



APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE (19/00748/PPP) FOR A MIXED USE DEVELOPMENT COMPRISING: CLASS 4 (BUSINESS USE); CLASS 5 (GENERAL INDUSTRY); CLASS 6 (STORAGE AND DISTRIBUTION); AND SUI GENERIS USES (HOME IMPROVEMENT SHOWROOMS/ WAREHOUSING, BUILDERS MERCHANT AND CAR SHOWROOM) (AMENDMENT OF ACCEPTABLE USES OF THE SITE FROM USE CLASSES 4 AND 5 APPROVED BY THE GRANT OF PLANNING PERMISSION 02/00660/OUT) AT WHITEHILLS, WHITEHILL ROAD MILLERHILL DALKEITH

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for planning permission in principle for a mixed use development comprising: class 4 (business); class 5 (general industry); class 6 (storage and distribution); and sui generis uses (home improvement showrooms/warehousing; builders' merchants; and car showrooms) on land at Whitehills, Millerhill.**
- 1.2 There have been no representations and consultation responses from the Coal Authority, the Scottish Environment Protection Agency (SEPA), the City of Edinburgh Council, the Council's Policy and Road Safety Manager, the Council's Economic Development Manager, The Wildlife Information Centre (TWIC) and Danderhall and District Community Council.**
- 1.3 The relevant development plan policies are policy 2 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT1, STRAT5, DEV2, DEV5, DEV6, DEV7, ECON1, TRAN1, TRAN2, TRAN4, TRAN5, IT1, ENV2, ENV7, ENV9, ENV10, ENV11, ENV15, ENV16, ENV25, NRG6, IMP1, IMP2, IMP3 of the Midlothian Local Development Plan 2017 (MLDP). The site is identified as site e26, an allocated business/general industrial site in the MLDP.**
- 1.4 The recommendation is to grant planning permission subject to conditions and the applicant entering in to a Planning Obligation.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site comprises an economic land allocation, site e26, within the area of Midlothian known as Shawfair. It is located to the south of the Fort Kinnaird Retail Park (within the City of Edinburgh Council administrative area), in an area bound by Whitehill Road to the north, west and south. The site is bound by the A1, the main Edinburgh to Newcastle arterial route, and the Waverley rail line to the east.
- 2.2 The site is approximately 18 hectares and is currently in agricultural use. The site slopes down generally from south to north and a small burn runs along the northern boundary of the site.
- 2.3 While there are a range of retail units in Fort Kinnaird Retail Park there are also a number of different commercial businesses operating from the land to the north, including a B&Q; numerous car showrooms; storage uses; builder's merchants; retail warehouses; and fast food outlets - all within the City of Edinburgh Council's administrative area.
- 2.4 In addition to the range of uses to the north there are a number of residential properties to the west and south of the application site. The Millerhill Energy Centre and Zero Waste facility are located to the south east of the application site and are accessed via Whitehill Road.

3 PROPOSAL

- 3.1 The application is for planning permission in principle for a mix of the following uses:
 - Class 4 – office/business/light industry
 - Class 5 – general industry
 - Class 6 – storage and distribution
 - Sui Generis – uses which are not included within the defined use classes. The application cites these uses as home improvement showrooms/warehouses, builders' merchants and car showrooms.

The Town and Country Planning (Use Classes) (Scotland) Order 1997 categorises different land uses into different classes to enable planning practitioners and decision makers to determine if a change of use of land or buildings is proposed or has occurred. In defining if a material change of use between one class and another has occurred it enables planning authorities to assess the impact of different uses and enables decisions to be made with regard the right development in the right location. Different uses within the same class are seen to have similar impacts and characteristic and are therefore inter changeable in land use planning terms.

- 3.2 The applicant has provided a site plan for consideration, but on the basis that it is for indicative purposes only.

- 3.3 In addition to the indicative site layout plan the applicant has submitted:
- A planning statement;
 - A noise statement;
 - A marketing report;
 - A transport statement;
 - A mining report;
 - A number of emails and letters to clarify different aspects of the proposal; and
 - Appropriate plans/drawings.

4 BACKGROUND

- 4.1 Outline planning application 02/00660/OUT for residential, industrial and commercial floor space, community facilities (including new primary schools), associated landscaping with the provision for sport and recreation and new transport facilities at land bounded by A720, Old Dalkeith Road and The Wisp, Millerhill was granted planning permission in August 2014.
- 4.2 Along with other planning conditions and a planning obligation, the outline planning permission for Shawfair required compliance with the approved Masterplan for the area. Condition 4 of planning permission 02/00660/OUT stated:
- “The development shall accord with the terms of the Master Plan and Design Guide (and the associated addendums) approved as Supplementary Planning Guidance. Where significant changes are proposed to the development and a planning application is required, the planning application shall be accompanied by the required amendment to the Master Plan and Design Guide and the justification for the change.”
- 4.3 Section 42 application 17/00650/S42, to amend the above-mentioned condition 4 of planning permission 02/00660/OUT was granted by the Committee at its meeting in April 2018 subject to amended conditions and an updated legal agreement (required because application 17/00650/S42 supersedes application 02/00660/OUT as the key permission for the Shawfair development). Condition 4 was amended as follows:
- “The development shall accord with the terms of the approved Masterplan and Design Guide (and associated addendums) approved as Supplementary Planning Guidance. Any significant changes to the Masterplan shall be made by way of an application for approval of matters specified in condition which shall be submitted for the approval of the planning authority.”
- 4.4 In May 2019 the applicant requested that the planning authority provide a screening opinion on the proposed mixed use development

(19/00399/SCR). In the absence of a number of detailed elements within the request, such as the scale and height of the proposed buildings, the planning authority based its screening opinion on assumed compliance with the approved Masterplan and Design Guide. As a result, the planning authority concluded that an environmental impact assessment was not required to be carried out.

