

REPORT TO: Planning Committee

MEETING DATE: 1 October 2013

BY: Depute Chief Executive
(Partnerships and Services for Communities)

SUBJECT: Pre-Determination Hearing: Planning Application No. 11/01109/PPM – Planning permission in principle for employment land, drainage works and enabling residential development at Fenton Barns, North Berwick

1 PURPOSE

- 1.1 A Pre-determination Hearing is mandatory where a planning application is made for a major development that is significantly contrary to the development plan and consequently has to be determined by a meeting of the full Council.
- 1.2 As the area of the application site is greater than 2 hectares and the principle of development is for more than 50 houses, the proposed development is, under the provisions of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, defined as a major development. Furthermore the proposed development is significantly contrary to Policy DC1 of the adopted East Lothian Local Plan 2008.
- 1.3 Application 11/01109/PPM is therefore brought before the Planning Committee for a Pre-determination Hearing prior to the consideration of the merits and determination of the application by the Council at their meeting on 22 October 2013.
- 1.4 The purpose of this report is to provide the Committee with a description of the development proposal and with summaries of the development plan policies and other material considerations, consultation responses and public representations applicable to application 11/01109/PPM.

2 RECOMMENDATIONS

- 2.1 That the Committee refers to the content of the report as an informed context for the Pre-determination Hearing.

3 BACKGROUND

3.1 Description of application

The application site consists of several areas of land that are mostly in the locality of Fenton Barns but also at West Fenton. The areas of land are in the countryside to the north of Drem, to the south of Dirleton and to the southeast of Gullane. There are a number of residential and commercial properties in the wider locality.

In February 2010, planning permission (Ref: 09/00054/FUL) was granted in detail for the formation of a proposed new foul and surface water drainage system at Fenton Barns. The approved development has not been implemented and planning permission 09/00054/FUL lapsed on the 03 February 2013.

In January 2009 planning permission was sought by DC Watson & Sons for drainage works and for a residential development on the application site. The proposal was for a maximum of 150,000 square feet of housing rather than a specified number of houses. In April 2010 planning permission in principle 09/00053/OUT was refused for the following reasons:

“1. As enabling development for a new build infrastructure development in the countryside the proposed new build housing development is not supported by Part 1(a) of Policy DC1 of the adopted East Lothian Local Plan 2008.

2. As the proposed new build housing development is not to enable a form of new build development in the countryside of an employment, tourism or leisure use the proposed housing development is contrary to Part 1(c) of Policy DC1 of the adopted East Lothian Local Plan 2008.

3. In not being a direct operational requirement of an agricultural, horticultural, forestry or other employment use in the countryside the proposed new build housing development is contrary to Part 1(b) of Policy DC1 of the adopted East Lothian Local Plan 2008 and Policy ENV3 of the approved Edinburgh and the Lothians Structure Plan 2015.

4. As the proposed new build housing development would be on greenfield land not allocated for housing development it is contrary to Policy HOU8 of the approved Edinburgh and the Lothians Structure Plan 2015.

5. There is not, and there would not be sufficient capacity at Dirleton Primary School to accommodate children that could arise from the occupancy of the proposed new build housing development”.

The applicant appealed to the Scottish Ministers against the Council's decision to refuse planning permission in principle 09/00053/OUT. That appeal was subsequently dismissed by the Reporter appointed to determine the appeal. In dismissing the appeal, the Reporter concluded that “the scale of the departure from the development plan is so

significant that it requires exceptional circumstances to override it. In this case whilst a strong argument has been put forward to support the need for enabling development, on the basis of the information before me, I am not persuaded, at the time of my determination, that every potential option for raising finance has been explored. In these circumstances I attach greater weight to the integrity of the development plan, and consider that an exceptional case of sufficient weight has not been provided. Other material considerations do not therefore justify a departure on the scale proposed". In making this conclusion the Reporter added that "the development of around 75 houses, as a likely minimum based on my own assessment above from the figures provided, would be a major departure. It would double the residential size of Fenton Barnes and effectively create a significant new settlement in the East Lothian countryside. It could act as a precedent and make it more difficult for the council to refuse similar applications in the future".

