



Decision by David Buylla, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2266
- Site address: 27 Lanark Road, Edinburgh, EH14 1TG
- Appeal by Thistle Property Group against the decision by the City of Edinburgh Council
- Application for planning permission 18/02817/FUL dated 18 June 2018 refused by notice dated 1 February 2019
- The development proposed: demolition of existing public house and erection of a building comprising residential apartments and associated development
- Application drawings: listed in a schedule at the end of this notice
- Date of site visit by Reporter: 1 May 2019

Date of appeal decision: 16 October 2019

Decision

I allow the appeal and grant planning permission subject to the 10 conditions listed at the end of this notice. Attention is drawn to the three advisory notes at the end of the notice.

Reasoning

1. On 17 May 2019 I gave notice of my intention to grant planning permission for this development subject to the completion of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 or some suitable alternative arrangement securing a developer financial contribution towards the provision of off-site affordable housing. A copy of my notice of intention is attached as Annex A to this notice.
2. On 2 September 2019, the appellant's solicitor provided confirmation that the obligation had been completed and registered against the appeal property.
3. I have been advised of no material change in circumstances since my notice of intention. Consequently, I hereby grant planning permission for the development proposed.

David Buylla
Principal Reporter

Conditions

1. Prior to the commencement of construction works on site:



- a) A site survey (including intrusive investigation where necessary) must be carried out to establish, either that the level of risk posed to human health and the wider environment by contaminants in, on or under the land is acceptable, or that remedial and/or protective measures could be undertaken to bring the risks to an acceptable level in relation to the development; and
- b) Where necessary, a detailed schedule of any required remedial and/or protective measures, including their programming, must be submitted to and approved in writing by the planning authority.
Any required remedial and/or protective measures shall be implemented in accordance with the approved schedule and documentary evidence to certify those works shall be provided for the approval of the planning authority.
(Reason: to protect the amenity and safety of the occupiers of the development and of those involved in its construction)
2. No development shall take place until the applicant has secured the implementation of a programme of archaeological work, in accordance with a written scheme of investigation which has been submitted to and approved in writing by the planning authority.
(Reason: in order to safeguard the interests of archaeological heritage.)
3. A detailed specification, including trade names where appropriate, of all the proposed external materials shall be submitted to and approved in writing by the planning authority before work is commenced on site. Samples of the materials may be required.
(Reason: in order to enable the planning authority to consider these matters in detail.)
4. A fully detailed landscape plan, including details of all hard and soft surface and boundary treatments and all planting, shall be submitted to and approved in writing by the planning authority before work is commenced on site.
(Reason: in order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site.)
5. The approved landscaping scheme shall be fully implemented within six months of the completion of the development or of first occupation of any of the approved apartments, whichever is the sooner. Any tree or shrub that should die within a period of five years of planting shall be replaced with a similar specimen in the following planting season.
(Reason: in order to ensure that the approved landscaping becomes established within a reasonable timeframe and is maintained adequately thereafter.)
6. A pre-works start bird survey shall be carried out by an ecologist to confirm that no breeding birds, nests, or dependent young are present if site preparation works are proposed to occur between April and July. The results of this survey shall be submitted to and approved in writing by the planning authority before any such works within this timescale commence.
(Reason: in order to safeguard breeding birds.)
7. Development shall not commence until a Bird Hazard Management Plan has been submitted to and approved in writing by the planning authority. The submitted plan shall include details of:

- monitoring of any standing water within the site temporary or permanent;
- sustainable urban drainage schemes (SUDS) - such schemes shall comply with Advice Note 3 'Wildlife Hazards' (available at www.aoa.org.uk/policycampaigns/operations-safety/);
- management of any flat/shallow pitched/green roofs on buildings within the site which may be attractive to nesting, roosting and "loafing" birds – the management plan shall comply with Advice Note 3 'Wildlife Hazards';
- reinstatement of grass areas;
- maintenance of planted and landscaped areas, particularly in terms of height and species of plants that are allowed to grow;
- which waste materials can be brought on to the site/what if any exceptions e.g. green waste;
- monitoring of waste imports (although this may be covered by the site licence);
- physical arrangements for the collection (including litter bins) and storage of putrescible waste, arrangements for and frequency of the removal of putrescible waste; and
- signs deterring people from feeding the birds.

