

OPINIONS
OF THE LORDS OF APPEAL
FOR JUDGMENT IN THE CAUSE

Land Securities Group plc (Appellants)
v.
Scottish Ministers and others (Respondents) (Scotland)

Appellate Committee

Lord Nicholls of Birkenhead
Lord Scott of Foscote
Lord Rodger of Earlsferry
Lord Walker of Gestingthorpe
Lord Mance

Counsel

Appellants:
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First Respondents:
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James Wolffe
(Instructed by Solicitor to the Scottish
Executive)
Second Respondents:
Richard Keen QC
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HOUSE OF LORDS

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**Land Securities Group plc (Appellants) v. Scottish Ministers and
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[2006] UKHL 48

LORD NICHOLLS OF BIRKENHEAD

My Lords,

1. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Rodger of Earlsferry. I agree that, for the reasons he gives, this appeal should be dismissed.

LORD SCOTT OF FOSCOTE

My Lords,

2. Having had the advantage of reading in advance a draft of the opinion of my noble and learned friend Lord Rodger of Earlsferry I find myself in full agreement with the reasons given by Lord Rodger for dismissing this appeal and there is nothing I can usefully add.

LORD RODGER OF EARLSFERRY

My Lords,

3. If you go from Motherwell to Wishaw or from Motherwell to Carfin, about a quarter of a mile from the town centre of Motherwell you will see a vast cleared area roughly the size of Monaco, still bearing the scars of its industrial past. It is the site of the former Lanarkshire and Ravenscraig steelworks. Steel production there stopped as long ago as 1992 and since then, while much has been done to decontaminate the

land and a spine road has been built across it, the site (“Ravenscraig”) has stood empty and undeveloped, blighting the surrounding area.

4. Naturally, considerable thought has gone into how Ravenscraig might be redeveloped. Indeed the matter has been regarded as of not merely local but national importance. Not surprisingly, it featured prominently in various aspects of the Glasgow and the Clyde Valley Joint Structure Plan 2000 which the Joint Committee, the second respondents, submitted to the Scottish Ministers, the first respondents, for their approval on 19 July 2000. The Plan was eventually approved, subject to certain modifications, on 26 April 2002 and became operative on 1 May 2002.

5. The Structure Plan written statement identified a number of “Metropolitan Flagship Initiatives” which were distinguished by their importance and by the scale of the joint action required: para 7.29. These developments would be, it said, the main foci for the longer term development of the Structure Plan area and would be of national significance. In Joint Policy Commitment 1, Ravenscraig-Motherwell-Wishaw was identified as an area for which priority was to be given to the joint promotion of its regeneration. In para 7.32 this area was said to contain a range of potential projects that should be promoted as a Metropolitan Flagship Initiative. In particular, Ravenscraig would provide an opportunity to create a more coherent urban structure, a sense of place and a quality of life within Lanarkshire, for example, by creating a core economic development area with an industrial and business park, providing new residential neighbourhoods with over 3000 new homes, improving transport links, providing a major sports and recreational facility and “testing the potential for creating a new town centre for the area linked to the restructuring of Motherwell and Wishaw.”

6. After the Structure Plan had been submitted to the Scottish Ministers, but before they had given their approval, on 28 June 2001 a partnership of Wilson Bowden Developments Ltd, Scottish Enterprise Lanarkshire and the owners, Corus, lodged a planning application relating to the site with North Lanarkshire Council. The application was for a mixed use development, including a new town centre with provision for up to 57,600 sq m gross of retail floorspace, together with offices and other services, food and drink, major leisure facilities, a hotel, residential and community facilities. The proposed retail floorspace greatly exceeded what would have been required to meet the needs of the roughly 3,500 new homes which the application envisaged.

The retail element in the proposed development was clearly designed to attract shoppers from surrounding communities.

7. A year later, in June 2002, the reporter appointed on behalf of the Scottish Ministers granted a wholly unrelated planning permission for the refurbishment, redevelopment and expansion of Motherwell Town Centre. This included provision for retail space.

