



Easter Term
[2013] UKSC 21
On appeal from: [2011] CSIH 77

JUDGMENT

Uprichard (Appellant) v Scottish Ministers and another (Respondents) (Scotland)

before

**Lord Hope, Deputy President
Lord Kerr
Lord Reed
Lord Carnwath
Lord Carloway**

JUDGMENT GIVEN ON

24 April 2013

Heard on 5 and 6 March 2013

Appellant
James Findlay QC
Stephen O'Rourke
(Instructed by Patrick
Campbell and Company
Solicitors)

Respondent
Ruth Crawford QC
Alistair Duncan QC
(Instructed by Scottish
Government Legal
Directorate Litigation
Division)

Respondent
Douglas Armstrong QC
Robert Sutherland
(Instructed by Balfour +
Manson LLP)

LORD REED (with whom Lord Hope, Lord Kerr, Lord Carnwath and Lord Carloway agree)

1. St Andrews is renowned throughout the world as the home of golf. It is also famous for its university, the third oldest in the English-speaking world. It is an attractive town, set between the sea and the rural hinterland of Fife, with many historic buildings and a skyline familiar to millions from television coverage of the Open Championship and from the opening of the film, *Chariots of Fire*.

2. This appeal has been prompted by concern on the part of the appellant, a resident of St Andrews, about Fife Council's policies for the future development of the town as set out in the Fife Structure Plan 2006-2026. She considers that the policies, if implemented, will cause irreversible damage to the landscape setting of the town. She has objected to these policies at every opportunity during the procedure leading to the finalisation of the structure plan by the Council, and during the subsequent procedure leading to its approval, subject to certain modifications, by the Scottish Ministers.

3. The question raised by the appeal is whether the Ministers have given adequate reasons for their decision to approve the structure plan subject to the modifications which they have made. The appellant submits that the reasons given did not adequately address her objections to the Ministers' proposed modifications, and that there has in consequence been a failure to comply with the requirements of the relevant legislation. She contends that she has been substantially prejudiced by that failure, as the reasons given raise a doubt as to whether the Ministers have considered the impact of the structure plan policies upon the landscape setting of St Andrews.

The relevant legislation

4. It may be helpful at the outset to explain the nature of a structure plan and its role in the planning system. These were clearly and accurately described by Lord Justice Clerk Gill in his opinion in this case ([2011] CSIH 59; 2012 SC 172, para 23):

“A structure plan is that part of the statutory development plan that sets out the overall strategy on which development in the relevant area will be based. The plan rests on fundamental strategic objectives adopted by the planning authority in accordance with ministerial

guidance. The Scottish Ministers retain the ultimate authority to approve its finalised terms. The strategic objectives are the basis of, and are carried into effect by, the various sectoral policies of the written statement. These policies are carried through in more detailed and site-specific ways in local plans and are ultimately implemented in *ad hoc* decisions on planning applications.”

5. It is necessary next to explain the procedure leading to the approval of a structure plan as set out in the legislation in force at the relevant time: that is to say, the Town and Country Planning (Scotland) Act 1997 as amended (“the Act”), and the Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983 (SI 1983/1590) as amended (“the Regulations”).

6. Under section 4 of the Act, the planning authority have a duty to keep under review the matters which may be expected to affect the development of their district or the planning of its development, and may, if they think fit, institute a survey of those matters. Under section 5, the Ministers may designate areas in respect of which planning authorities are to prepare structure plans; and there is a requirement that the district of every planning authority must be included in a structure plan area. Section 7(1)(a) provides that the structure plan for any district shall be a written statement formulating the planning authority’s policy and general proposals in respect of the development and use of land in that district. The planning authority are required by section 7(2) to secure that their policy and general proposals are justified by the results of the survey and by any other information which they may obtain. They are also required to have regard to current policies with respect to the economic planning and development of the region as a whole.

7. In relation to the form of the structure plan, regulation 6 of the Regulations requires that the policies and general proposals formulated in a structure plan must be set out so as to be readily distinguishable from its other contents. Importantly, in the context of the present appeal, regulation 6 also requires that the plan must include a reasoned justification of the policies and general proposals which it contains. It is therefore for the planning authority to provide reasons justifying the policies and general proposals contained in the plan.

8. In relation to procedure, section 8(1) of the Act requires the planning authority, when preparing a structure plan and before finally determining its content for submission to the Ministers, to take such steps as will in their opinion secure that adequate publicity is given to the report of the survey and to the matters which they propose to include in the plan, and that an adequate opportunity is

given for the making of representations with respect to those matters. Under section 8(2), the planning authority are required to consider such representations.