- 4.5 The applicant carried out a pre-application consultation (19/00489/PAC) for the expansion of the range of uses at Whitehills, Millerhill in May – August 2019. The pre-application consultation was reported to the Planning Committee at its meeting on 27 August 2019. The Committee noted the report which set out the potential to widening the use classes on the site for the benefit of generating employment.
- 4.6 The application for planning permission in principle constitutes a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and thereby it requires to be determined by the Planning Committee.

5 CONSULTATIONS

- 5.1 **The Coal Authority** does not object to the application, but has confirmed that the application site falls within a defined area of high risk for legacy coal mining. The planning application is accompanied by a Phase 1 Desk Study and Coal Mining Risk Assessment (October 2019, prepared by Mason Evans). The report identifies that a mine shaft entry is present within the application site and recommends that intrusive investigations are undertaken to confirm the coal mining conditions and to identify the necessary remedial measures. The submitted report does not provide a detailed assessment of the risk posed by the mine shaft and the implications it poses for the layout of the development of the site. A precautionary approach is recommended as any work within the proximity of a mine entry can be dangerous and present significant financial liabilities. As a result The Coal Authority have recommended that intrusive investigations must be undertaken in advance of the submission of a detailed layout for the site. Condition/s should be attached to any grant of planning permission to mitigate the coal mining legacy.
- 5.2 The **Scottish Environment Protection Agency (SEPA)** does not object to the application.
- 5.3 The **City of Edinburgh Council (CEC)** Chief Planning Officer supports the principle of the development of the allocated site for class 4 and 5 uses. However, has raised concerns regarding the other uses which form part of this application. He states that the proposal to amend the range of acceptable uses, to include those proposed, is contrary to the adopted MLDP.

- 5.4 While CEC have not formally objected to the planning application they have raised the following key concerns regarding the proposal:
- The CEC commissioned 'Commercial Needs Study' (prepared to inform the Edinburgh City Plan 2030) concludes that there is demand for industrial properties on Edinburgh's urban fringes. The study also suggests that low supply of industrial properties is constraining market demand. CEC state that speculative industrial developments elsewhere in the city have proved popular. CEC suggest that there is a shift in the provision of industrial premises, from aging inner-city property to more accessible and modern edge of city premises.
 - CEC state that the results of their Commercial Needs Study sit at odds with the applicant's own supporting statement, which states that there has been no market interest by class 4 or 5 operators.
 - CEC highlight concerns regarding the projected traffic levels and the way they have been presented as part of this application. However, they state that any likely changes in traffic levels are unlikely to cause any particular cross boundary concerns. They state that Whitehill Road is heavily parked and that a contribution should be sought from the developer to progress a suitable order to introduce waiting and loading restrictions on this road, or seek a suitable kerb realignment at the new junction, in order to protect sightlines.
- 5.5 The Council's **Policy and Road Safety Manager** does not object to the application, stating that the applicant's transport assessment indicates that the change to the proposed uses from those previously approved would not produce any substantial change in traffic generation from this site.
- 5.6 The Council's **Economic Development Manager** does not object to the application, stating that there is steady demand for industrial properties in Midlothian. While demand for office space is not as strong as it is in Edinburgh, there is some demand in Midlothian. Furthermore, the sui generis uses would support the construction sector and provide opportunities for local jobs.
- 5.7 **The Wildlife Information Centre (TWIC)** does not object to the application. TWIC screen all planning applications submitted to the planning authority for potential issues regarding protected species - they have stated that the proposed development is unlikely to have an adverse impact on the ecological issues highlighted in the application.
- 5.8 The **Danderhall and District Community Council** have stated that they do not object in principle to a wider selection of uses which, they say will support additional jobs and amenities for local residents. They do, however raise concerns with regard the details of the proposal. They state that while they appreciate that the market has changed since the Shawfair Masterplan was drafted and then subsequently approved they do have concerns that the wider range of uses will have

implications for the area in relation to traffic and road infrastructure. The Community Council highlight that numerous planning permissions, for large numbers of new homes, have been given planning permission since 2002 and that the Fort Kinnaird area was not as expansive as it is now. The Community Council highlight that the Scottish Ministers rejected the SESPLAN2 on account of insufficient consideration being given to transportation.

- 5.9 In their objection the Community Council have highlighted several specific areas of concern regarding the local road network and lack of public transport. The Community Council conclude their correspondence by making the following requests:
- That an up-to-date transport statement be provided;
 - That road improvements, including traffic management measures, are made to Whitehills Road and Newcraighall Road;
 - That public transport contracts servicing Millerhill, Newton Village, Hilltown and Danderhall are agreed with a provider before the development is completed; and,
 - That consideration is given to providing a medium-sized supermarket in one of the units on the application site.

6 REPRESENTATIONS

- 6.1 No representations have been received.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan, adopted in November 2017. The following policies are relevant to the proposal:

Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan)

- 7.2 **Policy 2 (Supply and Location of Employment Land)** states that the Strategic Development Plan supports the development of a range of marketable sites of the size and quality to meet the requirements of business and industry within the SESplan area. Local Development Plans will support the delivery of the quantity of the established strategic employment land supply as identified. Local Development Plans should also ensure they provide a range and choice of marketable sites to meet anticipated requirements.

