

## REVIEW DECISION NOTICE

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Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Preston Works, Mid Road, Prestonpans, East Lothian, EH32 9ER

Application for Review by Bankhead Land Ltd against decision by an appointed officer of East Lothian Council.

Application Ref: 11/00851/PP

Application Drawings: DWG001 and CB\_20182-01-1\_SK001

Date of Decision Notice – 23<sup>rd</sup> May 2013

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### **Decision**

The ELLRB reverses the decision to refuse this application and grants Planning Permission, subject to the condition set out below.

This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

### **1 Introduction**

1.1 The above application for planning permission was considered by the ELLRB, initially at a meeting held on 18<sup>th</sup> April 2013. The Review Body was constituted by Councillor Ludovic Broun-Lindsay (Convenor), Councillor John McMillan, Councillor John Williamson and Councillor Jim Goodfellow. Prior to that meeting, the members of ELLRB had carried out an unaccompanied site visit to the application site. At that meeting, the members of the ELLRB decided that they required further information on the issue of viability of redevelopment of the application site for business use. They fixed a Hearing session for 21<sup>st</sup> May 2013 to consider this matter and reconvened on that date. Councillor Jim Goodfellow was unavailable for the reconvened meeting and took no further part in proceedings. At the reconvened meeting, and after questioning the parties invited to the Hearing session, the remaining members considered that they then had sufficient information before them to determine this matter.

1.2 The following persons were also present at the Review Body:-

Phil McLean, Planning Adviser

Morag Ferguson, Legal Adviser

Fiona Stewart, Clerk

## 2 Proposal

- 2.1 The application site is at Mid Road Industrial Estate in Prestonpans and includes the former IQ Textiles factory and associated land, together with adjacent areas of access and public road. The application is for planning permission in principle for a Class 1 retail store on the site with associated car parking, landscaping and access and highway improvements. The proposal is that the existing building would be demolished to make way for the development. The proposed store would be 1858 square metres of gross floorspace and 1208 square metres of net retail floorspace. Of this, 80% is estimated by the applicant to be for convenience goods, with the remaining 20% for comparison goods. A number of supporting documents were submitted with the application, including a Planning and Retail Statement, a Transport Statement, and an Employment Land Report.

The application was validated on 26 September 2011 and was refused by the Appointed Officer on 10 December 2012. The Notice of Review is dated 5 March 2013.

## 3 Preliminaries

- 3.1 The ELLRB members were provided with copies of the following:-

1	The drawings specified above
2	The application for planning permission
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Letter dated 10 <sup>th</sup> December 2012
5	Copy of Policies ENV1D, RET1 and RET2 of the Approved Edinburgh and the Lothians Structure Plan 2015
6	Copies of Policies BUS1, R1, T2 and ENV4 of the Adopted East Lothian Local Plan 2008
7	Copy of Consultation Response from East Lothian Council's Policy and Projects Manager
8	Copy of Consultation Response from East Lothian Council's Head of Transportation
9	Copy of Consultation Response from East Lothian Council's Senior Estates Officer
10	Copy of Consultation Response from Network Rail
11	Copy of Consultation Response from the Coal Authority
12	Site Plans
13	Notice of Review dated 5 <sup>th</sup> March 2013

14	Applicant's Supporting Planning and Retail Statement
15	Applicant's Supporting Transportation Statement
16	Applicant's Supporting Employment Land Report
17	Applicant's Development Appraisals

#### **4 Findings and Conclusions**

- 4.1 The ELLRB established that the application site was subject to the Edinburgh and the Lothians Structure Plan 2015 and the Adopted East Lothian Local Plan 2008. The relevant Structure Plan and Local Plan policies were those copied to members as Items 5 and 6 above. The Planning Adviser gave a summary of the planning policies issues and the consultation responses and summarised the reasons for refusal of this application and the arguments being promoted by the applicant in this review.
- 4.2 The ELLRB noted that planning permission had been refused for two reasons, namely that a retail use of the site would be contrary to the business or industrial use for which the site is allocated in terms of the East Lothian Local Plan 2008 and would thus be contrary to the terms of Policies BUS1 and R1 of that Plan and that a retail use of the site would prejudice the local supply of available land for business and industrial uses, contrary to the objectives of the said Policy BUS1.
- 4.3 The Members accepted that the provisions of the East Lothian Local Plan would suggest that this application was correctly refused on the grounds that it did not comply with the development plan. However, having heard from the Applicant's agent and the Appointed Officer, and having considered the further statement submitted by the Council's Senior Estates Officer, they noted that there now appeared to unanimity that the redevelopment of the site for a business or industrial use was not financially viable. They noted that a number of development models had been explored but each led to the same outcome, namely that there was no commercially viable route to bring this site back into business or industrial use. They noted that the site was not currently contributing to the economic supply in East Lothian and considered that there was no reasonable prospect of this position changing in the future should an alternative use be refused. Having considered this matter, the members of the ELLRB agreed that this was a material consideration that outweighed the normal presumption that the terms of the development plan should take precedence.
- 4.4 Taking the whole circumstances into account, the ELLRB members concluded unanimously that the original decision to refuse planning permission should be overturned and that planning permission should be granted subject to the following conditions and informative notes:-
1. The submission for approval of matters specified in conditions of this grant of planning permission in principle shall be submitted for consideration by the planning authority in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval. Plans and particulars to be submitted shall include details of the siting, design and external appearance of the proposed retail store, the means of access to it, the means of any enclosure of the boundaries of

the site and the landscaping of the site and those details shall accord with the following principles of development for the site:

