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ACKNOWLEDGED

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FAO

Via Email to: development.management@midlothian.gov.uk &

Dear Sirs

**PLANNING APPLICATION [REDACTED] (INCLUDING ENVIRONMENTAL STATEMENT)
MIXED USE DEVELOPMENT COMPRISING; FILM AND TV STUDIO INCLUDING
BLACKLOT COMPLEX; MIXED EMPLOYMENT USES (RETAIL/OFFICE/COMMERCIAL);
HOTEL; GAS AND HEAT POWER PLANT/ENERGY CENTRE; FILM SCHOOL AND
STUDENT ACCOMMODATION; STUDIO TOUR BUILDING; EARTH STATION ANTENNA
AND ASSOCIATED INFRASTRUCTURE INCLUDING CAR PARKING; SUDS FEATURES
AND LANDSCAPING
OLD PENTLAND, LOANHEAD**

Please register this letter as an objection to the above application [REDACTED]

[REDACTED]

regulated by the Crofters Holdings (Scotland)
Act 1886 and the Small Landholders (Scotland)
Act 1911 and has [REDACTED]

[REDACTED]



My clients have previously expressed concerns to your [REDACTED] in her letter dated 6 March 2015 regarding certain irregularities in the pre-application consultation process and although a response was received yesterday my clients feel that not all of their concerns have been addressed. My clients are concerned that the deficiencies in the pre-application process may have prejudiced the public understanding of this proposal.

The grounds for objection are as follows:

Irregularities/Inadequate Information/Inaccuracies

It is concerning that application ref: [REDACTED] for mixed use development comprising; film and TV studio and blacklot complex; mixed commercial uses; hotel; and gas and heat power plant scoping submitted in November 2014 has not yet been determined. This is somewhat irregular and the lack of information in this regard somewhat disadvantages the public's understanding of the competence of requirements for ES submissions and has the potential to prejudice a thorough ES submission.

It is concerning that a Coal Mining Report was not considered as an integral part of the ES and in this regard the competency of the ES must be drawn into question together with the transparency in the planning process. It is noted that a Coal Mining Report was submitted late and only placed upon the Council's website a few days before the end of this initial public consultation period, giving insufficient time to consider and comment upon the submissions. Further to date, my clients, and as far as we are aware, no neighbours or members of public have been consulted upon this submission which ought to form an integral part of the ES. Additionally we understand that a revised ES and Non-Technically Summary addressing the Coal Mining report has not yet been submitted as required under the EIA Regs. Please clarify, have revised/updated ES and NTS reports been requested by the planning authority? We request in accordance with the Town and Country Planning Environmental Impact Assessment (Scotland) Regulations 2011) that the application is not determined until this full information is submitted, including a revised ES and NTS that fully integrates the findings of the Coal Report with a review of the overall ES including drainage issues (see below). Further in accordance with the Regulations re-notification/consultation is required with all neighbours, the public and Community Council, including site and press notices, giving a further 21 days to submit representations.

Failure to determine the application without a competent ES and Non-Technical Summary would conflict with the EIA Regulations and would open-up any planning decision to a risk of judicial review.

The drainage strategy for this major development site does not address the whole of the application site and in turn raises concerns regarding the competency of the Flood Risk Assessment. It is therefore impossible to know how this would affect the competency of the Environmental Statement and on this basis the ES appears incomplete. It appears that there is insufficient information to fully consider the drainage and flood risk impact of the development and these present grounds for refusal due to lack of information under the Environmental Impact Regulations. Further, the Coal Mining Report, a late submission, does not feature in the drainage strategy thereby adding further weight to the concerns that the ES is inadequate and insufficient.

While it is acknowledged that the application seeks to develop the whole of the land within the red edged application site it is relevant and a material planning consideration to take into account [REDACTED]. In the event that the current application were approved and only partly developed [REDACTED]

[REDACTED] including the implications of coal mining and ground stability, landfill gas, pollution, drainage and flood risk. These implications upon the undeveloped area of the current application site have not been addressed in the ES. It is requested that the Planning Authority require full details from the applicant on these issues as part of the ES and that [REDACTED] are consulted on any further information/submissions. While I accept this is an unusual scenario it ought to be considered as a material planning consideration at this outline stage [REDACTED] Crofters Holdings (Scotland) Act 1886 and the Small Landholders (Scotland) Act 1911. Failure to fully consider the impact upon [REDACTED] at this outline stage would potentially amount to maladministration.

The proposed development has been Classified as Class 5 whereas this is not accurate for the whole of the development. We should be grateful if the use classes could be amended accordingly.