Midlothian Local Development Plan 2017 (MLDP)

- 7.3 Policy **STRAT1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, facilities and affordable housing, including sites in the established housing land supply. Committed development includes

those sites allocated in previous development plans which are continued in the MLDP.

- 7.4 Policy **STRAT5: Strategic Employment Land Allocations** supports development for employment uses on sites identified as strategic employment land allocations.
- 7.5 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.6 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.7 Policy **DEV6: Layout and Design of New Development** requires good design and a high quality of architecture, in both the overall layout of developments and their constituent parts. The layout and design of developments are to meet set criteria.
- 7.8 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.9 Policy **ECON1: Existing Employment Locations** seeks to safeguard those sites allocated for economic land uses.
- 7.10 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.11 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A720 Sheriffhall Junction.
- 7.12 Policy **TRAN4: Freight** states that new storage and distribution businesses should be located where they will be readily accessible to the rail or strategic road network.
- 7.13 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.14 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new developments.
- 7.15 Policy **ENV2: Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the *Midlothian Green Network*.

- 7.16 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.17 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.18 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environmental.
- 7.19 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.20 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.21 Policy **ENV16: Vacant, Derelict and Contaminated Land** states that the Council requires to be satisfied that any proposed use of land is suitable in relation to any potential risks from prior contamination and land instability.
- 7.22 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.23 Policy **NRG6: Community Heating** requires that, wherever reasonable, community heating should be supported in connection with buildings and operations requiring heat.

- 7.24 Policies **IMP1: New Development and IMP2: Essential Infrastructure Required to Enable New Development to Take Place** require the developer to deliver, or contribute to, the required infrastructure to mitigate the impact of the development.
- 7.25 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of Development – Class 4 and 5 Uses

- 8.2 Planning permission in principle has been granted for the principle of class 4 and 5 uses on the site, by virtue of the original outline planning permission (02/00660/OUT) and associated Masterplan and then by the subsequent section 42 planning application (17/00650/S42). The current application seeks to extend the range of uses for the site only and, therefore, the approved Shawfair Masterplan is still relevant in terms of the assessment of this application.
- 8.3 The application site is on land allocated in the MLDP as forming part of the Council's established economic land supply (the site was originally allocated for economic development in the 2003 Shawfair Local Plan). The MLDP allocates the Whitehill site for business (class 4) and general industry (class 5) uses. This reflects the position taken in the Shawfair Masterplan.
- 8.4 SESplan policy 2 (Supply and Location of Employment Land), the sites allocation in the MLDP and the previous grants of planning permission support the presumption in favour of class 4 and 5 uses on the site.

Principle of Development – Class 6 and Sui Generis Uses

- 8.5 The applicant is seeking permission to expand the range of uses which would be acceptable. While it is clear that there is straight-forward policy support for class 4 and 5 uses on the site there is no such definitive planning policy support for the other uses proposed.
- 8.6 SESplan supports the safeguarding of existing economic sites in Midlothian and requires additional economic land to be allocated for development. SESplan also allows consideration of mixed-use development on economic sites, if supported by the MLDP, which does not result in a net loss to the overall strategic land supply. SESplan

also states that there should be a range of marketable sites to meet anticipated demand.

- 8.7 As a committed site within the established economic land supply, there is support for the early implementation of development at the site. The majority of the sites forming part of the Council's economic land supply are identified as being acceptable for business and general industry (classes 4 and 5), which have traditionally been those which produce the highest density of employment thereby providing a sustainable jobs market to the residents and future residents of Midlothian.
- 8.8 Policy ECON1 of the MLDP sets the criteria by which potential uses are assessed and includes the following requirements; the contribution towards appropriate employment densities; compatibility with neighbouring uses; avoiding detrimental impacts on the amenity of the area; and, meeting infrastructure deficiencies or requirements. This policy does not specifically support the introduction of non-business or non-industrial uses. While the policies of the MLDP do not explicitly support the proposed uses it is necessary for the Council to consider whether some support could be provided for the principle of establishing a wider range of uses at the application site than those previously granted planning permission to support economic activity and job creation.
- 8.9 It is the case that the application site was allocated for economic development (business and industry) and has been subject to a marketing campaign by the applicant. The evidence submitted by the applicant suggests that there has been limited interest in the site from businesses seeking to operate under the terms of classes 4 and 5. The applicant states that the existing local development plan allocation for the site, as classes 4 and 5, does not respond to the current market demand and that the Council should be more flexible in order to bring forward at least some development on this allocated but, as yet, undeveloped site. This flexibility would be in the spirit of SESplan policy, which seeks to encourage economic development by providing for a range and choice of marketable sites. This is particularly the case as economic development sites are not currently allocated for all of the uses being proposed as part of this application. The proposed uses cannot easily be accommodated elsewhere in Midlothian and could easily be lost from the Council area if not accommodated on a site such as this. The applicant's evidence suggests that the mixed range of uses proposed would be marketable.
- 8.10 In order to assess the appropriateness of the proposed uses it is necessary to consider them against the criteria set out in policy ECON1 of the MLP.
- 8.11 With regards to employment generation at the application site the applicant has stated that it is their opinion that the uses proposed will provide for a similar level of full-time equivalent (FTE) employment as

would be the case under the previously consented and allocated position.

