

REPORT TO: Planning Committee

MEETING DATE: Tuesday 6 May 2014

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Application No. **14/00064/PM**

Proposal Removal of condition 6 and variation of condition 7 of planning permission in principle 08/00669/OUT to remove requirement for zero and low carbon equipment and to allow for submission of green travel plan prior to occupation of buildings

Location **Land Bounded By Musselburgh Golf Course
Old Craighall
Services And B6415
East Lothian**

Applicant Lothian Park Ltd

Per Geddes Consulting

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

As the area of the application site is greater than 2 hectares, what is 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 type proposal 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.

Planning permission in principle (Ref: 08/00669/OUT) was granted on the 26 January 2011 for a business park development of some 5.2 hectares of land situated between the north side of the Old Craighall junction of the A1 trunk road and the south side of the golf course of Musselburgh Golf Club. Planning permission in principle 08/00669/OUT was granted subject to the imposition of 14 planning conditions.

To the north and east of the site lie parts of the golf course of Musselburgh Golf Club. The site is bounded to the west by the B6415 public road, and to the south by the Old Craighall junction of the A1 trunk road. To the southwest of the site, on the other side of

the slip road between the Old Craighall junction of the A1 trunk road and the BB6415 public road, is the Old Craighall Service Station.

Condition 2 of planning permission in principle 08/00669/OUT states that, amongst other things, the details of the business park development shall generally accord with the docketed Indicative Masterplan.

The docketed Indicative Masterplan shows how the business park could consist of four office buildings and a hotel. It is indicated that the office buildings would be three storeys in height whilst the hotel building would be five or six storeys in height. The office buildings would have a total floor area of 10,000 square metres. The proposed hotel would have 120 guest bedrooms, conference facilities, a restaurant, and meeting rooms. Three of the office buildings and the hotel building are shown to be positioned in a crescent shape on the southeast part of the site. The other office building is shown to be positioned on the northwest part of the site, close to the B6415 public road. Access to the site is shown to be taken from the B6415 public road via a new roundabout junction to be positioned at the north-western corner of the application site. The masterplan also shows how a circular internal access road, which could include a bus layby, could be created to provide access to the office and hotel buildings. It is also shown that another bus layby could be formed on the northern side of the slip road between the Old Craighall junction of the A1 trunk road and the B6415 public road, with a footpath link also shown to provide pedestrian access between the bus layby and the proposed business park. Landscaping strips are shown to be created along the eastern and southern boundaries of the site.

Condition 6 of planning permission in principle 08/00669/OUT states:

“Prior to the commencement of development details of the zero and low carbon equipment to be incorporated into the development and predicted carbon emission, using SAP or SBEM calculations, shall be submitted to and approved in writing by the Planning Authority. The details shall have due regard to the 'Sustainability Statement' that is docketed to this planning permission in principle. The completed development shall accord with the details so approved”.

The reason for Condition 6 is “To ensure this development complies with the on-site carbon emissions targets of Scottish Planning Policy 6”.

Condition 7 of planning permission in principle 08/00669/OUT states:

“A Travel Plan to minimise private car trips and to encourage use of alternative modes of transport shall be submitted to and approved by the Planning Authority prior to the commencement of development of any component part of the scheme of development hereby approved. The Plan shall include proposals for enabling persons to travel to and from the development by public transport. Additionally the Plan shall include: details of the measures to be provided; the timetable for introducing them; 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”.

The reason for Condition 7 is “In the interests of ensuring sustainable travel patterns in respect of the use of the scheme of development”.

Planning permission is sought through this application for the removal of condition 6, to remove the requirement for zero and low carbon equipment to be incorporated into the business park development. Planning permission is also sought through this application

for the variation of condition 7 to allow for submission of a Travel Plan prior to occupation of buildings, instead of prior to the commencement of development of any component part of the business park development.

This application for the removal of condition 6 and the variation of condition 7 is a valid application, as when it was made to the Council on 21 January 2014 a commencement had not been made to the development approved by the grant of planning permission in principle 08/00669/OUT and also the three-year time period for the submission of matters specified in conditions had not expired.

A commencement has still not been made to the development approved by the grant of planning permission in principle 08/00669/OUT. Moreover, the three-year time period for the submission of matters specified in conditions expired on the 26 January 2014 without detailed proposals having been brought forward for a business park development of the site. Planning permission in principle 08/00669/OUT has therefore lapsed.

