



FIRST DIVISION, INNER HOUSE, COURT OF SESSION

**[2026] CSIH 40
XA105/25**

Lord President
Lord Clark
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

ACORN BIOENERGY LIMITED

Appellant

against

THE SCOTTISH MINISTERS

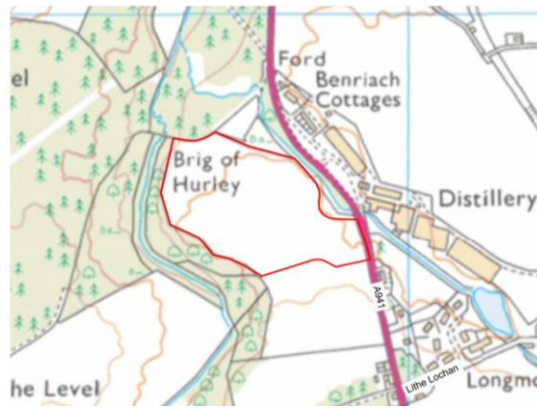
Respondents

**Appellant: Mure KC; Shepherd and Wedderburn LLP
Respondents: Donnelly; The Scottish Government Legal Directorate**

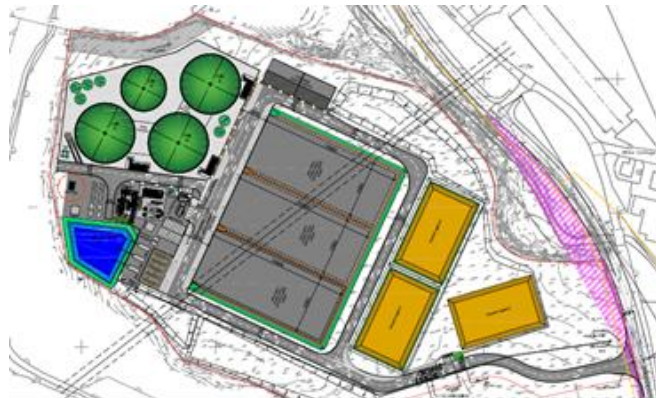
14 August 2026

Introduction

[1] On 28 April 2023, the appellant applied to Moray Council as the local planning authority for planning permission for a 100GWh (gigawatt hours) per year anaerobic digestion plant to be constructed on land at Longmorn, south of Elgin. The location of the proposed development is shown in the following red line drawing:



[2] The proposed layout of the site is depicted in the following drawing:



[3] The purpose of the plant would be to process by-products of the whisky distilling industry, along with some agricultural products and by-products. The plant's main output would be biomethane. This would either be injected into the gas grid or used by industry as a low carbon gas to replace fossil fuels employed in heating and transport. A gas main runs alongside the A941 within the eastern edge of the site. A by-product of the digestion process is digestate; this is used as a natural fertilizer for agriculture.

[4] The project would incorporate carbon capture technology, allowing CO₂ created by the process to be captured and either sold as a high-grade gas (to replace CO₂ manufactured using fossil fuels), or removed for carbon capture and storage.

[5] The appellant maintained that the development would promote the circular economy for a number of reasons: (i) it would process distillery by-products while also producing digestate for farmers producing for the distillery and for the plant itself; (ii) it

would produce biomethane, a low carbon fuel; (iii) it would capture and replace the manufacture of CO₂; and (iv) its anaerobic digestion process would produce no waste.

[6] The site is situated close to four whisky distilleries, Benriach and Longmorn distilleries are located directly across the A941; Glen Elgin and Mannochmore distilleries are about a mile from the site.

[7] The proposed site is largely surrounded on three sides by woodland. To the east of the site, shielded by planting, is the A941. Beyond the A941 are the Benriach and Longmorn distilleries and the settlement of Longmorn, which are not included in the Elgin “Countryside Around Towns” (CAT) designation set out in Policy EP4 of the Moray Local Development Plan 2020 (LDP), formally adopted on 27 July 2020. The development site is close to feedstock, distilleries that need biomethane, farmers who need fertiliser, and the gas injection point at Morayston. There is an existing gas pipeline on the site; this has the capacity to receive direct injection of biomethane from the site.

