

Your details (mandatory)

Please indicate in what capacity you are making this submission:

- as an individual (and representing your own views)
- as a representative of a private or commercial organisation (and representing the views of that organisation)
- as a representative of a public organisation (and representing the views of that organisation)
- as an agent (and making comments on behalf of other individuals that you represent or third parties)
- other

Please complete the following contact information:

Name

Email

Telephone

Address

Organisation name

Client's name

Is this the first time you have made a written representation on the Proposed Plan? (mandatory)

- Yes
- No

If you have previously submitted a site to be considered for development when the council was initially seeking Expressions of Interest (EOI), or commented on the Local Development Plan at the Main Issues Report (MIR) stage, or made a previous submission to the Proposed Plan please provide the reference given to you at that time if known.

EOI & MIR reference number can be found on any email or written communication we may have previously sent you.

Enter EOI (Expression of Interest) reference here

Enter MIRQ (Main Issues Report) reference here

Once form has been completed please sign and date (mandatory)

You do not have to respond to all of the questions set out only those which you feel are of particular relevance to you.

Signature Date

FOR OFFICE USE ONLY

Proposed Plan reference

Please use this form for sections: Foreword; Background; Context; Role and Purpose of Plan; Vision Statement and Aims; The Spatial Strategy (including Policy Framework); Appendices; Glossary; Proposal Maps; Strategic Environmental Assessment (SEA) Environmental Report; Equalities and Human Rights Impact Assessment (EQHRIA); Strategic Flood Risk Assessment (SFRA); Habitats Regulations Appraisal; Transport Appraisal (TA); and Action Programme.

Section title		
Page nos.		Paragraph nos.
SEE ATTACHED		

Section title		
Page nos.		Paragraph nos.
SEE ATTACHED		

Please use this form for sections: The Spatial Strategy and Development by Settlement

Settlement			
Site address / location			
Site Ref		Page nos.	
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Site address / location			
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Additional comments

Please use this space to add any additional comments which have not been covered elsewhere in this questionnaire.

SEE ATTACHED LETTER DATED 22/11/2015



Development Planning
Planning and Economic Development
West Lothian Civic Centre
Howden South Road
LIVINGSTON
EH54 6FF

 Burness Paull

22 November 2015

Dear Sirs

**WEST Lothian PROPOSED LOCAL DEVELOPMENT PLAN
LAND AT PRESTON ROAD FARM, LINLITHGOW (H LL 12)**

We act on behalf of residents in [REDACTED] Preston House and Preston House Gardens (“the Local Residents”) in respect of West Lothian Council’s (“the Council”) proposed allocation of a farm land at Preston Road, Farm, Linlithgow for residential development (Proposed LDP reference H-LL-12) (“the Preston Field”).

The [REDACTED] have submitted a comprehensive Technical Dossier (“TD”) setting out the significant constraints and unacceptable impacts of the proposed development of the agricultural land at Preston Road Farm. This letter supplements the information contained in the TD, and should be read in conjunction with that document.

The Council’s Response Form refers to the guidance in Circular 3/2013 regarding the length of submissions. The suggested word limit in Circular 3/2013 is guidance, and is not a legal requirement or constraint on submissions. The Circular caveats this guidance with the following statement that the representations “*should fully explain the issues wished to be considered at the Examination.There is no automatic opportunity for parties to expand on their representation later in the process, so it is important that they provide their full case and evidence, as this will then form part of the material available to the reporter at any subsequent Examination.*” It is therefore

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disappointing that the Council's guidance suggests that 2000 words is the limit of the representation that can be made.

The Council has applied the statutory minimum consultation period of 6 weeks¹. This representation has been submitted within the consultation period, and is therefore timeous.

1 PROPOSED MODIFICATION

1.1 The Local Residents seek the modification of the Proposed LDP, and the removal of site H-LL-12 from the Proposed LDP for residential development, and its designation as a Special Landscape Area. The reasons for the modification are set out in more detail below and in the TD, and can be summarised as follows:-

1.1.1 The allocation of Preston Field is contrary to SESPlan

1.1.2 The allocation of Preston Field is contrary to SPP.

1.1.3 The allocation fails the site effectiveness tests as contained in SPP and PAN 2/2010.

1.1.4 The allocation offends the Council's own policies and justification for release of land within Linlithgow.

1.1.5 The allocation is contrary to the recommendations of the Council's own Local Landscape Designation Review²

1.1.6 The allocation is contrary to numerous policies in the Proposed LDP.

1.2 It is apparent that the allocation of Preston Field would place the Council's LDP in contravention of the extant Strategic Development Plan, SESPlan. Its continued inclusion jeopardises the validity and lawfulness of this LDP process.

