

PLANNING COMMITTEE

1 OCTOBER 2013

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**MINUTES OF THE MEETING OF THE
PLANNING COMMITTEE**

TUESDAY 3 SEPTEMBER 2013
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON

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Committee Members Present:

Councillor N Hampshire (Convener)
Councillor D Berry
Provost L Broun-Lindsay
Councillor A Forrest
Councillor J Gillies
Councillor J Goodfellow
Councillor D Grant
Councillor W Innes
Councillor P MacKenzie
Councillor P McLennan
Councillor J McMillan
Councillor J McNeil
Councillor J Williamson

Council Officials Present:

Mr R Jennings, Head of Housing and Environment
Ms M Ferguson, Corporate Legal Adviser
Mr I McFarlane, Service Manager, Development Management
Mr K Dingwall, Principal Planner
Ms C Molloy, Senior Solicitor
Mr D Irving, Planner
Ms S Greaves, Planner
Mr G Talac, Transportation Planning Officer

Clerk:

Ms A Smith

Visitors Present:

Item 1 – Mr Marr, Mr Thomas
Item 2 – Mr Clowes, Mr Beck, Mr Hodge
Item 3 – Mr Scott
Item 4 – Mr Dunlop, Mr Laing
Item 5 – Mr Stewart

Apologies:

Councillor T Day
Councillor T Trotter
Councillor M Veitch

Declarations of Interest:

Item 3 – Provost Broun-Lindsay indicated he would leave the Chamber for this item due to a perceived conflict of interest.

Item 4 – Councillor Gillies advised he was a member of the Co-operative Regional Board so would leave the Chamber for this item.

Item 5 – Councillor Berry declared an interest in relation to the operation of his own business.

1. PLANNING APPLICATION NO. 13/00105/P: CHANGE OF USE OF AGRICULTURAL LAND AND PART CHANGE OF USE OF YARD (CLASS 4 USE) FOR USE AS 2 INDIVIDUAL PERMANENT GYPSY TRAVELLER PITCHES (3 CARAVANS PER PITCH), ALTERATIONS AND PART CHANGE OF USE OF BUILDING IN CLASS 4 USE TO SHOWER/TOILET FACILITY, SITING OF 2 UTILITY UNITS, FORMATION OF RAISED DECKING/HARDSTANDING AREAS, ERECTION OF FENCING AND GATES (PART RETROSPECTIVE) AT 8A WEST GARLETON HOLDINGS, HADDINGTON

A report had been submitted in relation to Planning Application No. 13/00105/P. The Service Manager, Development Management, Iain McFarlane, presented the report, summarising the key points. The proposed decision set out in the report was to grant consent.

In response to questions Mr McFarlane clarified matters in relation to the objections, the septic tank and SEPA requirements. He advised that the houses of West Garleton were not designated as a settlement in the East Lothian Local Plan 2008 (ELLP). He confirmed the Council shared a gypsy/traveller site at another location with Midlothian Council. He stated there was no specific planning policy relating to the provision of gypsy/traveller sites within the ELLP.

Mr Marr, of Forbes Marr Architects, agent for the applicants, addressed the Committee. He indicated that the ELLP, community planning and local housing strategy all supported the right of people to be housed regardless of ethnic status. The applicants wished to continue their chosen lifestyle but to do this locked into a community. This family had been resident in East Lothian for some time. They wished to have private, secure pitches on their own land. The Scottish Government supported private permanent pitches to meet the needs of gypsy/travellers, a recognised ethnic group. The proposal was consistent with relevant policies. In relation to the Structure Plan 2015 the proposal was consistent with the development strategy to promote a more inclusive society. Since 2003 Scottish Planning Policy (SPP) had required local authorities to identify locations that would be suitable for gypsy/traveller sites; East Lothian Council had yet to do this.

Mr Marr clarified issues regarding utility facilities, touring vans, number of caravans left on site if others were touring, parking facilities and self declaration.

Mr Thomas, of apt planning & development, spoke against the application on behalf of a group of local residents. He remarked that the term gypsy/traveller could be emotive but the residents wished to stress they had nothing against the applicants personally. The proposal for a permanent residence on site was contrary to Policy DC1 of the ELLP. There had been previous attempts to develop this site but none achieved; historically this was an agricultural plot. He queried the permitted class 4 use. He made reference to the road/junction issues. Despite West Garleton Holdings

not being a defined settlement the Council could not ignore the impact of development on residents. The site was opposite residential properties. He stated that planning permission would not have been secured for a house on this site and this application for permanent pitches should therefore not be granted.

Mr McFarlane clarified that there was provision in the Caravan Act for sites to operate for 5 caravans without a licence; he added that the Council's enforcement team was not currently pursuing any enforcement action in respect of this site.

Local Member Councillor McMillan stated the key issue was the absence of an appropriate Council policy. He referred to comments made by Mr Marr regarding the requirement by local authorities to look at the needs of this ethnic group. In relation to the policy implications he felt more time was needed to look at this issue in more detail. He made reference to the need to respect the culture of this ethnic group. In relation to this individual application however there were problems with this site, particularly the road junction. He felt this was not an appropriate site for 2 reasons - access and precedent.

Local Member Provost Broun-Lindsay agreed it was a matter of concern that the Council did not have a policy in the ELLP that addressed this issue. However, he believed that this application should be determined today. He appreciated the need to be sympathetic to SPP guidance. He understood why the objector wished to invoke Policy DC1; unfortunately mobile homes were excluded from this policy. He did share his colleague's concern about the road/speed of traffic/agricultural vehicles. He doubted however that this was sufficient reason to refuse the application. On balance he would be supporting the officer's recommendation to grant permission.

The Convener stated the site was in operation; the layout had been improved and facilities were going to be provided. He made reference to the lack of a policy to address these types of small private sites. He stated there was very little reason for refusal. However, due to concerns raised by Councillor McMillan, he proposed that the Committee should grant consent but only on a 5 year basis - this would give the Council time to monitor the impact and operation of this site and also time to introduce a policy to address any matters that arose. This would be the first privately owned and operated gypsy/traveller site in East Lothian; if the applicant operated the site well then there should be no issues at the reapplication stage.

Councillor Innes indicated that if a time limited permission was competent, he would second this proposal.

In response to a question from Councillor Currie, Mr McFarlane advised that if temporary permission was granted then a fresh application would be required at the end of the specified period. Councillor Currie expressed concern; the Committee should deal with applications in accordance with current policies, to do otherwise would give the possibility of appeal.

Councillor Berry, referring to his many years on this Committee, remarked that he had never been aware of a temporary planning consent being given before.

Mr McFarlane indicated there was no officer recommendation for temporary consent. He informed Members that temporary consent was given occasionally, for storage provision for example; the principle of a temporary consent was not unusual in the planning system. In response to an earlier point he advised that any condition on a grant of planning permission could be appealed. If the decision on an application had been taken at Committee level then the appeal would be to the Scottish Government.

The Convener reiterated that he was trying to ensure the Council set the right consent for this site; this was the first application of this kind before this Committee. The applicant would be able to appeal the condition. He moved that his proposal, to grant planning permission for a period of 5 years, be put to the vote.

Decision

The recommendation that planning permission should be granted, for a period of 5 years, was put to the vote and received **13 votes for** and **none against**; there were no abstentions. The Committee agreed to grant planning permission subject to the following conditions:

- 1 Unless otherwise approved by the Planning Authority the use of the site for Gypsy/Traveller pitches as hereby approved shall cease no later than five years after the date of this planning permission, at the end of which the caravans, utility units and raised decking areas hereby approved shall be removed entirely from the site and the use of the site and the land of the site restored to its former condition, to the satisfaction of the Planning Authority.

Reason:

To enable the Planning Authority to control the long-term use of the site, in the interests of the amenity of the area.

- 2 Each of the two individual permanent gypsy/traveller pitches hereby approved shall only be occupied by a single declared gypsy/traveller household.

Reason:

To restrict the extent of use of the pitches to that applied for and to reflect the specialised nature of the gypsy/traveller site proposal.

- 3 The access arrangements and the parking and turning areas all as hereby approved, shall be laid out as shown on the docketed drawing titled 'PLAN 2 LAYOUT PLAN' and thereafter shall be retained for such uses.

Reason:

In the interests of road safety.

- 4 A scheme of landscape planting shall be carried out, details of which shall be submitted to and approved by the Planning Authority. The scheme shall provide details of: the height and slopes of any mounding on or recontouring of, the site; tree and shrub sizes, species, siting, planting distances and a programme of planting. The details shall generally be in accordance with that shown on the docketed 'PLAN 2 LAYOUT PLAN' drawing and shall include 3 trees to be planted on the western boundary of the site adjacent to the approved pitch 2 and a mixed species of hedging containing evergreen species to give year round screening. The scheme shall include indications of all existing trees and hedgerows on the land.

All planting comprised in the approved details of landscaping shall be carried out in the next planting and seeding season following the grant of this planning permission. In the event that any trees or plants are removed or become seriously damaged or diseased within a period of 5 years following planting they 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 implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

2. **PLANNING APPLICATION NO. 13/00499/P: ERECTION OF 1 HOUSE, FENCING AND GATE AND FORMATION OF VEHICULAR ACCESS AND TURNING AREA AT LAND ADJACENT TO POST OFFICE, HUMBIE**

A report had been submitted in relation to Planning Application No. 13/00499/P. Mr McFarlane reported that a petition had been hand delivered at the site visit. He informed Members that further to a point made at the site visit as to the line of the west roadside boundary of the site, officers had measured the site. The results

showed a discrepancy in the site layout plan drawn up by the applicant's agent. The agent had verbally confirmed that he did not survey the site. Mr McFarlane advised that, as measured, the site would reduce by some 10 square metres. He indicated that no part of the site as measured was outwith the red line boundary of the application site. The development as proposed could still be carried out subject to a revision to the access arrangements and west boundary frontage. The Transportation service had given a view that the access arrangements could be made satisfactory subject to a condition controlling the boundary treatment of this frontage to maintain access. This would also require amendment of condition 2 as set out in the report which required the implementation of the approved access arrangements. So amended, there would still be sufficient space to retain for a footpath in relation to the Council's core path objectives. The proposed decision set out in the report was to grant consent. Mr McFarlane informed Members that the alternative means of addressing this issue would be to continue the application pending submission of revised plans or to seek a new submission.

Mr McFarlane then responded to questions regarding the original application in 2008, various parking matters and related advice from Transportation. He clarified that this application was not directly related to the earlier 2008 application; this application was a full application in its own right. The earlier application did determine the principle of having a house on site. This new application however had to be considered on its merit.

Mr Clowes, the applicant, addressed the Committee. He informed Members he had respected the advice and guidance from his architect and Planning officers and had complied with legal and technical processes. The site was not a public parking area. Permission had been granted previously for a house on this plot. This site had been freely available and on the market for a long time; his offer had been accepted - he understood there had been no other offers. The design and structure met all the required standards. They had lived in East Lothian for many years; they wished to be part of this local community. The application was recommended for approval by Planning officers and he hoped the Committee would grant permission.

Mr Beck spoke against the application on behalf of Humble, East and West Saltoun and Bolton Community Council. The Community Council considered that the report recommendation was flawed. The proposal went against the Scottish Government's planning principles; the role of the planning system was to ensure a development was in the public interest in the long term and planning decisions should help to increase economic viability. He referred to the 2008 application which had been granted consent, stating that aspects of this new proposal differed considerably. The Community Council also had concerns about the volume and speed of traffic on the B6368. If this application was approved there would only be 2 parking spaces left outside the shop. Members should refuse this application; building on this site would prioritise the application over the needs of the community.

Mr Beck answered questions regarding any objection to the original application and consideration of a community purchase of the site.

In response to questions from Members, Grant Talac, Transportation Planning Officer, clarified the assessment/position with regard to parking.

Mr Hodge, adjoining land owner to the application site, spoke against the application. He supported all comments made by Mr Beck. The plans submitted by the applicant were flawed. He made reference to the re-measurement that had to be done by Planning officers. The proposal was for a house, parking and turning area; the size of

the site was not sufficient for this. The proposal would prejudice the provision of a footpath. SEPA was aware the village septic tank was at its peak. He also made reference to the proposed core footpath which would cross his land. The local community objected strongly to this planning application, it was out of character for the village and the area; there were other sites better suited.

Local Member Provost Broun-Lindsay stated there was no question this was a very tight site. He made reference to the conflict between the community and the landowner regarding usage of the site. He remarked that the community had an opportunity earlier to purchase the site; they chose not to do so and were now trying to stymie what was a legitimate use for this land. Although communities needed car parking facilities, and the Council worked with communities where possible, he was not sure that this was sufficient reason to refuse the application when Planning officers recommended approval. He made reference to the 2008 application. He noted the proposed house would be set far enough back to allow a turning area. The ad hoc parking bays were there because the shop owner had decided not to use this area as garden ground. On balance, he would be supporting the officer's recommendation; he realised that this would be upsetting to the community.

Local Member Councillor McMillan indicated this was possibly the most difficult application to come before this Committee. He had the greatest respect for the work of the Community Council who had made a strong case for the future of the community and felt that this house was not appropriate. This was not an issue about the house but an issue regarding the community and its facilities, including parking provision. He noted that the applicants had gone through the appropriate planning processes and Planning officers stated this was an acceptable development of the site. On balance, and after great consideration, he would be supporting the report recommendation and hoped the community could find a way to resolve the parking issues, which may require the assistance of the Council.

Councillor MacKenzie, in relation to parking, made reference to the comments from the Transportation officer. He remarked that in Longniddry there were dedicated parking spaces but people parked outside the shops and always would. He would, in accordance with the report recommendation, be supporting the application.

Councillor Innes stated that many of the arguments put forward by the Community Council were not valid, they were 5 years out of date; the principle of housing on this site had been established. He remarked that if the Committee went against the report recommendation and refused the application and it then went to appeal the Council would be derided by the Reporter. With regard to the issues Mr McFarlane had identified, he was satisfied that conditions would be in place to address these. He would be supporting the officer's recommendation, there was no valid reason to refuse the application - he urged other Members to do likewise.

Councillor Berry referred to planning legislation; he pointed out that the proposal had a pavement in the middle of a road; this would inhibit the B6368 considerably - this was a well used road, access was crucial due to limited visibility. It would be far safer if the access was set back from the road. This application was now apparently 20 square metres less once the measurements had been corrected; Members were being asked to support a house which was a fifth larger on a site which was actually smaller. 67 people had signed the petition. Humble only had one facility, the shop, which needed this space; access to the shop would be blocked by the new house. He queried why the Council would insist on a path but not on parking provision. The application should be refused because the community wanted it refused; Members

would be abdicating responsibility if this community's concern was ignored. He would not be supporting the recommendation.

Councillor Currie commented that it was the role of the Committee to represent the whole community of East Lothian, not just one particular area of the county. He agreed with Councillor Innes's comments about the potential appeal position if the application was refused. This was private land; the owner was entitled to sell, the applicant entitled to buy. All objectors, including the petitioners, seemed to be objecting not just to this house but to the existence of any house at all on this site. These objections were too late; the decision to grant permission for a house on this site had been taken in 2008. The only decision the Committee could take therefore was to approve the application. He reluctantly agreed with the Planning officer's recommendation.

The Convener referred to issues regarding the size of the site which had needed to be addressed by Planning officers. There was also the issue in relation to encroachment of the carriageway; he queried whether this could be controlled by an appropriately worded condition.

Mr McFarlane advised that condition 1, which related to final site setting out details, applied as standard. There would be a new condition 2 regarding access arrangements. There would be a new condition 3 regarding enclosure at the west boundary of site. The conditions as detailed in the report would be renumbered from condition 2 onwards, with condition 2 becoming condition 4 and so forth.

The Convener moved that the recommendation to grant planning permission, taking into account the amendment of conditions as outlined by Mr McFarlane, be put to the vote.

Councillor Berry opposed this recommendation; this was not seconded.

Decision

The recommendation that planning permission should be granted as outlined above was put to the vote and received **12 votes for** and **1 vote against**; there were no abstentions. Councillor Berry asked that his dissent be recorded. The Committee agreed to grant planning permission subject to the following conditions:

- 1 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.

- 2 Prior to the commencement of development of the house hereby approved, revised details of the access arrangements based on an accurate site survey shall be submitted to and approved by the Planning Authority.

Reason:

In the interests of road safety.

