

**PLANNING COMMITTEE**

**TUESDAY 6 MAY 2014**

**PUBLIC DOCUMENT PACK**





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

**TUESDAY 1 APRIL 2014  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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**Committee Members Present:**

Councillor N Hampshire (Convener)  
Provost L Broun-Lindsay  
Councillor D Berry  
Councillor S Brown  
Councillor J Caldwell  
Councillor S Currie  
Councillor A Forrest  
Councillor J Gillies  
Councillor J Goodfellow  
Councillor D Grant  
Councillor P MacKenzie  
Councillor K McLeod  
Councillor J McMillan  
Councillor J McNeil  
Councillor T Trotter  
Councillor J Williamson

**Council Officials Present:**

Mr R Jennings, Head of Development  
Ms M Ferguson, Service Manager – Legal Services  
Mr I McFarlane, Acting Service Manager – Development Management  
Mr K Dingwall, Principal Planner  
Ms C Molloy, Senior Solicitor  
Mr M Greenshields, Transportation Planning Officer

**Clerk:**

Ms F Currie

**Visitors Present:**

Item 2 – Mr J Aitken  
Item 3 – Mr M Andrews

**Apologies:**

Councillor T Day  
Councillor W Innes

**Declarations of Interest:**

None

**1. MINUTES OF THE MEETINGS OF THE PLANNING COMMITTEES HELD ON 25 FEBRUARY AND 4 MARCH 2014**

The minutes of the Planning Committees held on 25 February and 4 March 2014 were approved.

**2. PLANNING APPLICATION NO. 12/00924/PPM: RENEWAL OF PLANNING PERMISSION IN PRINCIPLE 09/00222/OUT FOR A PROPOSED MIXED USE DEVELOPMENT AT LAND TO SOUTH, EAST AND WEST WALLYFORD**

A report was submitted in relation to Planning Application No. 12/00924/PPM. Keith Dingwall, Principal Planner, presented the report, summarising the key points and drawing Members' attention to two additions to the proposed clauses and conditions (outlined below). The report recommendation was to grant consent. The two additions were:

1. That there should be an additional clause within the legal agreement that would be Clause vi). Clause vi) would state:

Secure from the applicant the transfer to the Council of ownership of the land required for the new Wallyford Primary School. The value of the land contributed by the applicant for the new School will be agreed with the district valuer and offset against the value agreed with the district valuer for the existing Wallyford Primary School site that is to be transferred to the applicant or their nominees.

2. That there should be an additional condition, condition 27. Condition 27 would state:

No development (including buildings or any SUDS detention pond) shall be constructed over an existing culvert (including the Ravensheugh Burn) that is to remain active, unless otherwise approved in writing by the Planning Authority, following consultation with SEPA.

Reason:

To limit the risk of flooding of the application site and surrounding land.

In response to questions from Members, Mr Dingwall advised that in addition to the developer's financial contribution there would be a transfer of land for a new primary school and the maximum number of houses for the site had been set at 1050. He also addressed questions of flood prevention, noise mitigation and the proposed mix of commercial and other units.

Members also raised the question of delivery of the 263 affordable housing units for this site. They considered it essential that as many of these units as possible be delivered on site and requested that, should there be any proposal to deliver the affordable housing units off site or that the Council take a commuted sum in place of onsite delivery of units, such a decision should be remitted to the Planning Committee.

Head of Development, Richard Jennings, said that the Council's primary aim was always to deliver affordable housing on site and they worked closely with developers and the Scottish Government to achieve this. However, where this was not possible, it was necessary to consider alternatives such as banking land or taking commuted sums.

Service Manager – Legal Services, Morag Ferguson, advised Members that, ordinarily, decisions on delivery mechanisms would be a matter for officers under the Scheme of Delegation. However, if Members wished to take such decisions, these would be a matter for Council, rather than Planning Committee. The Convenor undertook to refer any such decisions to a meeting of Council if circumstances arose where an onsite solution was not reasonably practicable.

Mr Jim Aitken of East Lothian Developments Ltd, the applicant, addressed the Committee. He acknowledged the unfortunate history of the site, however the investment needed to progress the development was now in place. He urged Members to support the application and allow work to commence as soon as possible.

Local Member Councillor Caldwell considered this development to be long overdue. He noted that, as well as affordable housing, it would deliver land for a new primary school and other new amenities. He would be supporting the application.

Local Member Councillor Currie expressed his thanks to planning officers for their work on this and previous applications. He welcomed the proposals which would be of benefit to all and provide much needed housing and jobs in the local area. He would be supporting the application.

Local Member Councillor Forrest agreed with his colleagues and noted that Mr Aitken had taken the time to discuss his plans with the Community Council. He would be supporting the application.

Councillor Berry also welcomed the proposals, especially the mix of residential and commercial units and the plan to keep the existing community at the heart of the development. He would be supporting the application.

The Convenor brought the discussion to a close. He concluded that this was a very important site for East Lothian, particularly in relation to the delivery of affordable housing, and development should proceed forthwith. He would be supporting the recommendation to grant planning permission as set out in the report.

The Convenor moved to the vote on the report recommendation:

For: 16  
Against: 0  
Abstentions: 0

**Decision**

The Committee agreed to grant planning permission subject to:

1. A direction to substitute the period of 3 years referred to in Section 59(2)(a)(i) and (3) of the Town and Country Planning (Scotland) Act 1997 (as amended) with a period of 8 years.
2. The undernoted conditions.
3. 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 provision of two community sports pitches, a four changing room facility and an allotment site;

(ii) Secure from the applicant the transfer to the Council, at no cost, of ownership of the Wallyford Community Woodland;

(iii) Secure from the applicant the provision of a commuted sum for the future maintenance of Wallyford Community Woodland for a 10 year period. The commuted sum shall also be sufficient to cover maintenance for a 10 year period of the two proposed community sports pitches and the open space that is immediately adjacent to it.

