

Bankhead Land Ltd

Local Review under Section 43A(8) of The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008, against a decision of East Lothian Council against the erection of a Class 1 retail store with car parking, servicing, landscaping and other associated works at Mid Road, Prestonpans, East Lothian, EH32 9ER

Application Reference: 11/00851/PP

Date: 5th March 2013

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Appeal Document List

Document	Title	Format
BL Document 1	Planning Application Form	Electronic
BL Document 2	Planning and Retail Statement	Electronic
BL Document 3	Transport Statement	Electronic
BL Document 4	Business Land Assessment	Electronic
BL Document 5	Development Appraisal	Electronic
BL Document 6	East Lothian Council - Decision Notice	Electronic
BL Document 7	East Lothian Council – Handling Report	Electronic

Executive Summary

This Review Statement outlines the reasons why we consider that planning permission should be granted on appeal in respect of application reference 11/00851/PP. The key points can be summarised as follows:-

1. This planning permission would have been granted but for one policy contravention relating to the loss of business and industrial land.
2. It has been demonstrated that it will be economically unviable to refurbish or redevelop the site for industrial and business use (BL Document 4). Financial appraisals show that in both cases losses will exceed £0.5million, meaning that no scheme complying with planning policies for the site could proceed. We would respectfully note that the East Lothian Council's Estates Department has misinterpreted the data and the Officer's Report incorrectly states that it will be economically viable to bring this site back into employment use.
3. The Council accept that even with this loss of business and industrial land, the Employment Land allocation available in East Lothian will still exceed Structure Plan requirements (Policy ECON 2).
4. Notably the application received no objections from the public or the Community Council.
5. The Planning Officer agrees that there is a planning case for additional retail provision in Prestonpans.
6. Mid Road is well located for a new food store close to the train station, primary school and on a bus route. It is also well placed to serve recently built houses located within walking distance of the site as well as the rest of the town. It is also adjacent to land allocated for 1,100 new homes, which are being developed.
7. The property was marketed by Ryden LLP (www.ryden.co.uk) for industrial use for 18 months after the previous occupier ceased to trade. There was no serious interest except from the appellant.
8. The site is a derelict eyesore and a magnet for vandalism and will remain so if no change of use is permitted.
9. The new development will be a positive benefit to the town, bringing the site back into economic use through a £2.89million capital investment, creating 58 temporary construction jobs, 82 permanent retail jobs, and improving amenity (BL Document 4).

1. Introduction

1.1 The planning application, which is the subject of this appeal, sought Planning Permission for the development of a Class 1 retail store on a derelict, brownfield site at Mid Road Industrial Estate, Prestonpans, East Lothian.

Matters of Agreement

1.2 We understand that the planning department gave very serious consideration to recommending approval for the application, and that the principal issue of concern was the absence of a named retail operator, rather than objection in principle to the reuse of this derelict industrial site as a local foodstore.

1.3 The Council's handling report accepts that the proposal is acceptable in the following respects:

- There is a lack of food shops in Prestonpans, which is evidenced by the high levels of convenience expenditure leakage from Prestonpans to neighbouring towns. This encourages unsustainable travel patterns and is inconvenient.
- There are no sequentially preferable sites to accommodate the proposed use.
- There would be no significant harm to the vitality and viability of Prestonpans Town Centre.
- The indicative access, parking and turning arrangements can all be satisfactorily accommodated.
- The proposal would not have a harmful impact on the character or appearance of the Prestonpans Conservation Area.

No Objections

1.4 It is notable that there were no objections to the application from the public or Community Council, but despite this it was refused under delegated powers. It is also notable that the planning officer considered the application to be acceptable in all respects, other than its non-compliance with Local Plan policies which allocate the site for business and industrial uses. Although a retail use is clearly a business, and will create employment, the designation in the Local Plan only permits offices (Class 4) and industry (Class 5) and Distribution (Class 6).