The refusal of the planning application

[8] On 25 April 2025 Moray Council refused the application for eight reasons set out in a schedule to the notice of refusal. For present purposes it is only the eighth reason for refusal that matters. This related to the project’s location within the Elgin CAT designation. The reason for refusal stated that the proposed project lay within an area where development must generally be prohibited to maintain the distinction between the defined settlement boundary of Elgin and the surrounding open countryside. The size and scale of the proposed development (9.8ha), its industrial appearance and its location immediately adjacent to the main arterial route to and from Elgin (and Moray as a whole) from the south would significantly undermine the function, nature and character of the CAT area.

The appeal against the refusal of planning permission

[9] The appellant appealed against the refusal of planning permission to the respondents who appointed a reporter. On 23 October 2025 he refused the appeal. The appellant now appeals to this court.

The relevant development plan policies

[10] The development plan comprises the 2023 National Planning Framework 4 (NPF4) and the 2020 LDP. The pertinent policies may be summarised as follows.

National Planning Framework (NPF4)

[11] Policy 1 gives significant weight to the global climate emergency in order to ensure that it is recognised as a priority in all plans and decisions. The policy states that when considering all development proposals significant weight will be given to the global climate and nature crises.

[12] Policy 2 is intended to ensure that emissions from new development are minimised as far as possible. Policy 3 aims to protect and enhance biodiversity. Policy 9 has the intention of encouraging, promoting and facilitating the reuse of brownfield, vacant and derelict land and vacant buildings.

[13] Policy 11 supports renewable development. The intent of the policy is stated to be to encourage, promote and facilitate all forms of renewable energy development onshore and offshore. The policy provides that development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported. A number of examples of such proposals are given; they include small scale renewable energy generation technology,

proposals associated with negative emissions technologies and carbon capture, and proposals including co-location of these technologies. There is no doubt that the proposed project is the type of development that the policy is intended to encourage. The policy states that development proposals for wind farms in National Parks and National Scenic Areas will not be supported. Development proposals will only be supported where they maximise net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities. Project design and mitigation are to demonstrate how various specified impacts are to be addressed. These include matters such as impacts on communities and individual dwellings and significant landscape and visual impacts.

Moray Local Development Plan 2020

[14] Policy EP4 aims to protect countryside around towns, including Elgin, against development sprawl into the countryside. Development proposals within the CAT areas will be refused unless they (i) involve the rehabilitation, conversion, limited extension, replacement or change of use of existing buildings or are necessary for the purposes of agriculture, forestry, low intensity recreational or tourism use or (ii) are specifically allowed under the terms of other LDP policies or settlement statements or (iii) are designated “LONG” term housing allocation released for development.

[15] Policy EP6 is intended to safeguard settlement boundaries against development proposals unless the proposal is designated as a “LONG” term development site.

Policy PP2 is concerned with supporting sustainable economic growth while policy PP3 states that development must be planned and co-ordinated with infrastructure and services. Policy DP5 seeks to provide a range of locations for new and expanding businesses. Policy

DP9 states that all renewable energy proposals will be considered favourably where they meet certain specified criteria and contribute to renewable energy generation targets.

Impact on greenhouse gas emissions and socio-economic benefits, such as employment, will also be considered in the assessment.

The reporter's decision

[16] The reporter first considered whether a screening direction under regulation 7(4) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 was necessary. He noted that it was, by the time of his consideration of matters, almost three years since the local planning authority had issued a negative screening opinion and that the planning application had been modified during that period, although the description of the development had not changed. The local planning authority's view was that the modifications did not exacerbate environmental impacts. Having considered the proposal's embedded mitigations, the planning authority's view and those of the appellant and the Scottish Environment Protection Agency (SEPA), the reporter was satisfied that a screening direction was not required. In reaching this decision, he took account of the evidence before him on the issues of noise, vehicle movements, landscape and visual impacts, and the potential for accidents. No issue is taken with the reporter's decision on this aspect of the appeal.