9. When the plan is submitted to the Ministers for approval, the planning authority are required by section 8(4) to make copies of it available for inspection. Section 8(5) requires that those copies must be accompanied by a statement of the time within which objections to the plan may be made to the Ministers. Section 8(7) requires the Ministers, if they are satisfied that the purposes of section 8(1) have been adequately achieved, to proceed to consider whether to approve the plan.

10. Under section 10(1) of the Act, the Ministers may either approve the plan (in whole or in part and with or without modifications or reservations) or reject it. Before determining whether or not to approve it, the Ministers are required by section 10(4) to consider any objections to the plan, so far as they are made in accordance with regulations. The Ministers also have a discretionary power to hold an examination in public. Section 10(10) of the Act, which is the critical provision in the present appeal, provides:

“On exercising his powers under subsection (1) in relation to a relevant proposal, the Secretary of State shall give such statement as he considers appropriate of the reasons governing his decision.”

The reference in that provision to the Secretary of State is now to be read as referring to the Ministers. The expression “a relevant proposal” is defined by section 10(2) as meaning *inter alia* a structure plan.

11. Further provision in relation to the procedure is made by the Regulations. In particular, regulation 18 provides that where the Secretary of State (now to be read as meaning the Ministers) proposes to modify a structure plan he shall, except as respects any modification which he is satisfied will not materially affect any policy or general proposal of the plan, *inter alia* give notice by advertisement of the proposed modifications, and “consider any objections duly made to the proposed modifications”.

12. It follows from these provisions that there are several opportunities for objections to be made during the process leading up to the approval of a structure plan. First, representations may be made to the planning authority, in accordance with section 8(1) of the Act, before the plan is finalised for submission to the Ministers. Secondly, objections to the finalised plan can be made to the Ministers, in accordance with section 8(5). Thirdly, objections can be made to any

modifications to the plan which are proposed by the Ministers, in accordance with regulation 18 of the Regulations.

13. It also follows that there are two distinct contexts in which reasons require to be given. First, the planning authority must include in the finalised plan a reasoned justification of their policies and general proposals, in accordance with regulation 6 of the Regulations. Secondly, the Ministers must, when exercising their power to approve the plan (in whole or in part, with or without modifications or reservations) or to reject it, give such statement as they consider appropriate of the reasons governing their decision, in accordance with section 10(10) of the Act.

14. The Act also makes provision for the preparation of local plans. Under section 11(1), every planning authority is required to prepare local plans for all parts of their district. Section 11(5) stipulates that the local plan must conform generally to the structure plan, and under section 17(3) the planning authority must not adopt a plan which does not conform to an approved structure plan.

15. Finally in relation to the legislation, section 238(1) of the Act enables “any person aggrieved by a structure plan or a local plan” who wishes to question the validity of the plan on the ground “(a) that it is not within the powers conferred by Part II [of the Act]” or “(b) that any requirement of that Part or of any regulations made under it has not been complied with in relation to the approval or adoption of the plan” to make an application to the Court of Session. There is no dispute that the appellant is a “person aggrieved”. Her application was made under section 238(1)(b).

16. Section 238(2) concerns the remedies which may be granted on an application under the section. It provides:

“On any application under this section the Court of Session –

...

(b) if satisfied that the plan ... is wholly or to any extent outside the powers conferred by Part II, or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of that Part or of any regulations made under it, may wholly or in part quash the plan ... either generally or in so far as it affects any property of the applicant.”

The preparation of the plan

17. In January 2003 the Council publicised its intention to prepare a replacement of the Fife Structure Plan 2002. A survey was undertaken in accordance with section 4 of the Act, and the Council also commissioned a report from a landscape architect, Alison Grant, on the capacity of the landscape to accommodate new development adjacent to St Andrews, and on a proposed green belt. The report, *Landscape Capacity Assessment and Proposed Green Belt Study of St Andrews*, was submitted in March 2003.

18. The Grant report identified a number of relatively small areas of land, totalling less than 25 hectares, where development could be accommodated without damaging the landscape. The remaining land adjacent to St Andrews was reported to be subject to landscape constraints on development. The nature and severity of the constraints varied as between different areas. In some locations, development would impact on the setting of St Andrews. In other locations, development would affect the landscape in other ways: for example, by affecting the open character of the location in question, or by affecting an existing designed landscape, or by affecting views from within the town.