Matters of Disagreement

- 1.5 The main point of disagreement between the appellant and the Council is whether it is viable to subdivide and redevelop the site for smaller units.
- 1.6 Given that this apparent discrepancy provides the only basis for refusal of the application, it is critical that the Local Review Body is provided with further information from its Officers to clarify the matter.
- 1.7 Although we accept that there may be demand for small business units in this part of Prestonpans, we do not believe that this site will ever be capable of providing them due to it being significantly economically unviable.
- 1.8 Therefore, if the proposal for retail use is not permitted, the site will remain vacant and in a derelict and dangerous state for the foreseeable future, and achieve no benefit for the community of Prestonpans.
- 1.9 In our view, the economic benefits associated with the proposed foodstore should be a key consideration. If granted, the proposal will involve a capital investment of approximately £2.89 million, and will create 82 retail and related jobs, as well as 58 temporary construction jobs (BL Document 4).
- 1.10 The application was registered by the Council on 16th September 2012 and included the following:
- Planning Application Form (BL Document 1)
 - Planning and Retail Statement (BL Document 2)
 - Transportation Statement (BL Document 3)
 - Business Land Assessment (BL Document 4)
- 1.11 The application is classified as a Local Application under The Town and Country Planning (Development Management Procedures) Regulations 2006. Under delegated powers, the Planning Authority decided to refuse planning permission on 10th December 2012, for the following two reasons:
1. ***A Class 1 Retail Use of the Application Site as a Supermarket, not being within Use Classes 4, 5 or 6 of the Town and Country Planning (Use Classes) (Scotland) Order 1997***

and not related to a Business or Industrial process carried out on the site is contrary to Policies BUS1 and R1 (Part 6) of the Adopted East Lothian Local Plan 2008.

- 2. A Class 1 Retail Use of the Application Site as a supermarket would prejudice the local supply of available land for business and industrial uses contrary to the objectives of Policy BUS1 of the adopted East Lothian Local Plan 2008. (BL Document 8)***

2. Description of the Site and Proposal

2.1 The appeal site extends to 0.77 hectares and is located at Mid Road Industrial Estate 0.5 miles south of Prestonpans town centre. It is situated on the B1361, which links Prestonpans with the nearby settlements of Wallyford to the west and Cockenzie/Port Seton to the east. John Cope's Road runs along the site's eastern perimeter and provides a direct link to Tranent. The site is bounded by the B1361 to the north which serves as the main access point to the development. To the south, the site is contained by the East Coast railway line which serves Prestonpans train station situated adjacent to the site. The train station has frequent local train services to Edinburgh and the proposed store will be well located to meet the needs of railway based commuters. The appeal site also includes part of the B1361 to accommodate associated highway improvements (ref. Transport Statement) as shown in Figure 1. The site is also within walking distance of recent housing expansion (1100 units).

Figure 1: Site Location



2.2 The site contains a 3,628 sqm industrial unit that was previously occupied by IQ Textiles (in administration). The existing accommodation comprises a defunct production facility with ancillary buildings constructed over a number of years. The survey undertaken by Ryden (BL Document 4) identifies the original building to be in very poor condition and not suitable for modern industrial occupiers. Furthermore, there is a large amount of asbestos within the fabric of the buildings. The site has been vacant since April 2009 and was acquired by Bankhead Land

Limited in May 2011. Numerous fire raising incidents by vandals means that the building has suffered significant damage and has become dangerous.

2.3 In terms of accessibility, the nearest bus stops are located on Preston Road and West Loan to the north of the site. The walking distance to these bus stops ranges from approximately 330metres to 380metres from the site. Prestonpans train station is within 150 metres.

Development Proposal

2.4 The proposal is for Planning Permission in Principle for the erection of a Class 1 retail development, access, car parking, landscaping and servicing. The proposed development comprises the following key components:

- 1,858sqm (gross) floorspace foodstore;
- Car park (129);
- Landscaping; and
- Access and highway improvements.

2.5 The proposed foodstore comprises a 1,858sqm (gross) floorspace single floor level unit located to the south of the application site. The total net sales floorspace equates to 1,208sqm. The proposed store will be for the sale of convenience goods such as food, beverages, tobacco, newspapers/magazines and non-durable household goods. We estimate that 966sqm would be for the sale of convenience goods with the remaining 242sqm for comparison goods (e.g. home accessories, electrical accessories, CDs and DVDs). The retail floorspace composition estimates equate to a floorspace ratio of 80% convenience goods to 20% comparison goods.

2.6 Vehicle access is proposed from the B1361, which as it passes the site is approximately 7.3 to 7.6metres wide and subject to a 30mph speed limit. This route provides access to Prestonpans from the surrounding local road network, linking to other towns and villages in East Lothian, and also provides a key link towards the A1 (1 mile).

2.7 The proposal contains opportunities to link the internal network of the site to the existing pedestrian, cycle and public transport networks with the aim of ensuring that as the development progresses all areas will be fully accessible by non-car modes.