- 8.12 Employment density projections are based on the *Employment Densities Guide, English Partnership, 2010*. This document does not provide clear projected FTE employment figures for all of the uses proposed as part of this application. As a result, the applicant has estimated the projected FTE employment figures. The applicant has estimated that based on the approved masterplan the site would generate on average 48sqm per FTE and the proposed uses would generate 46.4sqm per FTE. This shows that they consider that more employees will be accommodated within the same floorspace as previously approved – the proposed uses will not be detrimental to the number of jobs created.
- 8.13 In the circumstances it is difficult to draw direct comparisons between the projected employment generation from the permitted uses and the proposed uses. Even accounting for the applicant being generous in terms of their job creation estimates for their proposed uses the planning authority is satisfied that the proposed range of uses will generate employment figures roughly in line with what would be expected for a site of this size. In any event, it is the case that the site has remained undeveloped for a significant period of time (since 2003) and that the current proposal appears to represent a potential way to generate at least some employment in this area, providing new jobs for the new community at Shawfair, Danderhall and the wider area. The marketing data submitted by the applicant identifies that there has been some interest in the site for the proposed uses and it is expected that those uses can be brought forward more timeously than any class 4 or 5 uses given that there is no realistic prospect, certainly in the short term, of realising the levels of employment arising from a limited class 4 and 5 development.
- 8.14 With regards to the employment generating potential of the application site it is also relevant to consider the current uncertainty regarding the jobs market, as a result of the COVID-19 pandemic and the resultant impact on the local and national economy. It should be possible for the Council to respond in a flexible way in order to address local and national crises. Supporting this application will ensure that the Council is responding in a positive way to the economic difficulties currently facing the country. It is debatable whether the types of uses proposed in this application are those which will assist in the economic recovery, but the flexible approach to the extended range of uses provides the best opportunity. Sustainable economic growth is a material consideration which can outweigh the policy position with regard support for non-class 4 and 5 uses.
- 8.15 With regards to whether the proposed development would be compatible with neighbouring uses it is necessary to consider what those neighbouring uses are.

- 8.16 Planning permission has been granted for a large residential development to the west of the application site and there are a number of houses and cottages located around the boundary of the site. Arguably, of all of the proposed uses the one with the most potential to be incompatible with the neighbouring residential properties is the class 5 use. Given that the class 5 use is one of the established uses for the site it is considered that proposed development will be compatible with neighbouring residential properties, whether they are existing or future dwellings.
- 8.17 To the north of the application site is the Fort Kinnaird Retail Park and the allocated business and industrial land which is all located within the City of Edinburgh. Within the retail area there are a range of the usual out-of-town retail operators. In that area there are also DIY stores, builder's suppliers, storage uses and retail warehouses. Within the allocated business and industrial land there are a collection of consented car showrooms.
- 8.18 It is considered that the proposed development will not inhibit the employment generating activities of the neighbouring areas. Given that the applicant is, in effect, proposing an extension to some of the uses found in the South Fort Kinnaird area it is considered that the development will be complimentary to, and entirely compatible with, the neighbouring uses to the north.
- 8.19 As described above, the proposed development will not have an adverse impact on the amenity of the area. Conditions can be imposed in order to protect residential amenity, as was done in previous planning consents in Shawfair.
- 8.20 With regards to mitigating infrastructure deficiencies the application site falls within the area covered by the outline planning permission for Shawfair, as amended by the granting of a section 42 planning permission (17/00650/S42). The planning permission is bound by a Planning Obligation (section 75 agreement) securing developer contributions towards infrastructure. However the agreement declares that those contributions are not applicable in relation to the Whitehill site – this was done so as not to place a restrictive burden on the development of employment uses on a site which already has the burden of remediating challenging ground conditions (the site falls within a defined area of high risk for legacy coal mining).
- 8.21 Notwithstanding the provisions of that agreement and the applicant's position that the whole of the current development proposal should not be subject to developer contributions, the application is being assessed against a new local development plan (compared to the one the original Shawfair planning obligation was agreed under), different uses being proposed and what would constitute a new planning permission in law is proposed.

- 8.22 Having regards to the provisions of the development plan, the uses proposed and the proximity to Sheriffhall and the Borders Rail Line it is necessary to consider taking contributions towards these elements of infrastructure from those non-class 4 and 5 uses (because the class 4 and 5 uses on this site were exempt from contributions in the main Shawfair planning obligation, it could be considered to be unreasonable to take a contribution via this application, simply because of the nuances of the application process and considering the economic circumstances specific to this site).
- 8.23 In order to provide flexibility, in order to assist with the early delivery of development at this site, the planning authority has presented two further options to the applicant, which could potentially replace the requirement for a financial contribution. The first option is the potential to reach an agreement to transfer, to the Council, serviced plots capable of accommodating class 4 or 5 uses. The planning authority appreciates that the market for speculative start-up premises is considered a risk in the current times but considers that there would be a great benefit to the local community to have a ready supply of these types of premises to support the economic recovery.
- 8.24 Another way of supporting the local community and encouraging economic recovery is for the applicant to agree to set up a Local Training and Employment Plan. This extent of this plan would be negotiated with the applicant but would generally provide training, apprenticeships and employment opportunities for local people at different stages of the development.
- 8.25 Should this application be supported it would require to be dependent on the applicant accepting one of the abovementioned options.
- 8.26 While the proposed development is not entirely in compliance with the uses allocated for this site it is clear that the proposed uses will not fundamentally undermine the strategic and local planning policy position, which seeks to ensure that there is a readily available supply of land for economic development. The allocated economic land will still provide the opportunity to create as many jobs, and perhaps a better variety of jobs, as it had the potential to do previously and the proposed uses would be compatible with neighbouring uses.
- 8.27 While the range of acceptable uses is proposed to be expanded, as a result of this application, it will not exclude accommodating class 4 and 5 uses should operators of those types of businesses emerge. Therefore, it is still a possibility, albeit unlikely, that the whole of the Whitehills site could be occupied by class 4 and 5 operators.
- 8.28 While it is the case that a flexible approach to the range of uses at Whitehills should be employed, it is also the case that it would be unacceptable if there were to be no class 4 or 5 uses accommodated at the site. This would be entirely contrary to the aims of the development plan. The applicant has agreed to a limit on the floorspace for those

proposed non-class 4 and 5 uses, limiting those uses to 50% of the entire floorspace at Whitehills.