- 3 Unless otherwise approved by the Planning Authority, no fence, wall, gate or other means of enclosure shall be erected along the west boundary of the site other than as approved in terms of condition 2 of this planning permission.

Reason:

In the interests of road safety.

- 4 Prior to the house hereby approved being brought into use the proposed vehicle access, turning and parking arrangements shall be laid out as shown in docketed drawing no. CH_PL_003/Rev G and thereafter the access, turning and parking areas shall be retained for such uses.

The vehicular access with the B6137 public road shall have a minimum visibility splay of at least 2.0 metres by 90.0 metres in both directions so that no obstruction lies within it above a height of 1.05 metres measured from the adjacent road surface, and each of the two visibility splays shall be maintained thereafter.

No use shall be made of the new vehicular access driveway with the B6137 public road unless the first 2 metres of ground over the full width of the access and measured from the back edge of the adjacent B6137 public road is hard surfaced to prevent loose materials entering the public road, and thereafter shall be retained as such.

Any gates to be installed at the new vehicular access hereby approved shall only open inwards into the application site.

Reason:

In the interests of road safety.

- 5 A Construction Traffic Method Statement designed to minimise the impact of the movements of construction traffic to and from the application site shall be submitted to and approved by the Planning Authority prior to the commencement of development on the site and shall include hours of construction work and any recommended mitigation measures for the control of construction traffic, which shall, as may be applicable, be implemented prior to the commencement of development and during the period of development works being carried out on the application site.

Reason:

To minimise the impact of construction traffic in the interests of road and pedestrian safety in the locality.

- 6 A schedule and samples of the materials to be used as external finishes of the roof and walls of the house, including the base course, timber feature panels, quoins and window and doors bands, and the new 600mm high rendered boundary wall hereby approved shall be submitted to and approved by the Planning Authority prior to their use in the development and thereafter the materials used shall accord with the samples so approved.

If the timber gates, gate posts and fencing hereby approved to be erected on the boundaries of the site are to be painted or stained a colour or finished in a timber preservative, a sample(s) of that paint, stain or timber preservative shall be submitted to and approved in advance in writing by the Planning Authority, and the colour of the paint, stain or timber preservative applied to the gates, gate posts and fencing shall accord with the sample(s) so approved.

Samples of the materials to be used to surface the hardstanding areas to be used as paved patio, footpaths and vehicular parking and turning areas shall be submitted to and approved by the Planning Authority prior to their use in the development and thereafter the materials used shall accord with the samples so approved.

Reason:

To ensure that the external finishes are appropriate in the interest of safeguarding the character and appearance of the area.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992, as amended by The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, or any subsequent

Order amending, revoking or re-enacting that Order, no windows or other glazed openings shall be formed at first floor level within the south elevation of the house hereby approved, unless otherwise approved by the Planning Authority.

Reason:

To safeguard the privacy and amenity of the neighbouring residential properties to the south.

- 8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992, as amended by The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, or any subsequent Order amending, revoking or re-enacting that Order, no windows or other glazed openings shall be formed at ground floor level within the south elevation of the house hereby approved unless the part of the south boundary of the site that is coterminous with the south elevation of the house is enclosed by a solid means of enclosure of a minimum height of 1.8 metres, unless otherwise approved by the Planning Authority.

Reason:

To safeguard the privacy and amenity of the neighbouring residential properties to the south.

- 9 The house hereby approved shall not be occupied until the 1.8 metres high timber screen fencing to be erected on part of the south boundary of the site and the 1.8 metres high timber screen fencing and gate to be erected around the boundaries of the rear garden of the house, all as shown on docketed drawing no. CH_PL_003/Rev G have been erected. Thereafter those boundary enclosures shall be retained in situ at those heights unless otherwise approved by the Planning Authority.

Reason:

To safeguard the privacy and amenity of the occupiers of the neighbouring residential properties to the south and the privacy and amenity of the occupiers of the proposed house.

Sederunt – The Provost left the Chamber

3. PLANNING APPLICATION NO. 13/00211/P: ERECTION OF WIND TURBINE AND ASSOCIATED WORKS AT QUEEN MARGARET UNIVERSITY, MUSSELBURGH

A report had been submitted in relation to Planning Application No. 13/00211/P. Mr McFarlane presented the report, summarising the key points. The proposed decision set out in the report was to refuse the application.

Mr McFarlane and Daryth Irvine, Planner, responded to questions about negotiation with the applicant/agent regarding a smaller wind turbine and Typology B and C wind turbines.

Mr Scott, Director of Campus Services at Queen Margaret University (QMU), addressed the Committee. He outlined the background, stating that QMU had been looking at the possibility of having a wind turbine on site since 2004. The proposed location for the wind turbine was the only one viable on site; the proposed size was the only size viable. Extensive pre-application discussion had taken place; there was considerable support for this proposal. QMU was a prominent university in relation to sustainable development; it was well recognised and had won awards for sustainability. He appreciated that wind turbines were emotive; he advised that other alternatives had been investigated. He highlighted the educational benefits and indicated that staff and students were keen to progress QMU's sustainable aims.

Mr Scott and Mr Crawford of Locogen, the agents, responded to questions regarding the height and location of the proposed wind turbine, whether alterations to the proposal had been considered to comply with the Council's guidance, the anticipated financial benefit and details regarding the community consultation.

Local Member Councillor Williamson noted that no objections had been received from any of the statutory consultees. The conclusion of the Screening Opinion stated that there was no requirement for an Environmental Impact Assessment. There had been no objections locally; no-one had approached him with concerns about this application. As stated by Mr Scott, QMU had won many plaudits for sustainability issues; this proposal was a natural progression for QMU. In his opinion the QMU building itself was more visually intrusive than a wind turbine. He stated that even though the proposed wind turbine was classified as Typology B, the purpose and circumstances merited support. He would be supporting the application.

Local Member Councillor McNeil made reference to when university status had been granted to QMU and his delight that East Lothian had a university in its locality. In relation to the proposal he indicated he had received one representation at his surgery. He appreciated QMU's sustainable agenda but agreed with the officer's recommendation to refuse; the proposal did not accord with the Council's policy in relation to wind turbines. He appreciated that the applicant may choose to take this to appeal to Scottish Ministers if the Committee's decision was for refusal.

Local Member Councillor Currie stated the relocation of QMU to East Lothian was of huge benefit to the county and Musselburgh. He praised QMU's record in relation to sustainability issues. With regard to this application, the major issue was the visual impact. He indicated that the size of the QMU building did have an impact when it was built. In relation to the landscape's visual clutter he felt the addition of one wind turbine would not be unduly harmful. He appreciated the Council's policies on wind turbines however he also appreciated that the applicant may go to the Scottish Government if the application was refused. He would be supporting the application.

Councillor Innes remarked that QMU was one of the Council's most important partners. However, the Council had policies in place in relation to wind turbines, approved by Members, which had to be adhered to. He would be supporting the officer's recommendation to refuse this application.

Councillor Berry agreed that QMU was a splendid addition to East Lothian. He expressed regret that this application was before the Planning Committee. He remarked that by his calculations the proposed wind turbine would be the second highest structure in the county. He appreciated the technical argument put forward however he would be supporting, regrettably, the officer's recommendation.

Councillor Goodfellow remarked that if this application was refused and subsequently appealed successfully, there may be 2 wind turbines this height in the county, as an earlier application at West Fenton refused by this Committee had been overturned at appeal by the Scottish Government. He stressed that the Council had a clear policy on wind turbines; it was up to Members of this Committee to support this policy. He would be supporting the officer's recommendation for refusal.

Councillor Grant indicated he would also be supporting the officer's recommendation. Wind turbine applications were difficult to deal with however Members had asked for a policy to address these issues; this was now in place and must be adhered to.

The Convener brought the discussion to a close. He disagreed with an earlier comment; he thought QMU was an attractive building, in an attractive location - locating a wind turbine on this campus would be entirely inappropriate. He stressed that the Council's wind turbine policy had to be adhered to. He expressed concern about the landscape of East Lothian, particularly the lowland area; which now had a number of wind turbines due to the appeals process where the Scottish Government

had overturned decisions by this Committee. He would be supporting the recommendation to refuse planning permission as set out in the report and moved that this be put to the vote.

Decision

The recommendation that planning permission should be refused was put to the vote and received **9 votes for** and **3 votes against**; there were no abstentions. The Committee agreed to refuse to grant planning permission for the following reasons:

- 1 The proposed wind turbine is contrary to the Council's East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011) which states that a Typology B wind turbine cannot be accommodated within the 'Mayfield/Tranent Ridge' landscape character area.
- 2 The proposed wind turbine due to its positioning, form, height and scale would in many views of it appear as a highly exposed and obtrusive skyline feature and in its relationship with the existing electricity pylons would harmfully amount to visual clutter on the landscape. Such effects would harmfully detract from the landscape character of the 'Mayfield/Tranent Ridge' landscape character area. Accordingly, the proposed wind turbine is contrary to Policy NRG3 and of the adopted East Lothian Local Plan 2008, Scottish Planning Policy: February 2010, the Scottish Government web based renewables advice entitled "Onshore Wind Turbines" and the key considerations of landscape impact of Planning Guidance for Lowland Wind Turbines: June 2013.

Sederunt – Councillor Gillies left the Chamber; the Provost returned

4. PLANNING APPLICATION NO. 13/00001/P: ERECTION OF A CLASS 1 RETAIL STORE, FORMATION OF VEHICULAR ACCESS, CAR PARKING AND ASSOCIATED WORKS AT TRANMARE HOTEL, TRANENT

A report had been submitted in relation to Planning Application No. 13/00001/P. Mr McFarlane presented the report, summarising the key points. The proposed decision set out in the report was to grant consent.

Mr Dunlop, of D2 Planning, the agents for the applicant, addressed the Committee. He advised Members that the proposal had been through the statutory community consultation. Tranent Community Council was supportive in principle. He referred to the retail statement submitted with the planning application, highlighting a number of benefits of the proposal including regeneration of a brownfield site, addressing quantitative and qualitative retail deficiencies and the creation of 100 jobs. He informed Members that the applicant was in discussion with a number of national retailers. If this application was approved the intention was to submit the building warrant in early 2014 and for the store to be open before the end of 2014.

Mr Laing of GL Hearn spoke against the application on behalf of clients The Co-operative Group. The Co-operative was a significant stakeholder in Tranent town centre and had concerns about the impact of this proposal on the town centre. A store of the scale and nature proposed would not be in accordance with the character of the town; it would become the dominant retail store. He disputed several statements in the applicant's retail statement and also in the retail assessment commissioned by the Council. He drew comparisons with the retail situation in Annan. His clients were not against competition but as a town centre operator they had concerns that this application was contrary to the Development Plan.

Mr Laing responded to a number of questions from Members regarding the Co-operative store. He also responded to questions in relation to aspects of the applicant's retail statement and the Council's commissioned retail assessment.

Local Member Councillor Grant referred to the history of the site and to the significant difference of this proposal to the previous building. He indicated he had not received any serious opposition to this application; many people would welcome more choice of shopping in the town. The Council's independent retail assessment stated that the Co-operative supermarket and the town centre would not be adversely affected. There was nonetheless an element of risk if planning permission was granted. In relation to transport matters he did have concerns about the increase in traffic, particularly in/around Muirpark Terrace. The Tenants and Residents Association had campaigned for added safety measures. The traffic situation would have to be monitored carefully. He would be supporting the application but he did have concerns about the traffic.

Councillor Currie remarked that attempts had been made unsuccessfully to invigorate this site; a derelict site was the worst possible situation. The creation of 100 jobs was an important consideration. The objection by The Co-operative was, in his view, a commercial one. Competition was healthy for local communities. There were around 100 new houses in that area of Tranent; having a store on this site would be particularly good for those people without transport. With regard to traffic, he would have hoped by now for more traffic calming measures to have been in place. He would be supporting the report recommendation to grant planning permission.

The Convener moved that the recommendation to grant planning permission as set out in the report be put to the vote.

Decision

The recommendation that planning permission should be granted was put to the vote and received **12 votes for** and **none against**; there were no abstentions. The Committee agreed to grant planning permission subject to the following conditions:

- 1 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.

- 2 The retail store hereby approved shall have a gross floor area no greater than 1,625 square metres and a net sales floor area no greater than 1,250 square metres. The retail store hereby approved shall not be subdivided to form more than 1 retail unit.

Reason:

In order to retain control over the format of retail development at the site and in the interests of safeguarding the vitality and viability of the retail function of Tranent Town Centre.

- 3 Prior to the commencement of development, details of the proposed site access junction with Haddington Road shall be submitted to and approved by the Planning Authority. The details to be submitted shall be based on the proposed access junction illustrated in docketed drawing no. IMA-11-129-009 Rev B and shall be designed in accordance with the standards set out in

the East Lothian Council Standards for Development Roads and with an independent safety audit of the new junction. The details shall also show provision of a double gully on the eastern side of the new access junction that shall be designed to catch surface water running from east to west down Haddington Road.

The site access junction with Haddington Road shall be formed in accordance with the details so approved and prior to the retail store opening for trade.

Reason:

To ensure that adequate access is available in the interest of highway safety.

- 4 The retail store hereby approved shall not be brought into use unless and until the car parking and manoeuvring areas shown on the docketed site layout plan have been provided.

The car parking and manoeuvring areas as provided shall not be used for any other purpose unless otherwise agreed in writing by the Planning Authority.

Reason:

To ensure that adequate manoeuvring areas and off street car parking facilities are available in the interest of highway safety.

- 5 A Construction Method Statement to minimise the impact of construction activity on the amenity of the area shall be submitted to and approved by the Planning Authority prior to the commencement of development. The Construction Method Statement shall recommend mitigation measures to control noise, dust, construction traffic and shall include hours of construction. The recommendations of the Construction Method Statement shall be implemented prior to the commencement of development.

Reason:

To minimise the impact of construction activity in the interests of the amenity of the area.

- 6 No work shall be carried out on the site unless and until an effective vehicle wheel washing facility has been installed in accordance with details to be submitted to and approved by the Planning Authority prior to its installation. Such facility shall be retained in working order and used such that no vehicle shall leave the site carrying earth and mud in their wheels in such a quantity which causes a nuisance or hazard on the road system in the locality.

Reason

In the interests of road safety.

- 7 A Green Travel Plan to minimise private car trips and to encourage use of alternative modes of transport such as buses, cycling, walking shall be submitted to and approved by the Planning Authority prior to the retail store opening for trade. Additionally the Green Travel Plan shall include details of the measures to be provided, the methods of management, monitoring, review, reporting and duration of the Plan.

The approved Green Travel Plan shall be implemented prior to the first opening of the retail store.

Reason:

In the interests of ensuring sustainable travel patterns in respect of the retail store use.

- 8 Details of the provision of cycle parking within the site shall be submitted to and approved in writing by the Planning Authority prior to the retail store opening for trade. The cycle parking shall be provided within the site at a rate of 1 space for customers and 1 space for employees per 300m² of the gross floor area of the retail store hereby approved. The customer cycle parking shall be in the form of Sheffield cycle racks and staff cycle parking shall be in a lockable area.

The approved cycle parking shall be installed on site prior to the retail store opening for trade.

Reason:

To reduce dependence on the private car in the interest of the amenity of the area.

- 9 Prior to commencement of development details of a recycling point to be provided within the application site shall be submitted to and approved by the Planning Authority.

The recycling point shall be installed in accordance with the details so approved and prior to the retail store opening for trade.

Reason:

To ensure that adequate facilities are provided to ensure compliance with the Council's policies for recycling.

- 10 Prior to any use being made of the retail store hereby approved, the service yard shall be enclosed by a gate and a 3.5 metres high wall, in the position shown for them on the docketed site layout plan. The wall to be erected shall have a superficial mass of 23kgm-2.

The gate and 3.5 metres high wall shall thereafter be retained in place, unless otherwise approved in writing in advance by the Planning Authority.

Reason:

In the interest of safeguarding the amenity of the occupiers of neighbouring residential properties.

- 11 The Rating Level, LArTr, of noise emanating from the service delivery yard when measured 3.5m from the façade of any neighbouring residential property, shall be no more than 5dB (A) above the background noise level, LA90T. All measurements to be made in accordance with BS 4142: 1997 "Method for rating industrial noise affecting mixed residential and industrial areas". The difference between the Rating Level and Background Level can be increased to 10dB where the noise source does not have a tonal element.

Reason:

In the interest of safeguarding the amenity of the occupiers of nearby residential properties.

