



FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2025] CSIH 29
XA75/24

Lord President
Lord Doherty
Lord Ericht

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

PAUL DIXON

Appellant

against

ANGUS COUNCIL

Respondents

Appellant: Burnet KC, K Young; Drummond Miller LLP

Respondents: J d C Findlay KC, Innes; Angus Council's Law & Administration Division

25 November 2025

Introduction

[1] This appeal challenges a decision made on 25 October 2024 by the respondents' Development Management Review Committee ("DMRC") to grant planning permission for the development of a crematorium on land to the north east of Duntrune House, Duntrune, Angus. The land is agricultural. A planning officer, acting under delegated authority, refused the application on 24 January 2022. The challenged decision was the second occasion on which the DMRC had been asked to review the refusal. In a previous appeal

this court reduced (set aside) the committee's decision made on 29 June 2023 to grant the application following agreement between the same parties that the decision was unlawful. The court, of consent, remitted the application to a differently constituted DMRC to review it of new.

[2] The appellant is a close neighbour of the development site. He made representations against the grant of planning permission.

The planning application

[3] Duntrune Ltd submitted the application on 14 December 2020. They are not parties to this appeal. The proposed site is a 1.98-hectare area of agricultural land located north of the C4 public road around 300 metres east of Duntrune House. On the west the site is bounded by a wooded area, on the east by a woodland strip and two houses, on the south by the public road and on the north by agricultural land with woodland beyond. The site is around 1km northeast of the Dundee City Council boundary.

[4] The proposed crematorium building would be built on the west of the site with car parking to the east. The site would incorporate an internal one-way road. There would be 124 car parking spaces (72 regular spaces and 52 overflow spaces), 7 of which would be for disabled drivers. While there would be no coach parking spaces, an area in front of the overflow parking would be used by waiting coaches.

[5] The application was supported by a planning design and access statement and by a separate transportation assessment. The latter concluded that the proposed crematorium was expected principally to serve the Angus Council area. A reasonable proportion of visits would be from Dundee given its proximity. A transport assessment was also commissioned by opponents of the proposed development.

[6] The proposed layout is shown in the following drawing:



Report of handling

[7] The planning officer assigned to the case prepared a detailed report of handling dated 20 January 2021. At that time the development plan comprised the Angus Local Development Plan 2016 and the TAYplan Strategic Development Plan. The report noted that the respondents' roads service commented that given the location of the site and the fact that the existing public transport services were very low in frequency, the site was not readily accessible by sustainable means of transport. The applicants' traffic assessment indicated that traffic resulting from the development would result in a 27 per cent increase during the morning peak and a 20.3 per cent increase in the evening. The report accepted the advice from the roads service that the local road network was, however, capable of accommodating the traffic expected to be generated by the development.

[8] The site was not located within a principal settlement where planning policy sought to direct the majority of new development. While it was accepted that the type of use proposed was unlikely to come forward in a town centre or edge of centre location, the information relating to alternative sites did not consider sites within Dundee or out of centre sites which were, or could be made, easily accessible by a choice of transport, such as those on established transport corridors served by regular public transport services. The information was not considered to demonstrate that there were no sequentially preferable options available. The site would not be accessible by a choice of transport modes and would increase reliance on the private car in a location where access to walking, cycling and public transport was poor. A crematorium in the proposed location would promote an unsustainable pattern of travel and development contrary to the approach set out in Scottish Planning Policy, TAYplan and the ALDP. A facility of this nature should be provided at a location with good accessibility for all sections of the community and not just those who could or wished to travel by private car.

The refusal of planning permission

[9] Based on the report of handling, the delegated officer refused planning permission for the proposed development on 24 January 2022 for two reasons. First, the development would result in an unsustainable pattern of travel and development and would not be accessible by a choice of transport modes, increasing reliance on the private car in a situation where access to walking, cycling and public transport was poor. The proposal was therefore contrary to TAYplan policies 1 and 2, ALDP policies DS2 (Accessible Development), DS3 (Design Quality and Placemaking) and TC8 (Community Facilities and Services) and Scottish Planning Policy insofar as it related to local development in accessible locations.