19. In particular, as regards land to the west of St Andrews, referred to in the report as St Andrews West, the report identified areas totalling about 20 hectares which were designated as falling into category 3: that is to say, capable of development without adversely affecting the key characteristics and visual qualities of St Andrews. The remaining land in St Andrews West was designated as falling into category 5: that is to say, land where development was inappropriate because of its potential impact on the landscape character, scenic quality or visual attributes of St Andrews and its setting.

20. In March 2005 the Council published its consultative draft structure plan together with its draft report of survey, a sustainability appraisal and other documents. By letter dated 19 April 2005 the appellant made representations in accordance with section 8(1) of the Act. The Council gave consideration to the representations received from the appellant and others and subsequently finalised the plan.

The Council's finalised plan

21. Chapter 1 of the finalised plan provided a summary of the plan. It set out the fundamental strategic objective, namely the economic regeneration of Fife. The plan sought to achieve this objective by a number of means, such as restoring

population growth, providing low-cost housing as a stimulus to population growth and identifying key economic development areas in various parts of Fife. It explained that the strategy implemented the National Planning Framework published in 2004, which had identified St Andrews University as having the ability to contribute to both the national and the local economy, and had also identified St Andrews as a tourism destination of international renown. The strategy was to increase employment opportunities, taking a positive approach to economic development and directing major new employment-creating development to the main towns, including St Andrews. Another aspect of the strategy was to accommodate an increase in the population of Fife through the provision of housing at a number of locations, including St Andrews. A further aspect of the strategy was to protect the landscape setting of the historic core of St Andrews through the introduction of a green belt.

22. Chapter 2 described the settlement strategy. It explained that seven strategic development areas would contribute significantly to developing the Fife economy and enhancing communities. Those areas would be the focus for mixed-use developments, largely on greenfield land, containing a minimum of 1,200 houses. One of these areas was to be located in St Andrews. Paragraph 2.4 stated:

“The strategy is to realise the potential of St Andrews as an economic driver for the whole of Fife in terms of academic development and tourism, whilst reconciling this against the need to protect its internationally important heritage. This strategy has significant implications for land use and expansion of the town and has to be balanced with the need to protect its landscape setting. High quality development and expansion of employment land is required over the longer term. Land for 1200 houses in the period to 2026 will be identified; a large proportion of which will be within a strategic development area to the west of the town and will maximise the use of brownfield sites where possible. A 10ha science park and a 10ha general business park will be identified to provide opportunities for employment growth. The local plan will define the green belt boundaries taking account of the need to provide land for development over, and potentially beyond, the plan period. Contribution to a new link road will be required as part of this development.”

That aspect of the strategy was reflected in a number of policies and proposals, including Policy SDA1, concerned with strategic development areas, and Proposals PE1 and PH2, concerned with employment and housing respectively.

23. Chapter 4 was concerned with the environment. In relation to St Andrews, paragraph 4.5 stated:

“The key issue for St Andrews is the extent to which the town should grow over a long timescale. The town needs to accommodate further employment land to grow the economy, deliver affordable housing as part of the settlement, while the landscape setting of the town needs to be protected and enhanced by the identification of robust green belt boundaries. The local plan will set out how, where and the extent to which St Andrews should grow over the next 20 years.”

That approach was reflected in Policy ENV1.

24. Reading paragraphs 2.4 and 4.5 together, it appears therefore that the Council intended to determine through the local plan process how the strategy described in paragraph 2.4 was to be applied in practice, and in particular “how, where and the extent to which St Andrews should grow” in order to accommodate the further employment land and housing which were needed while protecting the landscape setting of the town.

The submission of the finalised plan to the Ministers

25. In June 2006 the Council submitted the finalised plan to the Ministers for approval, together with the report of survey, a sustainability appraisal and strategic environmental assessment, and other documents. Later in June or July 2006 the appellant submitted to the Ministers her objections to the finalised plan. Altogether, the Ministers received over 2700 objections.

26. During 2007 the Ministers agreed to a reappraisal by the Council of limited aspects of the finalised plan, so as to take account of new household projections which had been published by the General Register Office for Scotland. Following the reappraisal, the Council prepared proposed modifications to the finalised plan, and provided an opportunity for representations to be submitted. The appellant submitted such representations. The Council then finalised its proposed modifications, and submitted them to the Ministers in December 2007. It proposed in particular that the amount of new housing required for St Andrews should be reduced from 1200 to 1000 houses. An opportunity was then given by the Ministers for the lodging of objections to the proposed modifications. It appears that the appellant lodged such an objection.