- 12 Noise associated with the operation of any refrigeration plant and/or equipment shall not exceed Noise Rating curve NR15 at any octave band frequency between the hours of 2300-0700 and Noise Rating curve NR25 at any octave band frequency between the hours of 0700-2300 within any neighbouring residential property. All measurements to be made with windows open at least 50mm.

Reason:

In the interest of safeguarding the amenity of the occupiers of nearby residential properties.

- 13 Prior to the retail store opening for trade details of lighting columns to be installed within the application site shall be submitted to and approved by the Planning Authority and the lighting installed shall accord with the details so approved.

Any lighting columns so approved shall be designed and operated to ensure compliance with the following requirements:

(i) Any lighting columns shall be operated in such a manner that the Upward Light Ratio (ULR) does not exceed 5%;

(ii) Light Trespass (into windows) of both existing residential dwellings and residential dwellings at Pinkie Mains that are approved but not yet built, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 10 between the hours of 0700-2300 and shall not exceed 2 between the hours of 2300-0700; and

(iii) Glare from the lighting columns, measured as Source Intensity, (I), shall not exceed 10,000 cd between the hours of 0700-2300 and shall not exceed 1000 cd between the hours of 2300-0700.

Reason:

To safeguard the amenity of nearby residential properties and the visual amenity of the area.

- 14 All planting, seeding or turfing comprised in the approved details of landscaping shown on the docketed proposed landscaping plan shall be carried out in the first planting and seeding season following the operation of any of the retail store 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.

The approved scheme of landscaping shall not include any spiny or thorny species such as Berberis or Pyracantha.

Reason:

In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area, and to prevent litter from getting caught on spiny or thorny species of shrubs, again in the interests of the amenity of the area.

- 15 Prior to the commencement of development, details of all boundary treatments for the site shall be submitted to and approved by the Planning Authority.

Development shall thereafter be carried out in accordance with the details so approved.

Reason:

To ensure the development is of a satisfactory appearance in the interest of the amenity of the locality.

- 16 Details and samples of the materials and finishes to be used for the walls, roofs, windows and doors of the building shall be submitted for the prior inspection and approval in writing by the Planning Authority .

The development shall be thereafter undertaken in accordance with the details and samples so approved.

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 character and appearance of the area.

- 17 Prior to the commencement of development details of artwork to be provided on the site or at an alternative location away from the site shall be submitted to and approved by the Planning Authority and the artwork as approved shall be provided prior to the retail store being open for trade.

Reason:

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

- 18 Prior to the commencement of development, the intrusive investigation works recommended within the Coal Mining Risk Assessment Report, a copy of which is docketed to this planning permission, shall be fully undertaken.

Any remedial works or mitigation measures identified by the undertaking of the intrusive investigation works shall be undertaken prior to the commencement of development.

Reason:

To protect the public and environment from the coal mining legacy of the application site.

Sederunt – Councillor Gillies returned to the Chamber

5. PLANNING APPLICATION NO. 13/00461/ADV: DISPLAY OF ADVERTISEMENTS (RETROSPECTIVE) AT 26 VICTORIA ROAD, NORTH BERWICK

A report had been submitted in relation to Planning Application No. 13/00461/ADV. Mr McFarlane presented the report, summarising the key points. The proposed decision set out in the report was to refuse the application.

Mr McFarlane responded to questions. He stated that should the application be approved it would be for the standard term of 5 years. He clarified that it was feasible in theory for this term to be altered but he stressed that good reasons would have to be provided to vary the standard term.

Mr Stewart, the applicant, addressed the Committee. He informed Members that The Rocketeer was very successful and popular with both locals and visitors. He stated that to ensure the continuation of this success it was vital to get permission for the signage applied for; these signs were essential to the operation of this business. He asked the Committee to support the application.

In response to questions Mr Stewart indicated that the colour of the sign could be changed, but stressed the need for it to be visible and legible.

Local Member Councillor Goodfellow remarked that it was extremely regrettable that the Committee was dealing again with a retrospective application; this had to be addressed. With regard to this application he acknowledged that Mr Stewart had turned a derelict building into a very successful business. He appreciated that external signage was essential for this kind of business. He agreed with the Provost however that the white signage was garish. He concluded that this business was good for North Berwick. He would be voting against the report recommendation.

Councillor Currie agreed with his colleague's comments in relation to retrospective applications. He made reference to the amount of other signage in this area of North Berwick. He stated this was a good business, with a good reputation. The worst action the Committee could take would be to impede this business in its continued success. He would also be voting against the report recommendation.

Councillor Innes indicated this was a difficult situation. It was disappointing to have another retrospective application before this Committee. With regards to the signage he felt there should not be a "free for all"; advertisement displays should have, and adhere to, the appropriate permissions. He added however, that there was signage at world heritage sites so it should be possible to have signage outside a North Berwick restaurant. He had sympathy with the applicant and appreciated the need for signage, but it had to be appropriate in terms of style and colour.

Councillor McNeil also commented on retrospective applications. He also made reference to the amount of other signage in the vicinity of the application site, adding that officers needed to inspect the general area in relation to this and take action as appropriate. He would be voting against the report recommendation.

The Provost also remarked on the quantity of signage in this area of North Berwick. He stated that a sense of proportionality was needed when pursuing offenders; this case was less offensive than many, although, as pointed out, it was still an offence. He felt the A Board was a potential problem for passersby. He felt the colour of the signage should be more subdued. He would nonetheless be supporting the application and voting against the recommendation.

The Convener noted this was the second time this matter had been before the Committee. This was a successful business and a popular tourist destination. The business needed to advertise to attract customers. The colour of the signage however may not have been the best choice. He would also be voting against the officer's recommendation. He supported the A Board and the signage on the wall; he felt this kind of advertising should be allowed.

Councillor Goodfellow reiterated his earlier reference to the vast number of signs in this area of North Berwick; he stressed that the Council needed to address this issue. In relation to this application he proposed that planning permission should be granted for a temporary period of 2 years, to then be reviewed. This would allow time for issues regarding the other signage to be resolved.

Councillor Currie disagreed; the application before the Committee should be addressed in accordance with the existing criteria and not for a shorter period.

In response to questions Mr McFarlane advised that each application for advertisement consent was taken for that particular advertisement only; technically if it was replaced or moved then new consent would be required. He reiterated that the standard permission was for a 5 year period. He clarified that some of the other signage in that area was authorised, some not.

Councillor McMillan stated the Council needed to give advice to North Berwick traders regarding signage design and permissions; this issue had to be addressed.

The Convener brought the discussion to a close. He noted that Members generally seemed to be in favour of this application. If this was the case he recommended that the standard 5 year term should be adhered to. He asked Members to vote to grant planning permission.

Decision

The proposal that planning permission be granted was put to the vote and received **12 votes for** and **none against**; there were no abstentions. The Committee therefore overturned the report recommendation to refuse to grant planning permission and agreed to grant planning permission subject to the following condition:

- 1 This grant of express consent shall expire on 03 September 2018 after which date, unless further consent is granted by the Planning Authority, the advertisement hereby approved shall be removed entirely from the building and land adjacent to it.

Reason:

Pursuant to Part V18(1) of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

Signed

Councillor Norman Hampshire
Convener of the Planning Committee

REPORT TO: Planning Committee

MEETING DATE: 1 October 2013

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

2

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.

AUTHOR'S NAME	Keith Dingwall
DESIGNATION	Principal Planner
CONTACT INFO	kdingwall@eastlothian.gov.uk
DATE	28 August 2013

REPORT TO: Planning Committee
MEETING DATE: Tuesday 1 October 2013
BY: Depute Chief Executive
(Partnership and Services for Communities)
SUBJECT: Application for Planning Permission for Consideration

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Application No. **13/00227/PPM**

Proposal Planning permission in principle for residential development of 420 houses, community facilities, open space, employment uses and associated infrastructure

Location **Land At Mains Farm
North Berwick
East Lothian**

Applicant Walker Group (Scotland) Ltd

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

As the area of the application site is greater than 2 hectares and the number of dwellings is greater than 50, the development proposed in this application is, under the provisions of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, defined as a major development and thus it cannot be decided through the Council's Scheme of Delegation. The application is therefore brought before the Planning Committee for a decision.

As a statutory requirement of major development type proposals this development proposal was the subject of a Proposal of Application Notice (Ref: 12/00007/PAN) and thus of community consultation prior to this application for planning permission in principle being made to the Council.

As an outcome of that and as a statutory requirement for dealing with major development type applications a pre-application consultation report is submitted with this application. The report informs that some 82 people attended the pre-application public exhibition, which was held over a two day period at St Andrew Blackadder Church, North Berwick, and that those attendees made a number of queries and suggestions regarding the proposals. The development for which planning permission in principle is now sought is of the same character as that which was the subject of the community engagement undertaken through the statutory pre-application consultation of the proposal.

This application relates to some 38 hectares of agricultural land at Mains Farm, on the southern edge of North Berwick.

The site is bounded to the north by Grange Road, beyond which are residential properties. To the northwest of the application site, on the other side of Grange Road, is the former northern part of Gilsland Caravan Park and, beyond that, an area of agricultural land. That agricultural land together with the former northern part of Gilsland Caravan Park is allocated for a residential development of approximately 100 houses by Proposal H6 of the adopted East Lothian Local Plan 2008.

In February 2013 planning permission (12/00339/PM) was granted to CALA Management Ltd for the erection of 41 houses and 8 flats on the former northern part of Gilsland Caravan Park. Development of that site recently commenced. In April 2013 planning permission (Ref: 12/00338/PM) was granted to CALA Management Ltd for the erection of 67 houses and 4 flats on the agricultural land to the north of the former northern part of the Caravan Park. Development of that agricultural land has not yet commenced.

To the south and partly to the west of the application site is agricultural land. The site is otherwise bounded to the west by Gilsland Caravan Park and by the residential property of Gilsland House. The site is partly bounded to the east by agricultural land.

The agricultural land immediately to the northeast of the application site forms part of a larger area of agricultural land that is allocated for an expansion to the campuses of Law Primary School and North Berwick High School by Proposals ED9 and ED10 (Law Primary School, North Berwick and North Berwick High School) of the adopted East Lothian Local Plan 2008.

The site is otherwise bounded to the east by the public road of Haddington Road (the B1347 road).

In August 2013 planning permission (Ref: 13/00505/P) was granted for the realignment of Haddington Road and for the formation of accesses to the land of Mains Farm, to Law Primary School and to North Berwick Law car park.

Planning permission in principle is now sought for the erection on the application site of 420 houses, community facilities, employment uses and for associated infrastructure including roads and footpaths, open space, and landscaping.

The application is supported by a Masterplan and Masterplan Document, a planning statement, a landscape and visual impact assessment, a transport assessment, a design and access statement, an ecological assessment, a heritage assessment, and a landscape infrastructure masterplan strategy.

The Masterplan submitted in support of the application shows how a total of 420 residential units could be accommodated on the application site. It also shows how access to the site could be taken from Grange Road at two new access points, one being a priority junction shown to be positioned close to the northeast corner of the site, the other a priority junction shown to be positioned opposite the existing junction of Grange Road and Green Apron Park. Additionally it is shown that access could be taken directly from the realigned Haddington Road. The following four areas of open space are proposed within the application site: (i) a linear park that would be on a north to south alignment and that would be located to the south of Grange Road; (ii) a countryside park, which would have an area of some 16 hectares and which would occupy the southern part of the site; (iii) a small area of open space at the northern end of the site, which would be based around a proposed SUDS pond; and (iv) a sports pitch with changing facilities and a parking area, which would

be positioned on part of the eastern side of the site. The sports pitch, changing facilities and parking area would form part of a town park, which would also include recycling facilities and a play area.

The Masterplan indicates that a woodland belt could be planted along much of the western edge of the site. A community hub could be positioned to the west of the proposed sports pitch. The Masterplan indicates that the community hub could be based around a public square with landscaped and seating areas. It is indicated that commercial buildings, which could include shopping and employment opportunities, could be positioned immediately to the north and south of the indicatively proposed public square. An employment area, which is indicatively shown to contain three buildings, could be located at the northern end of the indicatively proposed countryside park. The Masterplan Document indicates that those buildings could be for commercial use.

The Masterplan Document that supports the applicant's Masterplan provides a contextual analysis of the site and sets out the design principles for the development. The design principles address matters of design concept, built form, landscape, access, and public open space in respect of the different character areas of the proposed development.

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 16 July 2007 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. 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.

Policies 1B (The Spatial Strategy: Development Principles), 5 (Housing Land) and 9 (Infrastructure) of the approved South East Scotland Strategic Development Plan (SESplan) and Proposal H5 (Mains Farm, North Berwick) and Policies H1 (Housing Quality and Design), H2 (Development Frameworks), H4 (Affordable Housing), DP1 (Landscape and Streetscape Character), DP2 (Design), DP5 (Major Development Sites), DP17 (Art Works-Percent for Art), DP18 (Transport Assessments and Travel Plans), DP20 (Pedestrians and Cyclists), DP22 (Private Parking), DP24 (Home Zones), ENV7 (Scheduled Monuments and Archaeological Sites), C1 (Minimum Open Space Standard for New General Needs Housing Development), C2 (Play Space Provision in new General Needs Housing Development), T1 (Development Location and Accessibility), T2 (General Transport Impact) and INF3 (Infrastructure and Facilities Provision) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

A material consideration in the determination of this application is the supplementary planning guidance of "Design Standards for New Housing Areas" approved by the Council on 10th March 2008. This guidance requires that a more flexible approach be taken in road

layout and design for proposed housing developments and sets core design requirements for the creation of new urban structures that will support Home Zone development as well as establishing design requirements for the layout of and space between buildings. Developers must provide adequate information to the satisfaction of the Council to demonstrate the merits of their design.

Also material to the determination of the application is Scottish Planning Policy on housing development and Scottish Government advice given in Planning Advice Note 67: Housing Quality.

It is 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.

A total of 220 written representations have been received in respect of this application. Of these, 29 make objection to the proposed development. One of the objections is from the Law Primary School Parent Council. Another is from the Head Team at North Berwick High School. The other 191 written representations do not state whether they support or object to the proposed development.

A copy of each written representation is contained in a shared electronic folder to which all Members of the Committee have had access.

12 of the 29 objections are made on the grounds that the application documentation appears to show an intention by the applicant to develop for housing the land to the northeast of the site that is allocated for an expansion to the campuses of Law Primary School and North Berwick High School by Proposals ED9 and ED10 of the adopted East Lothian Local Plan 2008. Most of these objections state that this allocated land should be legally and permanently dedicated to the High School through a title condition and that the land should be made into workable playing fields by the applicant as part of the first phase of development.

The other main grounds of objection are summarised as follows:

* The proposed access arrangements are inadequate, with existing roads being unsuitable to accommodate traffic generated by the proposed housing development;

* Infrastructure of North Berwick will find it difficult to cope with additional residents and traffic generated by proposed housing development;

- * Impact on privacy and amenity of nearby residential properties;
- * Construction traffic would pose a risk to the safety of local school children; and
- * Concerns over flood risk.

The vast majority of the 191 written representations are based on a pro-forma letter, which raises concern that the application documentation appears to show an intention by the applicant to develop for housing the land to the northeast of the site that is allocated for an expansion to the campuses of Law Primary School and North Berwick High School by Proposals ED9 and ED10 of the adopted East Lothian Local Plan 2008. These pro-forma representations state that this allocated land should be legally and permanently dedicated to the High School through a title condition and that the land should be made into workable playing fields by the applicant as part of the first phase of development.

A petition with 431 signatures has also been submitted. The petition raises the same concerns and makes the same suggestions as those contained in the pro-forma representations.

The Royal Burgh of North Berwick Community Council advise that, given there is a housing shortage in East Lothian, they support the principle of the proposed development. They advise that it seems well thought out with an emphasis on the creation of a community which they would hope will grow with time and become part of North Berwick.

The land of the application site is covered by Proposal H5 (Mains Farm, North Berwick) of the adopted East Lothian Local Plan 2008. Proposal H5 defines all of the land as being a strategic housing site and allocates it for a mixed use development of approximately 400 houses, community facilities, open space, employment and associated infrastructure.

Local Plan Proposal H5 requires the Council to prepare a joint Development Framework addressing the development requirements of the site and the nearby Gilsland site (Proposal H6). Proposal H5 states that it will then be the responsibility of the developer to submit for approval a masterplan consistent with both this joint Framework and with the Local Plan's development policies prior to or as part of an application for planning permission in principle or planning permission for a development of the site. Proposal H5 also stipulates that developer contributions are required for all necessary infrastructure, education and community facilities arising as a consequence of this development.

