

DATA LABEL: PUBLIC



DEVELOPMENT MANAGEMENT COMMITTEE

PLANNING APPEAL PPA-400-2152: PLANNING PERMISSION IN PRINCIPLE FOR PROPOSED MIXED-USE DEVELOPMENT FOR BUSINESS (CLASS 4), INDUSTRIAL (CLASS 5) AND STORAGE AND DISTRIBUTION (CLASS 6), WITH ASSOCIATED ENGINEERING, LANDSCAPING AND DRAINAGE AT LAND TO NORTH AND SOUTH OF A705, COUSLAND FARM, LIVINGSTON

REPORT BY CHIEF SOLICITOR

A. PURPOSE OF REPORT

To advise the Development Management Committee that a response has been submitted to the appeal made to The Scottish Government's Planning and Environmental Appeals Division (the DPEA) (Planning Appeal PPA-400-2152) for planning permission in principle for a mixed-use development for business (Class 4), industrial (Class 5) and storage and distribution (class 6) with associated engineering, landscaping and drainage at Land to North and South of A705, Cousland Farm, Livingston

B. RECOMMENDATION

To note the approval provided using SO31 (Urgent Business) procedures to approve the submission of a response to the DPEA in relation to Planning Appeal PPA-400-2152

C. SUMMARY OF IMPLICATIONS

I Council Values	Focusing on our customers' needs; being honest, open and accountable;
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	The proposed response will ensure that the council's position with regard to the original planning application is taken into consideration by the DPEA in deciding the appeal.
III Implications for Scheme of Delegations to Officers	None
IV Impact on performance and performance Indicators	None

V	Relevance to Single Outcome Agreement	None
VI	Resources - (Financial, Staffing and Property)	None
VII	Consideration at PDSP	N/A
VII	Other consultations	Legal Services;
I		Planning Services;
		Chair of Development Management Committee; and
		Local Ward Members: Councillors Jim Dickson, Mary Dickson, George Paul and Kirsteen Sullivan

D. TERMS OF REPORT

Planning Application reference number 0151/P/22, planning permission in principle for a mixed-use development for business (Class 4), industrial (Class 5) and storage and distribution (class 6) with associated engineering, landscaping and drainage at Land to North and South of A705, Cousland Farm, Livingston was considered by the Development Management Committee at its meeting on 17 August 2022.

The Planning Officer's recommendation was to grant planning permission in principle subject to conditions. The committee refused the application as they considered that the proposal did not conform with the following policies of the West Lothian Local Development Plan :-

- ENV1 - Character and Special Landscape Areas –the proposal does not comply with this policy simply by virtue of the allocation of the site for employment development within the LDP. The principle function of the LDP is to create coherence of development across the wider plan area. It is no longer appropriate to consider the proposal as a standalone development due to its relationship with the allocated Gavieside Development. Coherence would not be achieved between the proposal and the allocated Gavieside development. The proposal does not conform with ENV1 as the allocation of the site for employment development no longer conforms to the original intention of LDP. The proposal will affect the special character of the surrounding local landscape.
- ENV4 – Loss of Prime Agricultural Land - as the proposal will result in the loss of prime agricultural land which is not justified as the proposal no longer conforms with the intended spatial strategy set out in the LDP, and as such the proposal does not form a key component of the spatial strategy set out in the LDP.
- ENV9- Woodland, Forestry, Trees and Hedgerows – as the proposal will adversely affect trees for which there is no justification when the proposal is considered against the provision of the wider LDP strategy in respect of the risk to trees

- ENV20- Species Protection and Enhancement – as the species protection report does not consider all species that may be affected by the proposal, or provide any information regarding species enhancement.
- EMG5 – Noise – as until it is known what will occupy the buildings it cannot be known what noise will be generated.
- DES 1 – as the development will appear as a standalone industrial area visually separated from Livingston and Seafield and will have significant adverse effects on the amenity of the residents of Eliburn and Seafield.

The applicant appealed the refusal to The Scottish Government's Planning and Environmental Appeals Division (the DPEA). Legal Services prepared a statement in response to the appeal, a copy of which is attached to this report at Appendix 1.