8. Some of the objectors to the partnership's planning application argued that in one major respect it involved a departure from the policy in the Structure Plan. Schedule 6(c)(ii) of the Plan requires developers to apply a "sequential approach" to retailing and other town centre uses. In other words, preference is to be given to developments in town centres. The Plan emphasises that it is the responsibility of developers to demonstrate that they have applied the sequential approach, by showing that town centre options have been thoroughly assessed before edge-of-centre or out-of-centre locations are considered. The written statement, paras 11.36 and 11.38, explains that the aim behind the sequential approach is to promote the vitality and viability of the network of town centres which is essential to the economic success of the area and the wellbeing of its people. For these reasons, the principle that town centres, as opposed to out-of-centre locations, should be preferred for new developments is said to be central to the Metropolitan Development Strategy.

9. When the Structure Plan was being prepared, however, as para 11.58 shows, consideration had already been given to including retailing and other town centre uses as part of the Flagship Initiative for Ravenscraig. It was felt that there was capacity for increased retail floorspace within the Motherwell and Wishaw retail catchment areas and a need to consider the quality and distinctiveness of the retail facilities. The availability of Ravenscraig was thought to provide an opportunity for redevelopment of a scale and character that should stimulate regeneration throughout a wider area. Indeed, as paras 11.59 and 11.60 show, the Joint Committee were aware of the possibility of a planning application along the lines of the one which the partnership eventually made in June 2002:

"11.59A proposal has been promoted for the development of a new concept in leisure and retailing combined with other town centre functions, and incorporating 58,000 sq m of comparison retail floorspace, as well as major leisure

facilities, with the aim of creating a substantially more attractive retail facility than is currently available. This would be linked to the existing centres of Motherwell and Wishaw where measures would be required to manage the impacts of a retail centre at Ravenscraig. The relationship to the potential redevelopment and extension of Motherwell Town Centre, which is likely to accord with policy, would also need to be evaluated. The Ravenscraig proposal requires an evaluation of its marketability retail, environmental and transport impact assessments.

11.60 When North Lanarkshire, in consultation with the Structure Plan Joint Committee, has considered the full implications of the retail potential of Ravenscraig, it may be appropriate to expedite resolution of the strategic planning issues involved by an Alteration to the Structure Plan.”

10. So, when, after the Structure Plan was approved, North Lanarkshire Council actually had to confront the question of the scale of the retail floorspace in the partnership’s planning application, as para 11.60 of the Plan envisaged would happen, they consulted the Joint Committee. The Council and the Joint Committee did further work to evaluate the potential for creating a new town centre at Ravenscraig. Then on 15 January 2003 the Joint Committee decided to seek approval of an Alteration of the Structure Plan which would add Ravenscraig to the network of town centres in schedule 1(a) and would provide the strategic context for its inclusion in the Local Plan. On 25 April 2003 the Joint Committee submitted the First Alteration to the Scottish Ministers for their approval under section 10(1) of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”). By a decision letter dated 24 November 2003 the Scottish Ministers approved the Alteration with effect from 26 November 2003. Two aspects of the Alteration must be mentioned.

11. First, Part 7 of the Structure Plan deals with Strategic Development Priorities. At para 7.1 the written statement explains that Strategic Policy 1 sets out the Strategic Development Locations for future investment in urban and rural areas and that those locations are areas where major physical change will occur. They are said to be central to the successful implementation of the Strategic Vision and some are integral to the Flagship Initiatives. Strategic Policy 1 provides in part:

“Priority shall be given to investment in the following locations (as identified on the Key Diagram) in order to maximise the scale of urban renewal, in particular to support the Metropolitan Flagship Initiatives identified in Joint Policy Commitment 1, and to sustain rural communities:

- (a) Town Centres (Schedule 1(a));
- (b) Urban Renewal Areas (Schedule 1(b))....”