Secondly, the application was contrary to policy DS1 of the ALDP because the scale and nature of the development were not appropriate for its location because it did not enjoy good accessibility, particularly for pedestrians, cyclists and public transport; and because the proposal was not in accordance with other relevant policies, namely DS2, DS3 and TC8.

The first application for review

[10] As they were entitled to do, Duntrune Ltd applied to the DMRC for review of the delegated refusal of planning permission. They submitted that, when considered in the round, the proposal conformed to policy. They contended that it had been shown that there was a need for the proposed development, which would have economic and societal benefits for the Angus community; that the use was not suitable for a town or edge of centre location; that there were no sequentially preferable sites available; that the application was accessible by a variety of modes of transport appropriate to the scale of the development; and that the development would have no detrimental impacts on natural, built or cultural environment or on residential amenity.

The DMRC's first decision

[11] By decision notice dated 29 June 2023 the DMRC upheld the review and granted planning permission subject to conditions. The appellant appealed to the Court of Session and, as already explained, the parties agreed that the appeal should be allowed. The joint minute lodged with the court stated that it was agreed that the DMRC's decision notice, read appropriately, indicated that permission was granted notwithstanding conflict with the development plan whereas the respondents' position was that the actual basis for the decision was that permission should be granted on the basis that the proposal was in

accordance with the development plan. The respondents considered that there was, therefore, a clear and fundamental divergence between the reasons given in the decision notice and the real reasons, which were not provided. The respondents accordingly acknowledged that the appellant's interests were prejudiced by a failure to issue a lawful decision notice, which provided proper, adequate or intelligible reasons for the decision and that for this reason alone the decision ought properly to be reduced by the court. The application for review should be considered of new by a differently constituted DMRC.

The second DMRC review

[12] The second review decision notice was issued on 25 October 2024. It noted that at the planning application stage there had been 866 representations received. 775 of these raised an objection, 89 offered support and 2 were neutral. The community council also objected to the proposal.

[13] The respondents provided the DMRC with the services of an independent planning advisor to assist them in their consideration of the review application.

[14] The DMRC took the view that while there was sufficient information to consider the review, it would be beneficial for an updated traffic survey report to be requested from the applicants. The DMRC also agreed that an unaccompanied site visit would take place on 1 July 2024.

[15] By the time of the second DMRC's consideration of matters the Scottish Ministers had adopted National Planning Framework 4 on 13 February 2023 following approval by the Scottish Parliament. At that date NPF4 became part of the statutory development plan. Accordingly, the development plan covering Angus now comprised NPF4 and the ALDP 2016. TAYplan no longer formed part of the development plan. The previous National

Planning Framework and Scottish Planning Policy (2014) were also replaced by NPF4. The first DMRC had requested a statement from officers on NPF4 and this was available, along with the original report of handling, to the second DMRC.

The statement on NPF4

[16] The statement explained that NPF4 placed greater emphasis on addressing the twin global climate and nature crisis. It indicated that Scotland's climate change plan, backed by legislation, had set out the country's approach to achieving net zero emissions by 2045 and that significant progress must be made towards this by 2030, including by reducing car kilometres travelled by 20 per cent, by reducing the need to travel and promoting more sustainable transport. The overarching spatial strategy indicated that urban expansion would be limited so that the use of land could be optimised and compact urban growth promoted. The national planning policies placed emphasis on locating development in locations that were accessible by means other than private car and directing new development to the right location. This was considered to be the most effective means the planning system had to contribute towards the overall goal of reducing car kilometres travelled.

[17] The statement acknowledged that the proposal did not give rise to conflict with a number of detailed policies, but the location was not consistent with the overarching aims of NPF4. The application proposed development on greenfield land on a site close to but outwith a major city. The development would rely predominantly on access by private car and would generate significant vehicle movements in a location which was not accessible by a choice of sustainable transport modes. Accordingly, it was not a development which had been sited to minimise greenhouse gas emissions. The proposed development would not

contribute to the target of reducing car kilometres travelled by 20 per cent and would not support the spatial priority of compact urban growth. NPF4 policy 1 gave significant weight to the global climate and nature crisis when considering development proposals. Policy 2 required proposals to be sited and designed to minimise life cycle greenhouse gas emissions as far as possible. The proposal did not attract support from NPF4 policies 1 and 2. It was not consistent with the overarching spatial strategy; it was not consistent with the policies which sought to encourage, promote and facilitate the use of brownfield, vacant and derelict land and empty buildings and to help reduce the need for greenfield development; and it was not consistent with the policies that sought to encourage, promote and facilitate developments that prioritised walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.