2 BACKGROUND

2.1 The TD provides a detailed description of the Preston Field. Its key characteristics include:-

¹ It is noted that the advice in Circular 6/2013 is to the effect that planning authorities should consider extending consultations to up to 12 weeks to give parties sufficient time to formulate their case. This is particularly so where the issues are complex and it is submitted that the large Council area and complexity of inter-relationship between different settlements to satisfy the housing requirement, meets that criterion.

It is disappointing that the Council has afforded only the statutory minimum period for consultation, especially as this ends on a non-working day. The requirement that responses are received by Sunday 22 November, has meant that the consultation period for those not using email has been restricted to less than the statutory minimum.

² LUC 28 June 2013

- 2.1.1 It is designated as part of an Area of Great Landscape Value (AGLV);
 - 2.1.2 It is an undeveloped Greenfield site;
 - 2.1.3 It is prime agricultural land;
 - 2.1.4 It sits wholly outside the settlement boundary of Linlithgow, and on the opposite side of the Union Canal that has hitherto provided the defensible boundary at this location, with no alternative robust boundary;
 - 2.1.5 It forms part of the land and policies originally comprised within Preston House, which is a Grade A listed building;
 - 2.1.6 It abuts the Union Canal, a Scheduled Monument;
 - 2.1.7 The Council's SEA assessed the proposal as "not preferred" (being the lowest possible score) in 12 of the 21 relevant SEA criteria, and in 8 of the 9 SEA topics.
 - 2.1.8 It is located remote from Linlithgow town centre, and a considerable distance from the local train station. Its location at the top of Preston Road means that sustainable travel options are limited, if not realistically irrelevant to prospective residents' choices of travel mode, and there will be a high dependency on private cars.
- 2.2 In contrast to other potential areas of development in Linlithgow, the proposed allocation has received no local support. The only representations in favour have come from the landowner and his development partner, CALA Homes.
- 2.3 The landowner has control of significant areas of land within the existing AGLV (and proposed SLA). It is highly relevant to note that the landowner's submissions to this LDP were for the allocation of a much larger area of land – this would suggest the landowner has significant development aspirations beyond what is shown in the Proposed Plan for land in the AGLV/SLA.

3 **RELEASE OF LAND FOR HOUSING IN LINLITHGOW**

Hierarchy of Land for Development

- 3.1 The Proposed LDP sets out a hierarchy for the release of land for housing development in Linlithgow (paragraph 5.65). The hierarchy is:-
- 3.1.1 First, priority is given to brownfield sites within the current settlement boundary;
 - 3.1.2 Second, greenfield sites within the settlement boundary,
 - 3.1.3 Finally, greenfield sites outside the settlement boundary.

- 3.2 It is self-evident that Preston Field, as a greenfield site outside the settlement boundary, is at the bottom of the hierarchy. In addition, the proposed housing allocation is within an existing AGLV, and the Council has provided no sound planning justification for reversing the current environmental designation from one of protection against built development to promoting built development.

Constraints on Development

- 3.3 The current Local Plan identifies Linlithgow as an area of restraint, as it is considered to have reached its environmental capacity. The particular constraints that are identified in the extant Local Plan are traffic congestion, car parking and education.
- 3.4 The Local Plan confirms that the area of restraint does not constitute a moratorium on housing development, and infill opportunities may still be brought forward.
- 3.5 The issues of constraint identified in the Local Plan have not been addressed, and still exist. This was acknowledged by the Council in its own evidence to the recent planning appeal at Clarendon Farm, Linlithgow (P/PPA/400/2046), and in the Report by the Head of Planning and Economic Development dated 15 September 2015.
- 3.6 In addition to the issues of education, transport and car parking, air quality is now also considered a constraint on new development in Linlithgow. The Council's position at the Clarendon Farm appeal was that air quality in Linlithgow town centre was an area of "significant concern". Consistent with the Council's concerns, air quality was one of the grounds of refusal of the Clarendon appeal by the Scottish Government.
- 3.7 The Report by the Head of Planning and Economic Development confirmed that residential development in Linlithgow is dependant on the delivery of (i) a new non-denominational Secondary School at Winchburgh, (ii) resolution of the transportation constraints (to include slip roads on the M9) and (iii) resolution of air quality impacts.
- 3.8 The proposed allocation is not capable of meeting any of these constraints, and has no control over their delivery. This is of particular importance as regards Linlithgow allocations as the Action Programme has absolutely no guidance to provide as to how the infrastructure issues are to be dealt with. The unresolved issues are:-
- 3.8.1 The delivery of the Winchburgh School is not within the control of the landowner or CALA Homes. The development is not of a scale that it can make a meaningful contribution towards the delivery of the required education infrastructure.
- 3.8.2 The identified transport measures are not within the control of the landowner or CALA Homes. The development is not of a scale that it can make a meaningful contribution towards the delivery of the required transportation infrastructure. Development of Preston Field would serve to exacerbate the existing traffic