(iv) Secure from the applicant a financial contribution to the Council of £8,233,666 towards the provision of the new primary school and £2,175,945 towards additional secondary school accommodation at Musselburgh Grammar School or any subsequently redefined provision of secondary education within the Musselburgh secondary catchment area;

(v) Secure the provision of 263 affordable housing units within the application site or if it can be demonstrated to the Council that this, or the off-site provision of 263 affordable units is not practicable, to secure from the applicants a commuted sum payment to the Council in lieu of such an on or off-site provision;

(vi) Secure from the applicant the transfer to the Council of ownership of the land required for the new Wallyford Primary School. The value of the land contributed by the applicant for the new School will be agreed with the district valuer and offset against the value agreed with the district valuer for the existing Wallyford Primary School site that is to be transferred to the applicant or their nominees;

4. 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 insufficient future maintenance and ownership arrangements for, as relevant, Wallyford Community Woodland and the two proposed community sports pitches and the open space that is immediately adjacent to it, an insufficient provision of community sports pitches, related changing facilities and allotments, a lack of sufficient primary and secondary school capacity, and the lack of provision of affordable housing, contrary to the Council's Development Framework for the development that is titled Wallyford Settlement Expansion & Regeneration 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 all the dwellings and other buildings, 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 provision within the application site of recycling facilities.

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

c. Notwithstanding that shown in the Indicative Master Plan 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;

d. The detailed design of the layout shall otherwise accord with the principles set out in the Council's Design Standards for New Housing Areas and with Designing Streets;

e. The external finishes of the residential units shall be in accordance with a coordinated 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.

f. Notwithstanding the details shown in the Indicative Site Master Plan referred to above, there shall be a separation distance of at least a 9 metres between the windows of a proposed new building and the garden boundaries of neighbouring residential properties; and a separation distance of at least 18 metres between directly facing windows of a proposed new building and the windows of existing or proposed neighbouring residential properties.

g. Details of the play area(s), 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. The play area(s) shall be installed in accordance with the details so approved.

h. Parking for the residential and primary school components of the development hereby approved shall be provided at a rate as set out in the East Lothian Council's "Standards for Development Roads- Part 5 Parking Standards".

i. All access roads shall conform to East Lothian Council's "Standards for Development Roads" in relation to roads layout and construction, footways and footpaths, parking layout and number, street lighting and traffic calming measures.

j. Cycle parking shall be included at a rate of 1 space per flat. The parking shall be in the form of 1 locker per flat or communal provisions in the form of a lockable room or shed.

k. The provision of a vehicular access from the new distributor road to the site of the residential institution/ non-residential institution unit/ retirement homes use hereby approved.

l. The provision of pedestrian crossing points on Fa'side Avenue South to link the proposed new footpath behind the existing tree line to the existing footpath on the northern side of Fa'side Avenue South.

m. The provision of a 2 metres wide footway on the southern side of the A6094 road between the northern end of the existing footpath link that runs between Fa'side Crescent/ Fa'side Avenue South and the A6094 road, and a point approximately 60 metres to the west of the new roundabout access on the north-western edge of the site, delineated as the 'Salters Road Access' on docketed drawing no. 08018 (00) 256.

n. The provision of a minimum of 135 parking spaces provided within the new local centre for non-residential use.

o. The provision of a 1.2 metre high wall along the northern boundary of the site.

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 details to be submitted pursuant to condition 1 shall include a revised phasing plan. The revised phasing plan shall show the site being built out in an east to west direction with no housing being constructed within the west part of the site unless and until the distributor road has been completed. The revised phasing plan shall also accord with the following requirements:

(i) The traffic calming and environmental improvement works to be undertaken on Salter's Road must be completed prior to the commencement of development, unless otherwise approved by the Planning Authority following consultation with Transport Scotland.

(ii) Any improvements to the Wallyford and Dolphingstone interchanges as outlined in the transportation assessment to be undertaken prior to the commencement of development, unless otherwise approved by the Planning Authority following consultation with Transport Scotland.

(iii) Pedestrian links between each phase of development and the existing settlement to be provided prior to the occupation of the first dwelling house in each phase unless otherwise agreed with the local planning authority.

(iv) The supermarket(s) and local centre units must be complete and ready for letting by occupation of the 675th residential unit unless otherwise agreed with the local planning authority.

(v) The proposed school shall be completed and available for use prior to the occupation of the 300th house unless otherwise agreed with the local planning authority.

(vi) The distributor road shall be completed in its entirety within a period of two years from the date on which the 300th house is occupied.

(vii) No more than 600 units shall be accessed from the proposed eastern access junction at Strawberry Corner prior to the distributor road being completed and open to vehicular traffic.

(viii) The sports pitches, changing accommodation and allotments to be completed by occupation of the 675th residential unit unless otherwise agreed with the local planning authority.

(ix) The bus layover and passenger waiting facilities to be completed and available for use by occupation of the 675th residential unit unless otherwise agreed with the local planning authority.

(x) Improvements to the community woodland to be completed by occupation of the 675th residential unit or occupancy of the new primary school, whichever is first, unless otherwise agreed with the Planning Authority.

(xi) The eastern section of the distributor road between the Strawberry Corner access junction and the new primary school shall be finished to an adoptable standard with final surfacing prior to the first opening of the new primary school.

