

REPORT TO: Planning Committee
MEETING DATE: Wednesday 6 June 2012
BY: Executive Director (Services for Communities)
SUBJECT: Application for Planning Permission for Consideration

Application No. **12/00294/P**
Proposal Erection of 26 flats and associated works
Location **Cockenzie Boat Repair Yard
West Harbour Road
Cockenzie
East Lothian
EH32 0HX**
Applicant Morris and Spottiswood
Per Fouin and Bell Architects
Ward 3
RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

In this case the Council is not the applicant and does not own the land of the application site. However it might be taken that the Council has a financial interest in the land because the Council has expressed an intention to acquire the development on its completion and to operate the use of it as affordable housing.

The application site is Cockenzie Boat Repair Yard and its associated land. The site is some 0.23 hectares in area. It is bounded to the north by a short access lane with the workshop of Coast Craft Ltd beyond, to the northeast by West Harbour Road with houses and commercial units beyond, and to the southeast by the back gardens of the houses of Hawthorn Bank, which front onto Edinburgh Road. To the south it is bounded by Edinburgh Road with houses beyond, to the southwest by the land of Preston Links with Cockenzie Power Station beyond and to the northwest by Cockenzie Harbour. The site is within the western part of Cockenzie and forms part of a wider area defined as a mixed use area by Policy ENV2 of the adopted East Lothian Local Plan 2008.

The site is within Cockenzie and Port Seton Conservation Area. Cockenzie Harbour is listed as being of special architectural or historic interest (Category B).

The site is mostly occupied by the buildings of Cockenzie Boat Repair Yard. The southern part of the site, adjacent to Edinburgh Road, is an open yard currently used as a car wash business. The boundary of the site is delineated to the northeast, southeast and most of the northwest by the building lines of the buildings on the site. The eastern boundary of the southern part of the site is demarcated by a thin strip of land close to an existing timber fence at the west side of the gardens of Hawthorn Bank. The southern boundary is delineated by an electricity substation and by timber fences along the footpath of Edinburgh Road. The southwest boundary is not physically demarcated.

The site is part of a larger area of land around Cockenzie Harbour that is the subject of Policy ENV14 of the adopted East Lothian Local Plan 2008. Policy ENV14 seeks the environmental improvement and regeneration of the West Harbour area of Cockenzie by means of sensitive development or redevelopment. It is stated in the Policy that opportunities for housing, workshops, leisure, recreation and tourism uses exist. These uses should respect the area's harbour setting and Conservation Area status.

In November 2011 planning permission (Ref: 11/00993/P) was sought for the erection of 28 flats and 4 houses on the site that is the subject of this planning application. That application was later withdrawn without it having been determined.

Planning permission is now sought for the erection on the application site of 26 flats and for associated works including alterations to the existing vehicle access, the formation of an access road and hardstanding and for landscaping works.

Conservation area consent is separately sought through application 12/00294/CAC for the demolition of the existing buildings of the Boat Repair Yard on the site. A report on application 12/00294/CAC is presented elsewhere on this Committee Expedited List.

Of the 26 proposed flats, 22 would be contained in an 'L' shaped building, which would be aligned with the northwest and southwest boundaries of the site, turning the corner of those two boundaries. The building would extend along some 35 metres of the 52 metres length of the northwest boundary and some 44 metres of the 47 metres long southwest boundary. Along the northwest boundary the building line would be set back from the boundary by some 2 metres. The other four flats would be contained in a smaller building that would be aligned with part of the northeast boundary of the site.

The main 'L' shaped building would be two storeys in height for some one third of its length from its south end, rising to two and a half storeys in height along the rest of its length. It would have pitched roofs along all of its length with a stepped ridge height at its southern end. The pitched roofs would have gable ends. The two and a half storey parts of the main building would have wallhead, cat slide dormers to serve accommodation in the roof space. A pend would be formed in the northern end of the southwest part of the L-shaped building to enable the provision of a direct pedestrian access between the application site and the adjacent open space of Preston Links.

The smaller building would be two storeys in height and would have a pitched and gabled roof. It would have external staircases at its north and south gable ends to serve the upper flats.

The application drawings show the walls of the two proposed buildings finished with render of a type and colours to be agreed with the Planning Authority and the roofs clad with slates and tiles of types to be agreed with the Planning Authority. Windows would be double glazed and of a timber framed sash and case style. Their timber frames would be painted white. Doors would be constructed of timber and finished in an olive green colour.

As proposed to be laid out the buildings on the northeast, southwest and northwest parts of the site would form a courtyard which would be laid out for access, parking and turning and for garden ground.