problems, but would be unable to make any meaningful contribution to address them.

3.8.3 In the recent Clarendon Farm appeal, the Council's position was that a development of circa 119 homes would be too small to make much of a meaningful contribution to the funding of measures under an Air Quality Action Plan. Preston Field would provide fewer homes than were proposed at Clarendon Farm. It follows that the Council's concerns about Air Quality impacts apply. Development of Preston Field would serve to exacerbate existing Air Quality problems, but would be unable to make any meaningful contribution to address them.

3.9 SPP (paragraph 123) requires planning authorities to maintain a five year effective land supply, and this should be identified in Local Plans.

3.10 *"A site is only to be considered effective where it can be demonstrated that within five years it will be free of constraints"* (SPP 123).

3.11 The proposal is not free of constraints, and neither the landowner nor his development partner have demonstrated how these constraints would be addressed in the five year period. As such, Preston Field is not an effective site, and its inclusion in the Proposed LDP is not supported by the SPP or SESPlan.

4 **HOUSING LAND SUPPLY**

4.1 The Proposed LDP must accord with the Strategic Development Plan, SESPlan. Failure to comply with SESPlan renders the LDP unlawful.

4.2 SESPlan sets out two distinct periods for housing delivery, (i) up to 2019 and (ii) from 2019 to 2024. To conform with SESPlan, sufficient land must be allocated to meet both of these targets. However, Figure 5 of the Proposed LDP confirms that it will not meet the SESPlan 2019 target.

4.3 The issue of housing land supply is one that goes beyond this suggested allocation. However, it is relevant, as if the Council is to meet its SESPlan 2019 target, it needs to identify sites that are free of constraints and able to make a meaningful contribution to the housing land supply in the period to 2019.

4.4 Preston Field is a constrained site that it is conceded in the Proposed Plan, and by Officers (Report to Executive 15 September 2015), will not be able to make any contribution to the housing land supply in the key period to 2019. Further, any contribution it may eventually make will be very limited.

5 LANDSCAPE DESIGNATION - AREA OF GREAT LANDSCAPE VALUE

- 5.1 Preston Field sits outside the existing Linlithgow settlement boundary, and in an Area of Great Landscape Value (AGLV). Its development would be contrary to the extant Local Plan.
- 5.2 The Proposed LDP generally maintains the extent of the AGLV designation, with this referred to as a “Special Landscape Area”. However, Preston Field has been carved out of the SLA designation.
- 5.3 Land Use Consultants were commissioned by the Council to undertake a review of the existing AGLVs as part of the LDP process. That document, “West Lothian Local Landscape Designation Review” was published on 28 June 2013 (“the LLDR”). It is referenced in the Proposed LDP as a Council document (para 5.143).
- 5.4 The purpose of the LLDR was to assess existing AGLV and ALSC designations, and replace these with a single tier of “*new, more robustly justified single tier designated landscapes that would accord with national policy*”

Council’s Local Landscape Designation Review

- 5.5 Preston Field is located within part of the Bathgate Hills AGLV. In their assessment for the Council, LUC split the AGLVs into smaller landscape units. Preston Field was within the Bathgate Hills unit.
- 5.6 These landscape units were assessed and given a scoring between 0 and 30. The Bathgate Hills, including Preston Field, was given a scoring of 27 out of 30. This was the second highest scoring for a landscape awarded in the LLDR.
- 5.7 The LLDR recommended that the Bathgate Hills area should be included in the proposed LDP as part of an SLA. For the avoidance of doubt, the LLDR did not recommend the omission or deletion of Preston Field from the SLA.