The Bird Hazard Management Plan must ensure that flat/shallow pitched roofs be constructed to allow access to all areas by foot using permanent fixed access stairs ladders or similar. The owner/occupier must not allow gulls, to nest, roost or loaf on the building. Checks must be made weekly or sooner if bird activity dictates, during the breeding season. Outside of the breeding season gull activity must be monitored and the roof checked regularly to ensure that gulls do not utilise the roof. Any gulls found nesting, roosting or loafing must be dispersed by the owner/occupier when detected or when requested by Edinburgh Airport Airside Operations staff. In some instances, it may be necessary to contact Edinburgh Airport Airside Operations staff before bird dispersal takes place. The owner/occupier must remove any nests or eggs found on the roof. The breeding season for gulls typically runs from March to June. The owner/occupier must obtain the appropriate licences where applicable from Scottish Natural Heritage before the removal of nests and eggs.

The Bird Hazard Management Plan shall be implemented as approved, on completion of the development and shall remain in force for the life of the building. No subsequent alterations to the plan are to take place unless first submitted to and approved in writing by the planning authority.

(Reason: to avoid endangering the safe movement of aircraft and the operation of Edinburgh Airport through the attraction of Birds and an increase in the bird hazard risk of the application site. For further information please refer to Advice Note 3 'Wildlife Hazards' (available at <http://www.aoa.org.uk/policycampaigns/operations-safety/>).

8. Development shall not commence until details of the Sustainable Urban Drainage Schemes (SUDS) have been submitted to and approved in writing by the planning authority. Details must comply with Advice Note 3 'Wildlife Hazards'. The submitted Plan shall include details of:

- attenuation times;
- profiles and dimensions of water bodies; and
- details of marginal planting.

No subsequent alterations to the approved SUDS scheme are to take place unless first submitted to and approved in writing by the planning authority. The scheme shall be implemented as approved.

(Reason: to ensure the proposal has an acceptable effect on the water environment.)

9. Development shall not commence until details of enhanced double glazing and trickle ventilation features that will be employed in the approved building have been submitted to, and approved in writing by, the planning authority. Once approved, such measures shall be incorporated into the building and shall not be removed without the further written approval of the planning authority.

(Reason: the site is close to the busy A70 Lanark Road where noise could otherwise affect residential amenity to an unacceptable degree.)

10. Two bat boxes of a design and in a location that has been agreed in writing by the planning authority, shall be installed on the building prior to first occupation of any of the apartments. The bat boxes shall not be removed from the building.

(Reason: in order to mitigate the effects of development on bats, which are known to roost close to the site).

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **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)).

3. **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)).

Schedule of drawings

Location plan 1756 LOC 001
 Proposed site plan 1756 (PL) 002 D
 North and west elevations 1756 (PL) 101A
 Site elevation north and west 1756 (PL) 103A
 South and east elevations 1756 (PL) 102B
 Levels 01, 02 & 03 1756 (PL) 003B
 Levels 01, 02 & 03 glazing types 1756 (PL) 004
 Sections 1756 (PL) 050A
 Landscape plan LNK-RF-AA-XX-DR-L-0001 B
 Tree removal plan LNK-RF-AA-XX-DR-L-0003 A

Tree retention plan LNK-RF-AA-XX-DR-L-0004 B
Soft landscape LAYOUT LNK-RF-AA-XX-DR-L-0002 a

Annex A

Planning and Environmental Appeals Division

Appeal: Notice of Intention

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- Application drawings: listed in a schedule at the end of this notice
- Date of site visit by Reporter: 1 May 2019

Date of notice: 17 May 2019

Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission subject to the conditions listed below, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, or some suitable alternative arrangement, covering the matter listed in paragraph 33.