The Ministers' proposed modifications

27. In December 2008 the Ministers published their proposed modifications to the finalised plan, in accordance with regulation 18 of the Regulations, together with a strategic environmental assessment.

28. The proposed modifications did not materially alter the strategy summarised in Chapter 1 so far as relating to St Andrews. In Chapter 2, the references to strategic development areas were proposed to be replaced by references to strategic land allocations. The minimum number of houses to be contained in such an area was proposed to be reduced from 1200 to 300. The relevant area was proposed to be described as St Andrews West rather than St Andrews. Land was proposed to be located there for a minimum of 1000 houses. Up to 90 additional houses might be assigned to St Andrews following further assessment. Consequential alterations were also proposed to Policy SLA1 (as the former Policy SDA1 was proposed to be re-designated) and Proposals PE1, PH2 and PH3. In relation to the environment, the first two sentences of paragraph 4.5 were proposed to be revised so as to read as follows:

“The key issue for St Andrews is the careful management of growth. The town needs to accommodate further housing and employment land to grow the economy and deliver affordable housing, while protecting and enhancing the landscape setting by the identification of robust green belt boundaries.”

A consequential alteration was proposed to Policy ENV1.

The Ministers' strategic environmental assessment

29. The Ministers' strategic environmental assessment focused on the environmental effects of the modifications proposed by the Ministers rather than the effects of the finalised plan, in accordance with the relevant legislation. The assessment was however placed within the broader context of the plan as a whole. Paragraph 3.22 summarised the key findings which emerged from the assessment of housing allocations for St Andrews and North East Fife. They included the following:

“There is potential for significant adverse effects on landscape, due largely to the value and sensitivity of the receiving environment. Further development of a large scale around St Andrews, without

appropriate mitigation, has the potential to adversely affect its landscape setting. Expansion of the town will therefore require careful local level site selection and mitigation at the local plan level. Landscape capacity assessments have concluded that capacity to absorb large scale development around St Andrews is very limited. However, to the south and west of the town, specific areas where smaller scale development could be reasonably accommodated (subject to appropriate landscaping and siting) have been identified and should be prioritised for development at the local level, as appropriate. The existing AGLV [Area of Great Landscape Value] and several cSLAs [candidate Special Landscape Areas] could be directly or indirectly affected by housing development within this HMA [Housing Market Area].”

The reference in that passage to landscape capacity assessments referred in particular to the Grant report.

30. That summary reflected a fuller account set out in a table appended to the assessment, which stated:

“Previous landscape capacity studies have identified major constraints to development around St Andrews arising from its special landscape qualities. Areas where development could be accommodated, if appropriately landscaped were also identified, and these should form a focus for future land allocations within the relevant local plans.

...

The design of new housing, siting and scale should take into account landscape capacity. In particular areas around St Andrews that were noted for their distinctive qualities and role in providing the unique setting of the town should be avoided as far as possible.”

The previous landscape capacity studies referred to included the Grant report.

31. It is apparent from these passages that the Ministers’ strategic environmental assessment recognised that large scale development could damage the landscape setting of St Andrews. The conclusion drawn was that “expansion of the town will therefore require careful local level site selection and mitigation at the local plan level”. The sites identified in the Grant report as suitable for

development were to form a focus for future land allocations within the relevant local plan. That conclusion was consistent with the Council's approach in the finalised plan, under which the intention was to determine through the local plan process "how, where and the extent to which St Andrews should grow" in order to accommodate the further housing and employment land which were needed while protecting the landscape setting of the town. The conclusion drawn in the strategic environmental assessment was therefore consistent also with the Ministers' decision to approve, without modification, that aspect of the finalised plan.

The appellant's letter of objection

32. The Ministers allowed an opportunity for objections to be made to the proposed modifications to the finalised plan, in accordance with regulation 18 of the Regulations. The appellant submitted a letter dated 29 January 2009, which objected, not to any modification proposed, but to the absence of any modification of the strategy that St Andrews should be "an economic driver for Fife" and should accommodate the houses, science park, business park and bypass proposed. In the course of her letter, about 2000 words in length, the appellant made numerous more specific points in support of this general objection, grouped under the headings "Fife Population", "General Register Office Figures", "Landscape Capacity – St Andrews", "Population – St Andrews", "Strategic Land Allocations", "Affordable Housing", "Green Belt for St Andrews", "Objections and Representations" and "Fife Landscape Study".