The phasing of the development of the site shall be carried out in strict accordance with the phasing plan so approved, 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 The development of the site shall conform with the minimum density requirements established for the identified development areas shown on docketed drawing no. 08018(00), as well as generally complying with the range of house types and sizes shown on the same drawing.

Reason:

To ensure compliance with the provisions of the development plan.

- 4 No more than 1050 residential units shall be erected on the site.

Reason:

To ensure that there is sufficient education capacity, to restrict the scale of development to that identified in the applicant's update to the Transport Assessment and to minimise interference with the safety and free flow of traffic on the trunk road.

- 5 Housing completions 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- 120 residential units  
Year 2- 120 residential units  
Year 3- 120 residential units  
Year 4- 150 residential units  
Year 5- 150 residential units  
Year 6- 150 residential units  
Year 7- 150 residential units  
Year 8- 90 residential units

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.

- 6 Unless otherwise approved in writing in advance by the Planning Authority, the uses and unit sizes of the commercial units within the new local centre shall accord with the Local Centre table that is docketed to this planning permission in principle.

No more than 2731 square metres (gross) of the total gross floor space of the commercial units shall be used for convenience retail and no more than 603 square metres (gross) of the total gross floor space of the commercial units shall be used for comparison retail.

Reason:

In order to retain control over the format of retail and other commercial development in the interests of the vitality and viability of the new local centre.

- 7 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.

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

Reason:

In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

- 8 Prior to the commencement of development a long term landscape and habitat management plan shall be submitted to and approved in writing by the Planning Authority.

Reason:

To maximise the ecological potential of the proposed development.

- 9 Prior to the commencement of development a woodland management plan for the community woodland shall be submitted to and approved in writing by the Planning Authority. The plan shall further the value of the resource for biodiversity as well as people, and shall include the following measures:

- \* Formalisation and lighting of key footpaths to adoptable standard. These will give access to the new local centre and school;
- \* Provision of cycleways where required;
- \* Informal surfacing of secondary paths;
- \* Provision of additional lighting and seating in appropriate locations; and
- \* Enhancement of the existing viewing area and clearing at the summit of the woodland.

The plan shall cover a 15 year period, to be split into 5 year periods, and shall include a timetable for implementation.

The requirements of the woodland management plan shall thereafter be carried out in accordance with the details so approved.

Reason:

To maximise the ecological potential of the proposed development.

- 10 A Green Travel Plan shall be submitted to and approved by the Planning Authority prior to the first use of any component of the mixed use development. The Green 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 Green 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 mixed use development.

- 11 Prior to the commencement of development the findings of an independent road safety audit of the traffic calming and other environmental improvements of Salters Road shown on docketed drawing nos. 0645-LE-201 Rev B, 0645-LE-202 Rev B, 0645-LE-203 Rev B, 0645-LE-204 Rev A, and 0645-LE-205 Rev A shall be submitted to and approved in writing by the Planning Authority.

The traffic calming and other environmental improvements of Salters Road shall thereafter be fully undertaken in accordance with docketed drawing nos. 0645-LE-201 Rev B, 0645-LE-202 Rev B, 0645-LE-203 Rev B, 0645-LE-204 Rev A, and 0645-LE-205 Rev A and the approved findings of the independent road safety audit prior to the first occupation of any of the houses hereby approved.

Reason:

In the interests of road safety.

- 12 Prior to the commencement of development the findings of an independent road safety audit of the design of the environmental improvements of Inchview Road shown on docketed drawing no. 0645-LE-207 Rev A shall be submitted to and approved in writing by the Planning Authority.

Prior to the first occupation of the 675th house or occupancy of the new primary school, whichever is sooner, the environmental improvement of Inchview Road shall be fully carried out in accordance with docketed drawing no. 0645-LE-207 Rev A and the approved findings of the independent road safety audit.

Reason:

In the interests of road safety.

- 13 Unless otherwise approved in writing by the Planning Authority, the following transportation requirements shall have been undertaken prior to the occupation of the 675th residential unit or the occupation of the new school, whichever is the soonest:

a. A footpath, which shall include street lighting and which shall be made up to an adoptable standard, shall be formed through the community woodland in an east to west axis in the position that is indicatively shown on the masterplan docketed to this planning permission in principle.

Reason:

In the interests of road safety.

- 14 Prior to the commencement of development the findings of an independent road safety audit of the traffic calming and other environmental improvements of the new distributor road shown on docketed drawing nos. 0645-LE-101 Rev B, 0645-LE-102 Rev B, 0645-LE-103 Rev B, and 0645-LE-104 Rev B shall be submitted to and approved in writing by the Planning Authority. The audit shall include all access junctions, bus stops, raised tables, and signalised junctions/crossing points. It shall include details of safe crossing locations for pedestrians travelling to and from the new Town Centre in a north to south direction.

The traffic calming and other environmental improvements of the new distributor road shall thereafter be fully undertaken in accordance with docketed drawing nos. 0645-LE-101 Rev B, 0645-LE-102 Rev B, 0645-LE-103 Rev B, and 0645-LE-104 Rev B and the approved findings of the independent road safety audit prior to the whole of the new distributor road being opened to vehicular traffic.

Reason:

In the interests of road safety.

- 15 A monitoring program of traffic flows on Salters Road and the new distributor road shall be put in place to ensure that the deflection measures are operating to the satisfaction of the Planning Authority. Traffic count surveys shall be completed on occupancy of the 175th unit, the 450th unit, the 675th unit, and on completion of the development. The findings of the traffic count surveys shall be submitted to the Planning Authority within a period of two months from the date of the traffic count, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interest of road safety.