In accordance with agreed procedures, the Chair of the Development Management Committee and relevant ward members were consulted on the response before it was finalised for approval and lodging with the DPEA on 22 December 2022.

E. CONCLUSION

The attached response sets out the council's position in respect of an appeal submitted to the DPEA in respect of Application No.0151/P/22, planning permission in principle for a mixed-use development for business (Class 4), industrial (Class 5) and storage and distribution (class 6) with associated engineering, landscaping and drainage at Land to North and South of A705, Cousland Farm, Livingston

F. BACKGROUND REFERENCES

Report to Development Management Committee dated 17 August 2022

Planning Appeal Statement DPEA reference PPA-400-2152

Appendices/Attachments:

Appendix 1: Response of West Lothian Council to procedure notice in relation to Planning Appeal DPEA reference PPA-400-2152

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Date of Meeting: 18 January 2023

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
WRITTEN SUBMISSION ON BEHALF OF WEST LOTHIAN COUNCIL
("the Council")

IN THE APPEAL BY

HALLAM LAND MANAGEMENT & ROSEBERY ESTATES

("the Appellants")

AGAINST

**DECISION TO REFUSE PLANNING PERMISSION IN PRINCIPLE FOR PROPOSED MIXED-USE
DEVELOPMENT FOR BUSINESS (CLASS 4), INDUSTRIAL (CLASS 5) AND STORAGE AND
DISTRIBUTION (CLASS 6), WITH ASSOCIATED ENGINEERING, LANDSCAPING AND
DRAINAGE**

DPEA REFERENCE – PPA-400-2152

WEST LOTHIAN COUNCIL REFERENCE – 0151/P/22

1 Introduction

- 1.1 The Appeal is in respect of an application for planning permission in principle for a mixed-use development for business (Class 4), industrial (Class 5) and storage and distribution (class 6) with associated engineering, landscaping and drainage at Land to North and South of A705, Cousland Farm, Livingston ("the Application").
- 1.2 Details of the site and the locality are set out in the plans and paragraph 4 of the Report to the Development Management Committee of the Council ("the Committee") of 17 August 2022 (Appellants' Document PA 2.01).
- 1.3 At the Committee meeting on the 17 August 2022, the Committee received a detailed presentation from the Planning Officer on the proposal.
- 1.4 After discussion, deliberation and hearing from the Planning Officer, the Committee decided to refuse the application for planning permission in principle. The Application was refused for the reasons outlined at paragraph 3 below. It is this decision which is currently under appeal.
- 1.5 The public recordings of the Committee meeting can be accessed using the following link to the Council's Youtube page - <https://www.youtube.com/watch?v=JybQD63-rD8>

2 Consultations & Representations

- 2.1 Internal & External Consultees - are noted at paragraph 6 of the Committee Report (Appellants Document PA 2.01)
- 2.2 Letters of Representation - a total of 38 objections were received, and both Eliburn Community Council and Seafeld Community Council addressed the Committee and objected to the Application. The representations received included the following objections to the Application
 - 2.2.1 Brownfield sites should be prioritised over greenfield sites and there are plenty of empty units on industrial estates in Livingston
 - 2.2.2 Loss of visual amenity
 - 2.2.3 Loss of wildlife corridors
 - 2.2.4 Traffic impact from increased vehicular movements; and
 - 2.2.5 Impact on flooding

3 Decision Subject to Appeal

- 3.1 The Application came before the Committee for determination on 17 August 2022. The Committee agreed to refuse the Application on the following grounds (as noted on the Decision Notice (Appellant Document PA 2.02)):-
 - 3.1.1 The proposal does not comply with Policy ENV 1 (Character and Special Landscape Areas) of the West Lothian Local Development Plan, 2018 by virtue of the allocation of the site for employment development within the LDP. The principle function of the LDP is to create coherence of development across the wider plan area. It is no longer appropriate to consider the proposal as a standalone development due to its relationship with the allocated Gavieside Development. Coherence would not be achieved between the proposal and the allocated Gavieside development.