The submission includes retail development however the submitted Masterplan does not detail the location of the retail uses. Further a retail impact assessment has not been submitted. It is expected that the need for a RIA would have been confirmed in the yet undetermined Scoping application. This situation further frustrates the public's understanding of the application process and prejudices a fair neighbour and consultation process. The determination of the application in these circumstances would potentially amount to maladministration.

The application submission does not appear to consider the existing over ground electricity lines travelling the length of the site and it is unclear whether the electricity board has been consulted.

Justification for Refusal

The determining issue is whether the proposed development complies with the development plan and whether there are any material planning considerations that would warrant approval as a departure to the local development plan.

It is submitted that the proposal conflicts with the adopted development plan 2008 as set out below. It is further submitted that the Midlothian Local Development Plan Proposed Plan ought not to carry any weight in supporting this current application.

The proposed plan seeks to remove the land from the Green Belt for the purposes of allocating the land to the north of [REDACTED] as an area of potential retail and commercial leisure use however this is subject to objections. It is clear that the proposed development falls outwith this stated land uses. In terms of justification to depart from the Proposed Plan it is considered that the applicant has not made a planning and economic case for the proposed development; and there is insufficient evidence that the development would result in economic benefits in terms of inward investment and job creation.

In terms of the 'unique' nature of the proposed film/TV studio, this only represents a portion of the proposed development, and no evidence has been submitted to demonstrate that the development could not be located on more suitable alternative sites including satisfying a strategic test for retail/leisure uses.

It is submitted that this application is premature in terms of the development of green belt land and the re-alignment route of the A701 and ought not to be approved. The proposal to

remove land from the Green Belt and the allocation of Ec3 is inextricably linked to the route of the proposed A701 realignment and in this regard the application is premature pending the determination and development of the precise route. Para 2.3.4 of the Draft Plan confirms: 'The development of the 'Gateway' can only come forward if a realigned route for the A701, between the A720 Straiton Junction and the A703, is delivered ... must be constructed before development of site Ec3 can proceed....' It would hence be inappropriate to approve this application.

The A701 route shown in the submitted scheme does not accord with the Council's intended route or development allocations. This unauthorised realignment of the A701 results in the creation of a larger area for development than was proposed in the emerging Local Development Plan; it increases the loss of agricultural land and further erodes the green belt. This proposal effectively seeks to undermine the local plan process and the whole democratic local development plan process.

Not only is the proposal in direct contravention of the local development plan (adopted and emerging), it seeks also to develop to remove a larger area of green belt and prime agricultural land than was intended and for uses that do not conform to the emerging Local Development Plan. This proposal seeks to blatantly undermine the whole local plan process to the detriment of local democracy and fails to address the identified needs of the area.

We are in the process of submitting an objection to the Proposed Local Development Plan which is currently subject to public consultation in respect of the removal of the productive agricultural land subject of the current application from the Green Belt and the allocation of the land for industrial development under Allocation Ec3. The proposed by-pass is also a material planning consideration.

It is clear that the proposed development amounts to inappropriate uses in the Green Belt contrary to Scottish Planning Policy 21 Green Belts. SPP21 reinforces the following key objectives of green belt policy:

- To direct planned growth to the most appropriate locations and support regeneration;
- To protect and enhance the character, landscape setting and identity of towns and cities; and
- To protect and give access to open space within and around towns and cities, as part of the wider structure of green space.

As a result, there will be a strong presumption against inappropriate development in the green belt.

The proposed development does not fall within any of the above categories, is not identified as an appropriate use in the adopted Local Plan and ought to be refused.

Para 22 of SPP21 sets out the following appropriate uses for green belts:

- Agricultural uses, including the re-use of historic agricultural buildings in keeping with their surroundings;
- Woodland and forestry, including community woodlands;
- Horticulture, including market gardening (but not retailing unconnected with or out-of-scale with this purpose); and
- Recreational uses that are compatible with an agricultural or natural setting.

Para 23 of SPP21 states:

“New development in the green belt must be of suitable scale and form for the location. Many uses will only be appropriate when the intensity is low and any built elements are ancillary to the main use, small-scale and of high quality design. The reuse of buildings of architectural or historic merit should be viewed positively. Designing Places and the related Planning Advice Note series are particularly relevant. Public transport and access by walking and cycling will be required for uses that will attract a significant number of visitors.”

It is clear that the proposed development conflicts with the provisions of SPP21 and is not an appropriate use for the Green Belt.

The proposed development ought to be considered as a non-conforming use under Paras 26 and 28 of SPP21 which state:

26. Where a proposed use would not normally be consistent with green belt designation, exceptionally it may still be considered appropriate, either as a national priority or to meet an established need, and only if no other suitable site is available. These exceptions to the policy should be highlighted in the development plan to allow for wide publicity and engagement.