Masterplan matters

- 8.29 During the assessment of the application the applicant made it clear that they were only seeking permission to amend the range of already consented uses in order to allow a more flexible arrangement which would allow the accommodation of businesses which otherwise could not be located at Whitehills, or anywhere else in Midlothian. There has been no suggestion that the applicant was seeking to vary any of the other elements of the approved masterplan. Specifically, the applicant has not sought an increase in floorspace which was restricted through the approved masterplan. The submitted planning statement acknowledges that the approved masterplan limits floorspace at Whitehills to 25,000sqm. The submitted transport briefing note appears to base its findings on a total floorspace of 25,000sqm. The Council's policy and road safety consultation response is based on the transport assessment. For these reasons it is reasonable to, again, limit the consented floorspace to 25,000sqm. Taking into account the above-mentioned requirement for 50% of the total floorspace to be retained in class 4 or 5 use these restrictions can be covered by planning conditions.
- 8.30 The applicant has not sought to amend other elements of the masterplan, so they will also remain unchanged. The building heights, drainage and landscaping are three such elements which will remain as originally agreed in the masterplan and design guide.
- 8.31 Screening of the archaeological potential of the entire Shawfair area has previously been carried out and has identified that there is no requirement to carry out any archaeological survey work at the Whitehills site.

Other Comments Regarding the Proposed Uses

- 8.32 The CEC comments make it clear that they consider that the applicant's submission contradict the findings of their own 'Commercial Needs Study'. CEC have stated that, despite what the applicant states, there is still a demand for class 4 and 5 properties on the edge of the city. This demand appears to be generated by the movement of those operations out of older, less well served, properties within the city to more modern and accessible properties on the edge of the urban area. In effect, it appears that CEC are suggesting that the application site should be retained in class 4 and 5 use to allow for some of the businesses looking to relocate out of the inner-city areas. This position is at odds with Edinburgh's own position regarding the adjacent area at Fort Kinnaird, which, over time, has been allowed to be developed by non-office and non-industrial uses. Many of the same uses being proposed through this current application are present on land immediately adjacent, within CEC. There are a number of car

showrooms on Edinburgh's allocated business and industrial land to the north.

- 8.33 The Danderhall and District Community Council state that they do not object to the principle of the planning application. As it is the principle of the development which is being assessed through this application it is considered that the Community Council's representation does not form an objection to the proposal. They do support the opportunity to create jobs at this site but have highlighted concerns regarding traffic levels and management. The Community Council have also highlighted a desire for the site at Whitehills to accommodate a retail superstore. While the applicant identified at pre-application consultation stage that they wanted to open the site up to class 1 retail uses, the planning authority raised concerns that these uses would be contrary to the development plan and could not be supported at Whitehills – the applicant responded to these concerns and removed retail from their proposed mix of uses.

Access and transport matters

- 8.34 As this application has been submitted to establish the principle of an extended range of uses at Whitehills there have been few details regarding the access and transport matters submitted for consideration. The transport assessment establishes that there will be little change in traffic generation at the site as a result of the amended range of uses, when compared to the allocated class 4 and 5 uses, and the Council's Policy and Road Safety Manager concurs with that position, despite the concerns raised by the local Community Council.
- 8.35 CEC have raised some concerns regarding the levels of parking on Whitehills Road, in the area where the indicative plans suggest access and egress at the application site will be taken. CEC suggest that visibility splays will be required and potentially a traffic order applied for in order to make the junction safe.
- 8.36 The application site boundary does not extend to the carriageway at Whitehills Road. Therefore it is expected that the applicant will require to secure planning permission from CEC to gain access to the application site in the position identified in the indicative site plan. In any event, the planning authority are satisfied that it should be possible to secure an appropriate access to the site in order to accommodate the proposed development.

Landscaping

- 8.37 The structure planting at Whitehills was previously being secured through the planning applications for the wider Shawfair site and the approved masterplan. It would be appropriate to continue to require the structure planting which has been consistently sought through the approved masterplan.

Other matters

- 8.38 It will be necessary for the application to comply with other relevant policies within the MLDP, including the requirements for high speed fibre broadband connections for buildings; a scheme for protecting and enhancing on-site biodiversity; a scheme for linking into the green network; and, proposals for the incorporation of electric vehicle charging points and stations.
- 8.39 The Coal Authority has requested that if the application is approved a planning condition is attached which secure further investigations. These investigations must be used to inform the future remediation and the proposed layout of buildings and structures. It is essential that in arriving at a proposed layout the most expensive areas to remediate are not left to the lower value uses, thereby making it less likely to secure those uses on the site due to reasons of viability.