Reasoning

1. It is proposed to develop an apartment building of between two and four storeys on a 0.2 hectare site that is currently occupied by a former public house. The site lies between the Water of Leith and the Water of Leith Walkway, a popular pedestrian route through the city, and has a frontage onto the A70 Lanark Road.
2. Although within the built up area of the city, the site is identified in the proposals map for the Edinburgh Local Development Plan 2016 (the LDP) as green belt; forming part of a narrow strip of green belt land running along this part of the Water of Leith.
3. The proposed 25 open market apartments would be accommodated within a greenroofed block of a contemporary design. The former public house that would be replaced is a domestic-scale, two-storey property with single-storey flat roofed additions. It has no architectural merit and is currently boarded up and surrounded by hoardings, giving the site an unattractive and neglected appearance.

Planning and Environmental Appeals Division
4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR
www.gov.scot/policies/planning-environmental-appeals



4. The determining issue in this appeal is whether the proposal would deliver sufficient benefits that it could be justified in the planning balance, despite being inappropriate development in the green belt.

Green belt considerations

5. I agree with the appellant that the purpose of green belts is not to prevent all development. However, as is confirmed in Scottish Planning Policy (SPP), their aim is to restrict the types of development that may take place there, in order to direct development to the right locations. Paragraphs 49 and 50 of SPP confirm that the processes of green belt designation and review are matters for the development plan. From this, I conclude that, where a green belt has been designated, there is an expectation that it will continue to function as such until a review of the development plan determines that it is no longer required.

6. Policy 12 of the South East Scotland Strategic Development Plan 2013 (SESplan) requires local development plans to define and maintain green belts. And even when a shortfall in the five year effective housing land supply is identified (when SESplan Policy 7, requires planning authorities to release greenfield sites for development) there is an expectation that green belt objectives will not be undermined. Policy 12 and its accompanying reasoned justification confirm these to be: directing planned growth to the most appropriate locations; supporting regeneration objectives; protecting and enhancing the quality, character, landscape setting and identity of towns and the city; and protecting and giving access to open space within and around (among other places) Edinburgh.

7. From this national and strategic policy framework (the latter of which, despite its age, remains part of the development plan) I conclude that green belt designation carries particular significance and confers a greatly enhanced level of protection when compared with land that does not have that designation. I also find there to be an expectation that green belt boundaries are maintained in the long-term and are reviewed only as part of the statutory development plan process, and that if such land is to be released for development on an *ad hoc* basis, it must be exceptionally justified.

8. Policy Env 10 of the Edinburgh Local Development Plan 2016 (the LDP) presumes against the development of green belt land except for a limited range of rural uses and for the re-use and minor extension of existing buildings. The appellant accepts that its proposal would not accord with any of the types of development that are accepted by Policy Env 10.

9. Paragraph 183 of the LDP states that the key test for all proposals in the green belt is to ensure that the development does not detract from the landscape quality and/or rural character of the area. That test is of importance to my assessment of this proposal and I discuss it later in this notice. However, in terms of Policy Env 10, it is additional to the requirement that a proposal falls within one of the accepted development types. Therefore, an absence of harm to landscape quality and/or rural character is not enough to satisfy the policy. Accordingly, because the proposal is not for one of the acceptable development types, I find that it is contrary to LDP Policy Env 10.

10. The council's non-statutory guidance on development in the countryside and green

belt provides an indication of the types of development that would typically be permitted in such locations. This confirms that residential use that is not associated with a countryside use would only be accepted if there were exceptional planning reasons. The reuse of brownfield land is referred to. However, in regard to replacement buildings, the guidance only supports replacement with buildings of similar size or smaller. In this instance, the proposed replacement building would be significantly larger than the structure it would replace. Therefore, it can draw no support from the non-statutory green belt guidance.

11. Paragraph 52 of SPP advises on the types and scales of development that might be appropriate within a green belt. In addition to rural and outdoor recreational uses, it contemplates the possibility of essential infrastructure being provided, along with development that would meet a national requirement when no other suitable site was available. Again, this offers no support, in principle, to proposals such as this and reinforces the message that development within the green belt is very much the exception to the norm.