- 16 No development shall take place until there has been submitted to and approved in writing by the Planning Authority full details of the bus gate, including a timetable for its installation and proposals for its future maintenance, that is to be installed between Inchview Road and the new local centre. The bus gate shall thereafter be installed in accordance with the details so approved.

Reason:

In the interests of road safety.

- 17 No development shall take place until the applicant has submitted to and approved in advance a signage strategy for the application site. The strategy shall identify and promote key pedestrian, cycle and vehicle routes to and from the new local centre from both the existing settlement of Wallyford and from the other components of the mixed use development hereby approved.

Reason:

In the interests of encouraging sustainable travel patterns in respect of the mixed use development.

- 18 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 also address the temporary measures proposed to deal with surface water runoff during construction in accordance with the requirements of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 and General Binding Rules. The Construction Method Statement shall also make recommendations in respect of how pedestrians and school children can safely access the new school during construction works. These recommendations shall include the eastern section of the distributor road and footpaths from the new Strawberry Corner access being finished to an adoptable standard with final surfacing prior to the opening of the new school.

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.

- 19 The details to be submitted pursuant to condition 1 above shall include full details of all noise mitigation measures. These shall be based on the mitigation measures identified in the docketed Noise and Vibration report and shall be designed so that the 'good standard' indoor levels from Table 5 of BS 8233 Sound Insulation and Noise Reduction for Buildings- Code of Practice are met inside the proposed residential units. The mitigation measures shall include the erection of an acoustic barrier along the southern boundary of the site. The details to be submitted shall also include a timetable for the implementation of all of the proposed noise mitigation measures.

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

Reason:

To ensure an appropriate level of acoustic screening in the interests of the amenity of the future occupants of the site.

- 20 Development shall not begin until a scheme to deal with contamination on the site has been submitted to and approved in writing by the Planning Authority. The scheme, which shall include a detailed gas survey (long term monitoring) and a detailed groundwater monitoring exercise, shall contain details of the proposals to deal with contamination to include:

- 1 the nature, extent and type(s) of contamination on the site,
- 2 measures to treat/remove contamination to ensure the site is fit for the use proposed,
- 3 measures to deal with contamination during construction works,
- 4 condition of the site on completion of decontamination measures.

Before any of the buildings are occupied the measures to decontaminate the site shall be fully implemented as approved by the Planning Authority.

Reason:

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

- 21 No development shall commence unless and until the following requirements have been met:
- a. the existing 30 miles per hour speed limit has been extended along the frontage of the site on the A199 road from the existing 30 mph limit at Wallyford Toll, up to the eastern side of the proposed new access at Strawberry Corner; and
  - b. the existing 30 miles per hour speed limit has been extended along the frontage of the site on Salter's Road from the existing 30 mph limit at Fa'side Crescent, up to the western side of the proposed new access on the A6094 road.

Details of the proposed extension to the existing 30 miles per hour speed limit shall be submitted for approval by the Planning Authority. These measures shall be implemented in accordance with the details as approved by the Planning Authority.

Reason:

In the interests of road safety.

- 22 The proposed eastern and western vehicle site accesses shall be designed in accordance with the Design Manual for Roads and Bridges, Volume 6. An independent road safety audit shall be undertaken (and submitted to the Planning Authority for approval) for the final design drawings of the those two site accesses.

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

Reason:

In the interests of road and pedestrian safety.

- 23 There shall be no commencement of development unless and until:
- a) proposals for the alteration and re-activation of the existing traffic signal installation at the A1/A6094 junction have been approved in writing with the Planning Authority, in consultation with Transport Scotland; and
  - b) revised signal timing plans for the existing traffic signal installation at the A1/A199 junction have been submitted and approved in writing with the Planning Authority, in consultation with Transport Scotland.

The details to be submitted shall include a timetable for their implementation.

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

Reason:

To mitigate the adverse impact of the development on the safe and efficient operation of the trunk road.

- 24 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 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.

- 25 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.

- 26 Surface water from the application site shall be treated in accordance with the principles of the SUDS Manual (C697), which was published by CIRIA in March 2007.

Reason:

To ensure that the drainage scheme complies with best SUDS practice to protect nearby watercourses and groundwater.

- 27 No development (including buildings or any SUDS detention pond) shall be constructed over an existing culvert (including the Ravensheugh Burn) that is to remain active, unless otherwise approved in writing by the Planning Authority, following consultation with SEPA.

Reason:

To limit the risk of flooding of the application site and surrounding land.

**3. PLANNING APPLICATION NO.13/00719/P: ERECTION OF 17 HOUSES, GARAGES AND ASSOCIATED WORKS AT LAND AT STATION ROAD, DUNBAR**

A report was submitted in relation to Planning Application No. 13/00719/P. Mr Dingwall presented the report, summarising the key points and the history of previous planning applications for this site. He confirmed that, contrary to the terms of the report, the existing planning consent for a nursing home was still extant, having been granted an extension of time for implementation until 2015. The proposed decision set out in the report was to grant consent.

In response to questions from Members Mr Dingwall advised that the safest and most suitable access to the site was from Countess Road. He also confirmed that housing density had been carefully considered and that the proposed layout was acceptable in terms of visual amenity for neighbouring properties.

Mr Mike Andrews, the applicant, addressed the Committee. He stated that this was a good site for housing and the proposed design was sympathetic to the surrounding conservation area with retention of the existing wall and tree line. It was a low density site of well-spaced houses and to provide additional car parking within the site would create amenity and safety issues for the occupants of the houses.

