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FOR YOUR
INFORMATION

Your ref: H10-10kwh21let
Our ref: NOD/MLN/001
22 November 2012

Dear Sir

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
PLANNING APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE FOR THE
PROPOSED ERECTION OF HOTEL, TOURIST RETAIL OUTLET, TOURIST
ORIENTATION CENTRE, FORMATION OF ASSOCIATED CAR PARKING, VEHICULAR
AND PEDESTRIAN ACCESS AND ASSOCIATED WORKS AT FORDEL MAINS, LAND
ADJACENT TO THE A68 DALKEITH BYPASS**

1. This letter contains Scottish Ministers' proposed decision on the planning application by your client, Oakridge Property Limited, for the above-mentioned development. The Scottish Ministers are minded to grant planning permission for this proposed development subject to conditions and the satisfactory conclusion of an agreement to provide improvements to the local bus service.
2. On 3 November 2011, Scottish Ministers issued a Direction, under Section 46 of the Town and Country Planning (Scotland) Act 1997, requiring the above application to be referred to them for determination. This was because of the possible implications of the proposed development for policies contained in the approved Edinburgh and the Lothians Structure Plan, the adopted Midlothian Local Plan and Scottish Planning Policy (SPP) in relation to retail, transport, landscape and visual impact.
3. The application was subsequently considered at a hearing, on 18 April 2012, conducted by Mr Dan Jackman BA (Hons) MRTPI, a reporter appointed by the Scottish Ministers. A copy of Mr Jackman's report to the Scottish Ministers is enclosed for your information. A list of those who appeared at the hearing is given in the preamble of the report. Chapter 1 contains factual background and Chapter 2 sets out the planning policy context.



The Hearing

4. The case for the applicant is summarised in chapter 3, the case for Midlothian Council in Chapter 4, the case for the City of Edinburgh Council in Chapter 5 and the case for the other parties is provided in Chapter 6. The Reporter's findings of fact are contained in Chapter 7.

Consideration by the Reporter

5. The Reporter's reasoning and recommendation that planning permission should be refused appear in Chapter 8 of the report. At Appendix 2A the Reporter has provided a set of planning conditions and, at Appendix 2B, set out the matters to be included in the Agreement that he recommends should form part of the consent should Scottish Ministers be minded to grant planning permission.

The Scottish Ministers' Decision

6. The Scottish Ministers have carefully considered all of the evidence presented at the hearing, the consultation responses and representations, the Reporter's findings of fact and his reasoning and recommendation thereon. They accept the Reporter's findings of fact and are of the view that this is a complex case, in which there are contrasting and conflicting arguments for and against the proposal, with clear differences of opinion about the weight that should be attached to the economic arguments.

7. The Scottish Ministers agree that the proposal is contrary to the development plan and have carefully considered all the issues raised in the report, particularly in relation to the displacement of jobs and the sequential test. However, they consider that the public interest in this case does not lie in refusing planning permission. They consider that significant weight should be afforded to the potential economic benefits in terms of investment, increased employment opportunities, as currently intended, and the potential benefits to tourism locally and regionally. Scottish Ministers consider that these are material considerations which support the proposed development and are of such significant nature that they outweigh the development plan presumption. Scottish Ministers, therefore, do not accept the Reporter's recommendation that planning permission be refused.

8. The Scottish Ministers accept the Reporter's conclusions that the list of conditions and the terms of a legal agreement, as outlined in Appendix 2 of his report, are necessary and would be sufficient to regulate the development. They also agree with the Reporter that, prior to planning permission being granted, the applicant enters into an agreement with the council to provide improvements to the local bus service as set out in paragraph 7.114 of the report.

9. Accordingly, the Scottish Ministers hereby give notice that they are minded to grant planning permission in principle for the erection of a hotel, tourist retail outlet, tourist orientation centre, formation of associated car parking, vehicular and pedestrian access and associated works at Fordel Mains, on land adjacent to the A68 Dalkeith bypass.

10. The granting of formal planning permission will be subject to the conditions set out in the Annex to this letter and to the satisfactory conclusion of an agreement to provide improvements to the local bus service as set out in paragraph 7.114 of the report.