[18] The proposal was considered to be contrary to the NPF4 spatial principle of sustainable development in rural areas and policies 13, 14 and 29 because the development would generate significant vehicle movements in a location which was not accessible by a choice of sustainable transport modes and would increase reliance on the private car.

The applicants' further submissions

[19] The applicants lodged further submissions responding to the respondents' statement on NPF4. They submitted that when the correct interpretation and weight were given to the terms of NPF4, read as a whole, the application accorded with NPF4 and as such there was a presumption in favour of granting consent. If the DMRC considered that the application did not accord with NPF4 it was submitted that the material considerations previously identified by the first DMRC would justify departing from the development plan and granting consent.

[20] The submissions argued that the planning officer incorrectly considered the application to be contrary to policy 29 of NPF4 as it would generate significant vehicle movements. The focus on the proposals being a significant travel generating development underpinned all of the respondents' assessment of the application against NPF4. It was submitted that it was inherent in rural development that there would be a greater reliance on vehicles than in an urban location. The proposal was intended to serve an existing, mainly rural, community. It would not increase the community's demands for the services of a crematorium. It would not lead to additional vehicles taking to the roads. Rural Angus mourners were already having to travel to attend cremations. Rather, it would bring a crematorium closer to the existing rural community and thus reduce the mileage travelled.

[21] The submissions contended that the view on travel generation set out in the respondents' statement was not shared by the DMRC's independent planning advisor who brought policy 29 to the committee's attention. She advised at the DMRC's meeting on 31 January 2023 that the development was not a significant travel-generating one. That was also the view, according to the submissions, of the respondents' roads officers when consulted on the application. The submissions observed that the alleged significant travel generation was a thread which ran throughout the respondents' consideration of NPF4. The applicants' transport assessment had demonstrated that the development was not a significant travel generating use and this had been accepted by the roads officers and the DMRC's independent planning advisor.

[22] It was submitted that NPF4 required to be read as a whole. The weight to be attached to the various policies, which might conflict with each other, was a matter for the decision maker. The respondents' planning officers acknowledged that the proposal complied with many of the policies in NPF4, but only placed weight on those they

considered to have been breached. The DMRC was called on to place considerable weight on the social, economic and community benefits which the development would bring. These benefits had already been acknowledged by the respondents.

The updated transport assessment

[23] A transport assessment addendum report dated 16 July 2024 prepared by consultants instructed for the applicants concluded that the proposed development would have a negligible impact and that there were no road capacity issues to address on the surrounding road network. Newly taken traffic counts showed that the development impact would in fact be less than that considered during the planning application stage and could be considered to be negligible.

[24] An email from the traffic team leader of the respondents' roads service dated 29 July 2024 was made available to the DMRC. This noted that the traffic survey information submitted indicated an increase in traffic volumes as compared to the original 2019 survey. This reciprocally reduced the percentage traffic impact of the development proposals on the B978 by 0.7 per cent. The scale of change in traffic flows and its impact on the local road network was slight and the network was expected to continue to operate well within its theoretical capacity.

[25] The email also noted that traffic speeds over the survey duration were reduced on the B978 and C4 at the site access. The scale of the reduction in traffic speeds and their impacts was negligible and resulted in no need for changes to the conditions previously recommended by the roads service in respect of the proposed road improvements and visibility sightlines in the vicinity of the site.

The second DMRC decision

[26] The DMRC identified the determining issues in the second review as (1) whether the proposal would accord with the provisions of the development plan (NPF4 and the ALDP 2016); and (2) whether there were any other material considerations that should be taken into account.