33. Under the heading "Landscape Capacity – St Andrews" the appellant made several points. She began:

"In 1998 Fife Council published the St. Andrews Strategic Study. Two of its conclusions were that

'St Andrews is at its landscape capacity and no major expansion should take place.'

'Major new housing development would result in an unacceptable impact on the quality of the town's environment.'

In 2003 the Alison Grant Landscape Capacity Assessment and Green Belt Study of St. Andrews was published (following a requirement for a landscape assessment in the 2002 Structure Plan). It concluded that there was very little scope for development round St Andrews.

The Council has generally ignored this work, and the Tyldesley Landscape Assessments [a 1997 report by David Tyldesley and Associates entitled *A Green Belt for St Andrews*].”

The appellant then made other points under that heading, relating *inter alia* to the recent history of development in St Andrews and the trend of visitor numbers. The points made in the appellant’s letter largely repeated those which she had made in her earlier objections to the finalised plan.

The Ministers’ decision

34. In May 2009 the Ministers approved the finalised plan with modifications. In the letter notifying the Council of their decision, the Ministers stated that they had considered all representations and objections made to them, the matters taken into account in the plan as submitted, and such other matters as they thought relevant. So far as relating to St Andrews, the final modifications referred in paragraph 2.4 to the need for the strategic land allocation in St Andrews West to “meet the significantly higher need for affordable housing provision in St Andrews and NE Fife”. The final modifications were not otherwise materially different from those which had been earlier proposed.

The Ministers’ statement of reasons

35. The Ministers also published at the same time a schedule of reasons for making modifications to the finalised plan, and a separate schedule of reasons for not making modifications to the finalised plan. The former schedule gave a brief explanation of each of the modifications made. The latter schedule summarised objections made (1) to the plan as submitted to the Ministers in 2006, (2) to the modifications proposed by the Council in 2007 and (3) to the Ministers’ proposed modifications as published in 2008, in respect of which the Ministers had decided not to make modifications, and gave reasons for the Ministers’ decision. After an introductory section headed “General”, the schedule followed the layout of the finalised plan.

36. Under the heading “General”, the schedule addressed objections relating to the housing land requirement. Reason 4, in particular, stated:

“The strategic allocation to St Andrews West reflects the housing land required across Fife based on an 8% population growth estimate”.

Reason 5, addressing objections to the effect that “policies on ... landscape ... are omitted”, stated:

“The plan takes full account of environmental issues and provides an appropriate level of protection”.

37. In relation to Chapter 1 of the plan, reason 6 addressed objections to the effect that “the plan includes excessive developer-led projects and economic development implications”, and stated:

“Subject to the final modifications, the plan's vision and settlement strategy are consistent with government policies on development planning and sustainable economic growth.”

38. In relation to Chapter 2, reason 17 addressed objections to the effect that “St Andrews West development will ... affect landscape and amenity”, and that “[the] scale of development is too high”, and stated:

“It is appropriate for St Andrews to accommodate a strategic allocation of Fife’s housing requirement. The local plan will articulate the strategic land allocation which can be accommodated subject to mitigation and landscape enhancement.”

39. In relation to Chapter 3, concerned with the implementation of the strategy, reason 22 addressed objections to the effect that “a 10 hectare science park at St Andrews would be better placed [elsewhere]”, and stated:

“Business and employment proposals for St Andrews are consistent with its academic and scientific profile”.

40. In relation to Chapter 4, reason 33 addressed objections which were summarised and answered as follows:

“Landscape character and capacity assessments indicate that St Andrews is at its landscape capacity or that development should be steered to Craigtoun (named individuals, Royal Burgh of St Andrews CC, St Andrews Preservation Trust, St Andrews Green Belt Forum).

Reason: The 2003 Alison Grant study indicates that some scope for further development to the west of St Andrews exists subject to mitigation.”

The appellant's challenge

41. The appellant challenged the validity of the structure plan under section 238 of the Act on the ground that the Ministers had failed in reason 33 to give adequate reasons for rejecting her objection to the proposed modifications, based on landscape capacity, as set out in her letter dated 29 January 2009. The Ministers had therefore failed to comply with a requirement of the Act. Her interests had been substantially prejudiced. These contentions were rejected by the Lord Ordinary, Lord Uist ([2010] CSOH 105). A reclaiming motion was refused by the Inner House ([2011] CSIH 59; 2012 SC 172).