Developer Contributions

- 8.40 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The Circular advises that planning obligations should only be sought where they meet all of the following tests:
- necessary to make the proposed development acceptable in planning terms (paragraph 15);
 - serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
 - relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19);
 - fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23);
 - be reasonable in all other respects.
- 8.41 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements (a form of planning obligation) are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance).
- 8.42 The proposed development has been assessed in relation to the above guidance and it is considered that a planning obligation is required in respect of the following matter:
- The MLDP identifies the provision of the Borders Railway and Sheriffhall junction improvements as being key to accommodating development within this transport corridor. A proportionate contribution will be required from this development.

Conclusion

- 8.43 The proposed class 4 and 5 uses accord with the development plan and the presumption in favour of the development is not outweighed by any other material considerations. The class 6 and sui generis uses are not in strict compliance with the uses allocated in the local plan, and those uses previously approved. However, there is scope for the Council to take a flexible approach, in the circumstances, in order to support the economic resilience in the area and assist in the creation of jobs in an economically challenging time. The Council has a readily available economic land supply which, based on current take up rates, will take a significant period of time to exhaust and, as such, the proposal does not undermine the aims of the development plan. Furthermore if the Council wanted to take a more flexible approach to supporting business this would be the ideal location – a site not in significant demand for class 4, 5 uses and its proximity to the mix of uses north of the site at Fort Kinnaird.

9 RECOMMENDATION

- 9 It is recommended that planning permission be granted for the following reason:

The proposed mixed use development site is identified as being part of the Council's established economic land supply within the Midlothian Local Development Plan 2017 and as such there is a presumption in favour of the proposed development. This presumption in favour of development, along with a flexible approach to accommodating a range of employment generating uses during difficult economic conditions is not outweighed by any other material considerations.

Subject to:

- i) the prior signing of a legal agreement to secure the provision of contributions towards strategic transport infrastructure including Borders Rail and Sheriffhall junction improvements from the class 6 and sui generis uses. The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused; or
- ii) the transfer of serviced plots to the Council; or
- iii) the applicant entering into an agreement with the Council to establish and implement an Employment and Training Plan;

and the following conditions:

1. The uses hereby approved shall be limited to the following, and for no other uses:
 - Class 4 – Office/Light Industry
 - Class 5 – General Industry
 - Class 6 – Storage and Distribution

Sui Generis – limited to home improvement showrooms/warehouses, builder's merchants and car showrooms.

(The uses are defined as per The Town and Country Planning (Use Class) (Scotland) Order 1997 (UCO) and shall comply with the equivalent use classes in any order which revokes or supersedes the UCO).

Reason: *In the interests of clarify the range of uses which have been proposed and assessed as being acceptable in terms of compliance with development plan policy*

2. The gross floorspace of the combined development at the entire Whitehills site, allocated site e26 in the adopted Midlothian Local Development Plan, shall not exceed 25,000sqm. The combined gross floorspace of the class 6 and approved sui generis uses shall not exceed 12,500sqm.

Reason: *The application has been assessed on the basis of a maximum floorspace of 25,000sqm, which is in compliance with the approved Shawfair Masterplan. While a flexible approach to the range of uses is being taken in the circumstances the proposed development would not be in compliance with the development plan should no class 4 or 5 uses be accommodated on the Whitehills site.*

3. In the January of each year, until the development is completed, an updated phasing plan shall be submitted to and approved in writing by the planning authority. The phasing plan shall include the construction of each phase of the development, the provision of open space, structural landscaping, SUDS provision, transportation infrastructure, and percent for art. The plan shall clarify those phases of development completed, under construction and those phases of development scheduled to commence within 5 years of the submitted phasing plan. Development shall thereafter be carried out in accordance with the approved phasing unless agreed in writing with the planning authority.

Reason: *To enable the timeous delivery of infrastructure and services to meet the needs of occupants and future occupants of the development.*

4. The development shall accord with the terms of the approved Masterplan and Design Guide (and associated addendums) approved as Supplementary Planning Guidance in all respects other than where those documents refer to the acceptable uses for the Whitehills site as covered by condition 1 above. Any significant changes to the Masterplan shall be made by way of an application for approval of matters specified in condition which shall be submitted for the approval of the planning authority.

Reason: *To ensure the development complies with the development plan, national planning advice and guidance and good place making principals.*

5. Within 12 months, unless an alternative time period is agreed with the planning authority, from this grant of planning permission the scope and feasibility of a community heating scheme for the development hereby approved and, if practicable, other neighbouring developments/sites, in accordance with policy NRG6 of the Midlothian Local Development Plan 2017, shall be submitted for the prior written approval of the planning authority. Any structures, buildings or engineering works required to implement an approved scheme shall require a matters specified in conditions application.

Reason: *To ensure the provision of a community heating system to accord with the requirements of policy NRG6 of Midlothian Local Development Plan 2017 and in order to promote sustainable development.*

6. The structure landscaping (incorporating associated footpaths and cyclepaths) detailed in the approved Shawfair Masterplan and the Design Guide for Shawfair for the Whitehills site shall be carried out within 9 months of the commencement of development in Whitehills unless otherwise agreed in writing by the planning authority.

Reason: *To ensure the Structural Landscaping is carried out timeously and provides a good quality landscape setting for the new development. The landscaping and footpaths make a valuable contribution to the creation of quality places as well as encouraging walking and cycling.*

7. A valid application for approval of matters specified in conditions shall be submitted to the planning authority before the expiration of either:
 - I. twenty five (25) years from the date of this grant of permission;
 - II. six (6) months from the date on which an earlier application, for the same development block, for approval under this condition was refused; or,
 - III. six (6) months from the date on which an appeal or review against such a refusal was determined.