The existing access into the site from the public road of Edinburgh Road would be altered and widened. The access road would lead into the site and would be laid out to allow a potential future link with West Harbour Road should that road be upgraded to an adoptable standard in the future. A total of 27 parking spaces would be provided, along the southeast boundary of the site, in the centre of the courtyard and in an undercroft at ground floor level of the north-western component of the main flatted building. Two cycle stores would be incorporated into the main flatted building, at its east and west ends. A communal bin store would be formed adjacent to the access road.

Landscaped communal amenity space would be laid out to the north and west of the smaller building. Garden ground would be formed at the south and east frontages of the southwest 'leg' of the main building. Tree planting would be carried out in between some of the proposed parking areas. The landscaping and access road would be laid out so as to allow pedestrian access to West Harbour Road. A new path would be formed along the northwest elevation of the main flatted building to provide an extension to the John Muir Way, which would run along the south of the harbour from Preston Links to West Harbour Road.

A Design Statement, a Flood Risk Assessment, a Noise Impact Assessment and a Drainage Strategy have been submitted with the application.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the approved Edinburgh and the Lothians Structure Plan 2015 and the adopted East Lothian Local Plan 2008.

Relevant to the determination of the application are Policies HOU2 (Brownfield Housing Sites), ENV1C (International and National Historic or Built Environment Designations), ENV1D ((Regional and Local Natural and Built Environment Interests) and ENV1G (Design of New Development) of the approved Edinburgh and the Lothians Structure Plan 2015 and Policies ENV2 (Residential Character and Amenity), ENV3 (Listed Buildings), ENV4 (Development within Conservation Areas), ENV14 (The West Harbour Area, Cockenzie), C2 (Play Space Provision in New General Needs Housing Development), Policy C7 (Core Paths and Other Routes), DP2 (Design), DP7 (Infill, Backland and Garden Ground Development), DP22 (Private Parking) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008.

Material to the determination of the application are Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Scottish Planning Policy: February 2010 on development affecting a listed building or its setting and development within a conservation area.

Also material is Scottish Planning Policy on development affecting a listed building and its setting, development affecting a conservation area, housing development and Scottish Government advice given in Planning Advice Note 67: Housing Quality.

Scottish Planning Policy: February 2010 echoes the statutory requirements of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that in considering whether to grant planning permission for development which affects a listed

building or its setting a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Scottish Planning Policy: February 2010 also echoes the statutory requirements of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area. It is stated in Scottish Planning Policy that proposed development that would have a neutral affect upon the character or appearance of a conservation area (i.e. does no harm) should be treated as one which preserves that character or appearance. The design, materials, scale and siting of new development within a conservation area should be appropriate to the character of the conservation area.

Scottish Planning Policy: February 2010 states that infill sites can often make a useful contribution to the supply of housing land. Proposals for infill sites should respect the scale, form and density of the surroundings and enhance the character and amenity of the community. The individual and cumulative effects of infill development should be sustainable in relation to social, economic, transport and other relevant physical infrastructure and should not lead to over development.

It is also stated in Scottish Planning Policy: February 2010 that the Scottish Government's objectives of creating successful places and achieving quality residential environments should guide the whole process of delivering new housing. Further policy and advice on design is provided in Designing Places and Planning Advice Note 67: Housing Quality which explains how Designing Places should be applied to new housing. In PAN 67 it is stated that the planning process has an essential role to play in ensuring that: (i) the design of new housing reflects a full understanding of its context - in terms of both its physical location and market conditions, (ii) the design of new housing reinforces local and Scottish identity, and (iii) new housing is integrated into the movement and settlement patterns of the wider area. The creation of good places requires careful attention to detailed aspects of layout and movement. Developers should think about the qualities and the characteristics of places and not consider sites in isolation. New housing should take account of the wider context and be integrated into its wider neighbourhood. The quality of development can be spoilt by poor attention to detail. The development of a quality place requires careful consideration, not only to setting and layout and its setting, but also to detailed design, including finishes and materials. The development should reflect its setting, reflecting local forms of building and materials. The aim should be to have houses looking different without detracting from any sense of unity and coherence for the development or the wider neighbourhood.

