

REPORT TO: East Lothian Council

MEETING DATE: 22 October 2013

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

SUBJECT: 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 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.
- 1.2 Members will recall that a Pre-Determination Hearing for this application was held at the Planning Committee meeting of 01 October 2013. A Pre-Determination Hearing is mandatory where a planning application is made for a major development that is significantly contrary to the development plan.
- 1.3 As amended by Section 14(2) of the Planning etc. (Scotland) Act 2006, the Local Government (Scotland) Act 1973 requires that in cases where a Pre-Determination Hearing is mandatory then the application must be decided by a meeting of the Council. Thus this application is now brought before the Council for a determination.

2 RECOMMENDATION

- 2.1 That planning permission in principle be 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.

4. In the absence of any justifiable need for additional employment land at Fenton Barns, as it would not be of an appropriate scale and character for its countryside location, as it would result in the loss of some 12.47 hectares of prime agricultural land, and as the site identified for employment use is not well located in terms of proximity to a range of modes of transport, the proposed employment land is contrary to Policies DC1, BUS9 and T1 of the adopted East Lothian Local Plan 2008.

3 BACKGROUND

3.1 Planning Assessment

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 is now sought 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 Barns, in a position some 110 metres to the west of the B1345 road that passes through Fenton Barns. 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 Barns. 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 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.

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

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.

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.

It is therefore on the basis of an 80 house development, and not a 100 house development as originally proposed, that this planning application stands to be determined.

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 existing and proposed 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. It is also stated that 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.

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 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.

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;
- * 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;
- * Applicant has failed to notify all owners of land within the application site.

The concerns about land owner notification of the planning application relate to the existing pumping station at West Fenton Court, which is claimed forms part of the application site. On this basis, the objector claims that the residents of West Fenton Court, who the objector states own the pumping station, should have been notified of the planning application as land owners. The pumping station is however outwith the application site. Consequently, there is no requirement for the owners of West Fenton Court to have been so notified.

A perceived devaluation of an objector's property is not a material consideration in the determination of a planning application.

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.

Through the determination of planning application 09/00054/FUL and that grant of planning permission it has already been decided that the drainage works proposed for Fenton Barns are acceptable, not only in principle but also in detail. Thus, there is no good planning reason for the Council in their determination of this application to now oppose the principle of the proposed drainage works.

If the Council were to be of a mind to grant planning permission in principle for the proposed housing development, the Council's Senior Environmental Protection Manager, who has concerns that the occupants of existing residential properties and the proposed enabling 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.

The proposed housing and employment land components of the proposed development by their scale would have a significant impact on the local environment and thus in accordance with Policy DP17 of the adopted East Lothian Local Plan 2008 there would be a need to provide artwork either as an integral part of the overall design of it or as a related commission.

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 indicative site layout plan submitted in May 2013 shows how access to the 80 houses could be taken from the road that presently gives access to that part of Fenton Barns from the B1345 road. It also shows how three access points could be formed from that access road, two to serve the easternmost part of the housing development land and one to serve the westernmost part.

The Council's Transportation service are satisfied that in principle the proposed housing development could be safely accessed and that sufficient off street car parking could be provided. Were planning permission in principle to be granted for the proposed housing development, then the detailed arrangements for site access and car parking would thereafter have to be submitted to and approved by the Planning Authority.

In respect of the employment land, the Transportation service advise that they would normally require a Transport Assessment to be submitted in support of a proposal for an employment site of the size proposed. However they note that no details have been submitted of the type or size of employment units that would be developed on the site. They therefore recommend that a Transport Assessment should accompany any detailed proposals for the development of the proposed employment land. The Transport Assessment should include details of measures to improve public transportation infrastructure at Fenton Barns.

The Transportation service are satisfied that in principle the proposed housing and employment land would not result in the local road network being put under excessive pressure.

Based on the advice of the Transportation service the principle of the proposed development does not conflict with Policy T2 of the adopted East Lothian Local Plan 2008.