[27] Paragraph 22 of the decision stated the following:

“The DMRC indicated that they were minded to uphold the Notice of Review and grant planning permission as it was considered that crematoriums required a sensitive and peaceful setting, and that it was unlikely that this type of development would typically be near a town centre or edge of a central location. Members also noted that there were a number of other material considerations in that there were no policies within National Planning Framework 4, nor in the Local Development Plan which specifically considered this type of essential development, that there had been approval of similar developments within rural locations, the high cost of cremation, the demand for cremation and economic benefits.”

[28] In paragraph 23 the DMRC said this:

“The DMRC noted that Angus was a rural area and it would be difficult for any area within the county to be served well by public transport. Members also indicated that, despite many of the roads junctions not being of a modern standard, it was considered that with suitable signage and appropriate mitigation, they would be of a satisfactory standard, having agreed that the funeral traffic would typically be outwith any peak driving times, and would therefore not increase the volume of traffic significantly. Further, members noted that the roads authority had no objections to the development, nor were there any objections from statutory consultees. Members also indicated that there were no significant amenity, design or landscape issues that could not be mitigated by planning conditions, and the additional planting would enhance biodiversity within the site.”

[29] In paragraph 24 the DMRC concluded that the proposal complied with the pertinent policies of the development plan.

[30] Paragraph 26 said the following:

“The DMRC agreed, in line with their decision on 22 August 2024, that the development complies with the Development Plan. It was confirmed and agreed that the DMRC had considered how the development complied with the Angus Local Development Plan 2016 and the National Planning Framework 4 in the context of it

being the most up to date statement of planning policy and bearing in mind the context of applying wider planning judgement in reaching a decision.”

[31] The DMRC stated in paragraph 27 that in terms of the overarching policies of NPF4 policies 1 and 2, a wider view of compliance was taken because development on greenfield sites in rural locations was not prohibited, travel to cremations elsewhere would be reduced and the development proposed many sustainable design and construction features.

[32] In paragraph 30, the DMRC stated as follows:

“The DMRC agreed that NPF4 Policy 13 Sustainable Transport is not contravened as the development is not a significant travel generating use and has been considered alongside the desire to encourage rural development under NPF4 Policy 29 given the particular nature of the development. Attending a cremation could not be considered to be every day travel which reduced the applicability of the policy to the development. The proposal will be more accessible to more people as it provides an alternative facility and would reduce travel times and CO₂ emissions.”

[33] The DMRC agreed in paragraph 34 that the proposal would contribute to the local rural economy and provide an essential community facility in compliance with NPF4 policy 29 on rural development.

[34] In the remaining paragraphs of their decision the DMRC addressed the pertinent policies in the ALDP: DS1, DS2, DS3, TC8 and TC15. In summary, they held that the development complied with all these policies. It was of a scale and nature appropriate to the location, no brownfield sites or greenfield sites within settlements were suitable or available and there were no adverse effects on designated sites. The proposed use was unsuitable for a town centre or edge of centre location and it was of an appropriate nature and scale for a countryside location. There were no detrimental landscape or environmental impacts.

[35] The DMRC approved the conditions proposed by the planning officer. They added three additional conditions concerning widening of the C4 carriageway, the installation of a new bus stop at the entrance to the development and the promotion of a speed limit order.

Appellant's submissions

[36] The DMRC failed properly to consider whether the development would accord with the development plan. While reference was made to the statutory test, there was no real analysis of the key issue of conformity with the development plan. The DMRC appeared to have formed an overall sense that the proposed location was suitable, but that was as far as their analysis went. The absence of specific mention of crematoria in the development plan did not detract from the need to address the issue of conformity. The DMRC failed to interpret the policies or explain why they were complied with.

[37] The DMRC's decision not to follow the view of the delegated officer was unreasoned. Clear reasons had to be given for departing from the officer's view. An informed reader would be unable to understand why the DMRC had done so. No adequate reasons were provided for the decision that the local plan policies had been complied with. On this issue it was irrational not to follow the delegated officer's conclusions.

[38] On a proper analysis it was clear that the proposal did not accord with NPF4 or the relevant local plan policies. There was no explanation as to the investigations carried out in relation to the suitability and availability of brownfield sites. It was unclear which brownfield sites, if any, had been considered and why they were deemed not to be suitable. It would be surprising if the development site was the only suitable one in the whole Angus area.