The proposal does not conform with ENV 1 as the allocation of the site for employment development no longer conforms to the original intention of LDP. The proposal will affect the special character of the surrounding local landscape.
 - 3.1.2 The proposal will result in the loss of prime agricultural land which is not justified as the proposal no longer conforms with the intended spatial strategy set out in the LDP, and as such the proposal does not form a key component of the spatial strategy set out in the LDP.

The proposal is therefore contrary to Policy ENV 4 (Loss of Prime Agricultural Land) of the West Lothian Local Development Plan, 2018.
 - 3.1.3 The proposal will adversely affect trees for which there is no justification when the proposal is considered against the provision of the wider LDP strategy in respect of the risk to trees

The proposal is therefore contrary to Policy ENV 9 (Woodland, Forestry, Trees and Hedgerows) of the West Lothian Local Development Plan, 2018.

- 3.1.4 The protected species baseline report does not consider all species that may be affected by the proposal, or provide any information regarding species enhancement.

The proposal is therefore contrary to Policy ENV 20 (Species Protection and Enhancement) of the West Lothian Local Development Plan, 2018.

- 3.1.5 The proposal is contrary to Policy EMG 5 (Noise) of the West Lothian Local Development Plan, 2018 as until it is known what uses will occupy the buildings it cannot be known what noise will be generated.

- 3.1.6 The development will appear as a standalone industrial area visually separated from Livingston and Seafield and will have significant adverse effects on the amenity of the residents of Eliburn and Seafield.

The proposal is therefore contrary to Policy DES 1 (Design Principles) of the West Lothian Local Development Plan, 2018.

4 Comments

- 4.1 The main aim of the planning system is to ensure that development and changes in land use occur on suitable occasions and are sustainable. The planning system must provide protection from inappropriate development. Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997 requires that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 4.2 The House of Lords, in their judgement in the case of *City of Edinburgh Council v Secretary of State for Scotland & Others*¹, determined that the weight to be attached to any relevant material consideration is a matter for the judgement of the decision maker, having taken account of all relevant information. The range of material considerations is acknowledged to be wide ranging and includes for example Government guidance and policies, draft local plans and environmental impact of proposed development and planning history of the site, views of Statutory and other consultees and a legitimate public concern/support expressed in relation to the relevant planning issues.
- 4.3 It is accepted that the recommendation of Council Officials to the Committee was to grant planning permission in principle subject to a number of conditions. In reaching its decision on an application, the Committee does not have to follow the recommendation of Officials. The Committee must determine each application on its own merits, having given consideration to the Policies of the Development Plan, and all the material information available to it. The acceptability of a proposal is a matter for the judgement of the Committee, and the compliance of a proposal with the Development Plan is a matter for their judgement.
- 4.4 The Council respectfully submits that the Appeal should be dismissed on the basis of the reasons set out in the Decision Notice (Appellant Document PA 2.02).

¹ 1997 SCLR 1112

5 **Conditions**

- 5.1 In the event that the Reporter is minded to uphold the Appeal and grant planning permission in principle it is submitted that any permission granted should be subject to the proposed conditions, which are included in Part 1 of the Schedule annexed to this submission. The conditions mirror those draft conditions before Committee when they determined the Application other than condition 10 which relates to noise.

6 **Procedure**

- 6.1 The Council respectfully submits that it should be possible to determine this appeal without the need for further procedure other than a site visit.

7 **Documents**

- 7.1 The documents before the planning authority which were taken into account in reaching the authority's decision on the application subject to this appeal have been by in large lodged by the Appellant in their "Planning Application (PA) Document Reference List". However, we have included a list of plans in Part 2 of the Schedule annexed to this submission. Copies of those documents have been submitted by the Council.
- 7.2 A list, and copies, of representations and consultee comments that were before the Committee have been submitted to the DPEA under separate cover.

SCHEDULE

PART 1

PROPOSED DRAFT CONDITIONS

1. The development hereby approved relates to the principle of class 4, 5 and 6 use on the site in the areas shown on the indicative development framework drawing no. 1812-MPDF-P002 B. The location of class 4, 5 and 6 floorspace shall accord with the approved indicative development framework. For the avoidance of doubt, the areas marked in blue on the approved indicative development framework shall be Class 4 only and no Class 5 uses shall be located on the north side of the A705.