42. Certain material changes have occurred since the reclaiming motion was refused by the Inner House. First, in June 2012 the Ministers approved a strategic development plan for 2012-2032 covering St Andrews. The structure plan in issue in these proceedings thereupon ceased to have effect. Secondly, in October 2012 the Council adopted a local plan covering St Andrews. The appellant has brought separate proceedings in which she challenges the validity of the strategic development plan, and other proceedings in which she challenges the validity of the local plan.

43. In her appeal to this court, the appellant has essentially repeated the arguments advanced in the lower courts and rejected by them. She maintains that the Ministers misrepresented her objection based on landscape capacity in summarising it, in reason 33, as being that St Andrews was “at its landscape capacity”. Her argument was not that there was no capacity whatsoever, but that the available capacity was inadequate to accommodate development on the scale proposed. Having set up a straw man, the Ministers then knocked it down in reason 33 by pointing out that, according to the Grant report, “some scope for further development ... exists”. That reason however failed to address the point which she was actually making. It was no answer to refer to the Grant report, which supported the point being made. She was substantially prejudiced by the failure to provide adequate reasons, since it was not apparent whether the Ministers had grappled with the landscape issue: that is to say, the impossibility of fitting the proposed developments into the 22 hectares which, according to the Grant report, could be developed without damaging the landscape. There was therefore substantial doubt whether the Ministers’ decision had been taken within the powers of the Act (cf *Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1WLR 153, 168).

Discussion

44. In considering the adequacy of the reasons given for a decision, it is necessary to take account of a number of matters, including the nature of the decision in question, the context in which it has been made, the purpose for which the reasons are provided and the context in which they are given.

45. Although it is not possible to draw a clear cut distinction between the issues to be determined at the level of a structure plan, and those which should be determined in a local plan, it is apparent from section 7(1) of the Act that a structure plan is intended to be concerned with policy and general proposals, rather than with more detailed matters. It is also apparent from section 7(2) that the policy and general proposals set out in the structure plan are to be justified by the survey and by any other information which the planning authority may obtain. Furthermore, as I have explained, regulation 6 of the Regulations requires the structure plan to include a reasoned justification of the policies and general proposals which it contains. The appellant does not suggest that there has been any failure to comply with any of those requirements.

46. Against that background, the duty of the Ministers under section 10(10) to give reasons for their decision either to approve the plan (in whole or in part and with or without modifications or reservations) or reject it cannot be intended to require them to provide a justification for the policies and proposals in the structure plan: those are the policies and proposals of the planning authority, and it is that body's responsibility to provide a reasoned justification for them. Furthermore, the adequacy of the reasons given in the present case has to be considered on the basis that they are addressed to persons who are familiar with the background and the issues. These factors are relevant to the Ministers' exercise of the discretion allowed to them by section 10(10): the duty of the Secretary of State, to whose functions the Ministers have succeeded, is to "give such statement as he considers appropriate of the reasons governing his decision".

47. The equivalent provision in the Town and Country Planning Act 1971 was considered in *Edwin H Bradley & Sons Ltd v Secretary of State for the Environment* (1982) 47 P & CR 374. Glidewell J observed at p 389 that the reasons given must comply with the test formulated by Megaw J in *In re Poyser and Mills' Arbitration* [1964] 2 QB 467, 478: that is to say, they must be proper, adequate and intelligible, and must deal with the substantive points that have been raised. Glidewell J added that provided the reasons comply with that test, the Secretary of State could not be challenged in that respect. He might decide that short reasons would suffice, or that a point was not substantive and thus needed little or no reasoning in his decision. In *Westminster City Council v Great Portland Estates plc* [1985] AC 661 Lord Scarman stated at p 673, with the agreement of

the other members of the House, that he accepted the guidance given in those two cases.

48. It is in addition important to maintain a sense of proportion when considering the duty to give reasons, and not to impose on decision-makers a burden which is unreasonable having regard to the purpose intended to be served. In the present case, the Ministers received a plethora of objections to the plan and to their proposed modifications. To judge from the objections which the court has seen, many will have raised numerous distinct matters. The matters raised are likely to have been expressed by different objectors in different ways, with different nuances. If the Ministers were to be expected to address, line by line, every nuance of every matter raised in every objection, the burden imposed in such circumstances would be unreasonable. In such a situation, where objections can properly be grouped in categories according to their general tenor, it is not unreasonable for the Ministers to respond to them on that basis, summarising in broad terms the gist of a group of objections and the reasons for rejecting them.