In the original version of the Plan, schedule 1(a) lists Motherwell/Wishaw among the Town Centre Renewal Priorities and Motherwell and Wishaw as town centres to be safeguarded through structure and local plans. Significantly, in that original version Ravenscraig is not included in the list of town centres in schedule 1(a). But the Alteration adds Ravenscraig to that list and inserts a new para 7.8 in the written statement:

“Consideration has been given to a proposal for a new Town Centre in North Lanarkshire as a component of the regeneration proposals for the former Ravenscraig Steel Works site. A proposal, therefore, for the development of a new Town Centre at Ravenscraig, including additional retail floorspace, will help meet identified deficiencies in the existing retail provision and Town Centre facilities as well as helping the renewal of the Ravenscraig site and regeneration of this part of North Lanarkshire. The Supplementary Written Statement (Ravenscraig-Strategic Planning Role) sets out the basis upon which a new Town Centre could be supported, including the need for any proposal to be linked, as necessary, to a planned restructuring of the existing centres of Wishaw and Motherwell.”

12. The thinking behind the change is explained in the supplementary written statement. Paras 10 and 11 are to this effect:

“10. The redevelopment of Ravenscraig has the potential to create a significant new community with the potential for up to 10,000 people and 12,000 jobs. This scale of activity needs to be planned around a new centre to provide a focus for the new community and employment

areas, create a sense of place and character for the area and to facilitate a more sustainable form of transport provision. Such a strategy which integrates primary land uses of home and work supported by services and local activities will result in a more integrated, balanced and sustainable urban development.

11. The outstanding issue that delays further progress in the implementation of the nationally agreed priorities for the area is the testing of the potential for creating a new Town Centre as part of the overall development. The components of the Town Centre would be a mixture of the following elements and must be developed in phase with the primary land uses on the site: ... ”

The list of the components of the new town centre at Ravenscraig includes retail and leisure facilities, community facilities, including cultural, religious, recreational and educational, and integrated residential uses, a railway station and bus routes and related interchange facilities.

13. The supplementary written statement continues, at paras 12 and 13:

“12 The potential form and scale of the centre however needs to be related to the network of existing town centres which serve the area, in particular Motherwell and Wishaw. These two centres do provide local functions but do not provide a high quality and range of services nor quality of environment. Neither centre serves the higher order needs of the communities in a way that would be expected for the scale of population in the area and their relative distance from Glasgow City Centre.

13 The limited retail provision results in a disproportionate number of the community having to travel longer distances to meet their needs. This problem has increased over the last ten years and is reflected in low levels of investment, the range of shops and rental levels. It is also considered that the potential of Motherwell as a business centre is underdeveloped, given its location on the main line rail network and the scale of the area served. Wishaw also requires to improve its emerging focus as a local convenience centre with a greater residential function.”

14. For North Lanarkshire Council, which had been presented with the partnership's planning application, however, the most important element in the Alteration was the deletion of paras 11.58 – 11.60 in the existing Plan and their replacement by three new paragraphs in these terms:

“11.58 Consideration has been given to retailing and Town Centre uses as part of the Flagship Initiative, in addition to industry, business, housing, leisure and environmental improvement.... There is capacity for increased floorspace within the Motherwell and Wishaw retail catchment areas, and a need to consider the quality and distinctiveness of the retail facilities. The availability of the Ravenscraig site provides an opportunity for redevelopment of a scale and character that should stimulate regeneration throughout a wider area. These matters are set out in the Supplementary Written Statement (Ravenscraig – Strategic Planning Role).

11.59 A planning application has been promoted for the development of a new concept in leisure and retailing combined with other Town Centre functions, and incorporating 58,000 sq m gross of comparison retail floorspace, as well as major leisure facilities, with the aim of creating a substantially more attractive retail facility than is currently available. This would be linked to the existing centres of Motherwell and Wishaw where measures would be required to manage the impacts of a retail centre at Ravenscraig. The relationship to the potential redevelopment and extension of Motherwell Town Centre, which is likely to accord with policy, would also need to be evaluated. There would also require to be evaluation of the levels of impact on other centres, in particular, Easterhouse and Parkhead Town Centres in Glasgow and Hamilton in South Lanarkshire. Additionally, this Ravenscraig proposal requires an evaluation of its marketability, retail, environmental and transport impact assessments. In this context, therefore, the outstanding objections to this proposal require to be addressed in relation to and are not prejudiced by the recognition of a strategic need for a Town Centre at Ravenscraig, as set out in Strategic Policy 1(a).