12. The consistent message in all of these documents is that, if green belt land is to be developed other than in accordance with policy, it will not be sufficient merely to show an absence of unacceptably harmful physical effects. It must also be demonstrated that the proposal would deliver benefits of such importance that the strong policy presumption against it should be set aside.

13. The proposed development would deliver a number of benefits. These include improvements to the appearance of the site, bringing brownfield land back into use, the provision of housing in a highly accessible location, and the appellant's commitment to provide funding for the provision of off-site affordable housing. I have considered each in turn before weighing my conclusions against the significant policy presumption against the proposal in order to see whether it is exceptionally justified.

14. The appellant highlights the poor appearance of the site at present and contrasts this with the attractive, modern, "landscape-led" development that is proposed. It calculates that the proposed redevelopment would result in approximately 12.5% of the site being soft landscaped and that, through careful design, the proposed building would not interfere with views across the site to the woodland beyond to any greater extent than at present. The appellant highlights that high quality external finishes are proposed, in contrast with those of the existing building.

15. I agree that the site at present detracts significantly from the landscape quality and visual amenity of this part of the Water of Leith corridor. It is seen very clearly from Lanark Road and from the Water of Leith Walkway as it heads towards Craiglockhart Dell. I note that the appeal site is excluded from the Special Landscape Area designation that applies to other parts of the Water of Leith corridor, presumably in recognition of its developed status and the fact that it does not contribute positively to the high landscape quality of the river corridor. Even if it were brought back into use and refurbished, the existing building would detract from, and appear inconsistent with, the landscape quality and rural character of the Water of Leith corridor due to the poor quality of the building and the dominance of tarmac surfacing across the site.

16. I also accept that views from the A70 across the site to the mature woodland, which

are important to the street scene on this part of Lanark Road, would be preserved, due to the proposed building stepping down in height towards the rear of the site. While the proposed building would be larger and more prominent than the existing, I do not share the planning authority's or the Water of Leith Conservation Trust's concern that it would represent overdevelopment of the site because there would remain sufficient space around the proposed building for it to have an appropriate setting.

17. The design of the building would represent a significant improvement over the existing structure, introducing an attractive, modern feature to the street scene that would provide a high quality modern counterpoint to some of the older buildings nearby. Careful control over external finishing materials and site landscaping would be required. However, those are matters that could be addressed by planning conditions. I do not agree with the Water of Leith Conservation Trust's view that it is essential that a new building on the site must replicate design details and external finishes found on traditional buildings in the locality, as the wide variety of building styles and sizes in the area allows for a more creative approach. I am satisfied that the proposal would meet the requirement of LDP Policy Des 1 to contribute towards a sense of place and to draw upon positive characteristics of the locality. The planning authority considers the proposal would provide no opportunity to enhance access to the Water of Leith Walkway, but I have been given no reason to find such access inadequate at present or any policy requirement for it to be improved as part of a development proposal.

18. The proposal does not achieve the 15 metre set back from the river that is normally required by the non-statutory Edinburgh Design Guidance. However, the site is already developed within that distance, and, despite its close proximity to the river, there is proposed to be no access from the site to the river environment. This would ensure that this aim of the design guidance (to regulate public access in the interests of maintaining the ecological potential of the river corridor) would be respected. I am also satisfied that the requirement of LDP Policy Des 10 to provide an attractive water frontage would be achieved, as the proposed terraces would present an attractive and appropriate aspect to the river.

19. Overall, I find that the proposal would not only avoid harm to the rural character and landscape quality of the green belt, it would significantly improve those features, to the benefit of the site, the remainder of this part of the Water of Leith corridor and the street scene on Lanark Road.

20. Bringing this brownfield site back into use is a further valuable benefit of the proposal. The public house does not appear to have been vacant for long and the site has been well secured and is at present free from vandalism or fly tipping. However, there is no evidence to suggest that refurbishment and reopening of the premises is likely. Therefore, if the proposed development were to take place, one could expect a significant net economic benefit in terms of construction expenditure and employment and the spending potential of future residents.