Purpose of SLA Designation

- 5.8 The LLDR confirms that the purpose of the review of existing AGLV designations was to identify a single tier of robust and justifiable designations for inclusion in the LDP.
- 5.9 SPP (196) confirms that when preparing plans, the reasons for a local designation should be clearly explained and their function and continuing relevance considered. It is incumbent on the Council, therefore, to ensure the SLAs in its LDP meet these requirements.
- 5.10 An important requirement of a landscape designation is that its boundary’s are robust and justifiable. Arbitrary boundaries will be difficult to support and maintain in the longer term, and likely to come under pressure from landowners and developers.

- 5.11 Moreover, where the Council choose to disregard the recommendations of its own report, in this case the LLDR, it must demonstrate that it had proper planning reasons for doing so.

Proposed Allocation undermines Special Landscape Area Designations

- 5.12 Preston Field sits within the area recommended for inclusion by the Council's LLDR in the new SLA.
- 5.13 The suggested boundaries of the allocation at Preston Field are not based on robust, pre-existing features. Any development of Preston Field would require substantial landscape interventions if any form of meaningful settlement boundary was to be provided.
- 5.14 The landowner has already promoted land in his ownership within the existing AGLV for development, namely the redevelopment of Preston House, and residential development by Manor Kingdom at Preston House Gardens. It is highly relevant to this proposal, that the landowner's own development aspirations (as evidenced by the Expression of Interest submitted on his behalf) were for residential development of the whole of Preston Field, and not just the area suggested in the Proposed LDP.
- 5.15 The landowner's submission was not accepted by the Council on the grounds that:-
- “Development of the whole site would constitute an intrusive physical expansion of Linlithgow, well beyond the limit of development which is already provided for in the adopted West Lothian Local Plan. It would also be visually and environmentally intrusive. “*
- 5.16 This highlights the importance of ensuring there is a robust and defensible boundary to the SLA. However, there is no detail on what boundary could be provided, or how this could protect Linlithgow from the harm identified by Council officers. The Council do not appear to have given this matter any proper consideration.
- 5.17 In the absence of a robust and defensible boundary, and given the full extent of the landowner's apparent development aspirations, there is a real risk of development creep, and further erosion of the SLA with the associated harmful landscape, visual and environmental impacts already identified by the Council.
- 5.18 The allocation of this land for development, against the recommendations of the Council's own LLDR, undermines the reasoning, function and relevance of the Bathgate SLA designation. This is contrary to the SPP.
- 5.19 The allocation also undermines the ability of the SLA designation to maintain the landscape setting of Linlithgow. This is contrary to the requirements of Policy 13 of SESPlan.
- 5.20 Policy ENV 1 of the Proposed LDP has a presumption against development within SLAs. Development out with SLAs will not be supported if it adversely affects designated areas. When assessed against its own policies, the allocation of the Preston Field is contrary to the Proposed LDP.

- 5.21 There are less environmentally sensitive sites available for residential development in Linlithgow. There is no evidence of the comparative assessment undertaken by the Council between different sites, and why Preston Field was identified as more suitable for development compared to land with a lesser, or no, environmental designation.

6 **TRANSPORT IMPACTS**

- 6.1 The TD (Appendix C) sets out that the proposed allocation is contrary to PAN 75 on account of its remoteness from the town centre and amenities.
- 6.2 Preston Road serves both Linlithgow Primary and St Joseph's Primary schools, and is already subject to traffic control measures. The allocation would introduce additional car trips onto this road and peak times. This would exacerbate existing traffic problems.
- 6.3 Development would further reduce the attractiveness of Preston Road for walking and cycling, contrary to Safe Routes to Schools.
- 6.4 Traffic from the development using Preston Road to access the town centre and Edinburgh would exacerbate the existing air quality issues, that are already a matter of "significant concern" to the Council. However, the scale of development proposed is incapable of meaningfully addressing those impacts.
- 6.5 Alternatively, drivers may choose to use Riccarton Drive and Manse Road, meaning they would need to use the single lane canal bridge, and railway bridge junction. At the Clarendon Farm appeal, the potential for those living in that proposed development to use Manse Road, with the associated impacts, was not supported by the Council.
- 6.6 Impacts on road safety formed part of the Reporter's reasons why that appeal should be refused. This confirms the traffic related constraints on development in this part of Linlithgow, and the inappropriateness of the proposed allocation.