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 proposed for housing development would be retained. The landscape advice given by the Council's Policy and Projects Manager is that any new development should be set back an appropriate distance from those trees to ensure their well-being and, in addition, new landscaping should be used to better integrate the proposed development into its surroundings. Detailed landscaping proposals should also be submitted in respect of the proposed SUDS ponds to ensure that they make a positive contribution to the amenity and wildlife value of the application site.

The Council's Biodiversity Officer raises no objection to the principle of the proposed development.

As the housing development indicatively shown to be located to the north of Fenton Barns Farm Cottages would be positioned to the north of the

existing tree belt, the presence of it would not harm the setting of Fenton Barns Farm Cottages, which are located to the south of the tree belt and which are listed as being of special architectural or historic interest (Category B & C). As the housing development is indicatively shown to be located some 30 metres to the southeast of Fenbar Garage, the presence of it would not harm the setting of the Garage, which is listed as being of special architectural or historic interest (Category B). On this matter the principle of the proposed development does not conflict with the statutory requirement 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's setting. Neither does it conflict with Policy IB of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV3 of the adopted East Lothian Local Plan 2008 or the Scottish Historic Environment Policy: July 2009.

The Council's Executive Director of Services for People informs that the application site is within the primary school catchment area of Dirleton Primary School and the secondary school catchment area of North Berwick High School. He advises that Dirleton Primary School would have capacity to accommodate children that could arise from the proposed 80 houses, based on the phasing of completion of those 80 houses being controlled.

The Executive Director of Services for People also advises that North Berwick High School would not have capacity to accommodate children that could arise from the proposed 80 houses. Thus the Executive Director (Services for People) objects to the application. However, he confirms that he will withdraw this objection if the applicant is required to make a financial contribution to the Council of £382,800 (£4,785 per house) towards the provision of additional accommodation at North Berwick High School. This could 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 3/2012: Planning Agreements. Subject to the Council securing the appropriate developer contribution the proposal is consistent with Policy INF3 of the adopted East Lothian Local Plan 2008, which stipulates that new housing will only be permitted where the developer makes appropriate provision for infrastructure required as a consequence of their development. This will include funding necessary school capacity. A legal agreement will be used to secure this provision.

The Council's Assistant Archaeology Officer advises that the proposed development site is within an area regarded as having good potential for archaeological remains to survive. Accordingly she recommends that there should not be any commencement of development of it unless a programme of archaeological works (Archive Assessment, Watching Brief and Monitored Strip) has been carried out by a professional

archaeologist to evaluate the land for any potential archaeological remains. This stated position is consistent with Scottish Ministers' policy given in Scottish Planning Policy: February 2010 and Government advice given in Planning Advice Note 2/2011: Planning and Archaeology. It is also consistent with Policy ENV7 of the adopted East Lothian Local Plan 2008.

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

Notwithstanding these considerations, the principal material considerations in the determination of this application is whether or not the proposed employment land and housing development are consistent with development plan policy, and if not whether other material considerations justify approving the application contrary to the development plan.

The part of the application site proposed for employment land is not allocated in the adopted East Lothian Local Plan 2008 for development. Rather it forms part of the East Lothian countryside, as defined by Policy DC1 of the adopted East Lothian Local Plan 2008.

Policy BUS9 of the adopted East Lothian Local Plan 2008 relates to proposals for business and industrial developments on land not allocated for this purpose, including sites within the East Lothian countryside. It states that such proposals will not normally be permitted unless, amongst other things, no alternative allocated and marketable site is available in the area and the proposal does not conflict with other Local Plan policies.

In respect of alternative allocated and marketable sites, the Council's Policy and Projects Manager does not agree with the applicant's claim that there is a clear lack of marketable employment land supply in East Lothian at this time. The Policy and Projects Manager advises that sufficient land has been allocated by the adopted East Lothian Local Plan 2008 to meet both the strategic employment land requirements and the strategic requirement for land to be identified for small-scale business development. Some of these allocated sites, including land at Macmerry Business Park, Old Craighall Junction, Spott Road, Dunbar and Mid Road, Prestonpans are both marketable and effective. Given the relatively limited annual take-up of employment land, the Policy and Projects Manager advises that there is a sufficient supply of effective and marketable employment sites in East Lothian. On this basis, he advises that there is no need at the present time to increase the supply of employment land in East Lothian. In her consultation response, the Council's Economic Development Manager does not argue that there is any need at this present time to increase the supply of employment land at Fenton Barns or elsewhere in East Lothian.

The matter of employment land supply in East Lothian was considered in two recent appeals, one at Spott Road, Dunbar (Ref: PPA-210-2015) and

one at Barbachlaw, Wallyford (Ref: PPA-210-2018). In both of those appeals, it was concluded by the respective Reporters that there is an adequate supply of land allocated for business and industry in East Lothian. These conclusions are consistent with the advice given by the Policy and Projects Manager in respect of this planning application.

As there is alternative allocated and marketable sites available in the area the employment land component of the proposed development is contrary to Part 1 of Policy BUS9 of the adopted East Lothian Local Plan 2008.

Policy DC1 states that business use, other than where it is directly related to agriculture, horticulture, forestry and countryside recreation, will be acceptable where it is of an appropriate scale and character for its proposed location in the countryside. The proposed employment land, which would have an area of 12.47 hectares, would not be of an appropriate scale for its countryside location. Moreover, the land of the application site is mostly prime quality agricultural land. Policy DC1 (Part 5) of the adopted East Lothian Local Plan 2008 requires that all developments in the countryside minimise the loss of agricultural land. An employment development of the land would result in the loss of some 12.47 hectares of prime agricultural land. On these considerations, the proposed employment land is contrary to Policy DC1 of the adopted East Lothian Local Plan 2008.

Policy T1 of the adopted East Lothian Local Plan 2008 requires new developments to be located on sites that are capable of being conveniently and safely accessed by public transport, on foot and by cycle, as well as by private vehicle. Exceptions to this general policy will only be considered where there is a specific operational requirement for a location that does not meet the terms of this policy, or where there are overall planning benefits to be gained. The site proposed for employment use is not well located in terms of proximity to a range of modes of transport, and is remote from any settlement. Given that there is no need at the present time to increase the supply of additional land at this countryside location, there is no specific operational requirement for the proposed employment land at Fenton Barns. Consequently, the principle of the proposed employment land is contrary to Policy T1 of the adopted East Lothian Local Plan 2008.

By being contrary to Policies DC1 and T1, the principle of the proposed employment land is also contrary to Part 4 of Policy BUS9 of the adopted East Lothian Local Plan 2008.

It is stated in paragraph 84 of Scottish Planning Policy: February 2010 that the majority of housing land requirements will be met within or adjacent to existing settlements and this approach will help to minimise servicing costs and sustain local schools, shops and services. Authorities should also set out the circumstances in which new housing outwith settlements may be appropriate, particularly in rural areas.

The adopted East Lothian Local Plan 2008 does not allocate any land at Fenton Barns for residential development. Neither does the Local Plan define any part of Fenton Barns as being a settlement.

Rather, the areas of land proposed in this application for housing development are defined by Policy DC1 of the adopted East Lothian Local Plan 2008 as being part of the countryside of East Lothian.

Policy DC1 allows for new build housing development in the countryside where, under the provisions of Part 1(b), the Council is satisfied that a new house is a direct operational requirement of an agricultural, horticultural, forestry or other employment use.

The housing development proposed in this application is not to meet a direct operational requirement of an agricultural, horticultural, forestry or other employment use in the countryside at Fenton Barns. Therefore, it is not supported by Part 1(b) of Policy DC1.

Under the provisions of Part 1(c), an element of new build housing development may be acceptable to enable a proposed form of new build development of an employment, tourism or leisure use where the Council is satisfied that (i) the wider public benefits of securing the primary use outweigh the normal policy presumption against new build housing in the countryside, and (ii) the enabling development is essential, it is the minimum necessary to achieve the primary use and it is not a substitute for normal development funding, including borrowing.

At the Planning Authority's request the District Valuer has carried out an independent appraisal of the applicant's case for the proposed houses as enabling development. His appraisal has taken into account the financial contribution towards additional education provision recommended by the Council's Executive Director (Support Services). The District Valuer is satisfied that his calculations back up the information contained in the applicant's economic report that the minimum amount of enabling housing development necessary to enable the funding of the proposed drainage works would be 80 residential units.

In their supporting statement, the applicant states that the enabling housing proposed would enable the proposed employment land.

However, the applicant has subsequently clarified that enabling the proposed employment land would consist of the part servicing of that land. The enabling housing would, in part, fund provision of a first drainage connection for the new employment land assuming standard employment uses. The applicant has further confirmed that other servicing of the proposed employment land e.g. mains gas and electricity supply would be an abnormal cost not funded by enabling housing but, instead, by a future third party developer. The applicant is not proposing to install other infrastructure, such as roads, nor does he propose to erect

any buildings on the proposed employment land.

The housing development proposed in this application is not therefore to enable a form of new build development of an employment, tourism or leisure use being proposed at Fenton Barns. The enabling housing required to fund provision of the first drainage connection for the new employment land is not therefore supported by Part 1(c) of Policy DC1.

The proposed new foul and surface water drainage system, including the first drainage connection for the new employment land, would be new build development in the countryside at Fenton Barns. It would not be new build development of an employment use. It would be in the form of an infrastructure development with the intended purpose of replacing the existing private drainage system at Fenton Barns and thus of serving the existing residential uses and the existing and proposed employment uses there.

Part 1(a) of Policy DC1 supports, in principle new build leisure, tourism or infrastructure developments provided they have a clear operational requirement for a countryside location that cannot reasonably be accommodated within an existing urban or allocated area.

As a form of new build infrastructure development the proposed new foul and surface water drainage system, with its connection to the proposed new employment land, is consistent with Part 1(a) of Policy DC1. However, the proposed housing development is not. Part 1(a) does not allow for any element of new build housing development to enable new build infrastructure development in the countryside of East Lothian. The proposed enabling housing development is therefore contrary to Part 1(a) of Policy DC1 of the adopted East Lothian Local Plan 2008.

For the reasons set out above, the principle of the employment land and housing development does not accord with the development plan.

It is now necessary to consider whether or not there are any material considerations that outweigh the scale of the departure from the development plan.

In their planning statement, the applicant refers to general support from the Scottish Planning Policy: February 2010, particularly in relation to supporting economic growth, taking a positive approach to development, and supporting it in all areas. However, as the Reporter in the previous Fenton Barns appeal noted, Scottish Planning Policy does not support general disregard for the development plan, or proposals that may have a damaging impact on the environment, unless there are exceptional circumstances.

The Council's Economic Development Manager informs that the economic activity present at Fenton Barns derives from the operation of some 80 businesses there, with some 500 employees. The businesses

vary in their size and nature. These range from businesses employing one member of staff to more nationally known companies like Brown Brothers and Monaghan Mushrooms. These businesses make a significant contribution to the economy of East Lothian, both in terms of employment value and direct output of turnover.

The Economic Development Manager is keen to safeguard all the jobs at Fenton Barns given the current economic climate, as well as provide a conducive environment for new businesses to form and grow. Moreover, from her perspective, provision of any additional employment land is to be welcomed.

The applicant advises that the new drainage works would protect the 500 jobs that are provided by local businesses at Fenton Barns and would allow for new jobs to be provided. They consider 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. They note that in terms of the previous planning appeal at Fenton Barns, the Reporter concluded that it was for the Council and the applicant to work together to find a way forward. The applicant advises that to date, no alternative source of funding has emerged.

The Scottish Environment Protection Agency (SEPA) advise that the current drainage arrangements at Fenton Barns consist of a sewage treatment works (STW) which was built around the time of the Second World War to serve the former RAF air base. The STW now treats the foul drainage for the Fenton Barns development. They advise that it has a poor track record of compliance with its licence conditions and the responsible person, Keith Chalmers-Watson has been prosecuted on two separate occasions for breaching his licence. The works exerts a chronic long term pollution pressure on the West Peffer Burn which is classified as having Poor Overall Ecological Status in their 2011 classification scheme. It also takes in two trade effluent discharges from Brown Brothers (meat processing) and Monaghan Mushrooms. SEPA have no statutory control over those businesses and it is the operator's responsibility to control what goes into the sewer. According to SEPA, it is highly likely that the works is operating at full or over capacity. SEPA support the principle of the proposed development. They do however recommend that the new drainage system be provided prior to development of the housing commencing.