21. The proposal would contribute to the supply of housing land in a highly accessible location. There are bus stops immediately adjacent to the site; Slateford railway station is about 400 metres away and off-road walking and cycling routes along the Water of Leith and canal are easily accessible. Given the ongoing need to find suitable land for housing,

this is a further benefit of the proposal, although in the absence of any evidence as to the five year effective housing land supply, this carries less weight than would be the case if there had been a demonstrated shortfall in that supply.

22. The proposal would not incorporate any on-site affordable housing. Instead, a financial contribution (based upon the equivalent of 25% provision) has been offered towards its development elsewhere. LDP Policy Hou 6 requires 25% affordable housing and, for developments exceeding 20 units, normally requires this to be by on-site provision. LDP paragraph 232 suggests that off-site provision might be acceptable in exceptional circumstances and the appellant argues that such circumstances apply in this instance due to the high cost of constructing a building of sufficient quality for this sensitive site and because the value of almost all of the units, with a discount applied, would remain too high to qualify for the council's Golden Share scheme.

23. I note that the council's housing and development officer accepts that the appellant discussed the potential for on-site affordable housing with three registered social landlords (RSLs). However, the design of the proposed development (having units that are larger than the space standards RSLs can afford to develop and not sharing a single stairwell) would make the project unviable for them. While it is noted that the appellant did not discuss those issues with either the council's housing staff or with the RSLs in question prior to finalising its designs, the housing and development officer accepts that a commuted sum towards the provision of off-site affordable housing would be acceptable on this occasion.

24. The second reason for refusal of the application was that it had not been justified why affordable housing could not be provided on site. For the above reasons, I find that sufficient justification has been provided and that, subject to the developer making a financial contribution towards affordable housing provision elsewhere, the proposal is compliant with LDP Policy Hou 6. The financial contribution the developer would be required to make (£281,250 at current prices) is a further benefit of the scheme that requires to be weighed in the planning balance.

Other matters

25. The community council and a number of local residents have expressed concerns over the limited proposed provision of on-site car parking; referring to other developments in the area where lower parking provision has increased on-road parking to the detriment of pedestrian and cyclist safety. While these concerns are understood, the council's adopted parking standards set maximum rather than minimum levels in order to accord with national policy aspirations towards reduced reliance on the private car. The site is in a highly accessible location where future residents would have a choice of non-car travel options. Although that (and the restricted number of parking spaces within the development) would not guarantee lower levels of car ownership, the provision of higher levels of parking could potentially have the opposite effect, and I do not believe that such an approach, which would be contrary to the development plan, would be appropriate.

26. Some representations contend that the proposed building would be too tall and too close to the footway on Lanark Road. I agree that the building would have a much stronger presence in the street than the existing building, being of four storey height at the site

frontage. However, great variety in building sizes and styles can be seen in the locality, and Lanark Road at this point is relatively wide. I am satisfied that the expectation of LDP Policy Des 4 that development will have a positive impact on its surroundings, would be met.

27. Some concerns have been raised over flood risk and drainage issues. However, these are not shared by the agencies that have responsibility for such matters or by the planning authority. I conclude that there is insufficient evidence to withhold permission on such grounds.

28. The site is identified in the LDP as part of a Local Nature Conservation Site. If development on a site with that designation would adversely affect its flora, fauna, landscape or geological features, Policy Env 15 would only permit it where certain criteria are met. In this instance, I have already indicated my view that the proposal would affect the landscape in a positive way and there is no evidence to suggest that the site has any geological features of interest. With regard to flora and fauna, the appellant undertook an extended phase 1 habitat survey and a bat survey. These investigated the proposal's potential effect on bats, badger, breeding birds and otter. The surveys concluded that the site itself has little habitat value and no protected species were found there. However, the adjacent Water of Leith is known to be used by otter and there are trees nearby with bat roost potential and there is also a structure that is known to contain a non-breeding bat roost.