Planning permission in principle is now sought for employment land, for drainage works and for a residential development on the application site.

The drainage works for which planning permission in principle are sought in application 11/01109/PPM are identical to the proposed new foul and surface water drainage system that were approved in detail by the grant of planning permission 09/00054/FUL and which were the subject of previous planning permission in principle application 09/00053/OUT.

The new foul drainage system would replace the existing private foul drainage systems for the Fenton Barnes area, and would involve foul waste being discharged into existing public drainage infrastructure and ultimately into the existing waste water treatment works at Gullane. It is the applicant's intention that it would be a public system to be maintained by Scottish Water. The principal component of the proposed foul drainage system would be a new waste water pumping station. It is indicatively shown to be located in the southern edge of a field that is immediately to the south of Fenton Barnes, in a position some 110 metres to the west of the B1345 road that passes through Fenton Barnes. It is further indicated that the compound would be some 14.5 metres in length and 5 metres wide, with most of its equipment being contained in an underground chamber, although a metal crane type structure, some 2.5 metres in height is shown to be erected above ground level. The new waste water pumping station is intended to replace the existing privately owned sewage treatment works, located approximately 1km to the south of Fenton Barnes. The applicant advises that the existing sewage treatment works would be demolished on the new pumping station becoming operational. In support of the operation of the new waste water pumping station and to enable foul waste to be taken to the existing public drainage infrastructure and waste water treatment works that the proposed new foul drainage system is to be connected to, it is proposed that a network of new drainage pipes and rising mains could be installed underground.

The proposed surface water drainage system is indicatively shown to include the formation of two attenuation ponds and the laying of new field drainage channels. One of the attenuation ponds is shown to be located to the east of the proposed waste water pumping station, with the other attenuation pond shown to be located on agricultural land to the north of the residential properties of Fenton Barns Farm Cottages.

A masterplan originally submitted with this application indicates the land at Fenton Barns that is proposed for future employment use. It has an area of some 12.47 hectares. It consists of land to the south and east of Fenton Steading as well as most of the field that is immediately to the south of Fenton Barns and to the west of the B1345 road. In a further submission to the Council, the applicant estimates that of the 12.47 hectares, the net developable area may be between 7.5 and 8.75 hectares. The remainder of the 12.47 hectares would be used for landscaping and infrastructure such as access roads.

The principle of the housing is being promoted by the applicant as a necessary provision of enabling development to cover the primary cost of the new employment land and to fund, complete and vest in Scottish Water the development of the proposed drainage works. The planning statement informed that 100 residential units are required to enable the proposal.

The masterplan indicates how the housing could be developed on two areas of land on the eastern part of the application site that have a combined area of some 9 hectares. The easternmost of the two areas of land is bounded to the north by Dairy Cottages, to the east by farmland, to the south by Fenton Barns Farm Cottages and Fenton Barns Farm steading, and to the west by the public road which serves that part of Fenton Barns. The other area of land is situated to the west of that road and is bounded to the south by a small group of buildings, to the west by a length of the B1345 road and to the north by another small group of buildings. This westernmost area of land was previously used as a mini-golf course (approved by planning permission P/0496/93 granted in January 1994). However that use has ceased and the land is now mainly laid to grass. The easternmost area of land was, in part, previously used as a golf driving range (approved by planning permission P/0496/93 granted in January 1994). That use has ceased and the land has been returned to a field. The other part of the easternmost area of land is part of the same field. The former golf driving range buildings are now used for storage and as a retail unit. The masterplan indicates how some lower density housing surrounded by green space might be accommodated on the easternmost area of land. It is indicated that the westernmost area of land could contain a mix of lower and higher density housing. The masterplan indicates that the existing tree planting along the western boundary of the westernmost area of land and along the southern boundary of the easternmost area of land would be retained. It is further indicated that a pedestrian link could be provided for pedestrian access from the proposed housing to the business units at Fenton Barns that are

to the southwest of the two proposed areas of housing land and also to part of the proposed new area of employment land.