Councillor Berry sought an assurance that no private access would be allowed directly onto the station platform. Acting Service Manager – Development Management, Iain McFarlane, indicated that any change to the existing wall would require separate planning permission.

The Convenor outlined his reasons for bringing this application to Committee. Local Plan proposal H10 required that this site be used for a mix of housing and car parking. At the time the previous planning permission for this site had been granted, the Committee had been advised that discussions around the provision of additional car parking on land owned by Network Rail were in an advanced stage and this parking would be provided near the railway station in the near future. This had not happened and was not likely to happen as discussions have now broken down on the issue of cost for this parking. In the meantime, Dunbar was expanding and was due

to expand further. He considered that there was more pressure than ever on existing parking provision leading to congestion and inconvenience for residents in streets around the railway station. This application was contrary to the terms of the Local Plan proposal in that it did not provide any additional parking and therefore he would not be supporting the report recommendation.

Councillor Currie did not consider car parking to be material to the determination of this application. He noted that there had been few objections from the community and planning officers clearly felt justified in going against policy to recommend consent. He would be supporting the report recommendation.

Councillor Berry had no difficulty with the proposals and saw no justification for refusal of the application. He would be supporting the report recommendation.

Councillor Grant agreed that the extant planning permission for this site had also been a departure from the Local Plan but that decision had been taken in the expectation of additional parking coming forward elsewhere. The Committee now knew that this was not going to happen. Accordingly, he considered the current application to be a departure from the Local Plan that was not now justified and he would not be supporting the report recommendation.

Provost Broun-Lindsay was aware of the pressures on parking in the area surrounding the station. He considered that the Network Rail site would have provided an ideal solution but, if this is not now going to be possible, he considered that it was important to stick with the terms of the Local Plan proposal and require the provision of parking on this site. For this reason, he would be voting against the report recommendation.

The Convener brought the discussion to a close. He commented that with existing plans for over 1000 houses in Dunbar, the Council should do all it could to secure additional car parking for the town centre.

The Convener moved to the vote on the report recommendation:

For: 7  
Against: 9  
Abstentions: 0

**Decision**

The Committee agreed to refuse planning permission for the following reason:

- The proposed development does not provide for the development of a car park and is therefore contrary to Proposal H10 of the adopted East Lothian Local Plan 2008.

Signed .....

Councillor Norman Hampshire  
Convener of the Planning Committee

**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

2

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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.

**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

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*Note - this application was called off the Scheme of Delegation List by Councillor Berry for the following reasons: This has been a normal retail shop until 12/00011/P changed to a restaurant but only on Saturday. This extends all week in a building with many residents both above and across the street (sheltered housing). We need to establish the level of disturbance and why it will not be excessive.*

Application No. **13/01029/P**

Proposal Variation of condition 2 of planning permission 12/00011/P to allow additional dining places and variation of condition 4 of planning permission 12/00011/P to extend the opening hours of the cafe/restaurant to allow operation between 9am - 11pm Monday to Sunday inclusive (Part Retrospective)

Location **96 High Street  
North Berwick  
East Lothian  
EH39 4HE**

Applicant JP's

Per WYG

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

The premises of 96 High Street occupy the ground floor and lower ground floor of a four storey, mid-terrace building on the north side of High Street, within North Berwick Town Centre and North Berwick Conservation Area. The upper floors of the building contain residential flats. The premises are part of an established commercial ground floor frontage along the north side of High Street. It is presently in use as a shop and café known as 'JP's Deli'.

Planning permission 12/00011/P was granted on 16th March 2012 for the part café use of the premises (a use within Class 3 of the (Town and Country Planning (Use Classes) (Scotland) Order 1997), as a partial change from the use of the premises as a shop (a

use within Class 1 of the Town and Country Planning (Use Classes) (Scotland) Order 1997).

Planning permission 12/00011/P for the partial café use of the premises was granted subject to a number of conditions. Of these, Condition 2 restricts the floor space to be used as a café to that coloured yellow and shown on the docketed drawings of planning permission 12/00011/P. The reason for Condition 2 is to restrict the amount of café use of the premises to that which were applied for in order to retain a predominant shop use of the premises. Condition 4 of planning permission 12/00011/P restricts the hours of operation of the partial café use of the premises to 9.00am to 7.00pm on Mondays to Saturdays inclusive and 11.00am to 6.00pm on Sundays. The reason for Condition 4 is to restrict the hours of operation of the partial café use of the premises to that which were applied for.

Planning permission is now sought for the variation of Condition 2 of planning permission 12/00011/P to allow for more of the floor space of the shop to be used as additional dining places for the café and for the variation of Condition 4 of planning permission 12/00011/P to extend the opening hours of the cafe to allow its operation between 9.00am and 11.00pm Mondays to Sundays (inclusive) rather than the presently approved hours. This application for planning permission is in part retrospective due to the additional floor space already being laid out with tables and chairs for café use and the premises operating until 11.00pm on Saturdays.

In a statement submitted with the application it is stated that the additional dining places and the extension to the hours of the café are to enable the proprietor to operate an occasional 'pop-up' restaurant, cheese and wine evenings and taster menu evenings at the premises.

There are no other proposed changes to the use of the premises and no proposed physical alterations to the premises.

Since the application was registered an amended layout drawing has been provided by the Applicant's Agent to clearly identify the retail shelving display units that would be retained in the shop and to identify the whole of the area of café use of the premises.

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 ENV2 (Town and Village Centres, Other Retail or Mixed Use Areas) of the adopted East Lothian Local Plan 2008.