29. Because of potential disturbance to bats during construction, the council's ecological advisor states that a licence is likely to be required from Scottish Natural Heritage. However, having regard to the three applicable tests, it is considered likely that such a licence would be granted. In the absence of any contrary evidence, I find that the presence of bats close to the site is not an insurmountable constraint to development and that, subject to an appropriate condition, there would be no adverse effect upon any protected species.

30. Overall, I conclude that the proposal would satisfy the requirements of Policy Env 15.

Conclusions

31. I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise. Although the proposal would comply with a number of development plan policies, it would not comply with LDP Policy Env 10 and my conclusion overall is that it is not in accordance with the development plan.

32. The site would deliver a number of significant benefits, which I have outlined above. I find that these are sufficient to justify the grant of planning permission, despite the development plan conflict.

33. In order to secure a developer contribution towards off-site affordable housing, a planning obligation restricting or regulating the development or use of the land should be completed. I will accordingly defer determination of this appeal for a period of 12 weeks to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellant under section 75 of the Town and Country Planning

(Scotland) Act 1997 or some suitable alternative arrangement as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 12 week period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

34. The draft conditions listed below, which are as proposed by the planning authority and/or consultees subject to some minor amendments, will apply to the planning permission when granted.

David Buylla

Principal Reporter

Draft conditions

1. Prior to the commencement of construction works on site:

a) A site survey (including intrusive investigation where necessary) must be carried out to establish, either that the level of risk posed to human health and the wider environment by contaminants in, on or under the land is acceptable, or that remedial and/or protective measures could be undertaken to bring the risks to an acceptable level in relation to the development; and

b) Where necessary, a detailed schedule of any required remedial and/or protective measures, including their programming, must be submitted to and approved in writing by the planning authority.

Any required remedial and/or protective measures shall be implemented in accordance with the approved schedule and documentary evidence to certify those works shall be provided for the approval of the planning authority.

(Reason: to protect the amenity and safety of the occupiers of the development and of those involved in its construction)

2. No development shall take place until the applicant has secured the implementation of a programme of archaeological work, in accordance with a written scheme of investigation which has been submitted to and approved in writing by the planning authority.

(Reason: in order to safeguard the interests of archaeological heritage.)

3. A detailed specification, including trade names where appropriate, of all the proposed external materials shall be submitted to and approved in writing by the planning authority before work is commenced on site. Samples of the materials may be required.

(Reason: in order to enable the planning authority to consider these matters in detail.)

4. A fully detailed landscape plan, including details of all hard and soft surface and boundary treatments and all planting, shall be submitted to and approved in writing by the planning authority before work is commenced on site.

(Reason: in order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site.)

5. The approved landscaping scheme shall be fully implemented within six months of the completion of the development or of first occupation of any of the approved apartments, whichever is the sooner. Any tree or shrub that should die within a period of five years of planting shall be replaced with a similar specimen in the following planting season. (Reason: in order to ensure that the approved landscaping becomes established within a reasonable timeframe and is maintained adequately thereafter.)

6. A pre-works start bird survey shall be carried out by an ecologist to confirm that no breeding birds, nests, or dependent young are present if site preparation works are proposed to occur between April and July. The results of this survey shall be submitted to and approved in writing by the planning authority before any such works within this timescale commence.

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- monitoring of any standing water within the site temporary or permanent;
- sustainable urban drainage schemes (SUDS) - such schemes shall comply with Advice Note 3 'Wildlife Hazards' (available at www.aoa.org.uk/policycampaigns/operations-safety/);
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eggs.

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(Reason: to avoid endangering the safe movement of aircraft and the operation of Edinburgh Airport through the attraction of Birds and an increase in the bird hazard risk of the application site. For further information please refer to Advice Note 3 'Wildlife Hazards' (available at <http://www.aoa.org.uk/policycampaigns/operations-safety/>).

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(Reason: the site is close to the busy A70 Lanark Road where noise could otherwise affect residential amenity to an unacceptable degree.)

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