[39] There were no material considerations sufficient to justify departure from the development plan. The cost of and demand for cremations were not material planning considerations. There was evidence supplied by the operators of Parkgrove Crematorium, on the outskirts of the village of Friockheim, showing that its facility was operating well

below maximum capacity. The DMRC ignored this evidence. Approvals granted for similar developments in other areas were also irrelevant; there was no concept of precedent in planning law.

[40] The conclusions that the road network was sufficient to support traffic likely to be generated by the development and that there would be no significant travel generation were irrational. There was evidence from a transport consultant instructed by local residents that there would be a 38.7 per cent increase in traffic. There was no rational basis for holding that funeral traffic would be generally off-peak. The conditions intended to address problems with sightlines were inadequate. There was no guarantee that the speed limit would be reduced to 40 mph.

Respondents' submissions

[41] The DMRC correctly interpreted the development plan policies. The appellant's complaints all concerned matters of weight and questions of planning judgement. These were for the DMRC and could not be reconsidered on an appeal to this court. The DMRC were correct (or at least entitled) to conclude that the proposed development accorded with the development plan overall.

[42] The DMRC were entitled to differ from the delegated officer and to use their own experience and judgement. They were entitled to conclude that the scale and nature of the development were appropriate for the proposed location. They gave proper reasons for so holding, including that the proposed use was unsuitable for a town centre or edge of centre location and was of an appropriate scale and nature for a countryside location and that there was no adverse landscape impact.

[43] All the appellant's criticisms of the DMRC's decisions on compliance with the relevant policies amounted merely to disagreements on matters of judgement.

[44] It was crucial to understand that the DMRC's decision had to be read as a whole. Conclusions and judgments relevant to one policy were also relevant to others. The DMRC was, for example, well-entitled to apply its members' own experience that mourners did not usually travel to a cremation by public transport. They were entitled to take into account that Angus was predominantly a rural area, much of which was not well served by public transport. The DMRC's decisions on such issues did not amount to errors of fact susceptible to challenge on appeal. Other transport issues were considered by the DMRC in detail during their site visit.

[45] No irrelevant considerations were taken into account. There were no policies specific to crematoria. The policies had to be applied with that in mind. The absence of crematoria-specific policies was a material consideration. The cost of and demand for cremations in the locality were clearly relevant considerations. The letter from Parkgrove Crematorium concerning its unused capacity was received only after the DMRC had decided that they were minded to grant the application. The DMRC were entitled, in the exercise of their discretion, to hold that it came too late. In any event, it emanated from a commercial competitor and, therefore, carried little weight when set against other evidence showing that there were capacity limitations.

[46] Consistency of decision-making was a relevant consideration. The DMRC appropriately had regard to previous decisions and had sufficient material to justify their doing so.

[47] The DMRC gave close consideration to the provision of suitable road access. They had the benefit of traffic surveys; these were updated in the course of the committee's

decision-making process. The site visit specifically addressed road access issues. There was consultation with the roads service about traffic flows and planning conditions. The DMRC were entitled to have regard to upcoming changes in speed limits. Permission was granted subject to a range of roads-related conditions.

[48] The argument that the DMRC reached an unsustainable conclusion on travel generation proceeded on the misconceived basis of a relative increase in traffic volumes as opposed to the more appropriate absolute basis. It was a rational conclusion and one that was properly open to the DMRC to hold that traffic volume would not be increased significantly. There was a factual basis for the view that funeral traffic would be mainly off-peak.

[49] The DMRC's reasons were adequate and intelligible. They left the informed reader in no doubt as to the grounds for the decision and the basis on which all the main points had been disposed of.

Analysis and decision

[50] As the United Kingdom Supreme Court explained in *Tesco Stores v Dundee City Council* [2012] UKSC 13; 2012 SC (UKSC) 278 at paragraphs 17 and 18, it has long been established that a planning authority must proceed upon a correct understanding of the development plan. This is essentially for two reasons. First, the authority is required by section 37(2) of the Town and Country Planning (Scotland) Act 1997 to have regard to the provisions of the development plan so far as material to the application; it cannot properly have regard to the provisions of the plan if it fails to understand them. Secondly, the legal status of the development plan means that it is essential that the planning authority correctly understands what the plan means in the context of the application which the authority is

called on to consider. Section 25(1) of the 1997 Act provides that where in making a determination under the planning Acts regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise, to be made in accordance with the plan.