49. In the present case, it was reasonable for the Ministers to group the objections according to their subject-matter, and to organise them according to the relevant chapters of the finalised plan. The objections contained in the appellant's letter dated 29 January 2009, in particular, were relevant to several different chapters of the plan. In relation to Chapter 4, reason 33 in the Ministers' schedule addressed objections the general tenor of which was summarised as being that St Andrews was at its landscape capacity. Although the appellant complains that that was a misrepresentation of her objection, that exact phrase appears in her letter, at the forefront of the points made under the heading "Landscape Capacity – St Andrews". The reason for rejecting objections to that general effect, from her and others, was that the Grant study indicated that some scope existed for further development to the west of St Andrews.

50. That response did not address the broader point made by the appellant to the effect that the scale of development in St Andrews envisaged in the strategy set out in the plan, in respect of housing, a science park and a business park, would damage the landscape setting of the town. Reason 33 did not however stand alone. In relation to the plan's general strategy as set out in Chapter 1, reason 5 stated the Ministers' view that the plan provided an appropriate level of protection of the environment, and reason 6 explained that the plan's vision and settlement strategy were consistent with government policies on development planning and sustainable economic growth. In relation to Chapter 2, which set out the strategy of realising the potential of St Andrews as an economic driver and as the location of a strategic allocation of housing, reason 17 explained that, in the Ministers' view, it was appropriate for St Andrews to accommodate a strategic allocation of Fife's housing requirement, and that the local plan would "articulate the strategic land allocation which can be accommodated subject to mitigation and landscape

enhancement”. In other words, the strategic allocation which could be accommodated, having regard to landscape considerations, would have to be determined through the local plan process. Reason 4 also explained that the strategic allocation to St Andrews West reflected the housing land required across Fife on the basis of projected population growth. In relation to the science park and business park proposed in Chapter 3, reason 22 explained that business and employment proposals for St Andrews were consistent with its academic and scientific profile.

51. No doubt the Ministers might have explained in their statement of reasons that there was recognised to be a tension between, on the one hand, the economic and housing strategy of the structure plan, and on the other hand the protection of the landscape setting of the town, and that it was proposed to resolve that tension through the preparation of the local plan. Those matters were however explained in the structure plan itself. The reasons given provided an intelligible explanation, especially to a well-informed reader such as the appellant, as to why the Ministers were not persuaded by her objections. There has therefore been no failure to comply with the duty to give reasons.

52. Furthermore, even if the reasons might have addressed the appellant’s objection more clearly, there is no question of their possibly concealing a flaw in the Ministers’ reasoning by which she might have been prejudiced. Particularly when considered together with the Ministers’ strategic environmental assessment, which had acknowledged the risks to the landscape and had envisaged that they would be addressed through the local plan process, and to which the appellant had referred in her letter of objection, the reasons given did not raise any doubt as to whether the Ministers had failed to take account of a material consideration, namely the potential impact of the policy and proposals in the structure plan upon the landscape.

53. I should add that no point was taken on behalf of the Ministers as to whether the appellant’s letter of 19 January 2009 was in reality an objection to the proposed modifications or was an out-of-time objection to the finalised plan, which did not require to be taken into consideration.

Expenses

54. Finally, the appellant took issue with the decision of the Inner House to find her liable to the second respondent, Fife Council, in the expenses of the appeal in both the Outer House and the Inner House. The appellant complained in particular that the Inner House had rejected her submission that she should be spared a prohibitive burden of expenses, in the spirit of the Aarhus Convention, partly on

the basis that she had failed to provide information about her capital, although such information had not been requested by the court, and partly on the basis that she had failed to apply for a protective expenses order, although there was no established procedure for applying for such an order at the relevant time.

55. In his opinion on this matter ([2011] CSIH 77), the Lord Justice Clerk observed that the appellant had not been deterred from bringing her application, or from appealing against the decision of the Lord Ordinary, by the possible extent of her liability should she fail. In the event, she had failed on all material points. She had placed before the court information about her income from pension and investments, but that gave the court an incomplete picture of her means, since it did not include any information about her capital. She could have applied for a protective expenses order in accordance with the guidance given in *McArthur v Lord Advocate* 2006 SLT 170, but had not done so. Lord Hodge also observed that the possibility of applying for such an order was well known. Although the failure to apply for such an order did not prevent consideration of the issue of prohibitive expense at a later stage in the proceedings, it was a relevant consideration at the end of the proceedings that the possibility of an adverse award of expenses had not prevented the appellant from pursuing the appeal.