Proposal H6 reflects the requirements of Policy H2 (Development Frameworks) of the adopted East Lothian Local Plan 2008. The first of these requirements is that development proposals for strategic housing sites must conform to the relevant Development Framework and the second is that Masterplans for the allocated lands must comply with the relevant Development Framework and with other local plan policies. A Masterplan should be submitted prior to or as part of an application for planning permission to develop a strategic housing site.

A joint Development Framework for all of the allocated land of Proposal H5 and for the allocated Gilsland land was approved by the Council on the 28 June 2011. It sets out how the Council requires the lands to be developed in terms of design and infrastructure provision.

The land of application site is also covered by Policy DP5 (Major Development Sites) of the adopted East Lothian Local Plan 2008. As the site is a strategic housing site, Policy DP5 requires the submission of a Masterplan for all of it and an accompanying supporting statement. Policy DP5 sets out the minimum information that must be contained within the

Masterplan submission.

A Masterplan and an accompanying Masterplan Document have been submitted with this application. The submitted Masterplan and accompanying Masterplan Document are compliant with the requirements of Policy DP5.

Through their detailed master planning of the land of Proposal H5, the applicant has established that in total it is capable of accommodating more than the approximately 400 residential units that the development plan allows for the site. The Masterplan submitted with this application shows how a total of 420 residential units would be accommodated on the land of Proposal H5.

The Council's Policy and Projects Manager accepts that the site could accommodate more than 400 residential units. This is on the basis that there can be a degree of tolerance in respect of the approximation of 400 houses for Mains Farm set by Proposal H5 of the adopted East Lothian Local Plan 2008 and the fact that by its size and configuration the land of the application site is capable of accommodating an acceptable residential development of 420 houses.

Accordingly, and if the Planning Committee are of a mind to grant planning permission in principle for the residential development proposed in this application then the number of residential units can be as many as 420, without being a significant departure from Proposal H5 of the adopted East Lothian Local Plan 2008. The applicant is agreeable to a limit of 420 residential units.

The approved Development Framework stipulates that the layout of the housing development of the allocated land of Proposal H5 should integrate with its surroundings and be designed to ensure the creation of an interesting and distinctive environment with a layout that contributes positively to North Berwick.

What is proposed for the development of the land the subject of this application would be a sympathetic extension of North Berwick with due regard to the existing built form of the town and the locational context of the application site relative to existing housing and housing under construction at Gilsland. The Policy and Projects Manager is satisfied that the arrangement of land uses on the site proposed in the Masterplan complements existing land uses and is consistent with the aim of the approved Development Framework to create a compact and identifiable mixed community. The principles of development set out in the Masterplan Document include for a range of house types and sizes in order to cater for varying housing needs. Indicative densities are given for specific parts of the site. Together they set an indicative average density of 27.6 houses per hectare, which the Policy and Projects Manager confirms is acceptable. It is also stipulated in the Development Framework that 25% of the proposed housing component of the site's development has to be affordable housing. This is accepted in the Masterplan Document, with the stated principles that development of the affordable housing be fully integrated in its design with the other houses of the development and as groups of houses within the overall layout of the development.

Whilst the principles of the proposed development are generally acceptable, it would be prudent to impose conditions on a grant of planning permission in principle to ensure that the requirements of the development framework for the site are met. In this regard, houses should be predominantly two storeys in height and no higher than 3 storeys and should be orientated to face the street. Another element of the conditioning should be a requirement for the submission of a scheme of final finishes with a palette of colours and materials for the houses, which has due regard to the finishes of other residential properties in the locality.

One of the principal objectives of East Lothian Council's approved Design Standards for New Housing Areas is to reduce the visual dominance of the car in the streetscape of new developments. To achieve this, visible resident parking in driveways in front of houses and in front of integral garages should be avoided. Consequently a condition should be imposed on a grant of planning permission in principle for the proposed development precluding the use of integral garages, unless it can be justified as an exceptional design feature, or where the house and garage would not be on a primary street frontage, or where the careful use of boundary enclosures such as hedging or walling would serve to reduce the visual dominance of the car in the streetscape to an acceptable degree.

The Policy and Projects Manager is satisfied that the local centre proposed in the Masterplan is acceptable in principle and consistent with the aim of the approved Development Framework to create a sustainable mixed community. It would be prudent to ensure that use of the buildings within the local centre be restricted to those uses that would normally be found within such local centres (i.e. Class 1 (Shops), Class 2 (Financial, Professional and Other Services) and Class 3 (Food and Drink) of the Town and Country Planning (Use Classes) (Scotland) Order 1997). This can be secured through a condition of the grant of planning permission in principle for the proposed development.

In addition to the provision of a local centre, the approved Development Framework supports the provision a range of centrally serviced, flexible office spaces. Compliant with this requirement, the Masterplan shows an employment area, which is indicatively shown to contain three buildings and which is located at the northern end of the indicatively proposed countryside park. In order to safeguard the amenity of residents of houses that are shown to be located in close proximity to those three buildings, the Policy and Projects Manager recommends that use of the three buildings within the employment area be restricted to uses within Class 4 (Business) of the Town and Country Planning (Use Classes) (Scotland) Order 1997). This can be secured through a condition of the grant of planning permission in principle for the proposed development.

The Masterplan demonstrates that in principle the site could be developed for 420 houses without harming the privacy and amenity of neighbouring residential properties through overlooking or overshadowing. It also demonstrates that in principle the 420 houses could be laid out in such a way as to give an acceptable standard of residential amenity to their future occupants.

The Council's Environmental Protection Manager raises no objection to the principle of a housing development of the application site. However, since some of the proposed housing would be in close proximity to the proposed recycling facility and some of the proposed housing would be in close proximity to the employment area he recommends that a noise consultants report be obtained, which should include: (i) an assessment of noise from the use of the recycling facility and the use of the employment area and of any impact of such noise on the housing development; and (ii) any mitigation measures considered necessary to achieve satisfactory internal and external noise levels for the occupiers of the housing development.

The requirement for this can be secured through a conditional grant of planning permission in principle for the proposed development.

The Environmental Protection Manager raises concerns that noise and dust from construction activities may have an impact on the surrounding area. In view of this he recommends that prior to the commencement of development, a Construction Method Statement should be submitted to and approved by the Planning Authority. The Statement should detail mitigation measures to be employed to control noise and dust. The implementation of an agreed Construction Method Statement would ensure that the

construction activities did not have a significantly harmful impact on the environment or on the privacy and amenity of neighbouring properties. This matter can be addressed through a conditional grant of planning permission in principle for the proposed development.

The Council's Policy and Projects Manager is satisfied that the outline landscape proposals for the site correspond with the landscape advice set out within the approved Development Framework. In particular, the countryside park would provide an appropriate landscape setting for North Berwick Law. A detailed landscape planting plan should be submitted for the whole site. The plan should show species trees to the south of the residential properties proposed to the north of the countryside park. Moreover, it should show that the blocks of tree planting on the south and southeast boundaries of the countryside park should include forest trees within them. These matters could be secured through a conditional grant of planning permission in principle for the proposed development.

On all of the foregoing considerations of layout, design, amenity and landscape, the principle of the proposed development are consistent with Policies 1B and 5 of the approved South East Scotland Strategic Development Plan (SESplan), Policies H1, DP1, DP2 and DP24 of the adopted East Lothian Local Plan 2008, the approved Development Framework and the Council's Design Standards for New Housing Areas.

To satisfy the demand for pitch sports that will arise as a result of development of Mains Farm and of the land of Proposal H6, the approved Development Framework requires the provision on the Mains Farm land of a new community sports pitch and related changing accommodation. The approved Development Framework stipulates that all the costs associated with provision of the sports pitch and related changing accommodation has to be met on a pro-rata basis by the applicant(s) of an application(s) for planning permission for housing development of the land of Proposal H6 and of Mains Farm.

The sports pitch and changing accommodation are shown in the Masterplan as forming part of a larger town park. The applicant has offered to transfer the title of the proposed town park to the Council. This should be at no cost to the Council. It is also the intention of the applicant that they would fund the delivery, adoption and maintenance of the town park. This should be other than for the provision of the sports pitch and changing accommodation and related works, for which a proportional contribution will be required, in line with the requirements of the approved Development Framework. The Council's Healthy Living Manager and the Council's Property Projects Unit advise that the total value of the contribution for the 420 houses proposed in this application is £631,098.80. An agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 could be used to secure the transfer of ownership of the land and the financial contribution to fund the delivery, adoption and maintenance of the town park, including the proportional contribution towards the provision of the sports pitch and changing accommodation and related works. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Agreements. Subject to the securing of this developer contribution the proposed development is consistent with Policy 9 of the approved South East Scotland Strategic Development Plan (SESplan), Policy INF3 of the adopted East Lothian Local Plan 2008 and the approved Development Framework.

The approved Development Framework stipulates the requirement for the provision of other recreational areas of open space that are well integrated and designed, and easily accessible from the proposed new housing.

The Masterplan and Masterplan Document indicate how other areas of formal and informal open space, including a large countryside park, could be located throughout the site. The Council's Landscape and Countryside Manager is satisfied with the principles of both the

size and location of those areas of open space. The areas of open space and the location indicated for them in the Masterplan are consistent with the requirements of the approved Development Framework. On this consideration the principle of the proposed development is consistent with the requirements of the approved Development Framework and with Policy C1 of the adopted East Lothian Local Plan 2008.

The applicant confirms that future maintenance of the areas of open space would be factored on behalf of future residents. The exceptions to this would be the sports pitch, which would be transferred to East Lothian Council, and the countryside park, which the applicant intends would be factored with ownership retained by the North Berwick Trust. The Council's Landscape and Countryside Manager is satisfied with the principle of this.

The Development Framework requires the provision of suitably sized and designed equipped play facilities for toddlers, 5-10 year olds, and teenage age groups. In response to this, the Masterplan shows that a Neighbourhood Area Equipped for Play could be located between the local centre and the sports pitch and a Local Area Equipped for Play could be provided on the northern edge of the countryside park. A Neighbourhood Area Equipped for Play is defined as an area of open space specifically designated, laid out and equipped mainly for older children but with the play opportunities for younger children as well. A Local Area Equipped for Play is defined as an area of open space specifically designated and laid out with features including equipment for children who are beginning to go out and play independently close to where they live.

The Council's Landscape and Countryside Manager is satisfied with the indicative locations of the play areas but advises that it will be important for the Local Area Equipped for Play to be designed into the landscape around the vicinity of the entrance to the countryside park, taking account of the desire to have reasonable supervision of behaviours from neighbouring houses. A condition should be imposed on the grant of planning permission in principle for the proposed development requiring submission of further details of the play areas, including the play equipment to be installed and a timetable for their installation, to be submitted to and approved in advance by the Planning Authority. On this consideration the principle of the proposed development is consistent with the requirements of the approved Development Framework and with Policy C2 of the adopted East Lothian Local Plan 2008.

The approved Development Framework advises that NHS Lothian, Lothian & Borders Police and the Ambulance Service have indicated that the increased population that will arise from the housing developments of Mains Farm and the land of Proposal H6 may result in these service providers not being able to accommodate any identified impacts anticipated to arise from these local plan proposals within their existing facilities. Consequently Lothian and Borders Police, the Lothian Fire Brigade, the Scottish Ambulance Service and NHS Lothian were all consulted on this planning application. However none of those service providers have commented on the application.

NHS Lothian, the Scottish Ambulance Service and the Lothian Fire Brigade have not commented on this planning application.

Lothian & Borders Police raise no objection to the proposed housing. It can be taken from this that they are satisfied that they could accommodate within their existing operations any identified impacts anticipated to arise from the 420 houses proposed in this application.

The application site is within the school catchments of Law Primary School and North Berwick High School.

The adopted East Lothian Local Plan 2008 informed that there would be a need to extend both schools and their campuses in order to accommodate the children that would arise as a result of the development of the allocated site at Mains Farm and from other housing developments within the catchment areas. Consequently the land to the south and west of both schools is allocated for an expansion to the campuses of Law Primary School and North Berwick High School by Proposals ED9 and ED10 of the adopted East Lothian Local Plan 2008. To accommodate the southwards expansion of the school campuses, Proposal H5 of the adopted East Lothian Local Plan 2008 included for a realignment of Haddington Road so that the existing roadway would continue further south from North Berwick before turning west for some 200 metres to link with the western southward stretch of the existing road. The Local Plan made clear that developer contributions are required to provide for the increased education capacity and for the realignment of Haddington Road. The approved Development Framework advises that any need for developer contributions towards the expansion of education facilities will be assessed at the time any planning application is made.

The Depute Chief Executive (Resources and People Services) has carefully assessed this planning application, taking into account other sites in the catchment area with planning permission for residential development. He advises that the cumulative impact of all of those developments will have a significant impact on the pupil roll projection and therefore additional accommodation and campus will be required to accommodate the impact cumulatively arising as a direct consequence of these housing proposals.

In the case of this planning application, the Depute Chief Executive (Resources and People Services) advises that neither Law Primary School nor North Berwick High School would have capacity to accommodate children that could arise from the proposed 420 houses. Thus he objects to the application. However, he confirms that he will withdraw this objection if the applicant is required to a) transfer to the Council, at no cost to the Council, the title of 0.46 hectares of the agricultural land that is between the application site and North Berwick High School, and which is required as a direct consequence of the development proposed to expand the campus of North Berwick High School; and b) make a financial contribution to the Council of £5,600,002 (£13,333 per residential unit) towards increasing the capacity of Law Primary School and North Berwick High School. This includes a financial contribution towards the realignment of Haddington Road. These requirements can be secured by an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Moreover the Depute Chief Executive (Resources and People Services) recommends that a restriction would need to be placed on the annual completion rates arising from the proposed development. This can be secured through a condition attached to a grant of planning permission in principle for the proposed development. Subject to the securing of this developer contribution the proposed development is consistent with Policy 9 of the approved South East Scotland Strategic Development Plan (SESplan), Policy INF3 of the adopted East Lothian Local Plan 2008 and the approved Development Framework.

Most of the written representations are made on the grounds that the application documentation appears to show an intention by the applicant to develop for housing the land to the northeast of the site that is allocated for an expansion to the campuses of Law Primary School and North Berwick High School by Proposals ED9 and ED10 of the adopted East Lothian Local Plan 2008.

The allocated land to which most of the written representations refer is not within the application site and planning permission is not sought by the applicant for the residential development of it.

In his consultation response, the Depute Chief Executive (Resources and People Services) advises that the existing North Berwick High School has a pupil capacity of 950 pupils on a site of approximately 5.1 hectares in area. This is 0.5 hectares below the area size standard set out in the School Premises (General Requirements and Standards) (Scotland) Regulations 1967. He confirms that the Education Authority has committed to funding themselves the purchase of 0.5 hectares of the allocated land to the northeast of the application site, in order to ensure that the campus size of the High School complies with those Regulations. He also confirms that, to ensure that there is a sufficient size of campus to accommodate children that would arise from all of the sites in the catchment area with planning permission for residential development, there is a justifiable need for a further 0.6 hectares of that allocated land to be used to increase the size of the campus. Of the 0.6 hectares, 0.46 hectares is required as a direct consequence of the 420 houses proposed at Mains Farm. Thus, on the basis of the advice of the Depute Chief Executive (Resources and People Services), it can be concluded that there is a justifiable need for 1.1 hectares of the allocated land to the northeast of the site to be used for an expansion to the High School. As there is no justifiable need for the remainder of the allocated land to be used to increase the size of the campus, it would be unreasonable to require the applicant to legally and permanently dedicate to the High School this remaining allocated land through a title condition, as is suggested by most of the representors.

The Council's Transportation service has considered the transport assessment submitted with the application and generally agrees with its findings. They raise no objections to the principles of layout of the proposed development, of the site accesses from Grange Road, of parking provision indicated in the Masterplan and of the likely impacts of additional traffic generation on the existing road network. The principles of layout of the proposed development, of the site accesses from Grange Road and of parking provision indicated in the Masterplan are all consistent with the approved Development Framework.