[51] Interpretation of the development plan is, therefore, a matter of law. In the event that the planning authority fails properly to interpret the plan, its decision will be open to challenge in the courts (*City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, Lord Clyde at p 44). This does not mean that the policies set out in a development plan require to be construed as if they were terms in a commercial contract or provisions appearing in a statute. As Lord Reed (with whom Lord Brown, Lord Kerr and Lord Dyson agreed) observed in *Tesco Stores Ltd*:

“As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment and ors*, per Lord Hoffmann, p 780 [[1995] 1 WLR 759]). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.”
(paragraph 19)

Thus, 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] UKSC 37; [2017] 1 WLR 1865 at 26 and 73).

[52] In the present case, it is clear that the DMRC correctly understood the terms and effect of the pertinent policies in the development plan. In their review decision notice of

25 October 2024, they identified the relevant national and local planning policies and proceeded to assess the proposed development against each of the relevant policies. This led them to the ultimate decision that the development was in accord with the development plan.

[53] In considering the DMRC's decision it is of the utmost importance to read it as a whole and to avoid legalistic or unduly technical analysis. The appellant's submissions tended not to take a holistic approach; instead, they focused on whether there was compliance with individual policies with no real consideration of whether there was tension between policies which might be capable of being reconciled. The aims and principles reflected in the multiplicity of applicable planning policies will often pull in different directions when applied to the real-world context of a particular development proposal. The essential task of the decision-maker is to weigh up, in a balanced way, the various policies and to use judgement and experience in deciding how they should be applied to the particular proposal. Reading the decision as a whole, it is clear that this was the approach taken by the DMRC.

[54] In relation to sustainability and accessibility, the DMRC had regard to the overarching policies of NPF4 on tackling the climate and nature crisis (policy 1), on climate mitigation and adaptation (policy 2), and to policy DS2 of ADLP (Accessible Development). They understood the import and intention of those policies and attached significant weight to them. However, as we discuss below, there were also other policies relating to rural, employment and community development which pulled in a different direction.

[55] Policy 9 of NPF4 favours the sustainable use of brownfield land over greenfield sites, as does policy DS1 of ALDP. DS1 also favours development within settlement boundaries. The sequential assessment carried out by the applicants pointed to there being no suitable

brownfield sites in the Angus area and no suitable greenfield sites in settlements within the area. While the handling report stated that the applicants' assessment had not investigated whether there were any more suitable sites within the Dundee City Council area, neither the planning officers nor any of the objectors identified any other site which they maintained was more suitable. Moreover, the applicants' position was that the development was principally intended to serve Angus and that locating it in Dundee would not serve that purpose. On the basis of the material before them the DMRC were entitled to conclude that the development complied with policy 9 and DS1.

[56] One of the most contentious issues in the appeal is whether the development would be contrary to policy 13 d) of NFP4:

“Development proposals for significant travel generating uses will not be supported in locations which would increase reliance on the private car, taking into account the specific characteristics of the area.”

Whether a development is a significant travel generating use may involve questions of fact and degree, and planning judgement. In our view, that is the position here. The applicants' traffic assessment suggested that there might be 3 services a day, 5 days a week, and that an average of 70 people might travel to each service in 24 cars. The advice of the independent planning consultant advising the DMRC was that the development would not be a significant travel generating use. The roads service did not appear to disagree with that advice. A further salient point is that in assessing whether a development is compliant with policy 13 d) account is to be taken of the specific characteristics of the area. The area here is a rural one. The DMRC had in mind that in such a location the most sustainable modes of travel (walking and wheeling, cycling and public transport) may not be feasible. The definition of “sustainable travel” in NFP4 Annex F recognises “that in some locations, particularly in rural areas, where the top three modes have been judged as unfeasible for

day to day travel, low emissions vehicles and shared transport options will play an important role". We are not persuaded that it was irrational for the DMRC to conclude that the proposal complied with policy 13 d). The fact that the development would not be a significant travel generating use and the constraints which a rural location placed upon the feasibility of the top three methods of sustainable travel were factors which were relevant to the weight which the DMRC gave to the sustainability and accessibility policies in the development plan. Other relevant factors were their finding that the development would reduce the distances which mourners would otherwise have to travel to existing crematoria; that it could reasonably be expected that mourners would car share; and that conditions to be imposed included that the building approved should not be brought into use unless a Travel Plan had been submitted to and approved by the planning authority. The travel plan was to include installation of a new bus stop and other measures to encourage a more sustainable means of travel to and from the development.