11.60 The Structure Plan will support the creation of a new Town Centre at Ravenscraig to include retail floorspace and a range of other community facilities and services. Retail provision of up to 6,500 sq m net to serve

the new community would accord with the Plan. However, in terms of the overall scale of the centre, comparison floorspace to serve a wider subregion (including the needs of the new community) of about 30,000 sq m net would be acceptable. This is however subject to its being integral to and controlled through a comprehensive redevelopment plan for the Ravenscraig site. The evaluation of any planning proposal over 6,500 sq m net shall take into account the requirements set out in paragraph 19 of the Supplementary Written Statement (Ravenscraig – Strategic Planning Role) including complementary action for Motherwell and Wishaw Town Centres. Such action will require to be confirmed through Section 75 or other legally binding arrangements. It will be essential, also, that the development of any retail provision should be linked through programming, to the phased development of a comprehensive redevelopment plan for the Ravenscraig area. There should be continuing priority given by stakeholders in support of other Lanarkshire Town Centres, in particular Hamilton, in the light of any Ravenscraig proposal and consideration given to the impacts on neighbouring centres within Glasgow, namely Easterhouse and Parkhead.”

15. Once armed with the Scottish Ministers’ approval of this alteration to the Structure Plan which was designed to support the creation of a town centre with substantial retail floorspace at Ravenscraig, the North Lanarkshire Council felt that they were now in a position to consider the partnership’s planning application. On 3 March 2004 the Planning and Environment Committee decided that planning permission for the development should be granted – despite the fact that, as they knew, a number of companies, including the appellants, had appealed to the Court of Session against the Scottish Ministers’ decision to approve the Alteration and the appeal was due to be heard by the Inner House at the beginning of September. In proceedings brought by the Standard Life Assurance Company and Land Securities Group plc, on 29 July 2004 Lord Carloway reduced the Committee’s decision to grant planning permission and interdicted the Council from issuing any planning permission in pursuance of their purported decision of 3 March.

16. The appeal against the Ministers’ decision under section 238(1) of the 1997 Act was duly heard by an Extra Division (Lord Kirkwood, Lord Marnoch and Lady Cosgrove) and on 30 March 2005 they refused

it: 2005 CSIH 33. The appellants then lodged their appeal to this House. Nevertheless, on 11 May 2005 North Lanarkshire Council announced *urbi et orbi* that work on the billion pound Ravenscraig project had moved another giant step forward following the Planning and Environment Committee's decision to release the planning permission for the development. Despite this, the House was told that the Council have not actually granted planning permission to the partnership.

17. While a variety of grounds was argued before the Court of Session, the appeal to the House relates solely to the question whether, in reaching their decision, the Scottish Ministers correctly interpreted and applied their own policy on the sequential approach to potential town centre developments, set out in NPPG 8, as revised in 1998, on Town Centres and Retailing. Since NPPG 8 is central to the appeal, I must set out the relevant aspects.

18. As para 1 tells the reader, NPPG 8 defines the factors that the Secretary of State (now the Scottish Ministers) will have in mind when considering policies and development proposals. Planning authorities are also expected to take its contents into account in preparing their development plans and in undertaking their development control responsibilities. Among the broad policy objectives set out in para 7 is sustaining and enhancing the vitality, viability and design quality of town centres as the most appropriate location for retailing and other related activities. That policy is reflected, of course, in various parts of the Structure Plan, especially in its Strategic Vision.

19. Paras 8 and 9 flesh out the general principles, while paras 10–15 set out the sequential approach which has given rise to the issue in this appeal:

“8. The Government is committed to protecting and enhancing the vitality and viability of town centres. They offer a range, quality and convenience of services and activities that are attractive not only to the local population and visitors but also to investors. Despite recent pressures, they retain many natural advantages for shopping, leisure and employment. Shops in particular make an important contribution to their character. Town centres have a key role in contributing to the quality of life in urban areas and provide an important focus in rural areas, allowing both urban and rural communities to benefit from competition

between retailers and types of retailing. Sustaining their vitality and viability depends on continuing investment in new schemes and refurbishments and a positive and a proactive approach by planning authorities, in partnership with other public sector agencies and the private sector, in the identification and development of suitable sites. Furthermore, a range of uses other than shopping should be encouraged to locate within the town centres, including commercial leisure developments.