The Transportation service are satisfied in principle that the realignment of Haddington Road and the priority junction to the site approved by planning permission 13/00505/P would allow for a safe means of access to the housing site from that public road. In this regard, they recommend that both the realignment of Haddington Road and the new junction from it to the housing site be formed prior to occupancy of the 44th house. The principle of the site access from a realigned Haddington Road is consistent with the approved Development Framework and with Proposal H5 of the adopted East Lothian Local Plan 2008.

The approved Development Framework requires the provision of a network of pedestrian and cycle paths that integrate fully with existing paths and routes to the Primary and Secondary Schools, to the Town Centre and to the countryside. The Transportation service recommend that prior to the occupation of any houses, a shared footway/cycleway should be formed on the southern side of Grange Road, to form a continuous path between the application site and the adjacent Schools. Moreover, prior to the occupation of any house within phase 2 of the development, a shared footway/ cycleway should be formed parallel to the spine road through the site to provide the "safer route to school" from the site to the adjacent Schools via Haddington Road. These requirements can be secured by the imposition of conditions on the grant of planning permission in principle for the proposed development. Subject to these conditions, the Transportation service is satisfied that the indicative arrangements for pedestrian and cycle access are in principle acceptable and consistent with the requirements of the approved Development Framework.

Transportation confirm that there is no transportation objection to the principle of the proposed development of the application site subject to the imposition of conditions on a grant of planning permission in principle to ensure that satisfactory footway/cycleways are

provided, that various identified road safety measures are undertaken, that at least two pairs of bus stops be provided within the housing site, that an appropriate amount of car parking be provided within the housing development, that a Travel Plan be submitted, and that the spine road through the site be completed in its entirety to binder course prior to occupation of the 44th house.

Turning to other transportation matters, the proposed use of pinch points and shared surfaces within the layout of internal access roads of the proposed housing development to restrict traffic priorities and speeds accords with the 'Home Zone' principles set out in the Council's Design Standards for New Housing Areas.

In their location the houses would be capable of being conveniently and safely accessed by public transport, on foot and by cycle, as well as by private vehicle.

On all of the foregoing transportation considerations and subject to the above stated planning controls, the principle of the proposed housing development is consistent with Policies T1, T2, DP20 and DP22 of the adopted East Lothian Local Plan 2008 and with the approved Development Framework.

In order to prevent disruption and to minimise impacts on Grange Road, the Transportation service recommend that construction access to the site be solely taken from Haddington Road. Moreover, they recommend that a Construction Method Statement to minimise the impact of construction activity on the amenity of the area should be submitted to and approved by the Planning Authority prior to the commencement of development. The Construction Method Statement should recommend mitigation measures to control noise, dust, construction traffic and shall include hours of construction work. These matters can be controlled by conditions imposed on the grant of planning permission in principle for the proposed development.

The Council's Principal Waste Services Officer has expressed concerns at the layout and access for refuse vehicles. The Transportation service advise that an initial vehicle track for the site submitted by the applicant has demonstrated that subject to some minor changes demonstrates that the indicatively proposed internal access roads road are acceptable for large delivery and refuse lorries and for use by emergency vehicles. They do however recommend that a detailed swept path assessment should be undertaken for all the access roads within the site. This requirement could be secured by the imposition of a condition on the grant of planning permission in principle for the proposed development.

It is stated in Scottish Planning Policy: February 2010 that archaeological sites and monuments are an important finite and non-renewable resource and should be protected and preserved in situ wherever feasible. The presence and potential presence of archaeological assets should be considered by planning authorities when making decisions on planning applications. Where preservation in situ is not possible planning authorities should through the use of conditions or a legal agreement ensure that developers undertake appropriate excavation, recording, analysis, publication and archiving before and/or during development. If archaeological discoveries are made during any development, a professional archaeologist should be given access to inspect and record them. Planning Advice Note 2/2011: Planning and Archaeology similarly advises.

The Council's Heritage Officer advises that an archaeological assessment including an evaluation was carried out on the site as pre-application work. The results of this indicate that there is no requirement for any further archaeological work in relation to the proposed development. Accordingly he raises no objection to the principle of the proposed development. On this consideration, the principle of the proposed development is consistent with Policy ENV7 of the adopted East Lothian Local Plan 2008.

The approved Development Framework requires the applicant to consider the targets for reducing carbon emissions as set out in the Climate Change (Scotland) Act 2009. In response to this, the applicant has submitted a Sustainability Statement. In this Statement, the applicant advises that they propose to maximise energy efficiency through improved building efficiency standards and through the possible use of solar or photovoltaic panels. This report has been assessed by the Council's Policy and Projects Manager, who is generally satisfied with its findings. If planning permission in principle is to be granted for the proposed development, a condition should be imposed requiring that the housing development be carried out in strict accordance with the applicant's Sustainability Statement.

The Council's Housing Strategy and Development Service Manager advises that, in accordance with the Council's Affordable Housing Policy, 25% of the 420 new build residential units should be affordable housing (i.e. 105 units from the total of 420). Agreement has been reached with the applicant over the required mix of affordable housing tenures, house types and sizes, the general locations for the affordable housing within the application site, and their phasing and delivery. The terms for the provision of the affordable housing requirement should be the subject of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Agreements. Subject to the securing of this developer contribution the proposed development is consistent with Policy 9 of the approved South East Scotland Strategic Development Plan (SESplan), Policy H4 of the adopted East Lothian Local Plan 2008 and the approved Development Framework.

The proposed development by its scale would have a significant impact on 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 a grant of planning permission in principle for the proposed development.

The Masterplan includes provision of a sustainable urban drainage scheme (SUDS) pond which is designed to attenuate the flow of surface water run-off. The Scottish Environment Protection Agency do not object to the proposed development, although they recommend that full details of the finalised SUDS scheme should be submitted for the prior written approval of the Planning Authority, following consultation with SEPA. This requirement could be secured by the imposition of a condition on the grant of planning permission in principle for the proposed development.

Subject to the imposition of this condition, the Council's Flooding Officer raises no objection to the principle of the proposed development.

Scottish Water confirm that they have no objection to the principle of the proposed development. They advise of their statutory requirements for the servicing of the development. A copy of their comments has been forwarded to the applicant.

RECOMMENDATION

It is recommended that planning permission be granted subject to:

1. The undernoted conditions.
2. The satisfactory conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or some other legal agreement designed to:

(i) Secure from the applicant the transfer to the Council, at no cost, of ownership of the land indicatively shown for the town park, including the land indicatively shown in the docketed Masterplan for the sports pitch, sports changing facility and parking, recycling facility and NEAP (Neighbourhood Area Equipped for Play).

(ii) Secure from the applicant a financial contribution to the Council of £631,098.80 to fund the delivery, adoption and maintenance of the town park and towards the provision of the new sports pitch and related changing facility and parking.

(iii) Secure from the applicant the transfer to the Council, at no cost, of ownership of the 0.46 hectares of land allocated as part of an expansion to the campus of North Berwick High School, which is shown hatched in green on docketed drawing no. AL(01)04.

(iv) Secure from the applicant a financial contribution to the Council of £5,600,002.00 (£13,333.00 per residential unit) towards the provision of additional capacity at Law Primary School and at North Berwick High School.

(v) Secure from the applicant the provision of 105 affordable housing units.

3. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be 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 developer contributions to be secured by the Agreement the proposed development is unacceptable due to: an insufficient provision of a town park, community sports pitch and related changing facilities; a lack of sufficient school capacity at Law Primary School and North Berwick High School; and the lack of provision of affordable housing, contrary to the Council's Development Framework for the development that is titled Mains Farm and Gilsland, North Berwick and, as applicable Policies INF3 and H4 of the adopted East Lothian Local Plan 2008.

1 The submission for approval of matters specified in conditions of this grant of planning permission in principle shall include details of the siting, design and external appearance of the residential units, the means of access to them, the means of any enclosure of the boundaries of the site and the landscaping of the site and those details shall generally accord with the Indicative Master Plan and Masterplan Document docketed to this planning permission in principle, and shall address the following requirements:

a. The houses shall be predominantly two storeys in height, and shall in no case be higher than three storeys in height;

b. Other than in exceptional circumstances where the layout or particular building type does not permit, houses should be orientated to face the street;

c. Notwithstanding that shown in the Masterplan Document docketed to this planning permission in principle there shall be no integral garages, unless it can be justified as an exceptional design feature, or where the house and garage would not be on a primary street frontage, or where the careful use of boundary enclosures such as hedging or walling would serve to reduce the visual dominance of the car in the streetscape to an acceptable degree;

d. The external finishes of the residential units shall be in accordance with a co-ordinated scheme of materials and colours that shall respect the layout of the development and shall promote render as the predominant finish to the walls of the residential units;

e. Details of the two play areas, including the equipment to be provided within it and a timetable for installation, shall be submitted to and approved in advance by the Planning Authority and each play area shall be installed in accordance with the details so approved;

f. The buildings indicatively shown on the docketed Masterplan immediately to the north and south of the community hub shall be restricted in use to Class 1 (Shops), Class 2 (Financial, Professional and

Other Services) or Class 3 (Food and Drink) of the Town and Country Planning (Use Classes) (Scotland) Order 1997;

g. The buildings within the employment area indicatively shown on the docketed Masterplan shall be restricted in use to Class 4 (Business) of the Town and Country Planning (Use Classes) (Scotland) Order 1997;

h. Parking for the housing development hereby approved shall be provided at a rate as set out in the East Lothian Council Standards for Development Roads- Part 5 Parking Standards;

i. A detailed swept path assessment shall be undertaken for all of the access roads within each successive phase of the housing development hereby approved. The Design Vehicle to be used in the detailed swept path assessment shall be 2.5 metres wide, and shall have a 6.1 metre wheelbase within an overall vehicle length of 10 metres;

j. The provision of at least two pairs of bus stops (i.e. stop on either side of the road), including bus shelters within the site;

k. All footpath connections from a zone under construction to the existing settlement shall be constructed to an adoptable standard before the occupation of any units in that particular zone;

l. The proposed path through the Linear Park that is indicatively shown on the Indicative Site Layout Plan shall be a shared cycle pedestrian route with a minimum width of 2.5 metres and shall be built to adoptable standards, including lighting. It shall be constructed and made available for use prior to the completion of Phase 3 of the development;

m. A shared footway and cycleway shall be formed along the southern edge of Grange Road to provide a continuous link from the application site up to the existing zebra crossing on Grange Road, to the east of the site. It shall be constructed and made available for use prior to the occupation of any houses;

n. The proposed spine road within Phase 1 of the development shall be completed in its entirety to Binder Course level prior to occupation of the 44th house;

o. A shared footway and cycleway shall be formed parallel to the proposed spine road to provide a continuous 3 metres wide link link from the application site up to the new entrance to the School from the realigned Haddington Road. It shall be constructed and made available for use prior to Phase 2 of the development; and

p. The site shall be accessed from the southeast by the realigned Haddington Road, approved by planning permission 13/00505/P. Haddington Road shall be realigned and the new junction to Mains Farm (also approved by planning permission 13/00505/P) shall be completed in accordance with planning permission 13/00505/P, and made available for use prior to occupancy of the 44th house.

Reason:

To enable the Planning Authority to control the development in the interests of the amenity of the development and of the wider environment and in the interests of road safety.

- 2 The phasing of the development of the site shall be carried out in strict accordance with the phasing plans that are in the Masterplan Document docketed to this planning permission in principle, unless otherwise approved in writing in advance by the Planning Authority.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the good planning of the site.

- 3 No more than 420 residential units are approved by this grant of planning permission in principle.

Reason:

To ensure that the number of houses erected on the site accords with the strategic housing land supply for the North Berwick area and to ensure that there is sufficient education capacity.

- 4 Housing completions on the application site in any one year (with a year being defined as being from 1st April to 31st March the following year) shall not exceed the following completion rates:

Year 1- 44 houses

Year 2- 62 houses

Year 3- 48 houses
Year 4- 50 houses
Year 5- 72 houses
Year 6- 73 houses
Year 7- 61 houses
Year 8- 10 houses

If less than the specified number of residential units are completed in any one year then those shall be completed instead at Year 9 or beyond and not added to the subsequent Year.

Reason:

To ensure that the completion rate of residential development within the application site accords with the provision of education capacity.

- 5 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 : the height and slopes of any mounding on or recontouring of, the site; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development. It shall also show species trees to the south of the residential properties proposed to the north of the countryside park illustratively shown on the Masterplan docketed to this planning permission in principle. It shall further show forest trees within the blocks of tree planting on the south and southeast boundaries of the countryside park.

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 ten 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 implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

- 6 Prior to the commencement of development, details of the traffic calming to be carried out to Grange Road, including a timetable for implementation, shall be submitted to and approved by the Planning Authority. The details shall include the provision of speed table junctions at the proposed cross road at Green Apron Park, at the existing junction of Marly Rise with Grange Road, and at the eastern site access road junction with Grange Road. The traffic calming works shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of road safety.

- 7 Prior to the commencement of development, details of the road improvement works to be carried out to the road leading south-westwards to Kingston from the application site, including a timetable for implementation, shall be submitted to and approved by the Planning Authority. The road improvement works shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of road safety.

- 8 A Travel Plan shall be submitted to and approved by the Planning Authority prior to the occupation of any of the residential units hereby approved. The Travel Plan shall have particular regard to provision for walking, cycling and public transport access to and within the site, and will include a timetable for its implementation, details of the measures to be provided, the system of management, monitoring, review, reporting and duration of the Plan.

The Travel Plan shall thereafter be implemented in accordance with the details so approved.

Reason:

In the interests of ensuring sustainable travel patterns in respect of the residential development.

- 9 A Construction Method Statement to minimise the impact of construction activity on the amenity of the area shall be submitted to and approved by the Planning Authority prior to the commencement of development. The Construction Method Statement shall recommend mitigation measures to control

noise, dust, construction traffic and shall include hours of construction work. It shall confirm that construction access to the site shall be solely taken from Haddington Road.

The recommendations of the Construction Method Statement shall be implemented prior to the commencement of development. Development shall thereafter be undertaken in accordance with the details so approved, unless otherwise approved in writing by the Planning Authority.

Reason:

To minimise the impact of construction activity in the interests of the amenity of the area.

- 10 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.

- 11 Prior to the commencement of development, full details of the finalised SUDS scheme shall be submitted to and approved in writing by the Planning Authority, following consultation with SEPA. Development shall thereafter be carried out in accordance with the details so approved.

Reason:

To ensure adequate protection of the water environment from surface water run-off.

- 12 A noise consultants report to include (i) an assessment of noise from the use of the recycling facility and the use of the employment area, both to be formed within the site, and of any impact of such noise on the housing development of the site; and (ii) any mitigation measures considered necessary to achieve satisfactory internal and external noise levels for the occupiers of a residential development of the site shall be submitted to and approved by the Planning Authority prior to the commencement of development. Any identified mitigation measures shall be fully undertaken prior to the occupation of any residential unit built on the site.

Reason:

To ensure that the future occupants of any of the residential units benefit from a satisfactory level of amenity.

- 13 The development hereby approved shall be carried out in strict accordance with the Sustainability Statement docketed to this planning permission in principle.

Reason:

To ensure this development complies with the on-site carbon emissions targets of the Climate Change (Scotland) Act 2009.

Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation)

REPORT TO: Planning Committee
MEETING DATE: Tuesday 1 October 2013
BY: Depute Chief Executive
(Partnership and Services for Communities)
SUBJECT: Application for Planning Permission for Consideration

4

Note - this application was called off the Scheme of Delegation List by Councillor Veitch for the following reason: the local community has concerns over the impact the turbines would have on the village and surrounding environment.

Application No. **13/00568/P**
Proposal Erection of 2 wind turbines and associated works
Location **Limekilns
Phantassie Farm
Traprain
East Linton
East Lothian
EH40 3DF**
Applicant Hamilton Farmers Ltd
Per Life Long Energy
RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

Through the determination of an application (ref: 13/00174/P) made to the Council by Hamilton Farmers, planning permission was refused in May 2013 for the erection of two wind turbines on agricultural land some 270 to 310 metres southwest of the farm buildings of Phantassie Farm. Those wind turbines were to be positioned within a field some 300 metres to the west of Phantassie Farm House on elevated land close to an existing telecommunications mast. The wind turbines were each to be of a supporting column type measuring 14.9 metres in height from the ground to the centre of the rotor hub, with triple blades, each of a length of 6.6 metres and thus with a ground to blade tip height of 21.5 metres and a diameter of rotating blades of 13.2 metres.