[17] In paragraph 1 of his reasoning the reporter identified the key issue in the appeal as follows:

"I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise. The development plan for the site comprises the 2023 National Planning Framework 4 (NPF4) and 2020 Moray Local Development Plan (LDP). Where incompatibility exists between an element of NPF4 and the LDP, whichever is the later in date prevails. Having regard to provisions of

the development plan, I find the key issue for this appeal is the principle of the development. I consider that other issues, covering a range of detailed matters, are secondary to assessing acceptability of the site, in principle. The main policies relevant to the principle are: NPF4 policies 1, 2, and 11, and LDP policies EP4, EP6, PP2, PP3 and DP5.

The reporter stated (paragraph 4) that the evidence left him in no doubt that the proposal would assist in tackling climate change by reducing emissions. He considered that the proposal gained support from NPF4 policy 1 and the intent of policy 2. The site was close to and well placed to be supplied by a number of distilleries and was close to agricultural uses. It had direct access to the gas grid. Those factors were in line with the national policy of minimising carbon emissions.

[18] The reporter noted (paragraph 6) that the proposed site was a large 9.8ha area within the CAT designation. The LDP (in policy EP4) set out this bespoke designation specifically for the Moray area. It was relevant to key settlements that were most pressured from new development. The CAT areas restricted development sprawl around five settlements, including Elgin.

[19] The appellant argued that the proposal was immediately adjacent to a distillery and would not introduce a type of development leading to development sprawl. The reporter considered (paragraph 8) that restricting development sprawl (the purpose of policy EP4) could relate to any form of development and not just to housing. While the appellant acknowledged that some harm to the CAT designation would arise, it argued that the landscape and visual impacts were minimised by the existing character of the locality. Nevertheless, the reporter considered that policy EP4 did not allow for proposals to be considered on their individual landscape and visual merits. Policy EP4 did not support the principle of the proposal within the Elgin CAT.

[20] The appeal site was located around 300 metres from the southernmost “LONG” allocation in the LDP (policy DP3) and was outwith the Elgin settlement boundary. It was visually detached from the main built-up area of Elgin and in a more open countryside setting. The LDP policy EP6 “Settlement Boundaries” guarded against development which was immediately outwith the settlement. The proposal was therefore not supported by the intent of policy EP6.

[21] In paragraph 12 the reporter took the view that policy DP9 relating to renewable energy and biomass in the LDP was incompatible with NPF4 policy 11. The principle of the use should be considered against NPF4 policy 11 as this set out the up-to-date planning policy position on energy matters.

[22] The reporter considered the principle of the use against NPF4 policy 11. In paragraph 13 he stated the following:

“As a low carbon renewable energy technology, with carbon capture included, the appeal proposal receives broad support from the intent of policy 11 and its desired outcomes; including part a) of the policy. I acknowledge that the only geographical areas where there is a firm restriction in policy 11 (part b) concerns wind farms in National Parks and National Scenic Areas. In all other locations, I agree with the appellant that there is potential to locate low carbon/emissions energy proposals (such as this appeal). However, that would be in the context of any other geographically specific development plan policies. Policy 11 is not written in a way which excludes the consideration of other LDP policies.”

The reporter concluded that NPF4 policy 11 showed support for the proposal as a negative emissions technology in principle. Energy related proposals should be assessed against policy 11 as far as NPF4 was concerned.

[23] The reporter proceeded to address the appellant’s submission that LDP policy EP4 was incompatible with NPF4 policy 11. The appellant argued that policy EP4 did not specifically allow for a renewable energy use and was therefore inconsistent with NPF4 policy 11. The reporter agreed that it was not directly consistent. There was, however, a

difference between inconsistency and incompatibility. The appellant argued that policy 11 on its own provided a comprehensive test for determining a renewable energy proposal and that the only embargoed areas were onshore wind farms in national parks and national scenic areas. Policy EP4 and other LDP policies did not set out a balancing exercise in the same way as policy 11. As a result, according to the appellant, the specific wording of policy EP4 and indeed the wider LDP were said to be incompatible with NPF4 policy 11.

[24] In paragraph 24 the reporter set out his conclusion on the appellant's argument:

"The appellant argues that any impact on landscape and visual resources only requires to be evaluated against NPF4 Policy 11 and its balancing exercise. In my view, that would be ignoring a geographically specific policy of the LDP. In this instance it would also undermine the settlement strategy where, for example, the CAT designation is seen to take priority over local landscape designations (in policy EP3)."