9. Protecting and enhancing town centres is therefore a key consideration which underpins Government policy. In considering whether there is a requirement for additional retail and other developments, planning authorities are expected to reflect the primacy of town centres and promote comprehensive policies and proposals for sustaining them, both through development plans and development control decisions. In support of this policy, planning authorities should adopt a sequential approach to selecting sites for new development, with first preference always being given to development opportunities in town centres. Details of the sequential approach are set out in paragraphs 12 – 16.

10. Cities and most towns in Scotland are now served by a range of recent major retail and commercial leisure developments developed during the 1980s and 1990s and often located on sites outwith town centres. Given the importance attached to town centres, the scope for further such developments is likely to be more limited. Where proposals for further developments are not in accordance with the approved development plan, they should be refused if the considerations set out in paragraph 45 cannot be met.

11. Furthermore, new retail and commercial leisure developments should not lead to greater dependence on the car, and should be easily accessible by a choice of means of transport, including regular and frequent public transport services. This important requirement reinforces the principle that town centres should be the preferred locations for major generators of travel where access is easy and convenient.

12. Planning authorities and developers should adopt a sequential approach to selecting sites for new retail, commercial leisure developments and other key town centre uses First preference should be for town centre sites, where sites or buildings suitable for conversion are

available, followed by edge-of-centre sites, and only then by out-of-centre sites in locations that are, or can be made, easily accessible by a choice of means of transport. The sequential approach should apply to all food and comparison shopping as well as other attractions and facilities usually found in town centres, unless guidance in this NPPG or the development plan provides for a particular exception.

13. In support of town centres as the first choice, the Government recognises that the application of the sequential approach requires flexibility and realism from developers and retailers as well as planning authorities. In preparing their proposals developers and retailers should have regard to the format, design, scale of the development, and the amount of car parking in relation to the circumstances of the particular town centre. In addition they should also address the need to identify and assemble sites which can meet not only their requirements, but in a manner sympathetic to the town setting. As part of such an approach, they should consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or subdividing large proposals, in order that their scale might offer a better fit with existing development in the town centre. The scope for converting existing vacant and under-used premises in the town centre should be addressed as part of this approach. Consideration should also be given to whether the range of goods to be sold, including, say, bulky, electrical and fashion goods, could be retailed from a town centre or edge-of-centre site, in some cases in a different manner.”

Para 15 adds:

“Only if it can be demonstrated that all town centre options have been thoroughly addressed and a view taken on availability, should less central sites in out-of-centre locations be considered for key town centre uses. Where development proposals in such locations fall outwith the development plan framework, it is for developers to demonstrate that town centre and edge-of-centre options have been thoroughly assessed. Even where a developer, as part of a sequential approach, demonstrates an out-of-centre location to be the most appropriate, the impact on

the vitality and viability of existing centres still has to be shown to be acceptable....”

By “out-of-centre” is meant a location that is clearly separate from a town centre but within the urban area, including programmed extensions to the urban area in approved or adopted development plans. By contrast, “out-of-town” means development on a green field site, or on land not clearly within the current urban boundary.

20. Paras 31 and 32 are in these terms:

“31. Where a town centre site is not available or not suitable in terms of size, parking, traffic generation, or where there could be difficulties in providing servicing arrangements for large scale developments in the town centre itself, for example, in small or historic towns, an edge-of-centre site adjacent to the town centre should be the preferred alternative, since it should enable those shopping at the foodstore to walk to the town centre for other business. In this way it enables one trip to serve several purposes. In order to maintain and strengthen the adjoining town centre, this may require the reuse of derelict land or the redevelopment of suitable sites on the edge of the centre, enabling less favoured and neglected areas to be brought back into use.