7 **ECOLOGICAL IMPACTS AND LOSS OF PRIME AGRICULTURAL LAND**

- 7.1 As set out in the TD, Preston Field is a habitat used by a range of protected species. This is confirmed in the Council's SEA, which identified Preston Field as "Not Preferred Site" due to its adverse direct impacts on designated sites, species and habitats.
- 7.2 Development that will have an adverse impact on designated sites, species and habitats is contrary to Policies ENV 18, ENV 19 and ENV 20 of the Proposed LDP.
- 7.3 Preston Field is prime agricultural land. Development of prime agricultural land is not supported in the Proposed LDP unless 5 criteria in Policy ENV 4 can be met. As a consequence of the development of Preston Field, it is likely that the remainder of this field will, by virtue of its size and shape, no longer be capable of productive agricultural use, meaning a further area of Prime Agricultural Land will be sterilised. If prime agricultural land does need to be lost for development, it is essential the areas are minimised and used as

efficiently and effectively as possible. The allocation of the land is contrary to 4 of the 5 criteria of Policy ENV4.

- 7.4 It is perverse for the Council to allocate in its Proposed LDP, a development that runs contrary to so many policies in that same Plan.

8 **SESPLAN – POLICY 7**

- 8.1 It is a legal requirement of this LDP that it accords with the policies in the Strategic Development Plan, SESPlan.

- 8.2 SESPlan policy 7 supports the allocation in LDPs of greenfield land for housing to maintain an effective five year land supply, provided certain criteria can be met.

- 8.3 This proposed allocation is contrary to SESPlan Policy 7:-

8.3.1 First, Preston Field is not “effective” in terms of PAN 2/2010 as it cannot demonstrate that it will address development constraints within the next 5 years. It cannot contribute to the 5 year housing land supply. Its allocation cannot therefore be supported in terms of SESPlan Policy 7.

8.3.2 Second, the development will not be in keeping with the character of the settlement and local area – contrary to SESPlan Policy 7(b)

8.3.3 Third, SESPlan Policy 7(c) requires that “*any additional infrastructure required as a result of the development is either committed or to be funded by the developer*”. As detailed above, this allocation requires additional education and transport infrastructure that is not committed, and the allocation is incapable of funding.

- 8.4 The proposed allocation is contrary to SESPlan Policy 7, and as a consequence, places the Proposed LDP out of conformity with the SDP. This renders the Proposed LDP unlawful, at least in respect of the allocation of Preston Field.

9 **CONCLUSION**

- 9.1 Preston Field is greenfield land, situated within an existing AGLV. Its development is dependant upon an unnatural and arbitrary re-drawing of the settlement boundary and boundaries of the SLA. Were the boundaries of the SLA applied as per the recommendations in the LLDR, then the development of Preston Field would be contrary to the Proposed LDP.

- 9.2 The landowner has expressed development aspirations well beyond the proposed allocation. This would place the SLA under pressure to allow further development. There is no evidence this issue has been considered by the Council, notwithstanding the significant adverse landscape and environmental impacts identified by the Council.

- 9.3 The high level of car dependency associated with any development will have adverse impacts on existing traffic and air quality constraints. The allocation is not, however, sufficient to make any meaningful contribution to addressing these.
- 9.4 Likewise, the allocation of Preston Field cannot make any meaningful contribution towards addressing education constraints.
- 9.5 Development of Preston Field is wholly dependant on these constraints being addressed by third parties. The site cannot be considered effective, and it fails to make any meaningful contribution to the housing land supply.
- 9.6 The allocation is contrary to a range of existing Local Plan policies, and policies in the Proposed LDP relating to ecology, landscape and cultural heritage – but for its proposal allocation, it is apparent Preston Field would not be considered a suitable location for residential development.
- 9.7 The allocation of Preston Field is not supported by the Strategic Development Plan, and renders the Proposed LDP unlawful as a consequence.
- 9.8 The allocation does not accord with the 13 sustainability principles in SPP, or the six qualities of successful places.

For these reasons, and on behalf of the Local Residents, it is submitted that the Council should delete the allocation H-LL-12 from the Proposed Plan as it has no proper planning justification and runs counter to national and strategic planning policy. By allocating this site for housing development, the Council exposes itself to challenge on the basis that the allocation is not in conformity with the policies of the SESplan or the extant and proposed local plan

Yours faithfully



Burness Paull LLP