Reason: To define the permission and ensure appropriate uses are sited adjacent residential properties, in the interest of residential amenity.

2. Development shall not commence until the written approval of the planning authority has been given for the undernoted matters, and the development shall be carried out in accordance with that approval. The submissions shall be in the form of a detailed layout (including landscaping and car parking) and shall include detailed plans, sections and elevations of the buildings and all other structures.

Approval of Matters:

- a) Siting, design and external appearance of all buildings proposed to be erected on the site;
- b) Means of access to all buildings;
- c) Existing and proposed ground levels
- d) Proposed finished floor levels, which accord with the recommendations of the Flood Risk Assessment submitted with application 0151/P/22;
- e) Detailed hard and soft landscaping including boundary treatments;
- f) Design and configuration of public and open spaces;
- g) Details and position of electric vehicle charging points;
- h) A phasing plan for the development;
- i) A Stage 2 road safety audit, to include detailed design of the proposed roundabouts;
- j) A construction and environmental management plan, to include species protection plans;
- k) A programme of archaeological works;
- l) An updated drainage assessment;
- m) Intrusive site investigations to deal with coal mining legacy, including any necessary remediation; and
- n) A Phase 2 site investigation report;
- o) Further bat surveys of any trees within 30m of any works within the site;
- p) A noise impact assessment.

Reason: To enable the planning authority to assess those details which have yet to be submitted and to accord with Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended.

3. The details submitted under conditions 2 a) and c) shall include the following:

No building or structure of the development hereby approved shall exceed 15m in height above ground level.

Reason: To avoid the building/structure on the application site endangering the safe movement of aircraft and the operation of Edinburgh Airport through interference with communication, navigational aids and surveillance equipment.

4. The details submitted under condition 2 g) shall include the following:

Details of the positioning and appearance of active ready to use 50kW electric vehicle charging points with a CCS or CHAdeMO connector, with the level of provision determined by the standards in the Air Quality Planning Guidance, or other agreed provision, as well as who will be responsible for managing and maintaining charging infrastructure shall be submitted to and approved in writing by the planning

authority. Thereafter, the approved details shall be implemented prior to the occupation of any of the relevant buildings.

Reason: In the interest of sustainability.

5. The details submitted under condition 2 k) shall include the following:

No development shall commence until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted to and approved by the planning authority under condition 1 of this permission. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the planning authority in agreement with its archaeologist (West of Scotland Archaeology Service).

Reason: To safeguard the archaeological interest of the site.

6. The details submitted under condition 2 j) shall include the following:

Prior to the commencement of development, a construction and environmental management plan (CEMP), to include species protection covering, but not limited to, otters and badgers, as well as how Core Path 1 will be kept open during construction, shall be submitted to and approved in writing by the planning authority. Thereafter, any mitigation measures shall be carried out in accordance with the approved CEMP.

Reason: To ensure any protected species are not harmed during the construction of the development.

7. The details submitted under condition 2 l) shall include the following:

Prior to the commencement of development, an updated drainage assessment with a scheme for sustainable drainage (SUDS) surface water treatment that shall be developed in accordance with the Water Assessment & Drainage Assessment Guide (published by SUDS Working Party) and The SUDS Manual C753 (published by CIRIA) shall be submitted for the written approval of the planning authority. Thereafter the development shall be implemented in accordance with the details as approved.

Reason: To minimise the effects of surface water and diffuse pollution on the water environment.

8. The details submitted under condition 2 m) shall include the following:

Prior to the commencement of development, a report on a scheme of intrusive site investigations, designed by a competent person and adequate to properly assess the ground conditions on the site and establish the risks posed to the development by past coal mining activity shall be submitted to and approved in writing by the planning authority, in consultation with the Coal Authority.

The report shall include any remedial and / or measures necessary, including the submission of the proposed layout plan which identifies the location of any on-site mine entries (if found present) including appropriate zones of influence for all mine entries, and the definition of suitable 'no-build' zones'.