- a. the retail store hereby approved in principle shall have a gross floor area no greater than 1858 sq m and a net sales floor area no greater than 1208 sq m. Of the net sales floor area no more than 242 sq m shall be used for the sale of comparison goods. The retail store hereby approved in principle shall not be subdivided to form more than 1 retail unit.
- b. Parking spaces shall be provided at a level compliant with the East Lothian Council Parking Standards.
- c. The site layout shall provide for recycling facilities in accordance with Local Plan policy DP23.

Reason: To ensure that the matters referred to are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006; to ensure the development is integrated with its surroundings in the interests of safeguarding the character and appearance of the area, including the Preston Conservation Area; in the interests of retaining control over the format of retail development at the site; in the interests of safeguarding the vitality and viability of the retail function of Prestonpans town centre; in the interests of road safety; and in the interests of sustainable waste management.

2. Details pursuant to condition 1 shall include details of all road or footpath improvement works on or off the application site that are required to facilitate the retail development of the application site. The road or footpath improvement works so approved shall thereafter be fully undertaken prior to the retail store being open to trade.

Reason: In the interests of road safety.

3. No development shall take place until there has been submitted to and approved in writing by the planning authority a scheme of landscaping. The scheme shall provide details of: the height and slopes of any mounding on or recontouring of, the site; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. It shall include extensive the provision of extensive shrub and tree planting within the customer car parking area. The scheme shall include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason: In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

4. Development shall not begin until a scheme to deal with contamination on the site has been submitted to and approved in writing by the Planning Authority. The scheme shall contain details of the proposals to deal with contamination to include:

1. the nature, extent and type(s) of contamination on the site,
2. measures to treat/remove contamination to ensure the site is fit for the use proposed,
3. measures to deal with contamination during construction works,
4. condition of the site on completion of decontamination measures.

Before the retail store is opened to trade the measures to decontaminate the site shall be fully implemented as approved by the Planning Authority.

Reason: To ensure that the site is clear of contamination prior to the occupation of any buildings.

### **Informative notes**

#### **INFORMATIVE NOTE REGARDING THE TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION**

In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended) an application or applications for the approval of matters specified in conditions attached to this planning permission in principle must be made no later than whichever is the latest of the following:

- i. THREE YEARS from the date on this decision notice
- ii. SIX MONTHS from the date on which an earlier application for the requisite approval was refused; or
- iii. SIX MONTHS from the date on which an appeal against such refusal was dismissed.

The development to which this planning permission in principle relates must commence no later than TWO YEARS from the date of the requisite approval of any matters specified in conditions (or, in the case of approval of different matters on different dates, from the date of the requisite approval for the last such matter being obtained), whichever is the latter. If development has not commenced within this period, then this planning permission in principle shall lapse.

#### **INFORMATIVE NOTE FROM NETWORK RAIL**

Construction works must be undertaken in a safe manner which does not disturb the operation of the neighbouring railway. Applicants must be aware of any embankments and supporting structures which are in close proximity to their development.

- Details of all changes in ground levels, laying of foundations, and operation of mechanical plant in proximity to the rail line must be submitted to Network Rail's Asset Protection Engineer for approval prior to works commencing on site. Where any works cannot be carried out in a "fail-safe" manner, it will be necessary to restrict those works to periods when the railway is closed to rail traffic i.e. by a "possession" which must be booked via Network Rail's Asset Protection Engineer and are subject to a minimum prior notice period for booking of 20 weeks.

Any demolition or refurbishment works must not be carried out on the development site that may endanger the safe operation of the railway, or the stability of the adjoining Network Rail structures. The demolition of buildings or other structures near to operational railway infrastructure must be carried out in accordance with an agreed method statement. Approval of the method statement must be obtained from Network Rail's Asset Protection Engineer before development can commence.

The developer must contact our Asset Protection Engineers regarding the above matters, contact details below:

Network Rail Asset Protection Engineer

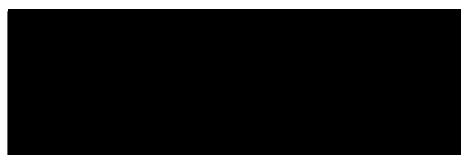
Buchanan House, 58 Port Dundas Road  
Glasgow, G4 0LQ  
Tel: 0141 555 4887  
E-mail - AssetProtectionScotland@networkrail.co.uk

#### INFORMATIVE NOTE FROM THE COAL AUTHORITY

The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority.

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority.

Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com)



**Morag Ferguson**  
**Legal Adviser to ELLRB**

#### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

#### **Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)**

#### **Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.**

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
  
- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.