The reporter considered that the balancing exercise in policy 11 related to the assessment of the detailed impacts of a proposal and not to a wider exercise across the development plan. That wider consideration was provided for in policy 1 where significant weight was to be given to the global climate crisis. It was therefore a matter for a decision maker to conclude on policy 1 when weighing up the impacts of a proposal on the LDP settlement strategy.

[25] What was important, in the reporter's view, was that the development plan as a whole provided the decision-making framework and not one single policy. In other words, the positive support for specific types of development in NPF4 would have to be considered within an overall assessment of compliance with the development plan. The fact that EP4 did not specifically allow for energy projects did not make it incompatible with policy 11.

At the end of paragraph 26 the reporter made the following observation:

"A LDP may identify areas where development would be highly restricted. I consider it a policy tension to be resolved in reaching a balanced conclusion on the development plan as a whole."

On the principle of the proposal the reporter considered that his findings showed a clear conflict with the CAT designation and its purpose. As policy EP4 (and policy EP6) were geographically specific, and in the absence of other LDP policies to support the proposed use at the site in the CAT, the principle of development was not supported by the LDP. This was despite the economic benefits arising and a degree of support that could be provided by policies PP2 and DP5 in terms of locational need in the area.

[26] While the appeal site had merits in respect of the proposed use, the reporter was not convinced that the evidence demonstrated that a site in the CAT was the only viable option. In his view there was no clear and exceptional locational need for the proposed plant to be at the Longmorn site. He therefore considered that the locational advantages of the site did not outweigh the settlement strategy established in the LDP for Elgin and its policy EP4.

[27] In paragraph 38 the reporter stated the following:

“The emissions savings are to be balanced against a ‘plan-led’ settlement strategy to restrict new development around Elgin. A settlement strategy is integral to a development plan for any area. I therefore do not consider the scale of the emissions savings are such that a long-term settlement strategy should be set aside in this location. I consider that approving the proposal would significantly undermine the settlement strategy across the key towns in Moray where pressure for development is considered to be most significant.”

The reporter had no reason to doubt that that the proposed development would be a multi-million-pound capital investment in Moray, creating construction and full-time jobs as well as local supply chain and other knock-on effects. After balancing the relative weight of the settlement strategy and the CAT policy, the reporter concluded that the proposal did not accord in overall terms with the development plan. There were no material considerations which would otherwise justify granting planning permission. Accordingly, he refused the appeal.

Summary of the appellant's submissions

[28] The reporter erred in law and acted irrationally in identifying “the principle of the development” as the single key issue. By making that determination he relegated a series of important issues, including policies in NPF4, to being merely secondary. Proper determination of the application required more than consideration of the scale, type and location of the development in principle. The reporter irrationally sidelined and downplayed key policies with the result that they were not properly taken account of in the overall balancing exercise. His approach wrongly put the CAT policy in the LDP ahead of NPF4 policy 11. He elevated EP4 into an embargo on any renewable energy development.

[29] The reporter’s approach caused him to discount aspects of NPF4 policy 11 on the basis that an assessment against such aspects would not call into question the principle of the proposal. NPF4 made clear that energy related proposals should be assessed against all of policy 11. In particular, the reporter failed to take into account the economic benefits of the proposal under policy 11(c). He erred in considering economic benefits merely as an aspect of LDP policy and as a material consideration. The reporter also erred by failing to take into account how the proposal addressed landscape and visual impacts, and impacts on biodiversity. The reporter erred in failing to have regard to NPF4 policy 3 (Biodiversity). The planning authority found that the tests in that policy were met by the proposal. The reporter erred in the rejecting the relevance of this policy on the basis that it was not a matter which called into question the principle of the use. The reporter also failed to have regard to the second intent of NPF4 policy 1, namely to address the nature crisis.

[30] While the reporter recognised that the proposal would be important to a circular economy, he failed to have regard to this matter as part of the development plan and hence as part of the balancing exercise. Similarly, his only reference to the key NPF4 issue of “Just

Transition” was under the heading of “Other matters” and not as part of the analysis of and balancing exercise under the development plan.