There are no policies of the approved South East Scotland Strategic Development Plan (SESplan) relevant to the determination of the application.

Four representations to the application have been received. All of the representations raise objections to the proposed development. The grounds of objection are:

1. the use of the premises as a restaurant with ancillary delicatessen, rather than a shop/deli with ancillary café/restaurant, would have a harmful effect on the vitality and diversity of North Berwick High Street as it would lead to the loss of a popular shop/deli and would lead to the creeping loss of a retail unit;

2. there are already a wide variety of restaurants and numerous cafés on North Berwick High Street but there is only one high quality deli and its continued downsizing would be a significant loss to the High Street;

3. it would be unreasonable for the premises to open until 11.00pm each day given that the premises are below residential properties;

4. the High Street is becoming a noisy and unpleasant place in the late evenings, especially at weekends and allowing yet another venue to continue trading until late would make the situation worse, which could have a negative impact on tourist trade and for local residents;

5. the proposal represents an intensification of use of the premises which would result in noise and odour nuisance to neighbouring residential properties;

6. the premises shares an access with residential properties and the intensification of use of it would result in significant nuisance and loss of amenity to the occupiers of those residential properties;

7. the title deeds of the residential properties on the upper floors of the building state that the tenement should at all times be used as dwelling houses and shops only and this proposal goes far beyond that requirement;

8. noise from customers coming and going all evening, including smokers, cars and taxis, staff cleaning up at the end of the day and deliveries will be unpredictable and unmanageable leading to loss of amenity to residents in the flats nearby;

9. shop/café stock is piled up in the shared passageway making it difficult for residents of the flats to get past to access their property;

10. reduction in value of the flats on the upper floors of the building due to being above a restaurant;

11. the windows at the rear of the shop/café open directly onto the garden of the flats and late opening of the premises and thus use of these windows in summer will lead to a loss of amenity to the occupiers of the flats; and

12. the kitchen at the premises may not be suitable for a restaurant use.

The matter of the contents of the title deeds relevant to the four storey, mid-terrace building, and whether or not the use of the premises accords with these is a civil legal matter between the relevant parties occupying the building and is not a material planning consideration in the determination of an application for planning permission.

The matter of the impact of a use or other development on the value of a neighbouring property is not a material planning consideration in the determination of an application for planning permission.

The matter of commercial competition is not a material planning consideration in the determination of an application for planning permission.

The matter of the use of the private shared communal access to the shop/café and upper floor flats is a private civil matter between the relevant parties occupying the building and is not a material planning consideration in the determination of an application for

planning permission.

The determination of this application rests on whether or not the proposed additional floor space for the café use and the extension to the hours of use of the premises as a café on Mondays to Sundays (inclusive) would be likely to result in significant harm to the amenity of any neighbouring use, including neighbouring residential properties.

Policy ENV2 applies to North Berwick Town Centre, an area it defines as being of mixed uses and one in which uses associated with a town centre will be acceptable in principle. These uses include retailing, business and office use, restaurants, leisure and entertainment. Proposals that would have a significant environmental impact, particularly on existing housing will not be permitted. Policy ENV2 states that within town centres changes of use of retail units to other town centre uses will only be acceptable where the Council is satisfied that a retail use is no longer viable or the benefits of the proposed use to the viability and vitality of the area outweigh the loss of the shop.

The existing shop/café premises form part of the established commercial ground floor frontage along the north side of High Street and as such they are part of the mixed use area of the town centre. Part of the vitality and viability of the town centre derives from the varied uses within the town centre and the varied opening hours of those mixed commercial uses. These uses include restaurants, hot food takeaways and public houses that are open later in the evenings. Policy ENV2 does not specify the number of cafés/restaurants that can operate within a defined town centre area. By being within the mixed use area of the town centre the application premises and thus also the neighbouring residential properties are within an area where some noise and movement is likely to occur in the evenings due to the varied opening hours of the commercial businesses within the town centre.

Planning permission 12/00011/P approved the use of part of the ground floor shop premises as a café. That café use includes the provision of 4 tables each with 4 chairs, giving a total seating area for 16 people.

The proposed use of more of the floor space of the shop as a café in order to provide additional dining places would increase the total number of tables from 4 to 6. Each of the two additional tables would have 4 chairs. Thus, there would be an increase from the 16 seats approved by the grant of planning permission 12/00011/P to 24 seats, being a total increase of 8 seats.

The application drawings show that the existing retail shelving display units which are positioned at each side of the shop, below the display windows, at each side of the entrance doorway and between the approved rear café area and the remaining shop would all be retained as retail shelving. These shelving units are not shown on the application drawings as being part of the area of shop floor that is proposed to be changed to use as the extended café use at the premises. Only one low level, free-standing retail shelving display unit, that is positioned between the counter and the shelving units at the east side of the shop, would be removed to facilitate the positioning of the additional café tables and chairs. Thus, in this particular case the proposed extended café use of the premises would not result in a significant loss of retail use at the shop premises compared to the existing situation approved by the grant of planning permission 12/00011/P, as it is proposed to retain the majority of the existing retail display shelving units of that part of the ground floor shop. Thus, the retail use of the premises would not be lost.

The applicant's agent has indicated that it is the intention of the applicant to only use the proposed extended floor space of the partial café use of the premises, occasionally, after



7.00pm and that otherwise the additional tables and chairs would be stored in a storage area of the lower ground floor of the premises. Notwithstanding this, as the use of the proposed extended floor space of the café use would not result in significant loss of retail use at the shop premises compared to the existing situation approved by the grant of planning permission 12/00011/P, it would not be reasonable to restrict the proposed extended floor space of the café use to only being between 7.00pm and 11.00pm Monday to Sunday.

