

[REDACTED]
Principal Investigations Officer
Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

ENVIRONMENTAL
Standards Scotland
Ìrean Àrainneachdail na h-Alba

[REDACTED]
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06 October 2026

Subject: Conclusion of Pre-Investigation.

Case Reference: IESS.26.024

Dear [REDACTED],

Many thanks for submitting your representation to Environmental Standards Scotland (ESS) regarding East Dunbartonshire Council's compliance with (and implementation of) environmental law. I have now concluded my consideration of the matters raised in your representation and write to set out my findings.

Your representation raised two key issues: Firstly, that East Dunbartonshire Council had not accurately assessed the potential impact of the proposed new Lenzie Academy development in Whitegates Park in reaching the screening opinion that an Environmental Impact Assessment (EIA) was not required. The principal area of concern centred on the alleged failure to consider a ground investigation report prepared in 2018 for a separate development (an additional supports needs school) in Whitegates Park. Secondly, your representation set out that the failure to consider the 2018 ground investigation report demonstrates a failure by East Dunbartonshire Council to ensure appropriate separation in decision making, given it was both the developer and the determining planning authority.

As I set out when notifying you of acceptance of your representation for pre-investigation, I firstly had to ensure that the law relevant to the issues raised came under the remit of ESS. Independent legal advice confirmed the relevant provisions were considered environmental

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law and came under ESS' remit. Legal advice was also taken on the expectations of complying with the relevant provisions and precedent established by case law.

On the first issue (failure to consider the 2018 ground investigation report), Regulation 7 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 ('the 2017 Regulations') sets out the screening procedure. When determining if a development requires an EIA, the planning authority must in all cases consider the selection criteria of Schedule 3 (the characteristics, location and potential impact) that are relevant to the development and the available results of any relevant assessment. A relevant assessment is defined (in Part 1, Regulation 2 of the 2017 Regulations) as *'in relation to a proposed development, an assessment, or verification, of effects on the environment carried out pursuant to national legislation which is relevant to the assessment of the environmental impacts of the proposed development.'*

Determining whether the initial 2018 ground investigation report is a 'relevant assessment' is fact dependent and must satisfy this definition. The 2018 ground investigation report was prepared in support of a planning application for an additional supports needs school (planning ref: [TP/ED/20/0576](#)). It therefore appears that the 2018 report was prepared pursuant to national legislation. In determining whether the 2018 report is relevant to the assessment of the environmental impacts of the proposed new Lenzie Academy development, it has been identified that (at page eight) the [original screening direction](#) of East Dunbartonshire Council does consider it. Additionally, a new ground investigation report (dated 17 Feb 2026) prepared for the new Lenzie Academy development details the previous 2018 report.

Therefore, the evidence gathered suggests that East Dunbartonshire Council (as planning authority) **have** considered the 2018 ground investigation report as a relevant assessment and have taken it into account in making their screening determination and also in future planning processes. My consideration has therefore found no evidence of an environmental failing with respect to the issue raised in the representation.

Regarding the second issue raised in your representation (the failure to consider the 2018 ground investigation report demonstrates a failure by East Dunbartonshire Council to ensure

appropriate separation in decision making), Regulation 52 of the 2017 Regulations requires that: (1) the planning authority or the Scottish Ministers, as the case may be, are to perform their duties arising under these Regulations in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest; and (2) Where the planning authority or the Scottish Ministers, as the case may be, are to consider an application for EIA development made by that body, they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

Independent legal advice was sought on the expectation of meeting the above requirements. A recent judgement by the Court of Justice of the European Union held '*That appropriate separation must be organised in such a way that an administrative body internal to the authority competent to make that determination has real autonomy, meaning, in particular, that it is provided with administrative and human resources of its own and is thus in a position to perform its duty objectively.*'

As set out, the evidence suggests that East Dunbartonshire Council did take the 2018 ground investigation report into consideration in making their screening determination, which does not support the position set out in your representation on this issue. In the absence of any further supporting evidence which indicated potential non-compliance with (or ineffective implementation of) the requirement to ensure functional separation by East Dunbartonshire Council, it was not considered appropriate to make further enquiries.

As you may be aware Scottish Ministers have provided a further (second) screening opinion for the proposed Lenzie Academy development. Legal advice given sets out that the second screening opinion by Scottish Ministers largely removes any prospect of successful challenge to the first screening opinion on the ground that Regulation 52 of the 2017 Regulations had been breached. In essence, the second screening opinion would remedy any procedural defect with the first screening opinion.

ESS has therefore found no evidence of non-compliance with, or ineffective implementation of, environmental law by East Dunbartonshire Council in relation to the issues raised in your representation.

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Regarding other concerns which you have subsequently raised regarding the veracity of East Dunbartonshire Council's decision that an EIA is not required for the new Lenzie Academy development, as set out in my previous correspondence to you, ESS is unable to act in relation to decisions taken by public authorities in the exercise of their functions in relation to a particular person or case. This means that ESS is unable to take any action over the individual decision taken by East Dunbartonshire Council (and Scottish Ministers) that the new Lenzie Academy development does not require an EIA. The Scottish Public Services Ombudsman (SPSO) may be a more relevant oversight body with respect to these concerns. The SPSO can review individual cases and decisions made by public authorities and consider complaints of maladministration. Maladministration is not defined in legislation, but case law confirms that it can cover things like failure to follow relevant law, policy, procedure, or guidance. The SPSO has reviewed complaints that are similar to the issues you are experiencing:

[Decision Report 201803735 | North Lanarkshire Council | SPSO](#)

[Decision Report 201203684 | The Highland Council | SPSO](#)

Further information on how to make a complaint to the SPSO can be found at: [Making a complaint | SPSO](#).

If you have any questions or queries regarding my findings, please do not hesitate to contact me at the above e-mail address. I thank you again for submitting your representation to ESS.

Kind Regards,



Principal Investigations Officer

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