Six written objections have been received. In two of the objections it is stated that the proposal is an improvement over the previously proposed scheme of development (Ref: 11/00993/P), for which there were 20 objections. The grounds of objection are that:

- (i) some neighbours were not notified, and the application was submitted over a holiday period;
- (ii) the loss of the boatyard would, by loss of employment, tourism and leisure opportunities, be contrary to the sustainable economic development aims of the local plan;
- (iii) the proposed development of tenement blocks would be of a high density and unsympathetic design harmful to the conservation area, to the setting of the listed harbour and nearby buildings and harmful to the character of the village;

- (iv) it would result in a loss of amenities for local residents;
- (v) it would not promote future use of the harbour;
- (vi) a bid for National Lottery Heritage funds is being made to buy, renovate and continue the use of the boat repair yard;
- (vii) it would lead to congestion at the junctions of Edinburgh road with West Harbour Road and East Lorimer Place;
- (viii) it would lead to greater demands for parking on Edinburgh Road, West Harbour Road and East Lorimer Place;
- (ix) it would not have safe pedestrian links with West Harbour Road, which is potholed and unlit;
- (x) the noise assessment submitted with the application does not meet the requirements of the Council;
- (xi) heavy machinery used for demolition of the existing building of the boat repair yard would damage West Harbour Road;
- (xii) the proposed 2.1 metres high wall to the houses Hawthorn Bank to the southeast of the site may not be sufficient to secure their privacy if the site is lower than their garden ground;
- (xiii) the demolition of the building of the boat repair yard may affect climbing plants in the gardens of the properties of Hawthorn Bank;
- (xiv) odour from the proposed bin store would affect residents of Hawthorn Bank; and
- (xv) it would lead to a loss of territorial areas for pets of residents in neighbouring houses.

Notification of neighbours and advertisement of the application were carried out in accordance with statutory procedures and as soon as possible after the application was validated.

The affect of the proposed development on territorial areas for pets and the lodging of a bid for National Lottery Heritage funds are not material planning considerations. The method of demolition and its effect on neighbouring properties is a matter for Building Standards.

Cockenzie and Port Seton Community Council, as a consultee, object to the proposals. They acknowledge the necessity of new housing development, however, they express concerns at the impact of the proposals on community infrastructure including schools, policing and medical services. They also question the building of new homes in such close proximity to the Cockenzie power station site. They consider that the loss of the boatyard to housing development is contrary to Policy ENV14 and would be a loss of community heritage which would also have drastic effects on tourism and recreation potential. They state that that the potential for development and rebirth of this area in terms of retaining skills and providing youth employment is immense and that this potential should be pursued by the Council in partnership with the community.

By its nature the proposed development amounts to urban infill housing development on a brownfield site within Cockenzie. Therefore the principle of residential development of the

site is consistent with Policy HOU2 of the approved Edinburgh and the Lothians Structure Plan 2015, Policy DP7 of the adopted East Lothian Local Plan 2008 and with national planning policy on housing development given in Scottish Planning Policy: February 2010.

The application site is not allocated for residential development in the adopted East Lothian Local Plan 2008. It is within an area of Cockenzie that is defined as a mixed-use area by Policy ENV2 of the adopted East Lothian Local Plan 2008. Policy ENV2 supports commercial development in principle. It also supports residential development where new-build proposals would reinforce the vertical mix of land uses typical of East Lothian's town and village centres.

Policy DP7 supports infill and backland development provided the site can accommodate the entire development, including an appropriate amount of open space, satisfactory vehicle and pedestrian access and car parking and the scale and design of the proposed development being sympathetic to its surroundings.

In respect of the vertical mix of uses referred to in Policy ENV2 the Council's Policy and Projects Manager advises that such a mix is not present in this area of Cockenzie. Rather it is an area of uses mixed in a horizontal way. Individual buildings have a single use. Policy ENV2 does allow for a mix of uses in the area, but has no requirement that such a 'horizontal' mix be included in all development proposals. He advises therefore that it would not be reasonable to insist on a mix of uses in any proposals for new development in the area. He states that residential use is one of the uses supported by Policy ENV2. The Policy and Projects Manager acknowledges that the boat repair yard has a clear functional link with the harbour and that this housing proposal would effectively preclude the operation of a future boat repair yard use there. However, his advice is that since there is no development plan policy specifically requiring its retention, he does not consider that the loss of the boat repair yard is contrary to the terms of Local Plan Policy ENV2. In respect of Policy ENV14 the Policy and Projects Manager advises that it does not suggest that any single development proposal should include more than one of the preferred uses. The housing use now proposed in the application under consideration would therefore not be inconsistent with Policies ENV2 and ENV14 of the adopted East Lothian Local Plan 2008.

The Council's Economic Development Manager raises no objection to the proposed residential development of the site and resultant loss of the Boat Repair Yard.