The reasons for the refusal to grant planning permission for those wind turbines are:

1. The proposed two wind turbines are contrary to the Council's East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December

2011) which states that a Typology C wind turbine cannot be accommodated within this part of the 'Agricultural Plain - Sub Area 1, East' landscape character area;

2. Due to the harmful impact they would have on the landscape of this part of the countryside of East Lothian the proposed wind turbines are contrary to Policies DC1 (Part 5) and NRG3 of the adopted East Lothian Local Plan 2008, Scottish Planning Policy: February 2010, the key considerations of landscape impact of Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian: December 2010 and the findings of East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011).

Planning permission is now again sought by Hamilton Farmers for the erection of two identical wind turbines on different pieces of agricultural land at Phantassie Farm to that previously proposed in application 13/00174/P.

The proposed two wind turbines would be sited in a field, one some 85 metres west of the farm buildings of Phantassie Farm and the other some 50 metres south of those buildings. In such positions they would be some 270 to 370 metres northwest of Phantassie Farm House.

Each of the proposed two wind turbines would consist of a supporting column measuring 14.9 metres in height from the ground to the centre of the rotor hub. The triple blades of their rotors would each have a length of 6.6 metres. Each of the proposed two wind turbines would therefore have a height of 21.5 metres from ground level to blade tip. The diameter of their rotating blades would be 13.2 metres.

It is proposed to excavate the land of the site of each wind turbine by 1.5 metres so that they would both sit on a lower ground level than the farmland around them, giving each of them a perceived height of 20 metres to blade tip.

To access the proposed wind turbines it is proposed to form a hardcore access track around the south side of the site of the proposed wind turbines.

To the west of the group of agricultural buildings of Phantassie Farm is the building of Phantassie limekiln that is listed as being of special architectural or historic interest (Category B).

As the proposal is for the erection of only two wind turbines with hub heights that do not exceed 15 metres, it does not fall into a category of a Schedule of Development that may require the submission of an Environmental Impact Assessment (EIA) under the provisions of The Environmental Impact Assessment (Scotland) Regulations 2011.

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.

Policies 1B (The Spatial Strategy: Development Principles) and 10 (Sustainable Energy Technologies) of the approved South East Scotland Strategic Development Plan (SESPlan) and Policies DC1 (Development in the Countryside and Undeveloped Coast), DP13 (Biodiversity and Development Sites), NRG3 (Wind Turbines), ENV3 (Listed Buildings), ENV7 (Scheduled Monuments and Archaeological Sites) 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:

1. The Scottish Government's policy on renewable energy given in Scottish Planning Policy: February 2010;
2. The Scottish Government web based renewables advice entitled "Onshore Wind Turbines", which has replaced Planning Advice Note 45: Renewable Energy Technologies;
3. The East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011);
4. The Council's Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian: December 2010;
5. Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development affecting a listed building or its setting given in Scottish Planning Policy: February 2010.

Scottish Planning Policy on renewable energy states that the commitment to increase the amount of electricity generated from renewable sources is a vital part of the response to climate change. In this, there is potential for communities and small businesses in urban and rural areas to invest in ownership of renewable energy projects or to develop their own projects for local benefit. Planning authorities should support the development of a diverse range of renewable energy technologies whilst guiding development to appropriate locations. Factors relevant to the consideration of applications for planning permission will depend on the scale of the development and its relationship with the surrounding area, but are likely to include impact on the landscape, historic environment, natural heritage and water environment, amenity and communities, and any cumulative impacts that are likely to arise. When granting planning permission planning authorities should include conditions for the decommissioning of renewable energy developments including, where applicable ancillary infrastructure and site restoration.

The advice entitled "Onshore Wind Turbines" forms one section of the web based renewables advice that the Scottish Government have introduced to replace Planning Advice Note 45: Renewable energy technologies. It provides advice on, amongst other things, matters relating to landscape impact, wildlife and habitat, ecosystems and biodiversity, shadow flicker, noise, road traffic impacts, aviation, and cumulative effects. In relation to landscape impact, the advice is that wind turbines can impact upon the landscape by virtue of their number, size or layout, how they impact on the skyline, their design and colour, any land form change, access tracks and ancillary components anemometers, substations and power lines. The ability of the landscape to absorb development often depends largely on features of landscape character such as landform, ridges, hills, valleys, and vegetation. Selecting an appropriate route for access, considering landform change, surfacing and vegetation can also influence to what extent proposals are integrated into the landscape setting. In relation to landscape impact, a cautious approach is necessary in relation to particular landscapes which are rare or valued. In assessing cumulative landscape and visual impacts, the scale and pattern of the turbines plus the tracks, power lines and ancillary development will be relevant considerations. It will also be necessary to consider the significance of the landscape and views, proximity and inter-visibility and the sensitivity of visual

receptors. Planning authorities are more frequently having to consider turbines within lower-lying more populated areas, where design elements and cumulative impacts need to be managed.

Policy 10 of the approved South East Scotland Strategic Development Plan (SESPan) seeks to promote sustainable energy sources.

It is stated in paragraph 9.6 of the adopted East Lothian Local Plan 2008 that the Council is supportive of Government policy to secure greater energy generation from renewable sources. The benefits will be weighed against the impact on the local environment and features of interest. With regard to wind turbines it is stated in paragraph 9.7 that because of the need for turbines to catch the wind it is not possible to hide them. The visual and landscape impact, both of the turbines themselves and associated infrastructure, is usually the main concern. In paragraph 9.8 it is stated that the Council wishes to protect valued landscape features, including North Berwick Law.

Policy NRG3 of the adopted East Lothian Local Plan 2008 states that subject to consistency with other plan policies, proposals for individual turbines or wind farms and associated access tracks and transmission lines will be supported where (i) they would not change the existing landscape character in an unacceptable way; (ii) they would not have an unacceptable visual impact on landscape or townscape including the impact on distinctive public views, landmark buildings or natural features, or routes; (iii) they would not have an unacceptable impact from noise at any noise sensitive property including the gardens of such properties however large; (iv) there would be no demonstrable nuisance from a shadow flicker effect; (v) they would have no unacceptable adverse impacts on hydrogeology or hydrology; (vi) alternative, better, sites are not available; and (vii) there are no unacceptable cumulative impacts. Policy NRG3 also requires that in assessing all proposals the Council will have regard to the findings and recommendations of the Landscape Capacity Study for Wind Turbine Development in East Lothian (May 2005).

The Council's East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011) is also relevant to the determination of this application. This Supplementary Landscape Capacity Study determines the capacity of the East Lothian lowland landscapes and the Lammermuir fringe to accommodate various scales of wind turbine development smaller than those considered in the Landscape Capacity Study for Wind Turbine Development in East Lothian (May 2005). In this regard four principal development typologies are considered in the study, namely, (i) Typology A: wind turbines between 65m and 120m high, (ii) Typology B: Single wind turbines between >42m and <65m high, (iii) typology C: wind turbines between 20m and up to and including 42m high, and (iv) typology D: wind turbines between 12m and <20m high, with all wind turbine heights being from ground level to blade tip.

The Council's Planning Guidance for Lowland Wind Turbines: June 2013 is relevant to the determination of this application. In setting out the policy framework, key considerations and capacity assessments for wind turbine development the purpose of this supplementary planning guidance is (i) to provide potential applicants for planning permission for smaller and medium sized turbines with guidance on the range of issue which they should consider when preparing wind turbine proposals, (ii) to indicate the matters which will be considered by the Council when assessing these applications, (iii) to set out the recommendations of the Council's East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011). It is focused primarily on turbines with a height to blade tip ranging from between 20 to 120 metres

but is also applicable to single and small groups of turbines in excess of 120 metres to blade tip where the same design and policy issues would be relevant.

The Landscape Capacity Study for Wind Turbine Development in East Lothian (May 2005) is not material to the determination of this application as its findings are not based on an assessment of the effect on the landscape of East Lothian of a wind turbine(s) lower than 42 metres high.

A total of 20 written objections have been received in respect of this planning application. Most of the written objections take the form of pro-forma letters. The main grounds of the objection to the application are:

- * the proposed two wind turbines are contrary to the findings of the Council's East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011); and

- * the proposed two wind turbines would harm the setting of the Category B listed Phantassie limekiln.

Due to its positioning within the local landform and that it would be a ground surface feature, the proposed access track would not be harmful to the landscape character and appearance of this part of the East Lothian countryside.

The National Air Traffic Services (NATS) and the Ministry of Defence (MOD) have been consulted on the application and neither of these bodies raise objection to the proposed wind turbines on grounds of aircraft safety. The Civil Aviation Authority (CAA) have no comment to make on the application.

It is stated in Part 1(a) of Policy DC1 of the adopted East Lothian Local Plan 2008 that infrastructure type development will be acceptable in principle in the countryside of East Lothian provided it has a clear operational requirement for a countryside location that cannot reasonably be accommodated within an existing urban or allocated area. Policy ENV3 of the approved Edinburgh and the Lothians Structure Plan 2015 states that development in the countryside will be allowed where it has an operational requirement for such a location that cannot be met on a site within an urban area or land allocated for that purpose.

With its purpose to generate and supply electricity a proposed wind turbine can reasonably be defined as being an infrastructure type development. A countryside location where wind power can be harnessed to generate electricity is a basis upon which the requirement to operate a wind turbine infrastructure type development in the countryside can in principle be justified.

The application site is in a countryside location where wind power can be harnessed to generate electricity and thus by their siting and operation in relation to the business use of Phantassie Farm the proposed two wind turbines can, as a form of new build infrastructure development in the countryside of East Lothian, be justified. The proposed two wind turbines are capable of providing the farm with a renewable energy source. On this consideration the proposed two wind turbines are consistent with Policy DC1 of the adopted East Lothian Local Plan 2008 and Policy ENV3 of the approved Edinburgh and the Lothians Structure Plan 2015.

Moreover, in their countryside location the proposed two wind turbines would not involve any permanent development and furthermore would not preclude the reversal of the use of the land of the application site to agricultural use. On this consideration

also the principle of the proposed development is consistent with Policy DC1 of the Local Plan and Policy ENV3 of the Structure Plan.

Policy NRG3 of the adopted East Lothian Local Plan 2008 stipulates that a proposed wind turbine(s) should not have an unacceptable impact from noise at any noise sensitive property and Part 5 of Policy DC1 requires there to be no significant adverse impact on nearby uses.

Paragraph 5.20 of Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian: December 2010 states that the proximity of noise sensitive receptors (e.g. residential properties) will be a significant factor in the requirement for an assessment of the affect of noise from the turbine on such noise sensitive receptors. Paragraph 5.22 states that for single turbines in low noise environments the day time level measured as LA(10)10min should be 35 DB at nearest noise sensitive dwellings, up to wind speeds of 10m/s at 10 metres in height.

In this regard the Council's Senior Environmental & Consumer Services Manager is satisfied that the external free-field noise levels associated with the operation of the proposed two wind turbines would not exceed 35dBLA90 10min at any wind speed up to 10m/s at any nearby residential property. Subject to such control the proposed two wind turbines would not have a harmful noise impact on the nearest residential properties.

Policy NRG3 of the adopted East Lothian Local Plan 2008 stipulates that a proposed wind turbine(s) should not demonstrably give rise to nuisance from a shadow flicker effect and Part 5 of Policy DC1 requires there to be no significant adverse impact on nearby uses.

The Scottish Government web based renewables advice entitled "Onshore Wind Turbines" advises that as a general rule the shadow flicker effect of an operating turbine should not be a problem where the distance between the turbine and a dwellinghouse exceeds 10 times the diameter of the rotor blades of the turbine.

In the case of each of the proposed two wind turbines 10 times the diameter of its rotor blades would be 132 metres. The nearest dwelling, being Phantassie Farm House to the southeast, is some 270 to 370 metres away from where the proposed two wind turbines would be sited. Thus, the proposed two wind turbines pass the Scottish Government's general rule of shadow flicker effect.

Due to their height and distance from the nearest residential properties the proposed two wind turbines would not be physically overbearing on any of them or in the outlook from them. On this count the proposed two wind turbines would not harm the amenity of those residential properties.

Policy NRG3 of the adopted East Lothian Local Plan 2008 stipulates that a proposed wind turbine(s) should not have an unacceptable adverse impact on hydrogeology or hydrology.

There is no evidence on which to say that the proposed two wind turbines would have an unacceptable adverse impact on the hydrogeology or hydrology of the area.

On these tests of noise and shadow flicker effect and considerations of dominance, outlook and impact on hydrology the proposed wind turbine is consistent with Policies NRG3 and DC1 (Part 5) of the adopted East Lothian Local Plan 2008, Policy 10 of the approved South East Scotland Strategic Development Plan (SESPlan), The Scottish

Government web based renewables advice entitled “Onshore Wind Turbines” and Planning Guidance for Lowland Wind Turbines: June 2013.

On the matter of safety, paragraph 5.15 of Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian: December 2010 states that although wind turbines erected in accordance with best engineering practice should be stable structures, it is desirable to achieve a set back from roads, railways and public footpaths. The Scottish Government web based renewables advice entitled “Onshore Wind Turbines” gives advice on the siting of wind turbines in proximity to roads and railways and states that it may be advisable to achieve a set back from roads and railways of at least the height of the turbine proposed.

Each of the proposed two wind turbines would achieve such a set back distance in its relationship with the public road to the east. The Council’s Transportation service has been consulted on the application and raises no objection to the proposed two wind turbines, being satisfied that due to their distance away from the public road they would have no significant adverse consequences for road safety.

On this consideration the proposed two wind turbines are consistent with Policy T2 of the adopted East Lothian Local Plan 2008, The Scottish Government web based renewables advice entitled “Onshore Wind Turbines” and Planning Guidance for Lowland Wind Turbines: June 2013.

Policy DP13 of the adopted East Lothian Local Plan 2008 generally presumes against new development that would have an unacceptable impact on the biodiversity of an area. One of the key considerations set out in Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian: December 2010 is that sites or species designated or protected for their biodiversity or nature conservation interest will be protected in accordance with development plan policy. Proposals for wind turbines must have regard to both their site specific and wider impacts.

The Council's Biodiversity Officer is satisfied that the proposed two wind turbines would not have any adverse biodiversity impacts.

Accordingly, the proposed two wind turbines are not contrary to Policy DP13 of the adopted East Lothian Local Plan 2008 or Planning Guidance for Lowland Wind Turbines: June 2013.

It is stated in Scottish Planning Policy that archaeological sites and monuments are an important finite and non-renewable resource and should be protected and preserved in situ wherever feasible. The presence and potential presence of archaeological assets should be considered by planning authorities when making decisions on planning applications. Where preservation in situ is not possible planning authorities should through the use of conditions or a legal agreement ensure that developers undertake appropriate excavation, recording, analysis, publication and archiving before and/or during development. If archaeological discoveries are made during any development, a professional archaeologist should be given access to inspect and record them. Planning Advice Note 2/2011: Planning and Archaeology similarly advises.

As stipulated in Policy ENV7 of the adopted East Lothian Local Plan 2008, new development that would harm a site of archaeological interest or its setting will not be permitted. One of the key considerations set out in Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian: December 2010 is that wind turbine development that would harm an archaeological site or its setting, will not normally be permitted.

The Council's Archaeology Officer advises that the proposed development would be situated in an area which has a good potential to contain archaeological remains and contains cropmarks of a possible prehistoric enclosure. Because of this the Archaeology Officer recommends that a programme of archaeological works be carried out prior to the commencement of development. This can be secured through a condition attached to a grant of planning permission for the proposed wind turbines. This approach is consistent with Scottish Planning Policy: February 2010 and Planning Advice Note 2/2011: Planning and Archaeology.

On this consideration the proposed two wind turbines are not contrary to Policy ENV7 of the adopted East Lothian Local Plan 2008 or Planning Guidance for Lowland Wind Turbines: June 2013.

As stipulated in Policy ENV3 of the adopted East Lothian Local Plan 2008, new development that harms the setting of a listed building will not be permitted. One of the key considerations set out in Planning Guidance for Lowland Wind Turbines: June 2013 is that any proposal for wind turbine development near or within the curtilage of a listed building must ensure that the listed building remains the focus of its setting and is not harmed by the presence of the proposed turbine(s).