Thereafter, any remedial works shall be implemented in accordance with the approved report.

Reason: To ensure the development is not affected by coal mining legacy.

9. The details submitted under condition 2 n) shall include the following:

Part 1

An updated Phase 1 desk study and a Phase 2 intrusive site investigation incorporating a survey of the extent, scale and nature of contamination, and an updated conceptual model of the site shall be submitted to and approved in writing by the planning authority. If no remediation is required Parts 2 and 3 of this condition can be disregarded.

Part 2

Prior to any work beginning on site, a detailed Remediation Statement to bring the site to a condition suitable for the intended use by removing unacceptable risks to all relevant and statutory receptors, must be submitted to and approved in writing by the planning authority. The Remediation Statement must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The Remediation Statement must ensure that the site will not qualify as contaminated land under Part2A of the Environmental Protection Act 1990 in relation to the intended use of the land following development.

Part 3

The approved Remediation Statement must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out the agreed remediation. The planning authority must be given two weeks written notification of the commencement of the remediation works. Following completion of the measures identified in the approved Remediation Statement, a Verification Report that demonstrates the effectiveness of the remediation carried out must be prepared. The Verification Report must be submitted to and approved in writing by the planning authority prior to commencement of the new use of the land.

Reason: To ensure there is no contamination on the site that could pose a risk to the health of future occupiers, in the interests of amenity.

10. The details submitted under condition 2 n) shall include the following:

Prior to the commencement of development, a noise impact assessment shall be submitted to and approved in writing by the planning authority. Thereafter, any mitigations measures required shall be implemented in accordance with the approved details and prior to the occupation of buildings that the mitigation relates to.

Reason: To ensure adverse noise impact is suitably mitigated, in the interest of amenity.

11. The following restrictions shall apply to the construction of the development:

Noise (Construction)

- Any work required to implement this planning permission that is audible within any adjacent noise sensitive receptor or its curtilage shall be carried out only between the hours of 0800 and 1800 Monday to Friday and 0800 and 1300 on a Saturday and at no time on a Sunday. This includes deliveries and operation of on site vehicles and equipment.
- No generators shall be audible within any residential properties between the hours of 2100 and 0800.

Noise (Vehicles/Plant)

- Heavy goods vehicles shall not arrive or leave the site except between the hours of 0800 and 1800 Monday to Friday and 0800 and 1300 on a Saturday. No heavy goods vehicles shall arrive or leave the site on a Sunday.

Vibration (Construction)

- Where piling or other significant vibration works are likely during construction which may be perceptible in other premises, measures must be in place (including hours of operation) to monitor the degree of vibration created and to demonstrate best practice. Prior to any piling or other significant vibration works taking place, a scheme to minimise and monitor vibration affecting sensitive properties shall be submitted to and approved in writing by the planning authority. Thereafter the development shall be implemented in accordance with the details as approved.

Site Compound

- The development shall not begin until the location and dimensions of any site compound have been submitted to and approved in writing by the planning authority. Thereafter the development shall be implemented in accordance with the details as approved.

Waste

- Effective facilities for the storage of refuse, building debris and packaging shall be provided on site. The facilities shall be specifically designed to prevent refuse, building debris and packaging from being blown off site. Any debris blown or spilled from the site onto surrounding land shall be cleared on a weekly basis. For the purposes of this condition, it shall be assumed that refuse, debris and packaging on surrounding land has originated from the site if it is of the same or similar character to items used or present on the site.

Wheel Cleaning

- All construction vehicles leaving the site shall do so in a manner that does not cause the deposition of mud or other deleterious material on surrounding roads. Such steps shall include the cleaning of the wheels and undercarriage of each vehicle where necessary and the provision of road sweeping equipment.

Reason: In the interests of visual and environmental amenity.

PART 2
DOCUMENT LIST

Refused Plans referred to in Decision Notice

- 1 Location Plan 18012-Cousland Farm-PLBD-P003
- 2 Masterplan 18012-MPDF-P002-B
- 3 Tree works/protection 18012-LAGA-P00