Policy DP2 of the adopted East Lothian Local Plan 2008, amongst other things requires that all new development must be well designed and integrated into its surroundings. Policy ENV1C of the approved Edinburgh and the Lothians Structure Plan 2015 and Policy ENV3 of the adopted East Lothian Local Plan 2008 require that new development should not harm the setting of a listed building. Policy ENV1D of the approved Edinburgh and the Lothians Structure Plan 2015 and Policy ENV4 of the adopted East Lothian Local Plan 2008 require that all new development within the Conservation Area be located and designed to preserve or enhance the special architectural or historic character of the Conservation Area.

Whilst it is not essential to replicate existing building styles to build successfully in a conservation area, both national planning and development plan policy nevertheless state that in designing proposed new buildings developers should think about the qualities and the characteristics of places. The development should reflect its setting and local forms of building and materials. The aim should be to have buildings looking different without detracting from any sense of unity and coherence for the development or the wider neighbourhood.

The application site is within the western part of Cockenzie and Port Seton Conservation Area. The western part of it, as described in the Conservation Area Character Statement appended to the local plan, is most strongly characterised by the dense grouping of terraces of East, West and North Lorimer Places south of Edinburgh Road. The Character Statement adds that the harbour is in need of environmental improvement; that the character of a working harbour is maintained by the many small-scale workshops in the areas; and that new housing development at the previously derelict salt works (now developed as Barga Court) will enhance the harbour. It is also stated that the quayside is in need of repair and enhancement appropriate to its listed status.

It is proposed to demolish the boat repair yard buildings in order to facilitate the positioning of the proposed flatted buildings on the site. The existing buildings occupy the majority of the site. They are comprised of a large brick shed with a shallow pitched roof of corrugated sheeting. There are single-storey sheds attached to its northeast side and southwest sides. The buildings have a modern, utilitarian appearance. They are of no particular architectural merit. They do not form small-scale workshops which the Conservation Area Character Statement describes as maintaining the character of a working harbour. As is assessed in the separate report on conservation consent application 12/00294/CAC that is also on this Committee Expedited List, they makes no positive contribution to the character and visual amenity of the Conservation Area. Provided what is to replace the buildings are of an acceptable form, design and finish in-keeping with the character of the Conservation Area, their removal from the site would not harm the architectural or historic character of the Conservation Area.

The existing houses of Hawthorn Bank, Edinburgh Road and West Harbour Road are mostly traditional houses of one or two storeys with pitched roofs. Their walls are finished with stone or render and their roofs with slate. Workshop buildings on West Harbour Road are one storey flat roofed utilitarian buildings finished with render and metal roofing panels. Houses at the northernmost part of West Harbour Road are two storeys in height with walls finished with render and pitched roofs clad with slate. The recent flatted development of Barga Court is built in a traditional architectural style. It is comprised of one and a half and two storey buildings, some with cat slide dormers to serve accommodation in the roof space. Their walls are finished mostly with render and to some small extent with stone facing. Their roofs are clad with pantiles. Their windows are timber sash and case style windows with double glazing.

The proposed two and a half storey components of the main building would be some 11 metres high. In this they would be some three metres higher than the ridge of the main building of the boat repair yard, which is some 8 metres high. They would be some 1.5 metres higher than the height of the two storey buildings of Hawthorn Bank and West Harbour Road. In this, the two and a half storey components of the proposed development would be of a larger built form than the existing boat yard buildings but of a scale and form which would relate positively to the scale and form of the existing residential buildings of the area. The two storey components of the buildings, adjacent to West Harbour Road and Edinburgh Road would be of a similar height to the existing residential buildings of the area. The proposed composition of the development would step up gradually from its Edinburgh Road end to its two and a half storey height. The smaller building, which would be adjacent to West Harbour Road, would be two storeys in height. It would be of a scale and massing which would not harmfully impose on the existing urban form and streetscene of the area. The proposed use of different colours of render and of slates and roof tiles would further visually diminish the scale and massing of the proposed buildings. The details of the use of render colours, slates, roof tiles and painted window bands can be made conditional on the grant of planning permission.

The design of the proposed flatted buildings is of an architectural style and with finishes which take reference from the more traditional elements of architectural design and historic use of materials in the wider area and which contribute to the intrinsic character and appearance of the Conservation Area. What is proposed would not appear visually incongruous within the townscape or be out of keeping with the architectural character and appearance of the Conservation Area. The proposed development would be a sensitive redevelopment of the site which would give the site an appropriate and sustainable new use, all in a manner that would deliver an improvement to this part of the local environment of the Cockenzie Harbour area.