The position of the applicant is that the application now being determined (Ref: 14/00064/P), which was made under Section 42 of the Town and Country Planning Scotland Act 1997 ("Act"), creates a new planning permission, distinct from the original planning permission in principle (Ref: 08/00669/OUT). The applicant advises that the consequence of this is that the standard time limits for the expiry of a planning permission (as provided for in Section 58 of the Act) will apply. As such any application granted in accordance with Section 42 will have a further three years to be implemented. This would update the timescale for the submission of a matters specified in condition application for the business park development. A legal opinion and copy of a recent appeal case (Ref: PPA-400-2038) have been submitted by the applicant in support of this position.

The Council's Legal and Procurement Service Manager does not agree with this position. If the Planning Authority approves this application, she advises that the decision notice issued would be a grant of planning permission for non-compliance with condition 6 and 7 of panning permission in principle 08/00669/OUT with a revised condition 7 forming part of that previous grant of planning permission in principle. It would not be a new grant of planning permission in principle for the development of a business park. Under the current legislation the period of time to carry out the development without compliance with those conditions would automatically be three years from the date of planning permission in principle having been granted (in this case three years from the 26 January 2011). Consequently her view is that planning permission in principle 08/00669/OUT lapsed on the 26 January 2014. It is not now possible for the applicant to extend the lifetime of the permission by another 3 years to enable submission of details of a business park development of the site the subject of planning permission in principle 08/00669/OUT.

Notwithstanding this, there is no reason why planning application 14/00064/PM cannot now be determined. Section 42 of the Act states that on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a)if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;

(b)if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

The determination in the case of this application therefore has to be limited only to the question of the conditions subject to which planning permission in principle 08/00669/OUT was granted. The determination cannot be extended to a reconsideration of the merits or otherwise of the application site being developed for a business park.

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.

There are no policies of the approved South East Scotland Strategic Development Plan (SESplan) that are relevant to the determination of this application. Policy DP18 (Transport Assessments and Travel Plans) of the adopted East Lothian Local Plan 2008 is relevant.

Material to the determination of this planning application is the Development Framework for the site, which was approved by the Council on the 26 August 2008.

No letters of representation have been received in respect of this planning application.

A material consideration in the determination of planning application 08/00660/OUT was Scottish Planning Policy 6: Renewable Energy. The expectation of Scottish Planning Policy 6 was that all future applications proposing development with a total cumulative floor space of 500 sq metres or more should incorporate on-site zero and low carbon equipment contributing at least an extra 15% reduction in CO2 emissions beyond the 2007 building regulations carbon dioxide emissions standard. Consistent with Scottish Planning Policy 6, the approved Development Framework required that the proposed business park development should incorporate on-site zero and low carbon equipment contributing at least an extra 15% reduction in CO2 emissions beyond the 2007 building regulations carbon dioxide emissions standard. It was on this basis that condition 6 was imposed.

Scottish Planning Policy was published by the Scottish Government in February 2010. This superseded Scottish Planning Policy 6, which was revoked. Scottish Planning Policy does not contain any similar requirement to incorporate on-site zero and low carbon equipment. Rather this matter is now covered by Building Standards Regulations. In view of this there is no good planning reason to oppose the removal of condition 6.

Policy DP18 of the adopted East Lothian Local Plan 2008 states that development likely to generate a significant amount of travel to work will be required to prepare, implement, maintain and monitor a Travel Plan. The approved Development Framework stipulates that this should be a requirement of a business park development of the application site. Neither Policy DP18 nor the approved Development Framework state when the Travel Plan should be submitted to the Planning Authority.

The Council's Transportation service raise no objection to the proposal, being satisfied that the proposed variation would not harm the purpose or integrity of condition 7. The proposed variation of condition 7 does not run counter to the previous advice given by Transport Scotland in their consultation response on planning application 08/00669/OUT.

RECOMMENDATION

That planning permission be granted for the applied for removal of condition 6 and the variation to condition 7 of planning permission in principle 08/00669/OUT as follows.

1 Condition 7

A Travel Plan to minimise private car trips and to encourage use of alternative modes of transport shall be submitted to and approved by the Planning Authority prior to the occupation of any component part of the business park development. The Plan shall include proposals for enabling persons to travel to and from the development by public transport. Additionally the Plan shall include: details of the measures to be provided; the timetable for introducing them; 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 use of the scheme of development.

Letters From

There were no representations received.