28. Proposals for non-conforming uses will also need to be sympathetic in scale and form and to link with walking, cycling and public transport provision, as noted in paragraph 23.

In terms of Para 26 of SPP21 it is considered that the proposed use is not a national priority, does not meet an established need and even if the former were complied with the non-availability of other suitable sites has not been demonstrated. As stated above the Local Plan does not make an exception for this type of development. Adopted Local Plan Policy RP3 identifies sites for Major Non-Conforming Uses within the Green Belt however this site is not included and therefore the proposed development conflicts with Policy RP3.

The proposed development conflicts with Policy RP1: Protection of the Countryside in that it does not satisfy the policy criteria and would result in inappropriate development in the countryside without any justification.

The proposal involves the development of Class 2, prime agricultural land that has been in productive [REDACTED] and thus conflicts with Local Plan Policy RP4: Prime Agricultural Land. Policy RP4 criteria are not satisfied as the site is not allocated for the proposed use, there is no locational justification that would outweigh environmental or economic interests served by retaining the farmland in productive use and does not accord with all other relevant Local Plan policies and proposals.

The environmental impact of the development, particularly upon the health and wellbeing of nearby residents, animals and the environment is a serious concern due to the potential risks associated with escaping gasses and air/water borne contaminants and ground stability associated with the coal mining excavations in the area. The impact upon the ecology of the area is also a concern. [REDACTED]

[REDACTED] are concerned that the development of land affected by previous coal mining would have a significant and detrimental impact [REDACTED]

The proposed development would have a detrimental visual impact on this rural area, including a destructive impact on the character of this close rural community and would result in irreversible damage to the environment and loss of wildlife habitats. The scale and form of the development would not be sympathetic to its rural location and would detract from the character, visual amenity and environmental quality of the area. The proposed development also conflicts with the Community Neighbourhood Plan.

In terms of accessibility the site does not link with walking, cycling and public transport provision. In the absence of good public transport linkages the proposed development would be heavily reliant upon vehicular traffic and would result in a significant increase in heavy traffic and congestion in a road network that is already congested to the detriment of road, cyclist and pedestrian safety. The Old Pentland Road is narrow with dangerous bends and poor visibility and does not have the capacity to accommodate the increased traffic volumes.

The ability of the proposed development to create employment opportunities ought not to outweigh the national policy context of the site in the Green Belt. The proposed development does not conform to the principles of sustainable development.

The determining factor is whether the proposed development complies with development plan policies unless material planning considerations indicate otherwise. The proposed development conflicts with the adopted 2008 Midlothian Local Plan (MLP) which identifies the site as lying within the countryside and Green Belt. The development conflicts with the provisions of Policy RP1: Protection of the Countryside and Policy RP2: Protection of the Green Belt and there no material considerations that would justify a departure to the development plan.

The proposed development conflicts with Policy SHOP5 Major Retail and Commercial Leisure Development Outwith Strategic Town Centres and Straiton. The site does not have good cycling, pedestrian or public transport links and there is no evidence that the retail/leisure uses satisfy the Sequential Test. The impact upon the vitality and viability of Livingston as a Strategic Town Centre has not been assessed. The requirement for additional retail floorspace has not been demonstrated and the unimplemented retail consents at Straiton Retail Park have not been considered.

Conclusion

The application ought not to be determined in its current form as it is clear that the ES is incomplete and inadequate and does not accord with the EIA Regulations. This lack of information prejudices the public's understanding of the environmental impact and does not enable full consideration of the overall environmental impact. Further neighbour/public consultation is required upon the receipt of the full ES and NTS.

It is clear that the proposed development does not accord with the adopted Local Development Plan 2008 or the proposed development plan (2015) and conflicts with national Green Belt policy as contained in SPP21. To determine the application on the basis that the land is proposed to be removed from the Green Belt under the Proposed Plan would be inappropriate and premature. The development would result in the unacceptable loss of productive, prime agricultural land and erosion of the Green Belt for non-conforming uses all to the detriment of the character, appearance, vitality, viability and amenity of the area.

There is clear justification to resist the application and it is requested that the application is refused.

impact upon this farming land and retention thereof before the application is determined. Failure to properly consider the impact of the development upon the retained land would constitute maladministration.

My clients fully support the views and concerns expressed in letter of representation to this current planning application received by the planning authority on 5 June 2015. We expect that further representations will be submitted in respect of the Coal Mining Report, revised ES and NTS following further public re-consultation.

I should be grateful if you would acknowledge receipt of this letter and keep me informed of progress. I request that my clients are consulted on any further submissions of documents and are afforded an opportunity to submit further representations for consideration before the application is determined.

Yours faithfully



Planning & Development Consultant