The proposed new buildings would be well contained within their site and by virtue of their size, scale, proportions, architectural form and materials would not be an intrusive, incongruous or exposed form of development. They would fit comfortably into the pattern and density of the built form of the area. They would display design qualities in keeping with characteristic local forms of buildings and materials and would not be at odds with or detract from the mixed architecture of this part of the Conservation Area and of the streetscape. They would be appropriately and acceptably designed for their place. They would not be harmful to the historic character and appearance of this part of Cockenzie and Port Seton Conservation Area. Rather, the proposed flatted buildings would be an improvement on the utilitarian character and appearance of the application site and accordingly would enhance the character and appearance of the area and the Conservation Area.

In its position along the northwest boundary of the site and facing northwards to Cockenzie Harbour, the two and a half storey high component of the development on this part of the site would form an edge to the harbour in a similar way to the northwest elevation of the main boat repair yard building. It would however be set back some 2 metres from the existing building line of the boat repair yard building. In this it would not draw focus away from the harbour in views of it. In its proposed position, the proposed development would not be harmful to the setting of the listed Cockenzie Harbour.

The site is capable of accommodating all of the proposed development including satisfactory vehicular and pedestrian access and amenity space without being an overdevelopment of it. The proposed development would not be of a density incompatible with existing densities of terraced and flatted development in the area.

On the above design considerations the proposed development is consistent with Policies ENV1C, ENV1D and ENV1G of the approved Edinburgh and the Lothians Structure Plan 2015, Policies DP2, DP7, ENV3 and ENV4 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010 with respect to the affect of it on the listed Cockenzie Harbour and on the Conservation Area.

Due to their positioning and distance away from neighbouring residential properties the proposed new buildings would not result in overlooking of or a harmful loss of daylight or sunlight received by any of the those properties. The proposed new building would not harm the privacy and amenity of the neighbouring residential properties through overlooking or overshadowing.

The application drawings detail that the south-eastern brick wall of the existing building would be taken down to a height of 2.1 metres as measured from the finished site ground level. Site survey drawings submitted with the application indicate that the ground levels on that side of the site would be similar to those of the adjacent gardens of the properties of Hawthorn Bank. With the wall so altered, the proposed development would not be harmful to the residential amenity of the occupiers of the properties of Hawthorn Bank. Details of other boundary treatments can be made conditional on the grant of planning permission.

The Council's Environmental Protection Manager does not object to the proposed development. He does have concerns that noise associated with the operation of the existing Coal Fired Power Station may result in a loss of amenity to occupiers of the proposed residential properties, notwithstanding that consent has been granted to convert the existing power station to a Gas Turbine Power Station with potentially lower noise levels.

The Environmental Protection Manager accepts the view of the applicant's noise consultants that noise associated with the power station is fairly constant rather than intermittent or tonal. He therefore accepts that the NR25 standard is an acceptable measure of internal amenity for the proposed development. He advises that the applicant's Noise Impact Assessment submitted with the application demonstrates that the internal noise levels are predicted as being above the NR25 criteria in rooms on the north, south and west elevations of the buildings with the window partially open for ventilation. It is predicted that NR25 would be achievable within rooms located on the east elevation. He therefore concurs with the recommendation of the Noise Impact Assessment that an acoustic glazing specification and acoustic ventilators be used on those elevations to ensure that the future residents of the proposed buildings would have an acceptable standard of amenity in relation to potential noise impacts.

In the interests of safeguarding the amenity of the future occupiers of the proposed flats it should be made a condition of the grant of planning permission for the proposed development that the proposed bin storage facilities are formed prior to the occupation of the proposed flats. The matter of odours potentially arising from the use of the bin store would be a management issue for the owners of the proposed affordable housing development.

On these matters of privacy and amenity the proposed development is consistent with Policies DP2 and DP7 of the adopted East Lothian Local Plan 2008.

The Council's Transportation service raises no objection to the proposed development. In this they confirm that it would not have harmful impact on the local road network and that the proposed vehicular access, parking and turning arrangements within the site, including the level of parking proposed, are all acceptable. They make a number of recommendations in respect of their requirements for the implementation of vehicular, pedestrian and cyclist provision to the Council's Standards for Development Roads. They also recommend the submission of details and implementation of the following measures:

- (i) a Construction Method Statement to minimise the impact of construction activity on the amenity of the area, with measures to control construction traffic, noise, dust, hours of construction work and with details of wheel washing facilities and their use;
- (ii) the formation of 2 metres wide footpaths from the John Muir Walkway on the north-western side of the development to link in with the existing asphalt footpath on Preston Links and from the proposed pond on the south-western side of the development to link in with the existing asphalt footpath on Preston Links; and
- (iii) the prevention of vehicular access onto West Harbour Road until such time as West Harbour Road is constructed to an adoptable standard and is included on the list of public roads.