32. Some town centre sites may be under challenge and showing early signs of decline. Where such centres have failed to benefit from recent investment that may have been attracted to other competing centres and locations, or to attract sufficient custom, a different approach may be necessary. Although these town centres would clearly benefit from modernisation and refurbishment, authorities should be realistic in their expectations. Attempts to go back to past patterns of use, against the market trends that led to deterioration, may not always succeed and in some circumstances it could be necessary for planning authorities to manage the decline in the relative importance of the centre.”

21. Under the heading “assessing new developments”, paras 44 and 45 provide inter alia:

“44. During the 1980s and 1990s there has been investment in town centres, but more significantly there has also been growth in new forms of retail and commercial leisure developments outwith traditional centres, such as food superstores and retail parks. Cities and most towns in Scotland are now served by a range of recent major developments and others approved or under construction, often in out-of-centre locations. Where Planning Authorities consider there to be a requirement for further new developments or the expansion of existing developments, development plan policies and proposals should indicate the location, scale of additional floorspace and type of development appropriate. Such policies or proposals should be consistent with the general policies in this NPPG, including the particular considerations set out in paragraph 45 below. Accordingly, applications for further new, or expansions to existing, major retail and commercial leisure developments, should initially be assessed as to whether they are consistent with the development plan. Where there is considered to be no requirement for further developments, additional sites should not be identified in the development plan.

45. Where a proposed development is not consistent with the development plan, it is for the developer to demonstrate why an exception to policy should be made. Such proposals should be rigorously assessed by the planning authority against the policies set out in this NPPG and should be refused if all the following considerations cannot be met. The proposed requirement should:-

- a) satisfy the sequential approach....”

22. The principal submission of Mr Currie QC on behalf of the appellants was that, when they were deciding whether to approve the Joint Committee’s Alteration to the Strategic Plan, the Scottish Ministers had to take account of their declared policy in NPPG 8 that, when planning authorities consider there to be a requirement for a new development, development plan policies and proposals should be consistent with the sequential approach in para 12 of the NPPG. It was important that Ministers should stick to their declared policy because companies like the appellants had invested in various existing town centre sites on the basis that the sequential approach would be followed and priority given to development in town centres. In fact, however, when AWG Developments Ltd had raised the need for the sequential approach to be applied by the Scottish Ministers when deciding whether

to approve the Alteration, the Scottish Ministers had replied, in Annex A to their decision letter, that “The sequential approach, as set out in NPPG 8, is not directly applicable to the creation of a new town centre.” Counsel for the Scottish Ministers accepted that “directly” added nothing to the statement of their view.

23. Mr Currie submitted that this reply showed that the Ministers had misinterpreted their policy and so had failed to take into account a relevant and material consideration which ought to have been taken into account. It was common ground that, in line with the well-known passage in the opinion of Lord President Emslie in *Wordie Property Co v Secretary of State for Scotland* 1984 SLT 345, 347 – 348, if the Scottish Ministers were indeed bound to apply the sequential approach but had not done so, then their decision to approve the Alteration would be ultra vires. Only rather faintly did Mr Moynihan QC for the Ministers suggest that, in an exercise of discretion, the House might nevertheless decide not to quash the decision.

24. On behalf of the Joint Committee Mr Keen QC put forward a somewhat sophisticated argument in reply to the appellants’ argument. The sequential approach in NPPG 8 had to be applied when a planning authority was considering a proposal for retail or similar development outside a town centre. So, if the Alteration had simply proposed a retail development at Ravenscraig, it would admittedly have been outside any town centre and the Scottish Ministers would have had to apply the sequential approach in deciding whether to approve that aspect of the Alteration. But, in fact, the development being proposed included a town centre and any proposed retail development would take place in that town centre. So the retail development was one to which priority should indeed be given in accordance with the sequential approach.