[57] Policies which might tend to pull to some extent in other directions than the sustainability and accessibility policies of the development plan included policy 29 of NPF4 and policies TC8 and TC15 of ADLP.

[58] Policy 29 has the intention of encouraging rural economic activity, innovation and diversification, including essential community facilities. Importantly, it states in subparagraph (b) that development proposals in rural areas should be suitably scaled, sited and designed to be in keeping with the character of the area. They should also consider how the development will contribute towards local living and take into account the transport needs of the development as appropriate for the rural location. Like the definition of "sustainable travel", that qualification acknowledges that in rural areas there will inevitably require to be greater reliance on use of private cars than in urban locations. Policies TC8

(Community Facilities and Services) and TC15 (Employment Development) cover much the same ground. The DMRC were entitled to find that the development complied with all of these policies and to give the policies significant weight, which they clearly did.

[59] The appellant argued that the DMRC had taken account of certain irrelevant considerations. We do not agree. The fact that there were no crematoria-specific national or local policies was clearly a matter which it was open to the DMRC to consider in applying the policies set out in the development plan. Similarly, the cost of and demand for cremations in the Angus area were factors that the DMRC could perfectly properly take into account. The need for and viability of a crematorium in this location had been put in issue by objectors. Both of those factors were relevant planning considerations. The cost of cremation, while perhaps not in itself a relevant planning consideration, was relevant to the assessment of those factors.

[60] As for the appellant's contention that the DMRC erred in its treatment of the letter from the director of Parkgrove Crematorium, this essentially involved a discretionary question of procedure and case-management for the DMRC to reach their own view on. They were entitled to hold that the letter came too late in the process to allow it to be considered. The letter was sent by email on 4 September 2024. The date for making timeous representations had long since passed, and indeed the DMRC had already indicated on 22 August 2024 that it was minded to uphold the review subject to the formulation of suitable conditions. Parkgrove is, in any case, more than 18 miles north-east of Duntrune. Their catchment areas were unlikely to coincide.

[61] While issues of roads capacity and roads safety were raised in representations, it was very clear from the material before the DMRC that the roads near the development could cope without difficulty with the traffic generated by it, and that all suggested road safety

issues were adequately addressed by the conditions attached to the permission. The appellant argued, faintly, that although there was a condition providing for the making of a speed limit reduction order on C4, there was no guarantee that such an order would be made. In our view there is no substance to that objection. The clear intention is that the order will be made, and there is no basis for apprehending that it will not be. Finally, the standard of reasoning against which the DMRC's decision notice falls to be judged was set out in *West Lothian Council v Scottish Ministers* [2023] CSIH 3; 2023 SLT 175, LP (Carloway) delivering the court's opinion at paragraph [24]:

"In *NLEI v Scottish Ministers* [2022] CSIH 39 (LP (Carloway), delivering the opinion of the court, at para [54]), the court emphasised the desirability of reporters expressing their decisions in an intelligible yet succinct manner. Reporters are not lawyers. Neither are many of those who have to read and implement their decisions. The reporter requires to identify the live issues and to frame a determination in a manner which leaves the reader in no doubt about what the reasons for the decision were and what considerations were taken into account. Within these bounds of legality, a reporter is generally free to apply his or her planning judgement to the live issues and to express the decision in a manner which will be easily understood by its potential readership."

This approach applies equally in the case of a decision notice issued by a review body such as the DMRC. Applying that approach, we are in no doubt that the decision notice adequately and intelligibly explains the reasons for the decision.

[62] For these reasons we consider that there is no merit in any of the appellant's challenges to the DMRC's decision. The appeal is refused.