11. Formal planning permission will not be granted until a legally binding agreement has been concluded to the satisfaction of the Scottish Ministers. The Scottish Ministers, therefore, propose to defer their formal decision on the planning application, in the first instance for a period of 3 months, to enable these actions to be completed.

12. For the avoidance of doubt, on page ii within the summary of the report, reference to "inquiry" should read "hearing". Also, "Fordal", quoted throughout the report, should be read "Fordel"

13. Copies of this letter and of the hearing report have been sent to Midlothian Council and to the other parties that appeared at the hearing.

Yours faithfully



LYNDSEY MURRAY

PLANNING APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE FOR THE PROPOSED ERECTION OF HOTEL, TOURIST RETAIL OUTLET, TOURIST ORIENTATION CENTRE, FORMATION OF ASSOCIATED CAR PARKING, VEHICULAR AND PEDESTRIAN ACCESS AND ASSOCIATED WORKS AT FORDEL MAINS, LAND ADJACENT TO THE A68 DALKEITH BYPASS

PROPOSED CONDITIONS

1. Plans and particulars of the matters listed below 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.

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 Planning etc (Scotland) Act 2006).*

2. Development shall not begin until an application for approval of matters specified in conditions regarding the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of each phase of the development, the provision of landscaping, trees and shrubs planting, the SUDS provision, transportation infrastructure and implementation of all of the recommendations made in the Extended Phase 1 Habitat Assessment for the site, dated June 2010. Prior to the tourist retail facility being brought into use the approved tourist orientation facility shall be constructed. Development shall thereafter be carried out in accordance with the approved phasing unless otherwise approved in writing by the planning authority.

Reason: *i) To ensure the development is implemented in a manner that mitigates the impact of the development process. li) To ensure the provision of the tourist orientation facility which would bring additional tourism opportunities within Midlothian, and the provision of which is one of the reasons why the Council supports the proposed development as a departure from Policies of the approved Edinburgh and the Lothians Structure and the adopted Midlothian Local Plan 2008.*

3. Development shall not begin until a site specific environment management plan has been submitted and approved in writing by the planning authority (in consultation with the Scottish Environment Protection Agency) and all work shall be carried out in accordance with the approved plan.

Reason: *To ensure that the construction of the development does not cause unacceptable levels of pollution to the air, land and water.*

4. Development shall not begin until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

i) Existing and finished ground levels for the buildings, external structures, roads and landscape mounds in relation to a fixed datum;

- ii) A landscape design statement detailing proposed new planting within the site; including trees, shrubs, hedging and grassed areas. The planting shall include planted up mounds along the edges of the site;
- iii) The location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- iv) A schedule of plants to comprise species, plant sizes and proposed numbers/density;
- v) A programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the new buildings on the site being occupied;
- vi) Proposed car park surfacing;
- vii) Proposed footpaths; and,
- viii) Proposed cycle parking facilities;

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance. Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure adequate landscape mitigation including measures to have immediate impact in the interests of safeguarding the landscape character and amenity of the area.*

5. Development will not be permitted to start until a site investigation and assessment have been submitted to and approved by the planning authority. If the planning authority considers that there is contamination of the site and/or previous mineral workings required to be remedied, a scheme to deal with any contamination of the site and/or previous mineral workings shall be submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

- i) The nature, extent and types of contamination and/or previous mineral workings on the site;
- ii) Measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- iii) Measures to deal with contamination and/or previous mineral workings encountered during construction work; and,
- iv) The condition of the site on completion of the specified decontamination measures.

Before any of the buildings or parking areas are brought into use the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

Reason: *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

6. Development shall not begin until an application for approval of matters specified in conditions for the siting, design and external appearance of the buildings and other associated structures has been submitted to and approved in writing by

the planning authority. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. Development shall thereafter be carried out using the approved materials or such alternatives as may be approved in writing with the planning authority.