Reason: *To accord with Section 59(5) of the Town and Country Planning (Scotland) Act 1997 (as amended) and to allow sufficient time for this development to be implemented in line with consents across other parts of the Shawfair development area.*

8. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) or part thereof of the development at Whitehills until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works and open space has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- i. existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
 - ii. existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
 - iii. proposed new planting in landscaped areas and open space, including trees, shrubs, hedging and grassed areas;
 - iv. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the buildings on adjoining plots are occupied;
 - vii. drainage details and sustainable urban drainage systems to manage water runoff;
 - viii. proposed car park configuration and surfacing;
 - ix. proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
 - x. proposed culverts or other means providing vehicular or pedestrian traffic across watercourses or ditches;
 - xi. proposed cycle parking facilities; and
 - xii. proposed pieces of public art and/or sculpture (percent for art).

All hard and soft landscaping and open space shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). 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 the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV5, DEV6, DEV7 and DEV9 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.

9. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in

conditions for the siting, design, use and external appearance of all buildings and other 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 agreed in writing with the planning authority.

Reason: *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies DEV2, DEV5 and DEV6 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

10. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- i. a programme for completion for the construction of access, roads, footpaths and cycle paths;
 - ii. existing and finished ground levels for all roads, footways and cycle ways in relation to a fixed datum;
 - iii. the proposed roads (including turning facilities), footpaths and cycle ways including suitable walking and cycling routes linking the new development with other areas of the Shawfair development;
 - iv. proposed visibility splays, traffic calming measures, lighting and signage;
 - v. proposed construction traffic access and haulage routes;
 - vi. proposed car parking arrangements;
 - vii. proposed public transport infrastructure including bus shelters and bus laybys; and
 - viii. a green travel plan designed to promote walking, cycling and the use of public transport.

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: *To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

11. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for a

scheme to deal with any contamination of the site and/or previous mineral workings has been 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;
- iv. the condition of the site on completion of the specified decontamination measures; and
- v. details of how mine water is kept separate to SUDS ponds and wetlands.

Before any part of the site is occupied for commercial purposes, 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.*

12. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for a scheme of intrusive site investigations for the mine entry and shallow coal workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any coal mining legacy and include:

- i. the submission of a report of findings arising from both schemes of intrusive site investigations;
- ii. the submission of a layout plan which identifies an appropriate zone of influence for the mine entry, and the definition of a suitable 'no-build' zone;
- iii. the submission of a scheme of treatment for the mine entry for approval; and
- iv. the submission of a scheme of remedial works for the shallow coal workings for approval.

Development shall not be commenced until the approved treatment/remedial works have been implemented.

Reason: *The Coal Authority have requested the above condition in order to adequately address concerns regarding the stability and safety of the development site.*

13. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions setting out details, including a timetable of implementation, of high speed fibre broadband has been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each commercial building. The delivery of high speed fibre broadband shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure.*

14. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for a scheme of sustainability/biodiversity for the site, including the provision of bricks and boxes for bats and swifts, and biodiversity-friendly landscaping throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy DEV5 of the Midlothian Local Development Plan 2017.*

15. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for the provision and use of electric vehicle charging stations has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy TRAN5 of the Midlothian Local Development Plan 2017.*

16. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for a Construction Environment Management Plan (CEMP) has been

submitted to and approved in writing by the planning authority. The CEMP shall include:

- i. signage for the construction traffic, pedestrians and other users of the site;
- ii. controls on the arrival and departure times for the construction vehicles and for site workers;
- iii. details of piling methods (if employed);
- iv. details of earthworks;
- v. control of emissions strategy;
- vi. a dust management plan strategy;
- vii. waste management and disposal of material strategy;
- viii. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;
- ix. prevention of mud/debris being deposited on the public highway; and,
- x. material and hazardous material storage and removal.

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

Reason: *In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place.*

17. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions assessing flood risk and its mitigation has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To address concerns in relation to Flood Risk and to ensure flood risk to the development can be mitigated and the development will not increase the risk of flooding elsewhere.*

18. Construction, engineering, site delivery and any other operations shall only take place between 0800 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays. Any amendment of these hours shall be agreed in writing with the planning authority prior to work taking place outwith the hours stated.
19. Construction, engineering, site delivery and any other operations shall comply with following noise level: 70 dB LAeq(12hr) (façade), with the best practicable means (BPM) at all times in accordance

with BS5228 guidance. All fixed plant/machinery noise shall comply with the following:

Night time (22:00 – 07:00 hrs) NR25 (internal, open window)

Day time (07:00 - 22:00 hrs) - NR30 (internal, open window)

Reason for conditions 18 and 19: To ensure noise assessment criteria are appropriate to protect residential amenity.

20. Any hedging identified for removal shall, prior to its removal, either (i) be removed outwith the bird nesting period, or (ii) be surveyed for nesting birds by a qualified ecologist. The results of the nesting bird survey including any proposed mitigation shall be submitted to and approved by the planning authority in writing. If the survey is approved by the planning authority the hedging shall be removed before the beginning of the bird nesting period following the date of the survey, failing which the hedging shall not be removed.

Reason: In the interests of safeguarding nesting birds, which are afforded protection in law and to ensure the development accords with policy ENV15 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.

21. Permitted development under Class 40, section (1) (e) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended, replaced or superseded by any subsequent regulation is expressly excluded within the site and no electricity substation shall be erected within the site unless details of its position and appearance have been submitted to and approved in writing by the planning authority.

Reason: To ensure that any substation is unobtrusive and not unduly close to any occupied building.