The detail of these measures can be made conditional on the grant of planning permission. The land required for the formation of the required footpath links is partly within the ownership of the applicant, part is owned by the Council and part is in community ownership. The land required for the proposed new John Muir Way link is owned by the

applicant and the Council. Should there be any obstacle to the use of land in community ownership for the formation of the link path from the pond on the southwest of the development to the existing path on Preston Links, there is sufficient land in the ownership of the applicant and Council to achieve an alternative link to the path at the north of the development.

On these transportation considerations the proposed development complies with Policies T2, DP20 and DP22 of the adopted East Lothian Local Plan 2008.

The Council's Senior Access Officer raises no objection to the proposed development. She advises that she is supportive of the proposed new path link for the John Muir Way. She recommends that a 2 metres wide pathway be provided for the proposed new link for the John Muir Way along the north-western part of the site. She recommends that such a path should be constructed of machine laid tarmac and that there be a 0.6 metres high wall with a 0.6 metres high hand railing along the waterfront walkway. She also recommends that a staggered barrier be erected at the West Harbour road end of this link. These recommendations can be made conditional on the grant of planning permission. On this access consideration the proposed development is consistent with Policy C7 of the adopted East Lothian Local Plan 2008.

In respect of Policy C2 of the adopted East Lothian Local Plan 2008 the Council's Landscape and Countryside Management Manager advises that in this case it would be acceptable for the developer to provide a financial contribution of £30,000 for the upgrading of existing nearby play facilities at Whin Park, to provide for the future residents of the proposed development as well as for existing residents of the area. Such off-site provision of play facilities off-sets the need in this case for the provision of a play area within the proposed development. This can be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 1/2010: Planning Agreements. In this respect the proposed development does not conflict with Policy C2 of the adopted East Lothian Local Plan 2008.

There is an existing large tree between the site and the neighbouring gardens of the properties of Hawthorn Bank. There are also trees adjacent to the southwest boundary of the site. The applicant does not propose to remove those trees. However, parking spaces, a bin store and landscaping space would all be formed within the crown spread of the tree adjacent to the gardens of Hawthorn Bank. Thus those operations would be carried out within the root protection area of that tree. The western part of the building would be constructed close to the trees adjacent to the southwest boundary of the site. To ensure that those trees are retained and not damaged by construction of the proposed development, a condition can be attached to the grant of planning permission requiring the details of tree protection measures to be submitted to and approved by the Planning Authority.

The Council's Housing Strategy & Development Services Manager confirms that the Council is in negotiations with the landowner of the application site to purchase the site and to develop all of the proposed 26 flats as affordable housing. To this end the detailed form of the proposed development has been designed in liaison with officials of the Council's Housing Strategy & Development Service such that it would fulfil the Council's requirements for it to be affordable housing.

The terms for the provision of the affordable housing requirement would normally be the subject of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. In the circumstances where the Council may agree to purchase the housing site

for development entirely as affordable housing then such an agreement would not be appropriate in this specific case. Instead a suspensive condition can be imposed on a grant of planning permission which would ensure that no development begins on the application site until it is demonstrated to the Council, as Planning Authority, that agreements are in place to deliver the development as affordable housing. This would allow the Council sufficient control over the development of the site if the ownership of the site remains as it is and it is not sold to the Council.

The Council's Executive Director, Services for People informs that the application site is located within the primary school catchment area of Prestonpans Primary School and the secondary school catchment of Preston Lodge High School. He confirms that there would be sufficient capacity at Prestonpans Primary School and Preston Lodge High School to accommodate children that could arise from the proposed development. Thus the Executive Director, Services for People raises no objection to the application.

The Scottish Environment Protection Agency raise no objection to the proposed development in respect of flood risk or provision for surface water drainage. They are satisfied with the findings of the applicant's Flood Risk Assessment and the proposals of the applicant's Drainage Strategy. The Council's consultant as Flood Authority advises that whilst the applicant's Flood Risk Assessment takes account of the latest assessments of wave action, the design of the development does not include provision for this along the northwest boundary of the development site. He advises that a retaining wall is required along the seaward side of the proposed new John Muir Way link. He is satisfied that a wall which rises to the height proposed by the Council's Access Officer would be sufficient to address his concerns in respect of this matter. The design of the construction of the retaining wall in respect of flood resistance can be made conditional on the grant of planning permission.