In May 2013 the applicant submitted an indicative site layout plan showing how 80 houses could be laid out within the part of the application site proposed by the masterplan for housing. Of these 80 houses, it is indicatively shown that 30 of them could be positioned on the easternmost area of land and the other 50 could be positioned on the westernmost area of land. It is further indicated that the 80 houses would have a total floor area of 176, 643 square feet.

In a subsequent email from the planning agent acting on behalf of the applicant, confirmation is given that a development of 80 residential units would be sufficient to generate the floorspace (and from that the financial receipt) to pay for the proposed new drainage system.

A brochure submitted with this application indicates possible designs for the proposed housing.

In a planning statement submitted with the application, the applicant informs that land under his ownership was acquired by the War Office in both world wars for use as an airfield and hangar facility. The land was returned to the applicant's family in 1947 along with various airfield buildings and a private sewage treatment works that had been established at that time. Since then, Fenton Barns has been subject to development with some new residential properties and with small businesses. The private sewage treatment works still services the business and residential uses within the Fenton Barns area. However the applicant states that it is no longer fit for purpose. The evolution of the area as a business location in particular has exacerbated the problems experienced at the existing private treatment works. The existing private drainage system is incapable of meeting the rising discharge standards imposed by the Scottish Environment Protection Agency license. The combined system in place (foul and surface water) in times of heavy rainfall is unable to deal with the flows through the system and the private sewage treatment works regularly discharges into the Peffer Burn leading to pollution of Aberlady Bay. Despite the best efforts of the landowner in maintaining the works, it and the associated pipework are no longer suitable or reliable. Several pollution incidents have occurred, including very recent incidents, which raise questions over the whole future of Fenton Barns as one of the key important employment centres in East Lothian. The applicant advises that the modern and effective drainage system proposed would benefit both residential and commercial properties within the Fenton Barns area. However such a system comes at considerable expense. The applicant considers that the enabling housing development is fundamental in order to cover the primary costs of the drainage upgrade and can only be met by the sale of the land proposed for housing development. The new drainage works would protect the 500 jobs that the applicant states are provided by local businesses at Fenton Barns and would allow for new jobs to be provided.

The applicant advises that the proposal that forms this application is materially different to that which was previously refused and dismissed on appeal in that the current application promotes new employment land as well as drainage works for the new and existing employment land.

A separate economic report submitted with the application seeks to justify the inclusion of the housing as enabling development. The applicant has suggested that a legal agreement should be entered into by the applicant and the Council to ensure an appropriate linkage between the provision of the new drainage works and the enabling housing development.

In the economic report, it is stated that the applicant cannot afford to renew the drainage system. Moreover, there is insufficient residual value to obtain a loan to cover the cost of the new drainage system. The businesses at Fenton Barns are not willing to contribute towards these costs. It is the applicant's view that the proposed enabling housing development is the only way that sufficient funding can be made available to fund these works.

The applicant has provided a copy of a letter from SEPA, in which support is given for the proposed new drainage system.

The applicant argues that East Lothian has failed to provide a continuous and effective housing land supply, and the proposed housing component of the development would make a useful contribution in meeting this shortfall.

The applicant also argues that the new employment land would provide a major increase in the marketable land supply, which they contend is clearly lacking in East Lothian at this time.

Under the provisions of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 the proposed development falls within the category of a Schedule 2 Development, being one that may require the submission of an Environmental Impact Assessment (EIA). Schedule 3 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 sets out the selection criteria for screening whether a Schedule 2 development requires an EIA. On 08 May 2012 the Council issued a formal screening opinion to the applicant. The screening opinion concludes that it is East Lothian Council's view that the proposed development is not likely to have a significant effect on the environment such that consideration of environmental information is required before any grant of planning permission in principle. It is therefore the opinion of East Lothian Council as Planning Authority that there is no requirement for the proposed housing development to be the subject of an EIA.