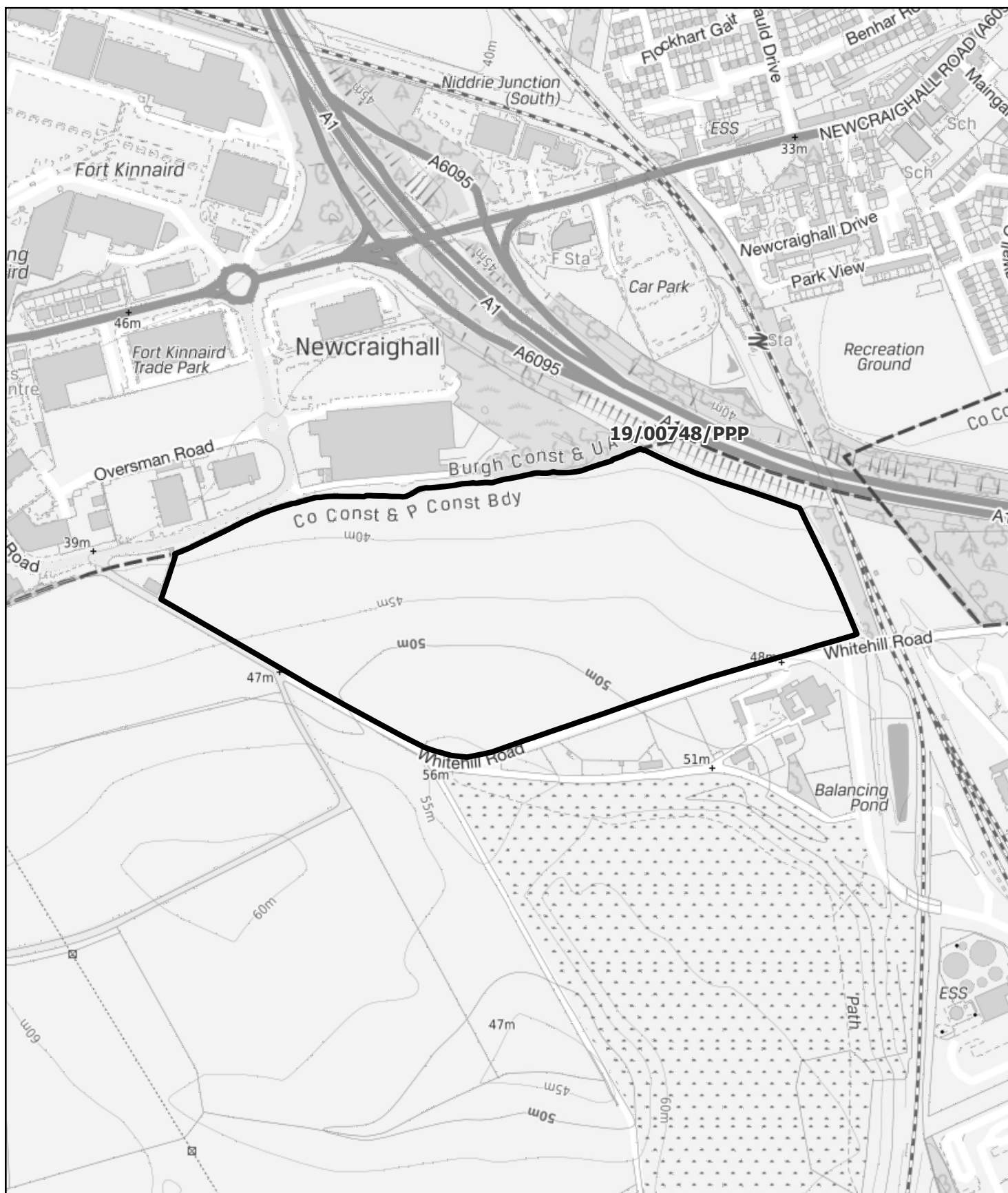
22. Unless otherwise approved in writing by the planning authority there shall be no storage nor industrial activity outwith any buildings erected within the Whitehills site. Any area so approved for external storage or industrial activity shall only be used for these purposes as an ancillary operation to the lawful use of the building within the same curtilage.

Reason: In the interests of visual amenity.

Peter Arnsdorf
Planning Manager

Date: 18 August 2020

Application No: 19/00748/PPP
Applicant: Shawfair LLP, 27 Silvermills Court, Henderson
Place Lane, Edinburgh
Agent: Colliers International, 1 Exchange Crescent,
Edinburgh
Validation Date: 17 September 2019
Contact Person: Duncan Robertson
Tel No: duncan.robertson@midlothian.gov.uk
Background Papers: 02/00660/OUT and 17/00650/S42
Attached Plans: Indicative Masterplan



**Planning Service
Place Directorate**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Application for Planning Permission in Principle for Use Class 4- Business Use; Use Class 5- General Industry; Use Class 6- Storage and Distribution; Sui Generis- Home Improvement Showrooms/ Warehousing; Sui Generis- Builders Merchant; and Sui Generis- Car Showroom (amendment of acceptable uses of the site from Use Classes 4 and 5 approval by the grant of planning permission 02/00660/OUT)) at Whitehills, Whitehill Road, Millerhill, Dalkeith

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File No: 19/00748/PPP

Scale: 1:6,000





Indicative Masterplan

project		Whitehills, Edinburgh	revision	
client	Shawfair LLP	status	FINAL	
job no	E173 I	draw no	(SK)007	A
scale	1:2000@A3	date	27.03.18	drawn
				AG