[31] On a proper reading of NPF4 policy 11, it did not fall out of account in favour of policy 1 when considering a wider exercise across the development plan. Unlike housing development, the proposed development would have a limited operational life and would thereafter be decommissioned with the land reverting to its previous use.

[32] If the true meaning and effect of policy EP4 in the LDP was that the balancing exercise could not take account of all aspects of NPF4 relevant to the proposal, then EP4 was in conflict and incompatible with NPF4. On that hypothesis, policy EP4 would not be part of the development plan. If, however, policy EP4 was compatible with NPF4 then contrary to the reporter’s reasoning, policy EP4 did not prevent all relevant parts of NPF4 being weighed in the balance against the CAT designation and the reporter ought to have considered in his balancing exercise all aspects of, amongst other things, policy 11.

[33] The reporter’s reasoning failed to explain what scale of emissions savings would be necessary to overcome policy EP4. Had the reporter properly interpreted the development plan as a whole and weighed in the balance all aspects of the proposal, a different conclusion would have been possible.

Summary of the respondents’ submissions

[34] The reporter was entitled to take the view that the matters concerning the principle of the development were those meriting the greatest weight, with others meriting less weight. In his decision the reporter properly set out his assessment of the issues bearing on the principle of the development. He fully considered the topic of emissions savings and addressed the CAT policy in the LDP. He had regard to the significant economic benefits

which the proposal would produce and considered that the development was broadly supported in principle by policy 11 of NPF4.

[35] The reporter noted that the economic benefits were common ground and did not call into question the principle of the development. He was entitled to approach matters in that way.

[36] Essentially, the appellant's criticisms of the reporter's reasoning related to the weight he chose to give to various factors. This was not a permissible ground of appeal. The reporter was entitled to conclude that a settlement strategy was integral to a development plan for any area and therefore to hold that scale of the emissions savings were not such that the settlement strategy should be set aside in this particular location.

[37] The reporter had regard to NPF4 policy 3; he explained that he attributed minimal weight to it.

[38] The reporter considered the importance in NPF4 of the circular economy. He took into account just transition, the generation of renewable energy and the use of carbon capture utilisation and storage.

[39] There was no conflict between the policies in the LDP and NPF4 except insofar as policy DP9 was concerned.

Decision

[40] As is well-known, a fundamental principle of planning law is that the courts are concerned only with the legality of the decision-making process. The courts exercise a supervisory jurisdiction and are not empowered (or equipped) to engage in a reconsideration of the merits of a case. They cannot re-evaluate a judgement concerning the application of planning policies to the particular facts and circumstances arising in the

context of the application (*Tesco Stores v Environment Secretary* [1995] 1 WLR 759, Lord Keith of Kinkel at 764H and Lord Hoffmann at 780H; *J29 (Scotland) v Scottish Ministers* [2025] CSIH 17, Lord President (Pentland) delivering the opinion of the court at paragraphs [37] to [39]).

[41] In the present case the appellant's attack on the reporter's decision amounted in effect to an invitation to the court to disregard these fundamental principles. The appellant sought to persuade the court that a different conclusion should have been reached on questions of planning judgement; the balancing exercise, which lay at the heart of the decision, should have been conducted differently and the relevant factors should have been differently weighed. Such an approach is not legitimate. In developing this approach, the appellant failed to read the decision as a whole and adopted an unduly narrow textual analysis of it.

[42] When read as a whole, as it must be, the reporter's decision in the present case makes clear that he determined the appeal in accordance with the development plan, as he was required to do by section 25(1) of the Town and Country Planning (Scotland) Act 1997. He was entitled to consider and decide the appeal on the basis that the determining issue was whether the principle of the development was supported by the development plan. The central issue, which the reporter correctly identified, was whether the proposed development would be in a location that was acceptable in terms of the development plan.