A café/restaurant is a use typically associated with the mixed commercial uses of a town centre. Such proposed part use of the shop premises of 96 High Street would maintain the viability and vitality of North Berwick Town Centre. It would not be incompatible with the particular mixed uses of North Berwick Town Centre.

It is acknowledged that there are already a number of cafes, restaurants and hot food takeaways in North Berwick Town Centre. In a survey carried out of the commercial premises of the town centre it is found that presently some 17% of them are in use as cafés, restaurants and hot food takeaways. Some one third of those uses are concentrated within the central part of the High Street, between the junctions with Market Place to the east and Church Road to the west. However, no evidence is presented that such concentration of use if added to by this extended café use of the shop premises at 96 High Street would have a resultant cumulative effect harmful to the amenity and vitality and viability of the town centre.

The proposed extended café use of the ground floor of the premises, with no external changes proposed to the building, would not have an appreciable effect on the architectural and historic interest of the North Berwick Conservation Area.

Thus, the proposed change of use of more of the ground floor shop from a Class 1 shop use to a Class 3 café use to be used in association with the existing shop and café uses by providing an extended café use of the ground floor of the premises does not conflict with Policy ENV2 of the adopted East Lothian Local Plan 2008.

The proposed extended openings hours of the partial café use of the premises would apply to the partial café use of the premises approved by the grant of planning permission 12/00011/P and the additional café floor space the subject of this application. Those extended opening hours between 9.00am until 11.00pm on Mondays to Sundays (inclusive) would be comparable with the later opening hours of the restaurants, hot food takeaways and public houses in North Berwick town centre.

The greatest potential impact of the proposed extension to the hours of the partial café use of the premises would be on the neighbouring residential properties that are in the floors of the building above the premises, due to their proximity to the application site.

It is acknowledged that it is possible that the extended opening hours of the cafe use would have the potential to result in some additional noise generation from its operation and from guests and staff leaving the premises at that time. However, the application premises and thus also the neighbouring residential properties are within a mixed use area of North Berwick Town Centre where noise and movement is likely to occur in the evenings due to the varied opening hours of the commercial businesses within the town centre and the free movement of members of the public on the street.

The Council's Environmental Protection Manager raises no objection to the extended opening hours of the café use of the premises between 9.00am and 11.00pm on Mondays to Sundays (inclusive). He advises that beyond 11.00pm levels of amenity afforded to any residential neighbours would be higher, however, the extended openings

hours of the café as applied for, would continue to be within what is termed 'daytime and evening' hours (i.e. 7.00am to 7.00pm and 7.00pm to 11.00pm respectively). Such 'daytime and evening' hours of operation of the café use would not have a harmful impact on the amenity of the neighbouring residential properties.

The Environmental Protection Manager further advises that noise from patrons on the street as they leave the premises is not a matter controlled by Environmental Protection as such noise/disturbance would not be actionable under statutory nuisance provisions. Any member of the public could use the street at any time, and this principle would also apply to use of the communal access/staircase of the building which could be used by any resident at any time.

The two existing rear windows of the ground floor shop/café premises face towards the communal rear garden of the flats of the upper floors of the building of which 96 High Street is a part. The two windows open immediately onto the access stairs that serve the lower ground floor of the shop/café premises of 96 High Street. It is acknowledged that it is possible that the extended opening hours of the partial café use of the premises would have the potential to result in some additional noise generation from the operation of the café use if those two windows were opened. However, the stairs to the lower ground floor of the shop/café premises could be used at any time by the owner and/or staff. Also, in this town centre location noise is likely to occur in the evenings. Thus it is not considered that the opening of those two windows during the extended hours of operation of the partial café use of the premises would have a resultant cumulative harmful effect on the amenity of the occupiers of those neighbouring flats that use the area of garden ground.

Therefore, the proposed extended hours of partial café use of the premises between 9.00am and 11.00pm on Mondays to Sundays (inclusive) would not have a significant impact on the residential amenity of the neighbouring residential properties. The proposed extension to the hours of partial café use of the premises from 9.00am until 11.00pm on Mondays to Sundays (inclusive) is not contrary to Policy ENV2 of the adopted East Lothian Local Plan 2008.

Planning permission 12/00011/P for the part cafe use of the premises is granted subject to a conditional planning control on the preparation and cooking of food. This planning control remains in place and there is a continuing requirement for compliance with it. It would equally apply to any extended hours of use of the premises or extended floor area used as a café.

The Council's Transportation service raises no objections to the proposed additional floor space being used as part of the partial café use of the ground floor premises or to the extension to the hours of the part café use of the ground floor premises from 9.00am until 11.00pm on Mondays to Sundays (inclusive).

CONDITIONS:

1 Condition 2

The cafe use hereby approved shall be limited to the three areas coloured yellow for tables and seating and for the W.C. facilities as delineated on drawing no. 100.10/Rev A docketed to this planning permission.

Reason:

To ensure that the amount of cafe use remains as applied for and hereby approved.

- 2 The hours of operation of the café use hereby approved shall be restricted to 9.00am to 11.00pm on Mondays to Sundays inclusive.

Reason:

To restrict the hours of operation of the café use to that applied for and to safeguard the amenity of the area, including the amenity of neighbouring residential properties.