3. Grounds for Appeal

Material Consideration 1 - Development Viability

- 3.1 Whilst we accept that there may be demand for small business units in this part of Prestonpans, we do not believe that this site will ever be capable of providing them.
- 3.2 The site was marketed as an industrial facility / development opportunity by Ryden LLP from December 2009 – April 2011. Despite an active marketing campaign, there was only one enquiry from a company interested in purchasing the property for occupation within employment use Classes 4, 5 and 6. However, as a result of the limited yard space and the nature of the buildings the property did not meet their requirements and no offer was received (BL Document 4).
- 3.3 The Officers Report accepts that the existing unit does not meet the requirements for modern industrial users (BL Document 7).
- 3.4 The Business Land Assessment Report prepared by Ryden LLP and submitted as part of the original application included a development appraisal, which assumed that the site is demolished, cleared and redeveloped for Classes 4, 5 and 6 uses. This shows a **loss** of circa **£0.5million** (BL Document 4). A further Development Appraisal (BL Document 5) was submitted by the applicant in January 2012, which evaluated the costs of subdividing and refurbishing the units to create a range of unit sizes, including a number of smaller industrial units. This assessment concluded that the proposed scheme would create a **loss** of - **£0.6million**. This position has worsened, as the buildings have deteriorated further in the last 12 months and as such it would cost more to bring them back into occupation. Consequently, although we note that there may be demand for smaller units, the cost of subdividing the existing building is not financially viable.
- 3.5 From our review of the Application Handling Report, the main point of disagreement between the appellant and the Council is whether it is viable to subdivide and redevelop the site for smaller units. The Application Handling Report indicates that the Councils' Estates Department advise that the figures presented in the applicant's development appraisal are reasonable and taken from recognised industrial sources. However, in apparent contradiction of this statement, the Handling Report states that the Senior Estates Officer advises the development appraisal does not demonstrate that it would be unviable to subdivide the existing building. We can only assume that the facts presented have been misinterpreted.

Material Consideration 2 - Policy BUS 1 / Legal Framework

3.6 Section 25 of the Town and Country Planning (Scotland) Act 1997 provides that where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

3.7 The correct approach to be taken in the determination of this appeal is set out in the well-known speech of Lord Clyde in the case of *City of Edinburgh Council v Secretary of State for Scotland & Others* 1997 S.C.L.R. 1112. Lord Clyde indicated that it was:

"necessary for the decision-maker to consider the Development Plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the Development Plan which is relevant to the application or fails properly to interpret it. He will have to consider whether the development proposed in the application before him does or does not accord with the Development Plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether, in light of the whole plan, the proposal does or does not accord with it. He will also have to identify all other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the Development Plan should not be accorded the priority which the Statute has given to it. And, having weighed these considerations and determining these matters, he will require to form his opinion on the disposal of the application".

3.8 This appeal statement reflects this approach and addresses compliance with the development plan, namely the Edinburgh and the Lothians Structure Plan 2015 and The East Lothian Local Plan 2008.

3.9 The Decision Notice states that the proposal is contrary to Policy BUS 1 of the adopted East Lothian Local Plan 2008, which requires the site to be developed for uses within Classes 4, 5 and 6. The policy states that development, which does not fall within these Classes will not normally

be permitted, with the exception of retail activity that is directly related and ancillary of a business or industrial process carried out on site (BL Document 6).

3.10 We do not seek to challenge the objectives of the development plan or its strategy. However, the Council's Handling Report fails to consider paragraph 5.15 of the Local Plan, which states that while other uses (including housing, leisure and retail development) will not normally be permitted; alternative non-business uses may be considered where business land is no longer appropriate for that use. The fact that the site is not financially viable for business and industrial uses, in our view means that such alternative non-business uses (i.e. retail use) should be permitted, as an exception to Policy BUS1.

3.11 The terms of paragraph 5.15 therefore allow this decision to be made in conformity with the Local Plan, and to permit retail use here will not set a precedent for retail uses to be permitted on other sites allocated for business uses in the Local Plan.

Material Consideration 3 - Business Land Supply

3.12 The Decision Notice states that permitting a Class 1 retail use of the application site would prejudice the local supply of available land for business and industrial uses, contrary to the objectives of Policy BUS1 (BL Document 6).