The proposed two wind turbines would be sited some 125 and 245 metres, respectively to the southwest of the listed building of Phantassie limekiln. However, between that listed building and the site of the proposed two wind turbines is a strip of mature trees. Moreover the existing modern agricultural buildings of Phantassie Farm are already a prominent feature within the setting of the limekiln. The presence of the mature trees and the existing modern agricultural buildings would prevent a direct visual relationship between the proposed two wind turbines and the limekiln. In such circumstance and due to the relatively low height and limited massing of them, the proposed two wind turbines would not have a harmfully prominent or imposing visual relationship with and would not harmfully impose themselves on the setting of the listed Phantassie limekiln.

Accordingly, the proposed two wind turbines are consistent with Policy ENV3 of the adopted East Lothian Local Plan 2008, Scottish Planning Policy: February 2010 and Planning Guidance for Lowland Wind Turbines: June 2013.

Notwithstanding these foregoing conclusions it now has to be established whether or not the proposed two wind turbines would be acceptable in terms of their landscape and visual impact.

On the matter of landscape impact, an important material consideration in the determination of this planning application is the Council approved East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011) which determines the capacity of the East Lothian lowland landscapes to accommodate various scales of wind turbine development.

The land of the application site is within the 'Agricultural Plain – Sub Area 1, East' landscape character area of the Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011). The Study classifies this landscape character area as being a rolling landform with pronounced ridges and occasional landmark features, with a relatively high proportion of woodland which increases containment and reduces scale. The Study further classifies this landscape character area as being of high sensitivity to Typology of wind turbine A and B, of medium-high sensitivity to Typology of wind turbine C and low sensitivity for Typology D.

The Study states that within the 'Agricultural Plain – Sub Area 1, East' landscape character area: (i) there are no opportunities to locate wind turbines of Typology A (between 65 metres and 120 metres high) or of Typology B (single wind turbines between more than 42 metres and less than 65 metres high); (ii) there are very limited opportunities to accommodate wind turbines of Typology C, being wind turbines between 20 metres high and up to and including 42 metres high (subject to impact on key views) and that any such wind turbines should be towards the lower height band of Typology C, being below 30 metres high from ground level to blade tip in order to attain a better scale relationship to small buildings in this well settled area and minimise effects on views of landmark features; (iii) there are opportunities to locate wind turbines of Typology D, being wind turbines between 12 metres and less than 20 metres high, if visually associated with farms and buildings.

Although the Study advises that within the 'Agricultural Plain – Sub Area 1, East' landscape character area there are some opportunities to accommodate Typology C wind turbines, it particularly states that the part of the Agricultural Plain – Sub Area 1, East' landscape character area in which the site of the proposed two wind turbines is located cannot accommodate any Typology C wind turbines.

Each of the proposed wind turbines, at a height of 21.5 metres from ground level to blade tip, is a Typology C wind turbine that the East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011) advises cannot be accommodated within the 'Agricultural Plain – Sub Area 1, East' landscape character area.

However it is proposed to excavate the land of the site of each wind turbine by 1.5 metres so that they would both sit on a lower ground level than the farmland around them. This would result in each proposed wind turbine having a perceived height of 20 metres to blade tip, only a fraction higher than a Typology D wind turbine, being one between 12 metres and less than 20 metres high which the Study states can generally be accommodated within this landscape character area.

In light of this it is necessary to determine, though a specific landscape and visual impact appraisal of their likely impact whether or not the proposed two wind turbines would be acceptable to their place. In this due regard has to be paid to the terms of Structure Plan Policy ENV3, Local Plan Policies DC1 and NRG3, Scottish Planning Policy: February 2010 and Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian: December 2010.

Part 5 of Policy DC1 of the adopted East Lothian Local Plan 2008 stipulates that new development must be sited so as to minimise visual intrusion and landscape impact within the open countryside. With regard to its nature and scale new development must be integrated into the landscape, reflect its character and quality of place, and be compatible with its surroundings.

As stipulated in Policy NRG3 of the adopted East Lothian Local Plan 2008 a proposed wind turbine(s) should not change the existing landscape character in an unacceptable way and should not have an unacceptable visual impact on landscape or townscape including the impact on distinctive public views, landmark buildings or natural features.

On the key considerations of landscape impact and impact on public views to and from landmark features Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian: December 2010 states:

(i) wind turbine development will only be supported where the overall integrity and setting of key public views to and from landmark features, both natural and man-made, will not be compromised. Developments which would harm the character, appearance and setting of significant natural landscape features, landmark buildings and structures will be resisted;

(ii) wind turbines must be sited and designed so that they relate to their setting; that any adverse effects on visual amenity and landscape are minimised and that areas which are valued for their landscapes and scenery are protected;

(iii) wind turbines must be acceptable in terms of scale and character for their proposed location and must be well integrated into the landscape, reflect its character and quality of place and be compatible with its surroundings;

(iv) wind turbines must not appear incongruous or dominate the local landscape when viewed from a range of public places. They must be capable of being accommodated within an open landscape without detriment to landscape character. They must not result in a change of landscape character from a predominantly agricultural landscape to one that is a landscape dominated by wind turbines: cumulative impact will be a particular issue here;

In relation to cumulative impact paragraph 4.34 of Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian: December 2010 states that individual wind turbine proposals must not be looked at in isolation. Cumulative visual impact, viz. the impact of the proposed turbine/s when viewed in association with other turbines already erected or in the planning process needs to be taken into account. A balance must be retained, so that wind turbines are integrated into their landscape setting and do not merge with other turbines to change the character of the landscape into a predominantly wind farm landscape where other significant landscape characteristics of an area become visually subservient to wind turbines. On this matter Policy NRG3 of the local plan stipulates there should be no cumulative impacts from a proposed wind turbine(s).

There is an existing wind turbine at Scotsraig some 840 metres to the northwest of where the proposed two wind turbines would be positioned. Due to the separation distance there would be between it and the proposed two wind turbines and the rolling form of the intervening landform there would be no resultant harmful cumulative visual impact.

On the matter of landscape impact the Council's Policy & Projects Manager advises that the proposed two wind turbines would be positioned at the foot of a hill and thus down off the skyline. They would be positioned in relatively close proximity to the existing large agricultural buildings of Phantassie Farm. In this the specific landscape appraisal of the impact of the proposed two wind turbines undertaken by the Policy & Projects Manager finds that the proposed two wind turbines would be viewed in the context of the farm buildings of Phantassie Farm. The turbines would have a functional relationship with those buildings, the height and massing of which would allow a visual relationship which would mitigate the visual impact of the turbines. Moreover there are areas of mature woodland to the north, east and south of the location of the proposed turbines which provide a degree of screening of the sites in views from the surrounding area and in longer views towards the site from East Linton. The excavation of the land of the site of each wind turbine by 1.5 metres would also further reduce the visibility of each of them.

In overall conclusion, the proposed two wind turbines due to their positioning, form, height and scale would not appear as prominently intrusive features in their particular landscape setting. They would not change the existing landscape character of the area in a harmful way. They would not have a harmful visual impact on any key views of valued landscape, historic or natural heritage features.

From these specific findings of the detailed landscape assessment of their likely visual impacts it is demonstrated that the proposed two wind turbines can be successfully accommodated in this particular location within the 'Agricultural Plain – Sub Area 1, East' landscape character area. In this they are consistent with Policies DC1 (Part 5) and NRG3 of the adopted East Lothian Local Plan 2008, Scottish Planning Policy: February 2010, the Scottish Government web based renewables advice entitled "Onshore Wind Turbines" and the key considerations of landscape impact of Planning Guidance for Lowland Wind Turbines: June 2013.

These specific findings outweigh, in the particular circumstances of this case, the statement in the East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011) that the part of the Agricultural Plain – Sub Area 1, East' landscape character area in which the site of the proposed two wind turbines is located cannot accommodate any Typology C wind turbines.

With regard to Scottish Planning Policy it is appropriate to impose a condition on the grant of planning permission requiring removal of the wind turbine and restoration of the site should the wind turbine become operationally redundant.

CONDITIONS:

- 1 The external free-field noise levels associated with the operation of the wind turbines hereby approved shall not exceed 35dBLA90 10min at any wind speed up to 10m/s at any residential property.

Reason:

In the interests of the residential amenity of the wider locality and to protect noise sensitive properties.

- 2 No symbols, logos or any other markings shall be displayed on any part of the wind turbines hereby approved without the written consent of the Planning Authority, except for over-riding reasons of health and safety.

Reason:

In the interests of the visual amenity of the area.

- 3 No development shall take place until the applicant has, through the employ of an archaeologist or archaeological organisation, secured the implementation of a programme of archaeological work (Archive Assessment and Monitored Strip) on the site of the proposed development in accordance with a written scheme of investigation which the applicant will submit to and have approved in advance by the Planning Authority.

Reason:

To facilitate an acceptable archaeological investigation of the site.

- 4 In the event that any wind turbine installed on the application site fails to produce electricity for a continuous period of 6 months, then, unless otherwise approved in writing by the Planning Authority, it shall be deemed to have ceased to be required. If it is deemed to have ceased to be required the wind turbine shall be dismantled and removed from the site by the operator by no later than the date occurring 6 months after the end of the said continuous 6 months period, and the ground fully reinstated to the specification and approval of the Planning Authority.

Reason:

To prevent a redundant turbine remaining on the application site, in the interests of the landscape amenity of the area.

Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation)

REPORT TO: Planning Committee
MEETING DATE: Tuesday 1 October 2013
BY: Depute Chief Executive
(Partnership and Services for Communities)
SUBJECT: Application for Planning Permission for Consideration

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Note - this application was called off the Scheme of Delegation List by Councillor Innes for the following reason: the Council has granted permission for a significant development at this location previously, I therefore believe the applicant should have the opportunity to put his case to the Planning Committee.

Application No. **11/00363/P**
Proposal Erection of nursing home and associated works
Location **Cockenzie House
22 Edinburgh Road
Cockenzie
East Lothian
EH32 0HY**
Applicant Mr James McDonald
Per Gilberts Ltd
RECOMMENDATION Application Refused

PLANNING ASSESSMENT

The application site consists of the eastern part of the grounds of Cockenzie House. The remainder of the grounds of Cockenzie House and the building itself are outwith the application site.

Cockenzie House and its stone boundary walls, gates and garden features are listed as being of special architectural or historic interest (Category A). The garden features consist of two stone gazebos and a vaulted Gothic grotto. The House and its grounds are designated as the Cockenzie House Designed Landscape. They are within the Cockenzie and Port Seton Conservation Area. All of the trees within the grounds of Cockenzie House are protected by Tree Preservation Order 21- Cockenzie House.

The land to the south of the building consists of a tripartite walled garden, which is subdivided into three sections by stone walls. The two stone gazebos and the vaulted Gothic grotto are located within the central or inner garden (once the entrance court).

It is the eastern part of the tripartite walled garden that forms most of the application site. It consists of a central area of grassed open space, which is bounded to the north,

east and south by tree planting. The application site also includes an area of land that is located to the east and northeast of Cockenzie House.

The property is bounded to the north by the public road of the High Street, to the east by the public roads of South Doors and School Lane, to the south by the public road of Edinburgh Road, and to the west by the public road of West Harbour Road. The grounds of Cockenzie House are enclosed by stone boundary walls.

Cockenzie House has an extensive planning history. It was previously used as a nursing home but that use ceased in March 2008. It has more recently been used as a hostel and cafe. Planning permission (Ref: 08/00656/FUL) was retrospectively granted in February 2009 for the change of use of the nursing home to a hostel for a temporary period until the 3 February 2014. Planning permission (Ref: 10/00604/P) was retrospectively granted in October 2010 for the part change of use of the hostel to a café for a temporary period until the 3 February 2014. Planning permission (Ref: 11/00217/P) was retrospectively granted in June 2011 for the part change of use of the building from hostel use to 3 houses. One house is contained within the main part of the building. The other two houses are contained within the smaller wing that adjoins the eastern end of the main building. The drawings docketed to planning permission 11/00217/P indicate that the three storey wing adjoining the western part of the building would be retained for hostel use and as a café.

Through application 11/00692/P, planning permission is sought for alterations and extension to and conversion of most of Cockenzie House from a hostel, café and 2 houses to 19 flats and 1 house. One of the existing houses would be retained in use as a house. Planning permission is also sought for other associated works, including alterations to the existing vehicular access. A separate report on application 11/00692/P is, at this time, on the Scheme of Delegation List.

Through application 11/00692/LBC, listed building consent is sought for alterations and extension to the building, for alterations to the boundary wall, for the formation of a bin and cycle store, the formation of hardstanding areas and for the part demolition of walls and steps. A separate report on application 11/00692/LBC is, at this time, on the Committee Expedited List.

Planning permission is now sought for the erection of a new, detached nursing home and associated works on the application site. The nursing home would contain 66 bedrooms.

The proposed nursing home would be erected within the eastern section of the tripartite walled garden of Cockenzie House. The proposed building would sit on a roughly north-south axis, perpendicular to the main house, and parallel to the path that runs from the formal entrance on Edinburgh Road to the central bay of the house. The proposed building would sit forward of the front building line of Cockenzie House, and would occupy the greater part of the east garden. It would have a broadly rectangular shaped footprint and would be mostly three storeys in height (although part of the building would be single storey and parts of the building would be two storeys in height). The building proposed would be of a contemporary design. The roof of the single storey part of the building, which would consist of a sun room, would be mono-pitched. The roofs of the some of the two storey parts of the building would be flat whilst the roofs of the other two storey parts of the building would be mono-pitched. The roofs of the larger three storey part would mainly be flat but would also have a mono-pitched section at the eastern end of the proposed building. The walls of the building would mainly be finished in white smooth render with smaller sections of wall being finished in timber wall cladding. Dark grey coloured metal faced windows would

be installed in the building. The mono-pitched roofs of the building would be clad in metal, standing seam, roof panels.

The removal of a number of trees is proposed in order to facilitate the proposed nursing home.

It is proposed that a new vehicular access would be formed to the site from High Street, at a point close to the eastern end of the site's boundary with the High Street. To facilitate the formation of the proposed vehicular access and to provide appropriate visibility splays, some 26 metres of the existing roadside stone boundary wall would be removed or lowered and new, set back sections of wall, would be erected on either side of the proposed vehicular access. Access to the nursing home from the proposed vehicular access would be taken via a new access road that would be some 4.3 metres wide and would be finished in tarmac. The access road would serve a total of 22 car parking spaces, which would principally be provided immediately to the east of the nursing home building. The proposed vehicular access would also provide access to the proposed car park that would serve the 19 flats and 1 house that are the subject of planning application 11/00692/P. One tree in the northern part of the site would be removed to facilitate the proposed access and parking arrangements. A total of 9 replacement trees within the northern part of the site are proposed. An existing outbuilding that is located to the northeast of the main House would be altered and extended to form a bin and cycle store. The mono-pitch roof of the outbuilding would be removed, the walls of it would be heightened and a new flat roof would be installed. The walls of the altered outbuilding would then be clad in timber cladding. The outbuilding as it is to be altered would be used for the storage of bicycles. A timber fence some 2 metres in height would enclose a small area of land to the southwest of the outbuilding. This would be used for the storage of bins. The remainder of the application site would be landscaped.

Through separate application 11/00363/LBC listed building consent is sought for the proposed alterations to the boundary wall, for the formation of the bin and cycle store, the formation of hardstanding areas and for the part demolition of walls. A separate report on application 11/00363/LBC is, at this time, on the Committee Expedited List.

Amended plans have been submitted in respect of changes to the layout of vehicular and pedestrian access arrangements.

A design statement has been submitted with the planning application. It states that the development is proposed to fund renovation of the existing walled east garden, and a portion of the revenue generated by the nursing home is to be allocated to the future management of the grounds.

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 5 November 2012 the Council gave a formal screening opinion. The screening opinion concludes that the proposed development is unlikely to have significant effects on the environment to the extent that expert and detailed study through EIA would be necessary to properly assess any effect. Therefore, 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.

Relevant to the determination of the application is Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies ENV1 (Residential Character and Amenity), ENV3 (Listed Buildings), ENV4 (Development within Conservation Areas), ENV8 (Gardens and Designed Landscapes), C12 (Residential Care and Nursing Homes- Location), DP2 (Design), DP14 (Trees on or adjacent to Development Sites), DP17 (Artworks- Percent for Art), T2 (General Transport Impact), DP20 (Pedestrians and Cyclists) and DP22 (Private Parking) 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, on development within a conservation area, and on development affecting a designed landscape.

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.

It is stated in Scottish Planning Policy: February 2010 that planning authorities have a role in protecting, preserving and enhancing gardens and designed landscapes of national importance that are included in Historic Scotland's Inventory of Gardens and Designed Landscapes. The affect of a proposed development on a garden or designed landscape should be a consideration in decisions on planning applications. Change should be managed to ensure that the significant elements justifying designation are protected or enhanced.