SEPA could not take any action directly against the businesses at Fenton Barns as they have no statutory control over those businesses. The only action SEPA can take is against the responsible person, Keith Chalmers-Watson.

Gullane Area Community Council and a number of the objectors are not satisfied that the applicant has explored fully various alternatives in terms of the sewerage system. In other words, they suggest that there may be

other, less expensive, solutions to the current drainage problems at Fenton Barns.

This matter has been taken up with SEPA, who advise that “it would be up to the applicant to approach SEPA with alternative drainage proposals which we would assess on a case by case basis, it is impossible to say if we would object or not (to an alternative drainage solution)... SEPA do not act as technical consultants with the onus being on the operator to demonstrate how they intend to meet current and future standards”. Thus, SEPA are not in a position to consider the proposals other than on their technical merit. On the basis of this response, it cannot be concluded that the drainage system now proposed by the applicant is the only viable solution to the current drainage problems at Fenton Barns.

Drawing these matters together, the proposed employment land and up to 80 houses constitute a significant departure from the development plan. The proposed new housing would more than double the residential size of Fenton Barns and would effectively create a significant new settlement in the East Lothian countryside. As the Reporter in the previous Fenton Barns appeals concluded, it could act as a precedent and make it more difficult for the Council to refuse similar applications in the future. There is no justifiable need for the proposed new employment land, which, if developed, would result in a significant loss of prime agricultural land.

Against this, it is clear that the existing drainage system at Fenton Barns requires upgrading. SEPA are satisfied that the proposed new system would result in an acceptable drainage solution for Fenton Barns. On the other hand, it cannot be concluded that the drainage system now proposed by the applicant is the only viable solution to the current drainage problems at Fenton Barns.

In conclusion, the proposed housing and employment land are significantly contrary to the development plan. It cannot be concluded that the drainage system now proposed by the applicant is the only viable solution to the current drainage problems at Fenton Barns.

Even if it were, the benefits of the proposed new drainage scheme do not outweigh the provisions of the development plan. Other material considerations, including the contribution that the 80 houses would make towards the shortfall in the effective housing land supply of East Lothian, do not justify a departure of the scale proposed. It is therefore recommended that planning permission in principle be refused for the reasons set out in section 2 of this report.

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 Planning application 11/01109/PPM– Planning permission in principle for employment land, drainage works and enabling residential development at Fenton Barns, North Berwick
7.2 Adopted East Lothian Local Plan 2008
7.3 Approved South East Scotland Strategic Development Plan (SESplan)
7.4 Scottish Planning Policy: February 2010
7.5 Appeal Decision Notice Ref: P-PPA-210-2014

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DATE	03 September 2013

**NOTE TO COUNCIL OF PRESENTATIONS MADE TO THE
PLANNING COMMITTEE ON 1 OCTOBER 2013 IN RESPECT
OF THE 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

PRESENTATION BY ROBIN MATTHEW OF PPCA LTD (AGENT)

Planning permission in principle sought for employment land, drainage works and residential development.

Key issues

The enabling housing development is essential to cover 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 provided by local businesses and allow for new jobs. New employment land could be passed over to the Council in recognition of the shortfall of employment land in this area. This proposal is materially different to the earlier application; this application promotes new employment land as well as drainage works for the new and existing employment land. The new drainage system would cost £6 million. Stated that following detailed discussions with the Council and the District Valuer 80 dwellings were now regarded sufficient, this is a significant reduction from 100 units proposed in 2011. Scale of development proposed is minimum required to fund the new sewage treatment works. Discussions had already taken place with various developers.

Sewage treatment works

Stated that the consequence of refusal of the application would be serious repercussions for the sewage treatment works. SEPA test the system against various criteria, consistent failings since beginning of 2012. He outlined the technical tests and outcomes. He presented photographs showing the scale of the problem. Stated that given the age and condition of the existing system the treatment works had to be closed. SEPA had the option to prosecute the applicant, who is the licence holder. The applicant indicated he would not appeal a refusal of planning permission; however if the application is refused he intends to take legal action against the owners of Monaghan Mushrooms and Browns Food Group to stop them discharging into the system.