3.2 Development Plan Policy and Other Material Policy Considerations

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

Policy IB (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies DC1 (Development in the Countryside and Undeveloped Coast), ENV3 (Listed Buildings), BUS9 (Proposals on Unallocated Land), INF1 (Pipeline Consultation Zone), INF3 (Infrastructure and Facilities Provision), DP17 (Art Works- Percent for Art), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application are Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Scottish Ministers' policy on development affecting the setting of a listed building as given in the Scottish Historic Environment Policy: July 2009, and Scottish Ministers' policy given in Scottish Planning Policy: February 2010.

Also material to the determination of this application is the appeal decision in respect of previous planning application 09/00053/OUT.

3.3 Consultations

Gullane Area Community Council object to the principle of the proposed development, advising that insufficient attention has been paid to the local infrastructure in terms of roads, accessibility, schools and the impact that such a large scale economic development would have on leisure and tourism in the area. They also note that the employment land is in breach of the Local Plan. The Community Council are not satisfied that the applicant has explored fully various alternatives in the terms of the sewerage system.

In a further consultation response, the Community Council advise that both the proposed employment land and the proposed housing development constitute significant and unacceptable departures from the Local Plan. They advise that the background to the application is the applicant's failure to invest appropriately over time in what has consequently become a haphazard drainage system subject to repeated failure. The applicant's proposed solution is a misuse of the planning system. Moreover, the Community Council advise that the scale of development is unacceptable and will inevitably lead to increased traffic levels and associated greenhouse gas emissions and will impact on school capacity.

The Council's Environmental Protection Manager, who has concerns that the occupants of the proposed houses may be affected by noise emanating from any non-domestic premises that may be developed on the proposed employment land, recommends that it be conditional on the

submission of a noise assessment to be submitted to and approved by the Planning Authority.

A National Gas Transmission Pipeline is located to the east of the proposed housing site. The Health & Safety Executive does not advise, on safety grounds, against the granting of planning permission in principle for the proposed housing development.

The Council's Transportation service raise no objection to the principle of the proposed development.

The Council's biodiversity officer raises no objection to the principle of the proposed development.

The Policy and Projects Manager recommends refusal of the application, advising that the principle of the proposed development is contrary to the development plan. He further provides landscape advice in respect of the proposed development.

With regard to the housing component of the proposed development, the Council's Executive Director (Services for People) advises of the need for a developer contribution towards the cost of provision of additional accommodation at North Berwick High School.

The Council's Archaeology Officer recommends that a programme of archaeological works should be carried out at the site by professional archaeologists.

Scottish Water raise no objection to the principle of the proposed development.

The Scottish Environment Protection Agency support the principle of the proposed development.

3.4 Representations

A total of 43 written representations have been received in respect of this application, all of which make objection to the principle of the proposed development.

The main grounds of objection are summarised as follows:

- * The principle of the proposed housing and employment land is contrary to the development plan;

- * Proposal would be harmful to the privacy and amenity of neighbouring residential properties;

- * Increased traffic generated by the proposal would create significant road safety issues;

- * The applicant has acted irresponsibly by not ensuring that adequate funds have been put aside to ensure that the existing drainage system was adequately maintained;
- * Any infrastructure works and associated costs should lie firmly with the landlord/ owner of the commercial premises;
- * No other system appears to have been considered for improving or repairing the existing drainage system;
- * The application form is inaccurate, as the land of the application site is in agricultural use;
- * Lack of local services and public transport to serve the proposed housing;
- * Proposal would detract from the overall tourism value of this part of East Lothian;
- * Loss of prime agricultural land;
- * Proposed development would devalue the objector's property;
- * Proposed housing and employment land would not be in keeping with the rural visual appearance of the area;

4 POLICY IMPLICATIONS

4.1 None.

5 EQUALITIES IMPACT ASSESSMENT

5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

6.1 Financial – None.

6.2 Personnel - None.

6.3 Other - None.

7 BACKGROUND PAPERS

7.1 None.

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