25. I would reject that argument. It seems to me that Mr Currie was basically correct when he said that the sequential approach in NPPG 8 was designed to afford support to *existing* town centres. That is implicit in the broad policy objective of “sustaining and enhancing” the vitality, viability and design quality of town centres: para 7. The same goes for the reference in para 8 to “sustaining” their vitality and viability which is said to depend on “continuing investment in new schemes and refurbishments”. Para 9 talks of “protecting and enhancing” town centres. And in para 12 the sequential approach itself requires that first preference should be for town centre sites, where sites or buildings suitable for conversion are available – clearly, sites in existing town centres are contemplated. In short, the policy in NPPG 8 is that existing

town centres should be supported, rather than that developments should be encouraged in other areas. Whether that policy puts too much emphasis on protecting what exists rather than supporting new ventures is purely a matter of planning judgment and not a matter for the court. As long as the policy in NPPG 8 stands, however, its aim is to protect existing town centres from being undermined by developments in other parts of the town or city or outside the town or city. That being so, the mere fact that the retail development at Ravenscraig would take place in a projected town centre would not mean that it was automatically to be given priority by the application of the sequential approach in para 12 of NPPG if that approach had to be followed.

26. So the critical question is indeed whether the Scottish Ministers had to follow the sequential approach in para 12 of NPPG 8 when considering whether to approve the Alteration. Of course, if NPPG 8 did not apply at all to their consideration of the Alteration, then the sequential approach in para 12 would not apply either. But counsel for the Ministers did not advance that submission. Even on the assumption that various other aspects of NPPG 8 did indeed apply, however, it does not necessarily follow that the Ministers were bound to apply the sequential approach in para 12 of their policy if it was not actually suited to, or operable in, the exercise in which they were engaged.

27. Here what the Ministers were being asked to approve was an Alteration which did not simply envisage a large retail development at Ravenscraig. On the contrary, what was envisaged was a many-faceted development. As had already been explained in para 7.32 of the original Structure Plan, Ravenscraig was seen as furnishing an opportunity to create a more coherent urban structure, a sense of place and a quality of life within Lanarkshire and to deliver major land renewal. This was to be achieved in a variety of ways, such as creating a core economic development area with an industrial and business park, providing new residential neighbourhoods with over 3000 new homes, improving transport links, providing a major sports and recreational facility and “testing the potential for creating a new town centre for the area linked to the restructuring of Motherwell and Wishaw.” So the town centre, whose potential still remained to be tested, was just one element, though an important element, in that larger scheme. Similarly, as I have already explained in para 12 above, the town centre was itself to be composed of a mixture of elements, including retail and leisure facilities, community facilities, such as cultural, religious, recreational and educational facilities, integrated residential uses, a railway station, bus routes and related interchange facilities. Having done further work, especially on the retail aspects, after the Structure Plan was approved, the Joint

Committee now wanted to alter it so that it would support the town centre element, including the retail floorspace, in that larger development. As Lord Marnoch said in para 88 of his opinion in the Inner House, the designation of the new town centre at Ravenscraig is a unitary concept which proceeds upon a number of wide-ranging planning judgments.

28. Mr Currie concentrated, of course, on the retail element. The Alteration would lend support to a very substantial retail development on what was, in reality, he said, an out-of-centre site no distance at all from the town centre of Motherwell. Para 15 of the supplementary written statement acknowledged that, depending on its size, the development would have an impact on Motherwell and Wishaw and perhaps on other town centres in Lanarkshire. If the Scottish Ministers had duly applied their policy on Town Centres and Retailing in NPPG 8, they would have followed the sequential approach and would have given priority to sites in these existing town centres for the retail development. Indeed, their reporter had granted planning permission for a retail development in Motherwell town centre as recently as June 2002. In deciding that the sequential approach in NPPG 8 did not apply to what was so plainly an out-of-centre retail development, the Ministers had misinterpreted their policy in a most material respect.

29. Had the retail element stood alone, there would have been no answer to Mr Currie's argument that the requirement to follow the sequential approach was a policy which would have been relevant to the Scottish Ministers' consideration of the Alteration. They could, of course, still have decided to depart from their policy and not apply the sequential approach in deciding whether to approve the Alteration, but they would have had to give reasons for doing so. In fact, however, the retail element does not stand alone: it is an integral part of a scheme for the creation of a new town centre, which is in its turn part of a larger scheme for the redevelopment of the whole area. In that situation the appellants' argument is unrealistic since the sequential approach simply cannot be sensibly applied to the issue which the Scottish Ministers had to consider, viz an alteration to the Structure Plan which would support the development of a town centre at Ravenscraig. The sequential approach presupposes that the development in question is simply a retail or similar development which could take place in an existing town centre and for which the town centre should therefore have priority. Or else, if the development is too large, it can be broken down so as to make a better fit with existing developments in the town centre. Alternatively, consideration can be given to the range of goods to be sold in any retail premises, or the way in which they could be sold. If