56. The appellant's criticisms of the significance attached by the Inner House to her failure to apply for a protective expenses order must be rejected. The possibility of applying for such an order was well known at the relevant time. Although the procedure was not then regulated by a rule of court, clear guidance as to the procedure which should be followed had been given by Lord Glennie in the case of *McArthur*. The Inner House were entitled in the circumstances to treat as relevant the fact that the appellant had pursued the present proceedings without having applied for such an order. In relation to the appellant's failure to disclose her capital, the submissions recorded as having been made on her behalf before the Inner House included a submission that she was not a person of great wealth. The adequacy of the information provided about her financial position was a matter for the assessment of the Inner House, which is not open to further argument in this court.

Conclusion

57. For these reasons it follows that the appeal must be dismissed.

Postscript

58. This appeal turned on the construction of particular documents. Although of importance to those affected by the outcome, the appeal did not on examination raise any arguable point of law of general public importance. It was not an appropriate use of the time of this court. This is not the first occasion in recent months when the court has made observations to this effect in respect of a Scottish appeal: see *G Hamilton (Tullochgribban Mains) Ltd v Highland Council* [2012] UKSC 31; 2012 SLT 1148, para 29.

59. By virtue of section 40(3) of the Constitutional Reform Act 2005, an appeal lies to this court from any order or judgment of a court in Scotland if an appeal lay from that court to the House of Lords at or immediately before the commencement of that section. The effect of that provision is that, subject to certain statutes under which an appeal from the Court of Session lies only with the permission of the Court of Session or the Supreme Court, the general rule is that an appeal against a judgment on the whole merits of a cause lies to this court from the Inner House of the Court of Session without leave. That is a privilege which is not enjoyed by litigants in any other part of the United Kingdom. Appeals against any order or judgment of the Court of Appeal in England and Wales or in Northern Ireland can be brought only with the permission of the Court of Appeal or of this court. In practice, the Court of Appeal normally refuses permission so as to enable an Appeal Panel of this court to select, from the applications before it for permission to appeal, the cases raising the most important issues.

60. The public interest is served, in relation to appeals from England and Wales and Northern Ireland, by the rule that permission to appeal is granted only for applications that, in the opinion of the Appeal Panel, raise an arguable point of law of general public importance which ought to be considered by the Supreme Court at that time, bearing in mind that the matter will already have been the subject of judicial decision and may have already been reviewed on appeal. An application which in the opinion of the Appeal Panel does not raise such a point of law is refused on that ground: Supreme Court Practice Direction 3.3.3. The reasons for adopting that approach were explained by Lord Bingham of Cornhill, at the time when the final court of appeal was the House of Lords, in *R v Secretary of State for Trade and Industry, Ex p Eastaway* [2000] 1 WLR 2222, 2228:

“In its role as a supreme court the House must necessarily concentrate its attention on a relatively small number of cases recognised as raising legal questions of general public importance. It cannot seek to correct errors in the application of settled law, even where such are shown to exist.”

61. In the case of appeals from the Inner House, the public interest is secured in part by certain statutory rules which qualify the right of appeal, for example by

limiting appeals from judgments which were themselves given on appeal from the sheriff to points of law. The primary mechanism for securing the public interest is however the requirement that the notice of appeal must be signed by two Scottish counsel (an expression which for this purpose includes solicitors with a right of audience in the Supreme Court) who must also certify that the appeal is reasonable: Supreme Court Practice Direction 1.2.25.

62. In *Wilson v Jaymarke Estates Ltd* 2007 SC (HL) 135 the House of Lords emphasised that it was important that the privilege enjoyed by Scottish litigants should not be abused. Lord Hope of Craighead observed at para 17:

“It is contrary to the public interest that the time of the House should be taken up with appeals which do not raise an arguable question of general public importance, as this is liable to cause delay in the disposal of appeals which merit its attention.”

It is also relevant to note what was said by Lord Hope at para 20:

“The privilege which appeals from the Court of Session to this House still enjoy, if properly used, can work to the advantage of Scottish litigants and to the development of Scots law. But the limits on it must be carefully and jealously respected if it is to continue to be in the public interest, given the amount of appellate business that now comes before the House from all parts of the United Kingdom.”

63. Those observations apply equally to appeals brought to this court. It is the responsibility of counsel, when considering whether an appeal is reasonable, to bear them in mind.