Conclusion

He would argue that the application was not contrary to Policy DCI. This was an unique circumstance, there was no precedent in planning law. This application has to be looked at as a solution for Fenton Barns and on that basis he would request that planning permission in principle is granted.

Questions from Members

- Q Are Monaghan Mushrooms and Browns Food Group the main polluters? Percentages? What measures taken?
- A Yes, main polluters, no percentage breakdown available. Highlighted those businesses because they have points on site that allows them to be more closely monitored.
- Q Should planning permission be refused would all users be disconnected from the drainage system?
- A Staged approach. Monaghan Mushrooms and Browns Food Group main problem, licence holder would disconnect them first and then look, with SEPA, at a way to protect the other businesses and residents.

Q Separation of ground water and foul waste not possible? Heavy rainfall, should surface water drainage be routed to a SUDS pond, would this prevent the drainage system from being overloaded?

A No. There is no technical solution that would meet SEPA's legislative standards, no way of redirecting outputs. The treatment works were not built to take industrial effluent.

Q Suggesting that SEPA's limits have been exceeded but also linking this to flooding – 2 issues or same issue?

A SEPA tests the system every 3/4 months, their limits exceeded every time. Flooding only makes it worse but even in a dry climate levels would still be exceeded.

Q Enabling development has no provision for affordable housing, is this correct?

A Yes. Minimum number of dwellings proposed means exempt from obligation to provide affordable housing.

Q Since 2009 have owners stopped new customers coming on to the drainage system?

A There are limitations on the system but the licence holder has not prevented new businesses from occupying properties at Fenton Barns.

Q Re the above point, isn't there a new business now in operation at Fenton Barns?

A The only new business development at Fenton Barns since 2009 has been a nursery, which, at SEPA's insistence, has a septic tank.

Q Has the applicant identified a local separate answer for the waste produced by Monaghan Mushrooms and Browns Food Group?

A There has been additional equipment put in to both their businesses to reduce the effluent produced. The licence holder has no legal obligation to force unit holders to make such improvements.

Post meeting note

The information on this page has been supplied by the applicant (Keith Chalmers-Watson) in response to questions raised at the Pre-determination Hearing and is provided as further information for Members

1. The rainfall in 2012 was 36 inches against an average of 24 inches. This exacerbated the flooding of the STW. Undoubtedly, part of the drainage plan is to remove as much surface water as possible prior to a DIA being carried out. This will however have the effect of increasing the concentration of effluent rather than diluting it. The flooding element of the problem would be immediately reduced if the surface water was piped directly to the West Peffer.
2. Brown Brothers have installed a DAF unit which is capable of reducing BOD to 500 (human level) and easily handled at the STW. I have just had the result of a sample taken from the Brown Brothers factory on 24th September which had a BOD of 1466. The DAF unit is being incorrectly managed and I am unable to take any action against BB.
3. Monaghan Mushrooms are presently installing a filter unit which will reduce the suspended solid fraction to a level which the STW can handle. If it is managed properly.
4. The new build referred to was the Nursery and this was only approved provided it had a completely separate septic tank / soak-away system installed. The warehouse under construction is a replacement of an existing building on the same footprint, and largely funded by insurance.
5. Up until March 1996, the STW was administered by FRPB, a benign organisation. In 1990 nine samples failed. After 1996, SEPA became responsible and had considerably more powers to prosecute.
6. Alternatives to the proposal were fully considered 5 years ago:
 - a. Pump effluent to North Berwick - would cost 3 times the cost of pumping to the Gullane STW and was discarded.
 - b. Replace the existing works which would cost millions of pounds and SEPA would reduce the discharge consent levels.
 - c. No other alternative.
7. I resented enormously the claim that the FB Estate has been mismanaged. We have more than 100 business tenants and 400 jobs in the catchment area.