one asks oneself whether that sequential approach can be applied to the actual development which the Scottish Ministers had to consider, the proposed town centre at Ravenscraig, then the plain answer is that it cannot. The whole point is that the town centre is to be at Ravenscraig. It cannot be airlifted and dropped into an existing town centre. And the Ministers could not carve out the retail elements and apply the sequential approach so as to require them to be sited in an existing town centre such as Motherwell or Wishaw without completely altering, indeed destroying, the very nature of the proposed town centre development at Ravenscraig. The Scottish Ministers were therefore obliged to proceed on the basis that the Alteration put forward by the Joint Committee related to a whole town centre. In these circumstances they were fully justified in taking the view that the sequential approach was simply not operable and so did not apply to their consideration of the Alteration.

30. There is no escape from the fact that, if it goes ahead, the town centre development will greatly affect the town centres of Motherwell and Wishaw. Indeed, even the Scottish Ministers' approval of the Alteration is likely to have had an impact on the prospects for development in these two centres. As is to be expected in a broad statement of planning policy for the whole of Glasgow and the Clyde Valley, the point about the impact on Motherwell and Wishaw is dealt with only relatively briefly. Para 7.8 in the supplementary written statement says that any proposal for a new town centre would need "to be linked, as necessary, to a planned restructuring of the existing centres of Wishaw and Motherwell." The new para 11.60 of the Structure Plan itself simply says that the evaluation of any planning proposal for over 6,500 sq m of retail space will have to take account of complementary action for Motherwell and Wishaw and that such action will have to be confirmed through section 75 or other legally binding arrangements. Giving effect to that Structure Plan policy for complementary action for Wishaw and Motherwell is a matter for North Lanarkshire Council, as the local planning authority with responsibility for the Local Plan and for deciding individual applications for planning permission.

31. I would accordingly reject the principal argument advanced on behalf of the appellants.

32. Mr Currie advanced a subsidiary argument which really shaded into his principal submission. As I have noted, another change which was made to the original Structure Plan was to add Ravenscraig to the list in schedule 1(a) of town centres which are to be safeguarded through

Structure and Local Plans. Mr Currie submitted that Ravenscraig could not be added to that list since it was not an existing town centre. It had therefore been ultra vires for the Scottish Ministers to approve that alteration to the Structure Plan. I would reject that argument also. I have already accepted that the general policy behind NPPG 8 is the protection of existing town centres. And, equally, I would accept that many of the policies in the Structure Plan are designed to support existing town centres. It is also, at first sight, strange that Ravenscraig is added to a list of town centres at a time when, if you visited the site, you would see nothing but a vast open space, with not the slightest sign of a town centre. Nevertheless, once it is accepted that the vision behind the Structure Plan is that one day, within the lifetime of the Plan, there should be a town centre on that site as part of a larger development, then it makes sense for the Structure Plan to list it in schedule 1(a) and so try to promote investment in the site and ensure that the viability of this future town centre is not undermined in advance by, say, large retail or leisure developments on other sites in the vicinity. The effect of this addition to schedule 1(a) may not be to safeguard an existing town centre, but the Joint Committee were perfectly entitled to give effect in this way to a policy which is designed to promote investment and to protect the viability of what is intended to be the town centre at the heart of a development of national significance.

33. For these reasons I would dismiss the appeal.

LORD WALKER OF GESTINGTHORPE

My Lords,

34. I have had the privilege of reading in draft the opinion of my noble and learned friend Lord Rodger of Earlsferry. I am in complete agreement with it, and for the reasons which Lord Rodger gives I would dismiss this appeal.

LORD MANCE

My Lords,

35. I have had the privilege of reading in draft the opinion of my noble and learned friend Lord Rodger of Earlsferry. I am in complete agreement with it, and for the reasons which Lord Rodger gives I would dismiss this appeal.