The Coal Authority raise no objection to the proposals. They advise that the site is in an area likely to have been subject to past coal mining activities which could include historic unrecorded underground coal mining at shallow depth. They recommend that their standing advice Informative Note for new development in such areas be communicated to the applicant. This information can be attached to a grant of planning permission.

In respect of the existing use of the site the Council's Environmental Protection Manager raises no objection to the proposed residential development. He is satisfied that the applicant's Site Investigation Report addresses the likely contamination issues arising from that use, providing that once the existing building is demolished, further investigation is made and that the proposed remediation measures are carried out. This can be made conditional on the grant of planning permission.

The Council's Archaeology Officer raises no objection to the proposals. He has no requirements for an archaeological investigation of the site.

The proposed development by its scale and prominent public location would result in significant change to the local environment and thus in accordance with the requirements of Policy DP17 of the adopted East Lothian Local Plan 2008 it should incorporate artwork either as an integral part of the overall design or as a related commission. This can be secured by a condition on the grant of planning permission for the proposed development.

RECOMMENDATION:

1. It is recommended that planning permission be granted subject to:

(i) the undernoted conditions; and

(ii) the satisfactory conclusion of a Section 75 Agreement or some other appropriate agreement designed to secure from the applicant a financial contribution of £30,000 toward the upgrading of the play park facility at Whin Park, Cockenzie.

2. In accordance with the Council's policy on time limits for completion of planning agreements the recommendation also is that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reason that without the Council securing from the applicant through an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or other appropriate agreement a financial contribution of £30,000 toward the upgrading of the play park facility at Whin Park, Cockenzie there would not be adequate provision of play facilities in the area to meet the needs generated from the occupation of the proposed 26 flats, contrary to Policy C2 of the adopted East Lothian Local Plan 2008.

1 The development shall begin before the expiration of 3 years from the date of the grant of this planning permission.

Reason:

Pursuant to Section 58 of the Town and Country Planning (Scotland) Act 1997

2 No development shall be commenced on site unless and until written evidence that a contract has been entered into for the provision as affordable housing of all of the 26 flats hereby approved has been submitted to and agreed by the Planning Authority.

Reason:

In order to ensure the development is operated as affordable housing and is therefore compliant with Policies HOU4 and DP20 of the adopted East Lothian Local Plan 2008.

3 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;

b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and

c. the ridge height of the proposed shown in relation to the finished ground and floor levels on the site.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

4 No development shall take place until there has been submitted to and approved in writing by the Planning Authority a scheme of landscaping. The scheme shall provide details of:

(i) tree protection measures for the trees adjacent to the southeast and southwest boundaries of the site, which shall be implemented prior to the commencement of any demolition or construction works on site;

(ii) the method of working within the root protection area of trees adjacent to the southeast and southwest boundaries of the site, which shall be in accordance with BS5837: 2005 Trees in Relation to Construction, and which shall be implemented in the course of any ground breaking works, formation of hard surfacing or construction in those root protection areas;

(iii) All trees and shrubs to be planted, including sizes, species, habitat, siting, planting distances

and a programme of planting, omitting the trees currently shown at parking spaces 25, 26 and 27 as shown on drawing no. 11-174 (PL) 101 docketed to this planning permission; and

(iv) Details of all fences, walls or other means of enclosure on the site, including along the boundaries of the site with the gardens of properties of Hawthorn Bank. This shall include the detail of downtaking of the wall along the boundary with the gardens of Hawthorn Bank to a height of 2.1 metres. Thereafter all such fences, walls and means of enclosure shall be completed prior to the occupation of the flats hereby approved and shall remain in place unless otherwise approved in writing by the Planning Authority.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason:

In order to ensure the retention and maintenance of trees and the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area and in order to ensure parking spaces 25, 26 and 27 allow satisfactory manoeuvrability.

- 5 No development shall take place until details of a Construction Method Statement have been submitted to and approved in writing by the Planning Authority, which shall include measures to minimise the impact of construction activity on the amenity of the area, to control construction traffic, noise, dust, hours of construction work and wheel washing facilities and their use. Thereafter the measures of the Construction Method Statement so approved shall be implemented throughout the period of construction.

Reason:

In the interests of road safety and of the amenity of the area.

- 6 The contamination measures set out in the submitted Site Investigation Report shall be implemented in the course of demolition and construction works. Where any unforeseen contamination is discovered in the course of the development hereby approved, details of measures to deal with it shall be submitted to and approved in writing by the Planning Authority and thereafter before any of the flats are occupied all measures to decontaminate the site shall be fully implemented as approved by the Planning Authority.