*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 6 May 2014

**BY:** Depute Chief Executive (Partnerships and Community Services)

**SUBJECT:** Application for Planning Permission for Consideration

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**4**

**Note** - this application was called off the Scheme of Delegation List by Councillor Berry for the following reasons: this involves what had been a retail unit closing at 5pm possibly opening as a restaurant seven days a week until late (11pm?). Local residents are concerned about related disturbance.

Application No. **14/00083/P**

Proposal Part change of use from retail (class 1) to cafe use (class 3) and re painting of shop front (Retrospective)

Location **91 High Street  
North Berwick  
East Lothian  
EH39 4HD**

Applicant Mr Adam Elder

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

The property to which this application relates is a shop that occupies the ground floor of a two storey building located on the south side of High Street, North Berwick. By being within North Berwick Town Centre the shop is within an area of mixed uses as defined by Policy ENV2 of the adopted East Lothian Local Plan 2008. It is also within North Berwick Conservation Area.

The building containing the shop is bounded to the north by the public road and footpath of High Street, to the west by a shop with residential accommodation above, to the east and above by the first floor flats of 89 High Street and to the south by the residential property of 18 St Andrew Street.

Planning permission is sought retrospectively for a part change of use of the shop (Class 1) use to a café (Class 3) use and the repainting of the frontage of the premises a white colour.

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) June 2013 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) June 2013 and Policies ENV2 (Town and Village Centres, Other Retail or Mixed Use Areas), ENV4 (Conservation Areas), DP6 (Extensions and Alterations to Existing Buildings) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008.

Material to the determination of the application are Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Scottish Planning Policy: February 2010.

Scottish Planning Policy 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.

One written objection to the application has been received. It is from the proprietor of a neighbouring café. They object to the application that on the grounds that the café has been operating for several months without the benefit of planning permission and that there are numerous cafes in North Berwick and therefore no need for another to erode the businesses of existing cafes.

The fact that planning permission is sought for the part change of use of the shop to a café and the repainting of the shop front of the premises is in retrospect does not remove the applicant's statutory right to make such application for the part change of use or repainting or for the Council, as Planning Authority to make a determination of the planning merits of them.

Commercial competition is not a material consideration in the determination of an application for planning permission.

Policy ENV2 applies to North Berwick Town Centre, an area it defines as being of mixed uses and one in which uses associated with a town centre will be acceptable in principle. These uses include retailing, business and office use, restaurants, leisure and entertainment. Policy ENV2 states that within town centres changes of use of retail units to other town centre uses will only be acceptable where the Council is satisfied that a retail use is no longer viable or the benefits of the proposed use to the viability and vitality of the area outweigh the loss of the shop.

In this particular case the retail use of the shop has not been lost as it only a part of the shop has been changed in use to a café.

The use of part of the premises as a café (Class 3) is a use typically associated with the

mixed commercial uses of a town centre and would not be incompatible with the particular mixed uses of North Berwick Town Centre.

The intent of Policy ENV2 is to maintain the viability and vitality of town centres ensure the traditional mix of land uses and in particular to prevent a 'creeping' loss of retail units to other commercial and residential uses. In terms of floor space, some 54 square metres of the shop is now in use as café with some 150 square metres of floor space being retained in retail use. The part café use of the shop is significantly less than half of the retail space that has been retained and is ancillary to the retail operation of the shop. The loss of part of the retail space to cafe use does not have a negative impact on the vitality and viability of the town centre, subject to a planning condition restricting the area of Class 3 cafe use to the area set out in the application drawings.

Accordingly, the part change of use of the premises from a shop use (Class 1) use to a café (Class 3) use used in association with the shop does not conflict with Policy ENV2 of the adopted East Lothian Local Plan 2008.

The applicant's advises that food and beverages prepared and sold for consumption in the café are limited to soup, bread, cake and hot and cold beverages.

The Environmental Protection Manager is satisfied that with this limited preparation and sale of food and drinks the cafe use would not have a harmful impact on the amenity of the neighbouring residential properties. To ensure this she recommends that the method of preparation of the products sold in the café be restricted so that no shallow or deep frying would take place within the cafe. This control can be competently and effectively exercised through a condition on the grant of planning permission.

On the consideration of the amenity of nearby residential properties the café use of part of the shop, subject to the above planning control, does not conflict with Policy ENV2 of the adopted East Lothian Local Plan 2008.

The Council's Transportation Service raises no objection to the part cafe use of the shop. They advise that the use of part of the premises for café purposes ancillary to the existing shop use is also regarded as ancillary in transportation terms and does not result in a significant increase for parking demand in the area.

Accordingly the part café use of the premises does not conflict with Policy T2 of the adopted East Lothian Local Plan 2008.

The external walls and windows frames of the frontage of the premises have been painted white in colour. The painting of the frontage of the premises white is not harmful to the character and appearance of the shop front. It does not appear incongruous or at odds with the colours of the other frontages of the buildings of High Street. Thus the painting of the frontage of the premises white is not harmful to the character and appearance of the Conservation Area.

The painting of the frontage of the premises is consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) June 2013, Policies ENV4 and DP6 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010.

CONDITIONS:

- 1 The cafe use hereby approved shall be limited to the area outlined in red on drawing no. 11 docketed to this planning permission.

Reason:

To ensure that the cafe use hereby approved remains ancillary to the retail use of the premises, in accordance with Policy ENV2 of the adopted East Lothian Local Plan 2008.

- 2 The preparation, including cooking, and sale of hot food within the cafe hereby approved shall be restricted so that no shallow or deep fat frying of food shall take place on the premises, unless otherwise approved by the Planning Authority.

Reason:

To restrict the operational use of the cafe in accordance with the proposed means of ventilation of that use, in the interests of safeguarding the 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)*