[43] Between paragraphs 2 and 20 of his decision the reporter assessed the various issues which he considered to be relevant to the principle of the development. He was in no doubt that the proposal would assist in tackling climate change by reducing emissions; it therefore derived support from the 2023 National Planning Framework 4 (NPF4) policy 1 and the intent of policy 2, which seeks to encourage, promote and facilitate development that

“minimises emissions and adapts to the current and future impacts of climate change”. The principle was further supported, in terms of policy 2 a), by the fact that the development would be sited close to and would therefore be well-placed to be supplied by a number of distilleries, by it being close to agriculture and by it having direct access to the gas grid. These considerations were all in line with minimising carbon emissions.

[44] With regard to the Countryside Around Towns (CAT) policy in the Moray Local Development Plan 2020 (LDP) (EP4), the reporter took account, as he was entitled to do, of the appellant’s acceptance that there would be damage to the aims of this policy. The proposal was not supported by the intent of LDP policy EP6 (Settlement Boundaries); this sought to guard against development immediately outwith the settlement. The reporter found that the development would be “visually detached from the main built up area of Elgin and in a more open countryside setting” (decision, paragraph 9).

[45] In paragraph 11 the reporter examined the issue of access onto the A941. This was an issue testing the principle of development. The proposal offered “important and sizeable” economic benefits in terms of capital investment and direct and indirect employment opportunities. It followed that, in principle, access to the A941 was supported by LDP policy PP3.

[46] The reporter took into account (paragraph 14) that the council accepted in broad terms the economic and employment benefits set out by the appellant. This meant that NPF4 policy 11 c) did not weigh against the proposal.

[47] The reporter acknowledged in paragraph 15 that a range of other factors required detailed consideration under part e) of policy 11, but none of these affected the “overarching principle of the use”. They were not therefore of significant weight.

[48] Between paragraphs 16 and 20 the reporter addressed a range of other factors of lesser significance. He recognised that there was a locational need for this type of development “in the general area”. He examined other policies and concluded that none of them called into question the proposed use of the site for the development.

[49] We can detect no error in the reporter’s approach. He addressed all the relevant issues in a detailed, careful and well-balanced decision. He understood that the proposed development was supported by national planning policy, but that was not the end of the matter. He had to balance that support against the protection accorded to existing settlements by policy EP4 in the LDP. In the circumstances of the case these policies pulled in different directions, and it was, therefore, the reporter’s task to exercise his planning judgement in deciding whether, having regard to the whole of the development plan, permission should be granted. At the end of the day, he concluded that it should not be. That is the type of judgemental decision with which the court is not entitled to interfere.

[50] Reading the decision as a whole, it is impossible to conclude that the reporter left any relevant factor out of account or that he misdirected himself as to the meaning and effect of any of the relevant policies and their application to the facts of the case. He was correct to hold that the balancing exercise in NPF4 policy 11 related to the assessment of the detailed impacts of a proposal and not to a wider exercise across the development plan. Such a wider consideration across the whole of the development plan is provided for by NPF4 policy 1; this requires significant weight to be accorded to the global climate crisis. The reporter correctly recognised that NPF4 policy 1 was intended to ensure that in the consideration of all development proposals significant weight must be given to encouraging and promoting developments that address the climate crisis.

[51] Having fully recognised that the importance of tackling the global climate crisis had to be a factor of significant weight in considering the application, the reporter then had to consider the effect of LDP policy EP4. The latter policy was not in any sense superseded by NPF4 policy 11. The reporter was well-founded in holding that the proposed development conflicted with policy EP4. That was despite the project's economic benefits and a degree of support for it provided by LDP policies PP2 and DP5 in terms of locational need in the area. On the evidence before him, the reporter was not satisfied that the development site was the only viable option. The evidence did not show that there was a clear and exceptional need for the plant to be at the Longmorn site.

[52] The reporter then proceeded to weigh such advantages as the site possessed against the settlement strategy for Elgin reflected in LDP policy EP4. In doing so, he was exercising an entirely legitimate planning judgement.

[53] In the final analysis, the reporter held that the demonstrated emissions savings had to be balanced against a plan-led settlement strategy to restrict new development around Elgin. His judgement was that the scale of the emissions savings was not sufficient to overcome the long-term settlement strategy. There is no proper ground on which the court can interfere with that judgement; it was one for the reporter to make.

[54] The appeal is refused. All questions of expenses will be reserved.