Reason

To ensure that the site is clear of contamination prior to the occupation of the flats.

- 7 Notwithstanding that which is stated on the drawings docketed to this planning permission, a detailed specification of all external finishes of the flats of the proposed development shall be submitted to and approved by the Planning Authority prior to the use of the finishes in the development. The external finishes of the flats shall be in accordance with a co-ordinated scheme of materials and colours that shall be submitted to and approved in advance by the Planning Authority. This co-ordinated scheme shall in detail respect the layout of the development, shall promote render as the predominant finish to the walls of the flats and shall use colour of render, slate, roof tile and window bands to differentiate parts of the buildings. All such materials used in the construction of the flats shall conform to the details so approved.

Reason:

To ensure the development is of a satisfactory appearance in the interest of the amenity of the locality and the character and appearance of the Conservation Area.

- 8 Samples of materials and finishes to be used in the development shall be submitted for the prior inspection and approval in writing by the Planning Authority for the walls, roofs, windows, doors, rainwater goods, boundary treatments and ground surfaces.

Reason:

To enable the Planning Authority to control the materials, finishes and colour to be used to achieve a development of good quality and appearance in the interest of the visual amenity of the conservation area.

- 9 Prior to the occupation of the flats hereby approved the access parking and turning arrangements detailed on drawing no. 11-174 (PL) 101 docketed to this planning permission and which shall

conform with ELC Standards for Development Roads in relation to roads layout and construction, footways & footpaths, parking layout and number, street lighting and traffic calming measures shall have been formed and made available for use and shall thereafter remain available for such use unless otherwise approved by the Planning Authority. This shall include that the access junction shall have a raised at grade crossing into the shared surface area.

Reason:

In the interests of road safety and pedestrian safety.

- 10 Prior to the occupation of any of the flats hereby approved, the following measures shall have been formed and brought into use to details to be approved in advance by the Planning Authority, unless otherwise approved in writing:

(i) a 2 metres wide tarmac footpath between the existing asphalt footpath on Preston Links to the new part of the John Muir Way to be formed on the north-western side of the development;

(ii) the footpath of the new part of the John Muir Way to be formed on the north-western side of the development to be a 2 metres wide tarmac footpath with a retaining wall along the length of its northwest boundary with the harbour. The retaining wall shall be so constructed as to form a parapet to the footpath of at least 0.6 metres high and shall have a 0.6 metres high handrail erected on it;

(iii) a 2 metres wide tarmac footpath from the proposed pend on the southwestern side of the development to link in with the existing footpath on Preston Links; and

(iv) measures to prevent vehicular access from the site onto West Harbour Road.

Reason:

In the interests of pedestrian access, pedestrian and road safety and of control of flood risk.

- 11 Prior to the occupation of any of the flats hereby approved the bin and cycle storage facilities shall have been formed and made available for use. The cycle storage in the areas of the buildings denoted as 'cycle store' on drawing no. 11-174 (PL) 101 docketed to this planning permission shall provide secure, lockable storage at the rate of cycle one space per flat. Thereafter, the storage facilities shall be retained in use as bin and cycle storage areas.

Reason:

To ensure the provision of adequate bin and cycle storage in the interest of the residential amenity of the future occupants of the flats hereby approved and the visual amenity of the locality.

- 12 Prior to the occupation of each of the flats hereby approved they shall, as relevant, be fitted with glazing and ventilation units to the following specifications and thereafter any replacement of glazing or ventilation units shall be to the same specification, unless otherwise approved in writing by the Planning Authority:

(i) Windows on the southwest elevations of the buildings hereby approved shall have a glazing specification of (6mm float glass - 412mm cavity - 4mm float glass) and ventilation shall be provided by acoustic ventilators with a minimum acoustic rating of D_{ne}, w 35 dB (when in the open position) for single units and where more than one unit is to be used within the same room the acoustic performance rating shall increase by a factor +10 Log₁₀ (n) (where n is the number of ventilator units); and

(ii) windows on the northwest and southeast elevations of the buildings hereby approved shall have a glazing specification of (4mm float glass - 412mm cavity - 4mm float glass) and ventilation shall be provided by acoustic ventilators with a minimum acoustic rating of D_{ne}, w 32 dB per unit.

Reason:

In order to meet noise rating curve NR25 internally, in the interests of the amenity of the residents of the flats hereby approved.

- 13 No residential unit shall be occupied unless and until details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority and the artwork as approved shall be provided prior to the occupation of the final residential unit approved for erection on the site.

Reason:

To ensure that artwork is provided in the interest of the visual amenity of the locality or the wider area.