3.13 However, the Employment Land Report analyses the supply and demand for business and industrial land in the area and its findings show employment land allocations made within the East Lothian Local Plan exceed Structure Plan requirements (Policy ECON 2). The Local Plan identifies a total of 100.43 hectares of allocated employment land in East Lothian with take up employment land in recent years representing as little as 1.6 ha per annum when non-employment uses are discounted. The development site equates to a very small proportion employment land and its retail use would not affect East Lothian Council's ability to meet Structure Plan requirements (BL Document 4).

3.14 Furthermore, new employment sites that are sustainable, viable and marketable can be brought forward as part of the emerging East Lothian Local Development Plan.

3.15 The Council raises concerns that by permitting this proposal, a precedent will be set for other proposals to come forward and result in the local availability of such land being compromised to the detriment of the area and greater East Lothian economy. However, it is well established planning convention that planning decisions should be based on the merits of an individual application and should not be influenced by other decisions. The appeal site has a unique set of

circumstances, where the site is derelict, non-viable for business/industrial uses and has demonstrably failed to attract business uses. The costs of redeveloping the site for business and industry have been demonstrated to be financially unviable.

Material Consideration 4 - Economic Benefits

3.16 The Handling Report states that the employment use of the site provides valuable local jobs and assists in reducing unemployment and out commuting. However it has been vacant since 2009 and despite Ryden's undertaking a marketing strategy for over 16 months, it failed to attract an industrial occupier. Therefore, the Council should consider alternative employment/investment generating uses. The economic benefits associated with the proposed foodstore should be a key consideration. Industry figures indicate that redeveloping the existing building will create 40 jobs, however without any market interest this potential will never actually be realised for the reasons given above.

3.17 Conversely, the proposed retail development will create 82 retail and related jobs, as well as 58 temporary construction jobs (BL Document 4).

Material Consideration 5 - Operator

3.18 Although not a reason for refusal, the Council reiterates a number of times in the Handling Report that there is no 'named operator' identified for the proposal. However, without the benefit of planning permission the site will struggle to attract an operator, as within a competitive market, operators are more likely to only consider sites with planning permission.

3.19 The Handling Report goes on to state that if an operator were to come forward, there could be clarity on the likely employment generation of the proposal. However, the figures provided within the Employment Land Report, stating that 82 retail and related jobs will be created, are drawn from a reliable industry source and are not based on the presence of a named operator (BL Document 4). Notwithstanding this point, the involvement of a named operator is not a planning consideration and should have no bearing on the Council's decision.

4. Conclusions

4.1 The Council refused planning permission for the following reasons:

1. ***A Class 1 Retail Use of the Application Site as a Supermarket, not being within Use Classes 4, 5 or 6 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 and not related to a Business or Industrial process carried out on the site is contrary to Policies BUS1 and R1 (Part 6) of the Adopted East Lothian Local Plan 2008.***
2. ***A Class 1 Retail Use of the Application Site as a supermarket would prejudice the local supply of available land for business and industrial uses contrary to the objectives of Policy BUS1 of the adopted East Lothian Local Plan 2008(BL Document 8).***

4.2 The Employment Land Report and Development Appraisal submitted with the planning application establishes beyond doubt that the site is not viable for business or industrial uses, either by way of replacement buildings or by way of reuse/subdivision (BL Document 4 & 5). The fact that the site is not financially viable for business and industrial uses, in our view means that such alternative business uses (i.e. retail) should be permitted as an exception to Policy BUS1.

4.3 The employment land allocations made within the East Lothian Local Plan exceed Structure Plan requirements (Policy ECON 2). The Local Plan identifies a total of 100.43 hectares of allocated employment land in East Lothian with take up employment land in recent years representing as little as 1.6 ha per annum when non-employment uses are discounted. The development site equates to a very small proportion employment land and its retail use would not affect East Lothian Council's ability to meet Structure Plan requirements. Furthermore, new employment sites that are sustainable, viable and marketable can be brought forward as part of the emerging East Lothian Local Development Plan.

4.4 The economic benefits associated with the proposed foodstore should be a key consideration. If granted, the proposal will involve a capital investment of approximately £2.89 million, and will create 82 retail and related jobs, as well as 58 temporary construction jobs (BL Document 4). It will enhance the retail offer in the area, prevent leakage of retail spending, and reduce unnecessary travelling outwith Prestonpans, in-turn cutting carbon emissions.

4.5 A prominent site will be brought back into economic use with a new building, improved pedestrian route, and provide a positive contribution to the amenity of the locality.

4.6 Therefore, for the reasons set out above, we respectfully request that the Local Review is sustained and planning permission is granted.