucks DC v Porter (No 2)* [2004] 1 WLR 1953, paragraph 36).

[49] In the result the appeal must be refused.