Also material to the determination of the application are the representations received from the public.

There are a total of 11 written representations, 10 of which make objection to the proposed development. The other representation does not state whether it objects to or is made in support of the proposed development.

The main grounds of objection are summarised as follows:

- * Proposed nursing home would have a substantial detrimental effect on the character and setting of the listed building of Cockenzie House;
- * Proposed nursing home would have an enormous footprint, height and design completely out of keeping with the surrounding buildings and would not preserve or enhance the Conservation Area;
- * Proposed nursing home would harm the conservation objectives of the Cockenzie House Designed Landscape;
- * The extra traffic generated by the proposed development would increase congestion; and
- * An additional care home is not identified in the Council's Older People's Strategy;

Whether or not a nursing or care home is identified in the Council's Older People's Strategy is not a material consideration in the determination of this planning application.

Policy C12 of the adopted East Lothian Local Plan 2008 states that developers of nursing homes are encouraged to choose sites within, or close to, existing settlements. Proposals must have reasonable access to the normal range of services. In this case, the proposed nursing home would be located within the village of Cockenzie. Residents would have reasonable access to the normal range of services. On this consideration the proposed nursing home is consistent with Policy C12 of the adopted East Lothian Local Plan 2008.

The application site is situated in a predominantly residential area within Cockenzie, as defined by Policy ENV1 of the adopted East Lothian Local Plan 2008. Policy ENV1 states that the predominantly residential character and amenity of existing housing areas will be safeguarded from the adverse impacts of uses other than housing. Development incompatible with the residential character and amenity of an area will not be permitted.

The proposed nursing home use of the site would be compatible with the predominantly residential use of the area. Thus the principle of use is consistent with Policy ENV1 of the adopted East Lothian Local Plan 2008.

It is proposed that a new vehicular access would be formed to the site from High Street, at a point close to the eastern end of the site's boundary with the High Street. To facilitate the formation of the proposed vehicular access two sections of the existing roadside stone boundary wall would be removed or lowered and new, set back sections of wall, would be erected on either side of the proposed vehicular access.

Planning permission (Refs. 90/00870/HIS_P) was previously granted for, amongst other things, the formation of a new vehicular access at Cockenzie House, in a similar position to the new access now proposed. A section of the front boundary wall has been removed in the position shown for the new access, although the new access has not been formed.

The existing stone boundary wall that encloses the northern end of the grounds of Cockenzie House is, in association with the listing of Cockenzie House, listed as being of special architectural or historic interest (Category A). It makes a positive contribution

to this part of the Conservation Area and to the Cockenzie House Designed Landscape. The formation of the proposed vehicular access and the realignment of the stone walls on either side of the new access would result in a noticeable change to this part of the boundary wall. Nevertheless, if the realigned lengths of walls were to be constructed in stone salvaged from the dountakings, then those proposed works would not have an unacceptable impact on the architectural or historic integrity of the stone boundary wall, on the character or appearance of the Conservation Area, or on the conservation objectives of the Cockenzie House Designed Landscape.

The proposed cycle and bin store would be positioned some 15 metres to the northeast of the existing building. Due to the distance it would be away from the existing building the proposed cycle and bin store would not draw the focus away from or harmfully impose itself on the setting of that listed building. It would not harm the integrity of the stone boundary wall. In its position, and by virtue of its size, proportion, materials and architectural form, the proposed cycle and bin store would preserve the character and appearance of the Conservation Area. It would not harm the conservation objectives of the Cockenzie House Designed Landscape.

The proposed cycle and bin store and the proposed alterations to the stone boundary wall are consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies ENV3, ENV4, ENV8 and DP2 of the adopted East Lothian Local Plan 2008.

By virtue of its distance away from neighbouring residential properties and because of the presence of mature landscaping which would be retained, the proposed building and the use of it would not lead to harmful overlooking or overshadowing of any of the neighbouring residential properties. Neither would the use of the north and east parts of the site for access and car parking have a harmful impact on the amenity of neighbouring residential properties. The Council's Environmental Protection Manager raises no objection to the proposals subject to planning control being exercised over noise emanating from any plant and equipment associated with the nursing home, in order to protect the amenity of neighbouring residential properties. In this, he advises that noise emanating from any plant and equipment should not exceed noise-rating curve NR20 at any frequency when measured in any neighbouring property. He also recommends that a construction method statement to minimise the impact of construction activity on the amenity of the area should be submitted to and approved by the Planning Authority. He further recommends that details of the proposed ventilation system to be provided for the control of cooking odours should also be submitted to and approved by the Planning Authority. Subject to such planning control the proposals would not be harmful to the amenity of any neighbouring property.

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

The Council's Senior Environmental Health Officer raises no objection to the proposed nursing home, although she makes various recommendations in respect of the kitchen of the proposed nursing home.

The Scottish Environment Protection Agency were consulted on this application, as the application site is within an area of known flood risk. Their consultation response on the planning application is outstanding, and it is not yet known whether or not they are satisfied that there would be no unacceptable flood risk in respect of the proposed nursing home. This is therefore an unresolved material consideration in the determination of this application.

The Council's Transportation service raises no objection to the proposed nursing home development. In this they are satisfied 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 recommend that a continuous footway be provided immediately to the north of the application site, in accordance with details to be submitted to and approved by the Planning Authority. This can be made conditional on the grant of planning permission.

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 Waste Services Manager raises no objection to the proposed residential development.

All of the trees within the grounds of Cockenzie House are protected by Tree Preservation Order 21- Cockenzie House. Those trees help to define the setting of the listed building of Cockenzie House and make an important contribution to the Designed Landscape and Conservation Area. The Council's Policy and Projects Manager recommends that a woodland management plan for the long term management of those trees is submitted to and approved by the Planning Authority. This requirement can be made conditional on the grant of planning permission for the proposed residential development. Some of the trees within the eastern part of the tripartite walled garden would be removed. The Policy and Projects Manager raises no objection to this. He initially advised that he had concerns over the proposed removal of six of the seven trees to the north of the building, particularly given that the applicant was not proposing any replacement tree planting. The applicant has submitted an Arboricultural Method Statement and revised plans to address these concerns. The revised plans show that five of the seven trees to the north of the building would be retained. Additionally it proposed to plant 9 replacement trees. The Arboricultural Method Statement confirms that the new walls to be erected within the root protection areas of two of the existing trees will be constructed using a mini-pile and beam configuration. The Policy and Projects Manager accepts the recommendations of the Arboricultural Method Statement and is satisfied that the proposed measures are an acceptable means of protecting the tree root systems of the trees potentially affected. The proposed development is consistent with Policy DP14 of the adopted East Lothian Local Plan 2008.

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 residential development.

Notwithstanding these considerations, the principal material considerations in the determination of this application is whether or not the proposed nursing home would be an appropriate form of development within this sensitive location and if not, whether other material considerations justify approving the application contrary to the development plan.

The original building dates from around 1680, although over the centuries it has been altered and extended. The main building is three storeys in height, with some of its accommodation in the roofspace. The main building is positioned on the northern part of its grounds with its principal elevation facing southwards, towards Edinburgh Road.

A smaller wing, which is partly two storeys in height and partly single storey, adjoins the eastern end of the main building. A three storey wing (known as the Hanseatic Barn) adjoins the western end of the main building. garden ground.

The land to the south of the building consists of a tripartite walled garden, which is subdivided into three sections by stone walls. The two stone gazebos and the vaulted Gothic grotto are located within the central, or inner garden (once the entrance court).

The garden walls are of rubble stone, raised in height with what is thought to be clinker, and a series of gates in the dividing walls bordering the central garden allow access between the gardens. The central, or inner garden (once the entrance court) is divided by an axial path of concrete slabs. The two adjacent walled gardens are entered to by three doors in each wall, one in each corner and one in the centre point of the walls.

The original approach to the house was from the south, where entrance gates are set back from Edinburgh Road. A secondary entrance is to the north on Cockenzie High Street, and leads to the North Court to the rear of the house, used primarily for car parking.

It is the eastern part of the tripartite walled garden that forms most of the application site. It consists of a central area of grassed open space, which is bounded to the north, east and south by tree planting. The application site also includes an area of land that is located to the east and northeast of Cockenzie House.

Cockenzie House, including the Hanseatic Barn, gazebos, grotto, garden walls and gates were listed in 1971 as being of special architectural or historic interest (Category A). By being Category A listed, Cockenzie House is a building of national importance. The house and its grounds are also designated as the Cockenzie House Designed Landscape, added to the Inventory in 2001. The Inventory notes that the arrangement of house and walled garden has high value as a Work of Art. Furthermore, the known history and associations with the development of Cockenzie's early trading links and industries give this site outstanding Historical Value; the garden layout is a rare survival of its type. The garden has outstanding Architectural value as it provides the setting for a Category A listed building, the gazebos and walls provide a strong architectural dimension, and the grotto provides architectural interest and is important as evidence of the occupation of the owners of the house.

The site is also within the Cockenzie and Port Seton Conservation Area. The Conservation Area Character Statement in the adopted East Lothian Local Plan 2008 notes that most buildings in the Conservation Area are in dense groups and open spaces are rare. The grounds of Cockenzie House are noted as an important open space, whose mature trees are important to the setting of the Conservation Area. The trees within the site are protected by tree preservation order number 21 – Cockenzie House, confirmed in 1973.

In the applicant's design statement, it is stated that the proposals "conform to the greater scale and height of existing buildings within the walls of the site, rather than the smaller scale of the urban development beyond the garden walls". It goes on to note that "the new elements should still be visually and architecturally subservient to the existing house" and argues that this has been achieved as "the highest point of the new extension (sic) is to remain lower than the ridge of the existing main house". It also argues that the location and appearance of the proposed development will reinforce the formal axis running from the entrance on Edinburgh Road to the central bay of the main house.

It is the case that the scale of the proposed nursing home has more in common with existing buildings within the site (i.e. Cockenzie House) than with any other buildings within the surrounding settlement. However, given the unique nature of Cockenzie House within the settlement and its historic relationship to the rest of the village (i.e. having originally been built as a harbour manager's house), this does not provide justification for locating another large building within the site.

The submitted drawings indicate that the highest point of the proposed new building would be around 2m lower than the ridgeline of Cockenzie House, and marginally higher than the roof of the Hanseatic Barn. Its length would be over 1.5 times that of the frontage of Cockenzie House and its total footprint would be similar, if not larger, to that of Cockenzie House.

The proposed nursing home by virtue of its size, scale and positioning would dominate and compete with the listed building within the site such that the listed building would no longer be the focus of its setting. From significant parts of the central and west garden the proposed nursing home would be clearly visible and would be almost the same height as, and have a significantly longer frontage than the main house. By being positioned only some five metres from both Cockenzie House itself and from the wall separating the east and central gardens of the tripartite walled garden, the proposed nursing home would appear as a prominent and incongruous feature from the central garden, from where its full length would be seen. The character of the east garden itself would be fundamentally altered, and it would be entirely dominated by the proposed nursing home. The open, undeveloped form of the east garden is an important part of the setting of the listed building. This setting would be significantly harmed by the presence of the nursing home buildings and its associated infrastructure. As it would harm the setting of the listed Cockenzie House, the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV3 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010 on development affecting a listed building or its setting.

Historic Scotland object to the planning application, as they advise that the size and scale of the proposed nursing home would clearly dominate the visual envelope of the listed building. It would overwhelm the setting of the house, which should always remain the dominant focus of the site. From outwith the site the proposed nursing home would be clearly visible in key views, including those from the open village green. Such views will adversely affect the setting of the house and gardens within their carefully walled grounds.

Policy ENV8 of the adopted East Lothian Local Plan 2008 states that development that would harm the conservation objectives of areas included within the Inventory of Gardens and Designed Landscapes will not be permitted.

The open and undeveloped tripartite garden layout to the front of Cockenzie House is an extremely important element of the Designed Landscape and its relationship with Cockenzie House. The proposed nursing home would result in the loss of much of the east garden of the tripartite garden. It would adversely affect the whole concept of the tripartite design with formal gardens to the centre framing the front of the house, flanked by less formal pastoral gardens and woodlands to the east and west. The proposed development would significantly harm the conservation objectives of the Cockenzie House Designed Landscape. On this consideration the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV8 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010 on development affecting a designed landscape.

Historic Scotland object to the planning application, as they advise that the proposed nursing home would have a major negative impact on the integrity of the Cockenzie House Designed Landscape.

Policy ENV4 of the adopted East Lothian Local Plan 2008 requires that all new development in Conservation Areas must be located and designed to preserve or enhance their special architectural or historic character. The land of the application site forms part of the tripartite gardens of Cockenzie House, which is a historic feature of the Conservation Area and significantly contributes to the character of it. In its open form the garden is important to the setting of the Category A listed Cockenzie House. It is important to the quality of the urban environment of Cockenzie. The visual impact of the proposed nursing home would result in the loss of the open character of part of the tripartite gardens of Cockenzie House, to the detriment of the character, appearance and amenity of the Conservation Area. On this consideration the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV4 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010 on development affecting a conservation area.

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 his design statement, the applicant makes reference to the previous planning history of the site. He correctly advises that planning permission (Ref: 90/00870/HIS_P) was granted in February 1994 for the conversion of the Hanseatic Barn to form an extension to the then existing Cockenzie House Nursing Homes, for the erection of a building to contain 30 sheltered housing flats within the eastern garden of Cockenzie House and for other associated works. The applicant further correctly states that this planning permission was partially implemented, as the Hanseatic Barn was converted. As that planning permission has been partially implemented, the applicant therefore advises that the building to contain the 30 sheltered housing flats could therefore be erected at any time within the eastern garden of Cockenzie House. In his view, the nursing home building now proposed would have less of an impact than the 30 sheltered housing flats. This position is generally referred to as 'fallback'.

In this regard, it is worth noting that the original approval for the sheltered housing was in the context of being part of a single planning unit that took in the entire curtilage of Cockenzie House, approval being given for a sheltered housing use (Class 8 of the Town and Country Planning (Use Classes) (Scotland) Order 1997) that was functionally related to the use of the rest of the site as a nursing home (also Class 8). The use of the main house is no longer as a nursing home, with planning permission having subsequently been granted for its use as 3 houses, a hostel and a cafe. Those approved uses have been implemented. This has started a new chapter in the planning history of the whole planning unit and there are no lawful use rights to revert back to a nursing home within the site. In other words, planning permission would be required to resume Class 8, nursing home use. The change of use has affected the whole site and the use rights that existed under planning permission 90/00870/HIS_P are no longer extant. It therefore follows that this previous permission is not a lawful 'fallback' position and should not be accorded any weight as such.

In any event, even if the sheltered housing permission did remain extant and hence represent a lawful fallback position, it would only be appropriate to accord it weight in decision-making if there was a realistic prospect of it actually being exercised in the event of refusal. Case law suggests that the test should be made on the balance of

probabilities rather than the balance of possibilities, i.e. whether there is an actual likelihood of the fallback being implemented as opposed to a theoretical possibility. This seems unlikely given the lack of evidence of any serious intention by the applicant to implement the permission (a stage II building warrant application has been pending since 2001, reference 00/00812/BW_S2). Moreover, regulatory changes in respect of matters such as fire safety mean that the approved design is unlikely to be capable of implementation in its current form as it would not comply with current regulations.

Other material considerations, including the jobs that would be created through the development of the nursing home and the applicant's intention to fund renovation of the existing walled east garden and future management of the grounds, do not justify a departure of the scale proposed.

REASONS FOR REFUSAL:

- 1 The proposed nursing home by virtue of its size, scale and positioning would dominate and compete with the listed building within the site such that the listed building of Cockenzie House would no longer be the focus of its setting. Moreover, the open setting of the listed building would be significantly harmed by the presence of the nursing home buildings and its associated infrastructure. As it would harm the setting of the listed Cockenzie House, the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV3 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010 on development affecting a listed building or its setting.
- 2 The proposed development would significantly harm the conservation objectives of the Cockenzie House Designed Landscape, contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV8 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010 on development affecting a designed landscape.
- 3 The visual impact of the proposed nursing home would result in the loss of the open character of part of the tripartite gardens of Cockenzie House, to the detriment of the character, appearance and amenity of the Conservation Area. On this consideration the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV4 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010 on development affecting a conservation area.

Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation)