

REPORT TO: Planning Committee

MEETING DATE: Tuesday 2 December 2014

BY: Depute Chief Executive
(Partnership and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Application No. **14/00632/PPM**

Proposal Planning Permission in Principle for residential development and associated works

Location **Ferrygate Farm
Dirleton Road
North Berwick
East Lothian
EH39 5DJ**

Applicant Miller Homes

Per Holder Planning

RECOMMENDATION Application Refused

PLANNING ASSESSMENT

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

As a statutory requirement of major development type proposals this development proposal was the subject of a Proposal of Application Notice (Ref: 14/00003/PAN) and thus of community consultation prior to this application for planning permission in principle being made to the Council.

As an outcome of that and as a statutory requirement for dealing with major development type applications a pre-application consultation report is submitted with this application. The report informs that some 29 people attended the pre-application public exhibition, which was held at the Macdonald Marine Hotel, North Berwick on 02 April 2014, and that those attendees raised a number of issues regarding the proposals. The development for which planning permission in principle is now sought is of the same character as that

which was the subject of the community engagement undertaken through the statutory pre-application consultation of the proposal.

This application relates to some 7.6 hectares of agricultural land located immediately to the west of North Berwick. It has a broadly rectangular footprint and forms part of a larger field.

The site is bounded to the north by a length of Dirleton Road (the A198 road), a petrol filling station and garage, a small landscaped area and a number of houses. It is bounded to the east by a single track lane, known as Gasworks Lane, and beyond by houses and gardens and by agricultural land. It is bounded to the south by agricultural land and to the west by a tree belt, beyond which is agricultural land.

In August 2012 planning permission in principle (Ref: 12/00680/PPM) was sought for the residential development of some 10.3 hectares of agricultural land at Ferrygate Farm. That site included most of the land that is the subject of this planning application. A site layout plan submitted with that application shows how 140 residential units might have been accommodated within the application site. In April 2013 planning permission in principle 12/00680/PPM was refused for the following six reasons:

1. The new build housing development proposed in principle in this application is not necessary for agriculture, horticulture, forestry or other employment use and thus it is contrary to Policy ENV3 of the approved Edinburgh and the Lothians Structure Plan 2015 and Policy DC1 of the adopted East Lothian Local Plan 2008.
2. There is no demonstrable need for a grant of planning permission in principle for housing development of the land of the application site to release additional land for house building and in this the proposal is not supported by Policy HOU10 of the approved Edinburgh and the Lothians 2015.
3. In that the land of the application site is greenfield land not allocated for housing development through the adopted East Lothian Local Plan 2008 and is not required to meet strategic housing land allocations, the proposed development is contrary to Policy HOU8 of the approved Edinburgh and the Lothians Structure Plan 2015 and with Scottish Planning Policy: February 2010 on housing land.
4. In that the proposal is contrary to Policies ENV3 and HOU8 of the Structure Plan, they are also contrary to the requirement of Policy HOU10 of the approved Edinburgh and the Lothians Structure Plan 2015 that the bringing forward of any additional land into the already allocated housing land supply by a grant of planning permission will comply with other Structure Plan policies.
5. Development of the site for houses would be contrary to the objectives, proposals and policies of the adopted East Lothian Local Plan 2008 on housing development within and outwith the settlements of East Lothian. It would prejudice the development of allocated strategic housing sites, particularly at Gilsland and at Mains Farm, both in North Berwick. In this the principle for housing development of the land of the application site is contrary to Policy HOU3 of the approved Edinburgh and the Lothians Structure Plan 2015 and Proposals H1 to H7 of the adopted East Lothian Local Plan 2008.
6. A housing development of the application site would result in the loss of some 10.3 hectares of prime agricultural land and is not necessary to meet any established need and thus the principle of such development is contrary to Policy DC1 (Part 5) of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010.

An appeal against that decision of East Lothian Council was subsequently dismissed by the Scottish Government's Directorate for Planning and Environmental Appeals. It should be noted that the appeal was considered on the basis of an indicative layout of 111 residential units, as the applicant had informed the Reporter that they no longer intended to erect the 29 residential units proposed for the part of that site to the east of Gasworks Lane. A challenge against this appeal decision is currently being considered by the Court of Session.

Planning permission in principle is now sought for a residential development of the application site.

An indicative layout plan has been submitted with the application indicating how some 140 residential units could be accommodated on the application site. It is also indicated that a SUDS pond be accommodated on the northwestern part of the site and an area of recreational open space and play facilities could be accommodated centrally within the site. It is further indicated how footpath linkages through the site could be formed, and how new areas of woodland could be planted. This could include a new area of woodland along the western edge of the site, which, together with the existing woodland belt immediately to the west of the site, could create a woodland strip of 45 metres in width.

No illustrative drawings have been submitted with the application to indicate the design of any of the residential units.

The indicative layout plan indicates that access to the site could be taken from Dirleton Road via a new access to be formed some 30 metres to the west of the petrol filling station and garage on Dirleton Road.

The application is supported by, amongst other things, a Pre-application Consultation Report, a Planning Statement, a Landscape and Visual Impact Assessment, a Noise Assessment and a Transport Assessment.

The planning statement submitted with this application provides background details on the proposals and sets out the key reasons why the applicant considers that planning permission in principle should be granted. It declares that there is a clear shortfall in the 5-year housing land supply in East Lothian and that this proposal would deliver much needed housing, including affordable housing, in the short term. Subsequent to the registration of this application, a planning statement addendum has been lodged. Its purpose is to provide comments on the meaning, interpretation and weight to be attached to the revised Scottish Planning Policy: June 2014 in the context of this application.

The application site has also been submitted as part of the local development plan process following a call for sites by the Council as part of the research towards the new Local Development Plan. The Council's Main Issues Report (MIR) is a consultation document which considers such submissions and other sites. The MIR proposes the application site as an alternative site for housing in relation to the proposed alternative development strategy. The MIR is a material consideration, however, as a consultation document it can be accorded only limited weight at this stage.

Under the provisions of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 the proposed development falls within the category of a Schedule 2 Development, being one that may require the submission of an Environmental Impact Assessment (EIA). Schedule 3 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 sets out the selection criteria for screening whether a Schedule 2 development requires an EIA. On 08 May

2012 the Council issued a formal screening opinion to the applicant. The screening opinion concludes that it is East Lothian Council's view that a residential development of the scale proposed is not likely to have a significant effect on the environment such that consideration of environmental information is required before any grant of planning permission in principle. It is therefore the opinion of East Lothian Council as Planning Authority that there is no requirement for the proposed housing development to be the subject of an EIA.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

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

Policies 5 (Housing Land) and 7 (Maintaining a Five Year Housing Land Supply) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies DC1 (Development in the Countryside and Undeveloped Coast), DP1 (Landscape and Streetscape Character), DP17 (Art Works-Percent for Art), DP20 (Pedestrians and Cyclists), INF3 (Infrastructure and Facilities Provision), H4 (Affordable Housing), C1 (Minimum Open Space Standard for New General Needs Housing Development), C2 (Play Space Provision in new General Needs Housing Development), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Also material to the determination of the application is Scottish Planning Policy: June 2014.

One of the main Outcomes of Scottish Planning Policy is to create a successful, sustainable place by supporting sustainable economic growth and regeneration, and the creation of well-designed, sustainable places.

This is reflected in paragraph 25 of Scottish Planning Policy in which it is stated that the Scottish Government's commitment to the concept of sustainable development is reflected in its Purpose. It is also reflected in the continued support for the five guiding principles set out in the UK's shared framework for sustainable development. Achieving a sustainable economy, promoting good governance and using sound science responsibly are essential to the creation and maintenance of a strong, healthy and just society capable of living within environmental limits.

The principle in delivering this through the Development Management function is contained in paragraph 33 of Scottish Planning Policy in which it is stated that where relevant policies in a development plan are out of date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies in this SPP. The same principle should be applied where a development plan is more than five years old.

Paragraph 34 states that where a plan is under review, it may be appropriate in some circumstances to consider whether granting planning permission would prejudice the emerging plan. Such circumstances are only likely to apply where the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions

about the scale, location or phasing of new developments that are central to the emerging plan. Prematurity will be more relevant as a consideration the closer the plan is to adoption or approval.

Paragraph 110 of Scottish Planning Policy states that the planning system should identify a generous supply of land for each housing market area within the plan area to support the achievement of the housing land requirement across all tenures, maintaining at least a 5 year supply of effective housing land at all times.

At its Cabinet meeting of 10 December 2013, the Council agreed that East Lothian has a shortfall in its effective housing land supply. At that meeting the Council also approved Interim Planning Guidance against which planning applications for housing on land not allocated for housing development will be assessed. The application site is not allocated for residential development. Therefore the approved Interim Planning Guidance is a material consideration in the determination of this planning application.

A total of 21 written representations have been received in respect of this application, of which 20 make objection to the principle of the proposed development. The other representor does not state whether they object to or support the proposed development.

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

The main grounds of objection are summarised as follows:

- * local infrastructure, particularly the schools and health centre, would be adversely affected and could not cope;
- * the town centre cannot support the existing level of traffic without adding more;
- * loss of prime (grade A) agricultural land;
- * if approved, development would promote ribbon development between North Berwick and Dirleton;
- * lack of employment in North Berwick will lead to an increase in out-commuting;
- * the proposed development would have a harmful visual impact and would be detrimental to the area;
- * proposal is contrary to the adopted Local Plan as a location for residential development;
- * proposed development would increase traffic on the surrounding road network;
- * the rail station car park is already at full capacity and additional trains and carriages would be required to meet the increase in commuting;
- * the planning application is premature and should await the production of a future Local Development Plan;
- * concern that the sewage and drainage system may be unable to cope with the proposed housing; and
- * the walking times quoted by the applicant are incorrect and appear to be based on

assumptions that new footpaths will be able to be routed across private property and along privately owned roads.

North Berwick Community Council recommend refusal of the application on the grounds that:

- * North Berwick is not within the A1 corridor and thus not within a Strategic Development Area;
- * it is situated on a poor road network and the town has very few employment opportunities save for retail and tourism related trades and agriculture. All of this points towards an increased amount of traffic commuting to and from Edinburgh and other towns;
- * the train service is inadequate and will need further investment;
- * the infrastructure of North Berwick cannot cope with an influx of further inhabitants;
- * the existing schools and supermarket are not within walking distance of the site; and
- * the proposal would encourage the coalescence of Dirleton and North Berwick.

Gullane Area Community Council recommend refusal of the application. They further advise that it would be inappropriate for East Lothian Council to allow the application site to be developed until the report (Main Issues Report) has been published and the consultation on it has been completed.

As part of the existing area of undeveloped agricultural land between North Berwick and Dirleton the land of the application site, as an area of countryside between them, serves to differentiate one from the other. However the application site forms only a relatively small part of that existing area of undeveloped agricultural land. A housing development of the application site, and thus of a relatively small part of the intervening countryside land between North Berwick and Dirleton, would not compromise the separate forms and identities of those two places. Nor would it result in the coalescence of them. There is no other planning application before the Council at this time proposing the housing development of any of the other undeveloped agricultural land between North Berwick and Dirleton. It would be for the Planning Authority through the determination of any such future application to decide whether or not the development proposed in it was acceptable. A grant of planning permission for the housing development now proposed would not prejudice any such future determination(s).

If planning permission in principle were to be granted, the details of the siting, design and external appearance of the proposed houses, the landscaping of the site and the means of access to the proposed development would require the subsequent approval of the Planning Authority. Through the subsequent determination of such details in relation to Scottish Government Policy of Designing Streets and the Council's Urban Design Standards for New Housing Areas, planning control would be exercised to ensure that the built form of the development would be fully acceptable, with due regard to the need to safeguard the character and appearance of this site outwith the western edge of North Berwick.

The application site is immediately to the west of part of North Berwick. It has only a small interface with Dirleton Road, and is largely contained to the south of residential properties and the petrol filling station and garage on Dirleton Road. This existing built form gives the site a degree of visual containment. The western part of the site is

screened by a woodland tree belt. As it matures, this tree belt would provide increased screening of the site when approaching North Berwick eastwards along the A198 road. The applicant is proposing to increase the width of this tree belt to 45 metres, which in time would further help to integrate the development into its surroundings. The proposed landscaping of the site together with its well contained location means that in principle, the site could acceptably be developed for housing in the manner indicatively proposed without detriment to the landscape setting and character of North Berwick. On this consideration, the principle of the proposed development is consistent with Part 5 of Policy DC1 of the adopted East Lothian Local Plan 2008.

The Council's Principal Amenity Officer notes that the layout shown on the indicative site layout plan is different from that shown on the Landscape Layout Plan contained within the applicant's landscape and visual impact assessment. As well as a central area of open space, the Landscape Layout Plan also shows the provision of allotments and a flat grass sports pitch within the site. Given the lack of public open space within the western part of North Berwick, the Principal Amenity Officer is supportive of these open space proposals as shown in the submitted Landscape Layout Plan.

If planning permission in principle were to be granted for residential development of the site then it would be possible to secure the public open space shown on the Landscape Layout Plan through the imposition of a planning condition. It would also be possible to impose a planning condition to require further details of the allotments, including their long term management arrangements, to be submitted to and approved by the Planning Authority. The open space provision shown on the Landscape Layout Plan would be sufficient to serve a development of 140 houses consistent with Policy C1 of the adopted East Lothian Local Plan 2008.

Regarding formal play provision, the Principal Amenity Officer is satisfied with the proposed play area, which would be centrally located within the site. He recommends that it needs to provide a good range of individual play activities across the age range of toddler to 12 years old. If planning permission in principle were to be granted for the residential development of the site then a condition could be imposed to require that the details of the play area be submitted to and approved by the Planning Authority. Subject to the imposition of this planning condition, the proposed development is consistent with Policy C2 of the adopted East Lothian Local Plan 2008.

The Council's Access Officer is satisfied that the indicative site layout plan includes a number of footpaths. However, he advises that it looks from the current proposals that the only option for pedestrians would be to walk along Dirleton Road, which is far from ideal. He advises that it is important that any development at Ferrygate Farm should have good quality off-road routes into North Berwick.

The applicant has submitted a Transport Assessment with this planning application. In itself this submission is consistent with Policy DP18 of the adopted East Lothian Local Plan 2008.

The Council's Roads Services has considered the Transport Assessment and agrees with the findings that the traffic likely to be generated by the proposed housing development of the application site could be satisfactorily accommodated on the local road network. The assessment takes into account the additional traffic that could also be generated by the housing development of the lands of Gilsland and Mains Farm, respectively the subject of Proposals H5 and H6 of the adopted East Lothian Local Plan 2008.

It is proposed in principle in this application that site access would be directly from

Dirleton Road. Roads Services raise no objection in principle to these proposed access arrangements, subject to the existing 40 miles per hour speed limit being extended westwards on Dirleton Road, to the west of the proposed site access and subject to an independent road safety being undertaken for the proposed site access.

Roads Services raise no transportation objection to the principle of the proposed development of the application site subject to the imposition of conditions on a grant of planning permission in principle to ensure that appropriate off site road improvement works are undertaken, including ensuring that there is a satisfactory footpath connection between the application site and the existing public footway network on Williamstone Court, to the southeast of the site. This footpath connection should be formed and made available for use prior to the occupation of the first house.

With regard to safe routes to school, the Transport Assessment submitted with previous planning application 12/00680/PPM concluded that a school crossing patrol should be placed at the junction between Ware Road and Highfield Road. This is not referred to in the Transport Assessment submitted with this planning application. On this matter, the advice of the Council's Roads Services is that a schools crossing patrol should be placed at this junction to ensure a safe route to school. They further advise that the obligation for the applicant should be the payment to the Council of a developer contribution of £15,000 to fund a school crossing patrol for a fixed period of five years. This contribution can be secured by a legal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other legal Agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements.

The requirement for the developer contribution of £15,000 is consistent with Policy INF3 of the adopted East Lothian Local Plan 2008, which stipulates that new housing will only be permitted where the developer makes appropriate provision for infrastructure required as a consequence of their development.

In respect of the internal road layout shown on the indicative layout plan Road Services raise some concerns about the lack of deflection to keep vehicle speeds down and the lack of visitor parking within the southwest part of the site. These are matters of detail that could be resolved through the imposition of planning conditions, should planning permission in principle be granted for the proposed development.

It is also recommended by Roads Services that a Green Travel Plan be submitted, that wheel washing facilities be provided during the construction period, and that construction traffic movements be controlled.

With the imposition of conditions to cover the recommendations of Roads Services the proposed development would, in principle accord with Policies DP20, T1 and T2 of the adopted East Lothian Local Plan 2008.

In respect of landscape matters the Council's Policy and Projects service advise that the semi-mature belt of trees to the west of the site provides a visual screen. In their view the proposed housing should not have a detrimental impact in views of the site from the west along the A198 road. The proposed planting of a beech hedge along the site's boundary with Dirleton Road is supported. This could be complemented with trees. They further recommend that the housing development should be designed in accordance with BS5837: 2012 "Trees in relation to design, demolition and construction-Recommendations". To reduce the visual prominence of the development, it is recommended that the height of the houses at the entrance of the development should be reduced to single storey to tie in with the existing development along the south side of

Dirleton Road and to enhance views through the site to Berwick Law. These recommendations, which also include submission of a detailed landscape planting plan for the site, could be made a condition of a grant of planning permission in principle for the proposed development.

The Council's Policy and Projects service raise some concern about the visual impact of the proposed allotments, which are indicatively shown on the Landscape Layout Plan. As they are shown, the allotments would be positioned behind the rear (south) boundary line of the garages and houses on the south side of Dirleton Road and some 50 metres to the south of Dirleton Road itself. Subject to the provision of suitable planting and boundary treatments to the north of them, it is not considered that the allotments in their indicative position would be prominent or intrusive features, harmful to the character and appearance of the area.

The Council's Environmental Protection Manager raises no objection to the principle of housing development of the application site.

The Scottish Environment Protection Agency raise no objection to the principle of the proposed development. They do however recommend that details of the location and route of the Strathearn Culvert and the field drain is submitted to and approved by the Council and that no built development is located on top of those structures and flood risk is not increased elsewhere.

On the matter of flood risk, the Council's Senior Structures Officer raises no objection to the principle of the proposed development, although he advises that the details of the proposed sustainable urban drainage system (SUDS) should be submitted to and approved by the Council as Planning Authority.

In their consultation response, Scottish Water advise that while the capacity at North Berwick Waste Water Treatment Works (WWTW) is currently limited, a growth project has been raised and this site is included within the growth projections. In the shorter term they will work with all developers in the area to understand their build out rates and how they are managed during the development of the growth project. Scottish Water raises no objection to the principle of the proposed development.

Policy INF3 of the adopted East Lothian Local Plan 2008 stipulates that new housing will only be permitted where appropriate provision for infrastructure required as a consequence of the development is made. This includes funding necessary school capacity.

The Council's Depute Chief Executive (Resources and People Services) informs that the application site is located within the school catchment areas of Law Primary School and North Berwick High School.

He advises that both Law Primary School and North Berwick High School do not have sufficient capacity to accommodate children that could arise from the proposed development. Thus he objects to the application on the grounds of lack of permanent capacity at those schools. However, he would withdraw that objection provided the applicant makes a financial contribution to the Council of £1,425,000 towards the provision of additional school accommodation at Law Primary School and a contribution of £785,000 towards the provision of additional school accommodation at North Berwick High School

The required payment of a financial contribution of a total of £2,210,000 (£15,785.71 per unit) towards the provision of additional accommodation at Law Primary School and

North Berwick High School can be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Subject to the payment of the required contribution towards educational accommodation the proposal is consistent with Policy INF3 of the adopted East Lothian Local Plan 2008, which stipulates that new housing will only be permitted where appropriate provision for infrastructure required as a consequence of the development is made. This will include funding necessary school capacity.

The Council's Economic Development & Strategic Investment Manager advises that a grant of planning permission in principle would require to be subject to provision of 25% of all housing units to be developed as affordable housing. They should be provided on site or if it can be demonstrated to the Council that this, or the off-site provision of the required affordable units is not practicable, a commuted sum payment should be made to the Council in lieu of such an on or off-site provision. The terms for the provision of this affordable housing requirement could be the subject of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Subject to the Council securing the affordable housing requirement, which the applicant confirms they are willing to do, the proposal would be consistent with Policy H4 of the adopted East Lothian Local Plan 2008.

The matter of the impact of a residential development at Ferrygate Farm upon local services, such as the local health centre, was fully considered through the determination of previous planning application 12/00680/PPM. In taking the decision to refuse planning permission 12/00680/PPM, the position of East Lothian Council as Planning Authority was that, as a requirement of development of the site, it would have been unreasonable to insist that the applicant should make a financial contribution towards increasing the capacity of North Berwick Health Centre. This position was backed by the Reporter who determined the subsequent appeal, who concluded that "I find that the cost of healthcare provision is not something to which the Appellant should be expected to contribute". It would therefore be unreasonable for the Council as Planning Authority to now insist on the applicant making such a developer contribution.

Given the scale of the proposed development, if planning permission in principle were to be granted it would be appropriate for artwork to be incorporated either as an integral part of the overall design of it or as a related commission to be located on the site or in an approved alternative location. This could be achieved by means of a condition on a grant of planning permission in principle, subject to which the proposals would be consistent with the requirements of Policy DP17 of the adopted East Lothian Local Plan 2008.

Notwithstanding these technical considerations, the primary material consideration in the determination of this application is whether or not the principle of the proposed housing development accords with development plan policy and other supplementary planning guidance and if not, whether there are material considerations that outweigh any conflict with the development plan and other supplementary planning guidance.

The land of the application site is defined by Policy DC1 of the adopted East Lothian Local Plan 2008 as being part of the countryside of East Lothian.

The adopted Local Plan does not allocate the land of the application site for residential development.

The principle of new build housing development on the application site must therefore be assessed against national, strategic and local planning policy relating to the control of new build housing development in the countryside.

Part 1(b) of Policy DC1 of the adopted East Lothian Local Plan 2008 sets out the circumstances in which new housing outwith settlements may be appropriate, particularly in rural areas. It only allows for new build housing development in the countryside where the Council is satisfied that a new house is a direct operational requirement of an agricultural, horticultural, forestry or other employment use.

Policy DC1 also requires that loss of prime agricultural land be minimised. In respect of this, the release of Greenfield land for housing development will often result in loss of prime agricultural land. The proposed density of development, taken in conjunction with the provision of green space for the development and the area, is such that it can be considered that the loss of prime agricultural land would be minimised.

The new build housing development proposed in this application is not necessary for agriculture, horticulture, forestry operations or countryside recreation and is therefore contrary to Part 1(b) of Policy DC1 of the adopted East Lothian Local Plan 2008.

However, the South East Scotland Strategic Development Plan (SESplan) requires that Policy DC1 be considered in the context of the current housing land supply.

Scottish Ministers have approved SESplan subject to supplementary guidance on housing targets for each member local authority. That supplementary guidance is now approved by Ministers with a modification required in terms of calculating the housing land supply.

SESplan Policy 7 states that sites for greenfield housing development proposals either within or without the identified Strategic Development Areas may be allocated in Local Development Plans or granted planning permission to maintain an effective five years housing land supply subject to satisfying each of the following criteria:

- (a) The development will be in keeping with the character of the settlement and the local area;
- (b) The development will not undermine green belt objectives; and
- (c) Any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

East Lothian Council has agreed that East Lothian has a shortfall in its effective housing land supply. In respect of this the Council approved its Housing Land Supply: Interim Planning Guidance against which planning applications for housing on land not allocated for that purpose will be assessed.

The approved Interim Planning Guidance states that the weight the Council affords its terms, and the terms of other Development Plan policies, to individual planning applications will depend on the extent to which the proposed development is able to satisfy the following criteria:

- 1 Effectiveness;
- 2 Scale;
- 3 Timing;

4 Development Plan Strategy; and

5 Locational Considerations.

In respect of criteria 1; effectiveness, the applicants' agent has confirmed that there are no physical constraints to the development of the site. The site is in the control of a housebuilder, Miller Homes. In these respects it can be considered to be physically and financially capable of being immediately effective or capable of being so well within a period of five years from the determination date of this planning application. On these specific considerations the site can be considered to be effective.

In respect of criteria 2; scale, the proposed housing development of 140 residential units would be below the Guidance threshold of 200 units. The guidance states that the actual number of houses permissible on any one site or within any one settlement will be assessed against the scale and character of the specific settlement. Other than in the main towns, the maximum permissible will therefore be significantly less than the maximum capacity of 200 units. North Berwick is one of the main towns within East Lothian. Whilst this scale of growth would be significant, it would nevertheless be appropriate to the scale and character of the town.

North Berwick is one of the main towns within East Lothian. Whilst this proposed scale of growth would be significant, it would nevertheless be appropriate to the scale and character of the town. In this respect it does not conflict with criteria 2 of the Interim Guidance. In this and in that the proposals would not undermine green belt objectives and the infrastructure requirements are either committed or would be met by the developer, including for education provision, the proposals comply with Policy 7 of SESplan.

In respect of criteria 3; timing, the applicant's agent has indicated that development could commence during 2015 and all 140 houses could be completed by 2019. There is no evidence to suggest that they would not be able to develop the site within this suggested timescale.

In respect of criteria 4; development plan strategy, it is considered that the proposed housing would not prejudice the delivery of the existing Development Plan strategy because it would not compromise the ability to provide infrastructure to existing housing land allocations that do not yet have planning permission or are committed but have not yet started, and would not be dependent on the prior provision of infrastructure required by existing housing land allocations that do not yet have planning permission or are committed but have not yet started.

In respect of criteria 5; locational considerations, the application site is at the western edge of North Berwick and therefore in this respect satisfies the first part of criteria 5 in that it would form an extension of an existing settlement as defined in the adopted East Lothian Local Plan 2008.

As North Berwick lies outwith the East Lothian Strategic Development Area the proposed development also has to be assessed against the tests as set out in parts (i) and (ii) of criteria 5.

Criteria 5(i) sets out the following provisos where development may be acceptable, specifically where;

(a) the site is a consolidation of or an appropriate extension to an existing settlement

identified in the East Lothian Local Plan 2008, and its scale and nature is in keeping with the scale and character of that settlement and the local area, and

(b) infrastructure is available or can be made available within a timescale that allows for early house completions, and

(c) the site's development for housing is consistent with all other relevant development plan policies.

In regard to this the proposed development meets proviso 5(i)(a) in that the scale of the proposed development is in keeping with the scale and character of the existing town of North Berwick. Moreover, the proposed development meets proviso 5(i)(b) in that there is no evidence to suggest that infrastructure is not available or could not be made available within a timescale that allows for early house completions.

Therefore on this consideration the housing development of the application site is consistent with the Council's Housing Land Supply: Interim Planning Guidance.

Criteria 5(ii) sets out the further provisos where development may be acceptable, specifically,

(a) where the settlement is well served by public transport,

(b) existing facilities and services are both available and accessible such that the need to travel is minimised, and

(c) the extent to which the additional housing would help make a demonstrable and necessary contribution to sustaining or improving educational, social or community facility provision within the local area may.

In terms of part 5(ii)(a), as some of the objectors have informed, the car park at North Berwick train station often nears its capacity. The lack of capacity could become more significant once the housing sites at Mains Farm and Gilsland have been developed and are occupied. Objectors also inform that capacity on the trains can be an issue. Notwithstanding this, there is a bus stop on Dirleton Road, in close proximity to the application site. A regular bus service operates from this bus stop to Musselburgh and Edinburgh. On this matter, the site is relatively well served by public transport.

Turning to part 5(ii) (b) there is a wide range of facilities and services available in North Berwick, including primary and secondary schools, medical and dental facilities, a sports centre and swimming pool, and various retail stores, which would be available to future residents. In allowing for residential development outwith as well as within the Strategic Development Area for East Lothian, SESplan, including its Policy 7, gives due consideration of patterns of travel and sustainability of such developments. Therefore the proposals do not conflict with this consideration.

In respect of part (iii) of criteria 5 the proposed development would not be on land allocated for another specific use.

In respect of part (iv) of criteria 5 the proposed development, given it would form an extension of the existing town of North Berwick, would be compatible with adjoining or nearby existing uses.

Part (v) of criteria 5 states that a proposed housing use must be contained within robust, defensible boundaries and must not set a precedent for subsequent future expansion,

the principle of which would be more appropriately considered through a development plan review.

The application site is bounded on its east side by Gasworks Lane, on its west side by an existing tree belt and on its north side by a length of Dirleton Road, a petrol filling station and garage, a small landscaped area and a number of houses. These are robust and defensible boundaries which would serve to contain the proposed development along these aforementioned boundaries.

However the south side of the application site is bounded by further agricultural land with no robust, defensible boundary in place between the application site and this further agricultural land. In respect of these concerns, the applicant has indicated that substantial planting could be provided along the length of the south boundary of the site, however, this would take many years to establish and thus cannot be taken to provide a robust boundary enclosure in the short to medium term.

On consideration of the above, the southern part of the application site is not contained within a robust, defensible boundary.

The purpose of the Interim Planning Guidance is to ensure that the release of additional land to support the housing land supply is managed by providing a criteria based approach to what constitutes acceptable development. The principle of a robust, defensible boundary is to allow for relatively contained sites to be come forward for development whilst guarding against land releases which could ultimately lead to other land being brought forward under the application process where other options may have a better spatial and planning justification.

Application 12/00680/PPM, which was refused planning permission in principle by the Council and on appeal, included most of the land that is the subject of this planning application within its greater site area. It also promoted housing development on land to the south of the site that is the subject of this planning application. Additionally the applicant's submission for the MIR/local development plan process is for a site which includes the land to the south of the site up to the railway line.

Accordingly, a grant of planning permission in principle would set a precedent for subsequent future expansion to the south. It would not reinforce an existing boundary treatment of the site but rather would impose an arbitrary one on it.

The application site therefore cannot be considered to be the whole site in the terms of Part 2 of the Interim Planning Guidance, which states that planning applications which are a consequence of the subdivision of a larger site with smaller applications in order to meet this (200 unit) maximum will be resisted.

The proposals are significantly contrary to these two considerations of the Council's Housing Land Supply: Interim Planning Guidance.

The applicant's agent advises the Council that Scottish Planning Policy: June 2014 is the principal consideration guiding the determination of planning applications in circumstances where the development plan is out of date.

Paragraph 125 of Scottish Planning Policy states that where a shortfall in the 5-year effective housing land supply emerges, development plan policies for the supply of housing land will not be considered up-to-date and paragraphs 32-35 will be relevant.

As stated in the Council's Housing Land Supply: Interim Planning Guidance, the Council

acknowledges that there is currently a shortfall in the 5-year effective housing land supply. Thus paragraphs 32-35 of Scottish Planning Policy are relevant to the determination of the application.

Scottish Planning Policy states in paragraph 33 that where relevant policies in a development plan are out of date...then the presumption in favour of development that contributes to sustainable development will be a significant material consideration.

The applicant contends that the proposals would contribute to sustainable development; amongst other things it would bring economic benefit, support good design and make efficient use of land and therefore Scottish Planning Policy supports the principle of the proposed development.

Paragraph 29 of Scottish Planning Policy sets out 13 principles of sustainable development. Not all of these are relevant to this particular case of proposed residential development.

It would meet some of these principles. For example, there would be some economic benefit from the proposed development, including direct and indirect employment opportunities during the construction period. The proposed development could also support good design.

However, the applicant offers no evidence that the proposals meet some of the key principles of sustainability given in Paragraph 29, including supporting climate change mitigation and adaptation as set out in Scottish Planning Policy and the Scottish Government's Land Use Strategy. Thus no significant weight can be given to the contention that the proposals would deliver a sustainable development in the terms of this significant material consideration. Therefore it cannot be held to outweigh the considerations of the Interim Planning Guidance.

Equally, Scottish Planning Policy makes it clear that its aim is to achieve the right development in the right place (Paragraph 28); it is not to allow development at any cost.

As the Reporter acknowledged in his decision on the applicant's previous appeal, the site is not ideally located in relation to facilities in North Berwick. The Transport Assessment shows that it would take some 20 minutes to walk from the site to Law Primary School and North Berwick High School. The walking route to the town centre is the footway beside the A198 carriageway which, with its length, closeness to passing vehicles and uphill gradient on the return journey, would not be especially attractive to pedestrians. Two of the local supermarkets are on the side of the town furthest from the appeal site. On this count, and as the Reporter acknowledged in his decision on the previous appeal, there are issues relating to location of the site that do not favour approval of the proposed development.

Whilst there is due consideration to be given to the site contributing to the housing land supply, it is this consideration rather than the presumption in favour of sustainable development which needs to be weighed against the proposals non-compliance with Parts 2 and 5 of the Guidance. The consideration of housing land supply should not be taken to mean development at all costs and although in terms of Paragraph 34 of Scottish Planning Policy the proposed development is not so substantial that a grant of planning permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new developments that are central to the emerging plan, concession of the principle of development in this particular case could allow for more substantive development which could prejudice decisions about plan allocations in relation to the North Berwick area.

Given the questions over the contribution of the proposals to sustainable development and this issue of the emerging plan, the other material considerations do not in this case outweigh that the proposal does not meet significant requirements of the Interim Planning Guidance.

In conclusion there are no material considerations, including Scottish Planning Policy: June 2014, which outweigh that the new build housing development proposed in principle in this application is contrary on two counts to the Council's Housing Land Supply: Interim Planning Guidance.

RECOMMENDATION

That planning permission in principle be refused for the following reasons:

- 1 The new build residential development proposed in principle in this application is contrary to part 5 of the Council's Housing Land Supply: Interim Planning Guidance in that the southern boundary of the application site is not contained within a robust, defensible boundary and as such the residential development of the application site would set a real precedent for subsequent future expansion to the south, the principle of which should be considered through the Local Development Plan process.
- 2 The application site for the proposed development is a subdivision of a larger site as demonstrated by the planning history of the site and the land to which it relates as demonstrated by the previous application submission (12/00860/PPM) and the applicant's submission to the Local Development Plan call for sites, contrary to Part 2 of the Council's Housing Land Supply: Interim Planning Guidance.