PRESENTATIONS AGAINST THE APPLICATION

MARTIN WHITE (Resident of West Fenton)

Main points

- 2007 applicant signed joint marketing agreement with Edinmore, property speculators
- 2008 URS on board, one of the world's leading energy companies, not appointed to look at sewage issue but to assist in enabling new development
- 2009 first planning application lodged, would have expected SEPAs measurements of downstream water to show decline but did not
- Businesses would have to pay full Scottish Water charges if new system adopted, not surprising little interest from these businesses
- If URS been given an open brief other options may have been available, e.g. other mushroom farms recycle 100% of their waste water

Summary

This proposal is the wrong answer for the area and is at odds with planning policies. The area is rural and agricultural.

DAVE HOLLOWAY (Dirleton Village Association)

DVA objects to this proposal on the grounds that it contravenes the development plan and the development, if granted, has no local infrastructure to support it.

Focus on sewage proposal

(Informed Members previously employed by SEPA & Forth River Purification Board)

- As SEPA's former manager for the Lothians he is well aware of the sewage treatment works at Fenton Barns and its past discharges
- Drainage Strategy report (DSR) focused on most expensive option and does not consider other available options
- All costs and benefits not outlined in DSR
- Mr Holloway has reviewed the last 5 years of water quality
- Current plant capable of meeting SEPA's requirements, in dry weather
- As mentioned in DSR plant is directly affected by wet weather
- DSR correctly identified separation of flows as first step – would contend that this is the only step required, with this, SEPA's licence requirements could be met
- Other options available, all significantly cheaper than the new pump system proposed
- Once a pump system is adopted by Scottish Water all businesses and households would be liable for charges, there could be huge cost implications for the 2 largest businesses

Summary

Proposal inappropriate – wrong scale, wrong place, unnecessary, significant change to development plan and culpable threat to employment.

Questions from Members

- Q If the treatment works could be adapted to the levels required, would new businesses still be possible at Fenton Barns?
- A Businesses currently on site are 1/2 man businesses mainly and only have dry processes so adding in another business like these would not be an issue. Problem only if new businesses had to process waters into the system. All businesses subject to trade effluent controls.
-

TOM DRYSDALE (Gullane Area Community Council)

This application represents inappropriate use of the planning system. Background to the application was applicant's failure to invest appropriately over time in what has consequently become a haphazard drainage system subject to repeated failure.

Employment land

- If jobs are created will not be from the local area
- Vast majority of available land is in the Musselburgh area and A1 corridor – no shortage of available space there, businesses should be encouraged where there is available space and accessible workforce
- If application is approved a full economic impact analysis would be required

Residential element of application

- Reasons given by Reporter in dismissing previous application at appeal apply equally to this application
- Application for housing premature
- Already significant flow of new housing sites in this coastal ward
 - 120 at Gilsland
 - 420 at Mains Farm (potentially, next agenda item)
 - 140 at Ferrygate (now refused on appeal by Scottish Ministers)
 - 60 at Archerfield
- Concerns about the scale and market position of the proposed housing – large houses, not affordable houses, not meeting local housing needs

Transport issues

- Junction on coast road at Dirleton Toll is hazardous, surprised no objection by the Council's Transportation service
- No footpath or cycle path
- Minimum public transport provision on this route
- No mention of any of these factors in proposals
- Parking available at Drem station is insufficient for current needs

Education

- Present schools at capacity
- Extension to Dirleton Primary School will increase the roll from 75 to 100 but this will only deal with demand already in the system

Summary

The main economic drivers in the coastal ward are agriculture, culture and tourism. This application could strike at the heart of this; to allow this application would be a serious mistake. The Council's Policy and Projects Manager recommends refusal of this application; the Community Council agree.

DAVID CAMPBELL (AHSS East Lothian Cases Panel)

AHSS objects in principle to this application.

Focus on heritage aspect

- Very interesting site, containing some remaining airfield buildings from WW2
- The 3 conservation villages of Dirleton, Drem and Athelstaneford and the nearby battlefield would be compromised by these proposals
- Proposal would change the character of this very sensitive area
- The proposal would in effect create a new village

Summary

AHSS not simply opposed to any development in principle. The Society sympathises with the pressure the Council is under from the Scottish Government and others to bring forward employment and housing land but the Council has policies in place regarding future development and should adhere to these. AHSS objects to this application and urges refusal.