Reason: *In the interests of safeguarding the landscape character and visual amenity of the countryside.*

7. Development shall not begin until an application for approval of matters specified in conditions for the site access, roads, footpaths and cycle ways has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i) Existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
- ii) Proposed vehicular, cycle and pedestrian access;
- iii) Proposed roads (including turning facilities), footpaths and cycle ways;
- iv) Proposed visibility splays, traffic calming measures;
- v) Proposed car parking arrangements;
- vi) A programme for completion for the construction of access, roads, footpaths and cycle paths; and,
- vii) Proposed lighting.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason for 7(i)-(vi): *In the interest of road and pedestrian safety.*

Reason for 7(vii): *In the interests of safeguarding the landscape character and appearance of the area and to ensure that there will be no distraction or dazzle to drivers on the trunk road and that the safety of the traffic on the trunk road will not be diminished.*

8. Development shall not commence until details of proposals for art within the proposed development, including a timetable for its implementation, have been submitted to and approved in writing by the planning authority. The proposals for art shall be implemented in accordance with the approved timetable.

Reason: *To ensure the quality of the development is enhanced by the use of art to reflect its setting in accordance with policies IMP1 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

9. Development shall not begin until details of how it is intended to accord with the Council's Policy NRG3 (Energy for Buildings), together with programmes for providing such facilities, has been submitted to and approved by the Planning Authority.

Reason: *To ensure the provision of low or zero carbon equipment within the development in accordance with policy NRG3 of the adopted Midlothian Local Plan.*

10. Development shall not begin until details of a green travel plan; which shall include measures that will be implemented to encourage the use of public transport to and from the site and to reduce the number of private car trips to equate with the parking provision on the site, the system of management, monitoring, review and reporting; has been submitted to and approved by the Planning Authority.

Reason: These particulars have not been submitted or are incomplete and are required to be submitted to ensure that there is safe and convenient access to and from the site.

11. The retail floorspace contained in the tourist retail outlet shall have a gross floor area not in excess of 3716 square metres and the net retail sales area shall not exceed 2323 square metres. For the purpose of clarification the gross retail and net sales areas specified in this condition do not include space used for restaurants/cafes, tourist interpretation/orientation/viewing areas or other areas used for administration, customer toilets and entrance areas.

Reason: To ensure that the retail element offers the type of tourist related retail experience specified by the applicants in the interests of safeguarding the vitality and viability of Midlothian's Town centres, including Dalkeith.

12. The retail use of the tourist retail outlet hereby approved shall be limited to the sale of tourist related goods and refreshments. The range of goods sold shall not include any of the following types of goods unless otherwise agreed in writing by the planning authority:

- White goods;
- Appliances;
- Electronics;
- Mobile phones;
- Animal/pet foods and supplies; and
- DIY.

Furthermore, the net sales area shall be limited for certain types of goods, unless otherwise agreed in writing by the planning authority as follows:

- Furniture (no more than 200 square metres net sales area)
- Toys (no more than 100 square metres net sales area)
- Garden supplies and tools (no more than 200 sq m net sales area)
- Convenience goods (no more than 300 square metres net sales area)

Reason: To ensure that the retail element offers the type of tourist related retail experience specified by the applicants in the interests of safeguarding the vitality and viability of Midlothian's Town centres, including Dalkeith.

13. The use of the buildings hereby approved shall not come into use unless and until the car parking and access roads associated with them are formed and made available for use.

Reason: In the interests of road safety.

14. The proposed development shall conform to the following constraints:

- i) The detailed proposal shall not exceed two-storeys in height;
- ii) the proposed surface water treatment for the development specified in the surface water drainage strategy report dated April 2011 docketed to this planning permission shall be implemented in full and made operational prior to any of the new buildings hereby approved being occupied. There shall be no variation there from unless with the prior approval of the Planning Authority;
- iii) There shall be no drainage connections to the trunk road drainage system; and,
- iv) The hotel shall not exceed 90 bedrooms

Reason for 14(i): To ensure that the ~~pro~~posed development does not appear intrusive in the landscape and it can be sufficiently mitigated with landscaping.

Reason for 14(ii): To ensure that surface water is adequately drained from the site and to ensure that sufficient land is available within the site for tree and shrub planting to mitigate the landscape impact of the development.

Reason for 14(iii): To ensure that the efficiency of the existing drainage network is not adversely affected.

Reason for 14(iv): To limit the scale of the development to that suited to the layout of the existing access and minimise interference with the safety and free flow of traffic on the Trunk Road.

Advisory Notes

1. Notice of the start of development: The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

2. Notice of the completion of the development: As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended))

3. Display of notice: A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.)