

REPORT TO: Planning Committee

MEETING DATE: Tuesday 1 September 2015

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Note - this application was called off the Scheme of Delegation List by Councillor Berry for the following reason: Need the full committee to understand the reasons for recommending refusal when the provision of jobs in town centres is a key element of their revival.

Application No. **15/00287/P**

Proposal Change of use of domestic garden ground for the erection of building for office (Class 2) use and associated works

Location **Site At 2 Forth Street Lane
North Berwick
East Lothian
EH39 4JB**

Applicant Zest Capital Management

Per Somner Macdonald Architects

RECOMMENDATION Application Refused

PLANNING ASSESSMENT

In July 2009 application for planning permission 07/00495/FUL was refused for the erection of 1 house and associated works on a small irregular shaped plot of land, measuring some 121 square metres in area that is located at Forth Street Lane.

The reasons for refusal were that:

(1) The proposed house would due to its proportionality and constricted position be an incongruous, cramped form of infill development that would not preserve or enhance but instead would be harmful to the character and appearance of this part of the Conservation Area contrary to Policies ENV1D and ENV1G of the approved Edinburgh and the Lothians Structure Plan 2015, Policies DP2, DP7 and ENV4 of the adopted East Lothian Local Plan 2008, Planning Advice Note 67: Housing Quality and Scottish Planning Policy 23: Planning and the Historic Environment; and

(2) As a cramped form of overdevelopment of the application site the proposed house

and garden would fail to provide the future occupants of the proposed house with an appropriate level of privacy and residential amenity and would result in a harmful loss of privacy and residential amenity to existing neighbouring properties, all contrary to Policies DP2 and DP7 of the adopted East Lothian Local Plan 2008.

Also in July 2009 conservation area consent (ref. 07/00495/CAC) was refused for the demolition of a single garage on the site, required to be removed from the site to facilitate the erection of the proposed house.

The reason for refusal of conservation area consent application 07/00495/CAC being that 'in the absence of an acceptable development proposal for the site a grant of conservation area consent for the works proposed in this application cannot be justified'.

The decision to refuse planning permission 07/00495/FUL was the subject of an appeal to the Directorate of Planning and Environmental Appeals. The appeal was dismissed in March 2010 on the basis that the proposed development would have a cramped appearance, would result in overlooking of neighbouring residential properties, would appear dominant to neighbouring residential properties, and that whilst the design of the proposed building is inoffensive, the small site means that even by the relatively dense pattern of development within the conservation area, the proposed building would appear cramped and out of place, damaging to both the character and appearance of the conservation area.

In December 2010 planning application 10/01049/P was received for the change of use of domestic garden ground for the erection of a building for Class 3 use and for associated works on the same site as that for refused planning application 07/00495/FUL. The building proposed in planning application 10/01049/P was slightly larger than that proposed in refused planning application 07/00495/FUL and thus the same concerns were raised by the Planning Officer that the proposals would be an incongruous and cramped form of infill development that would not preserve or enhance but instead would be harmful to the character and appearance of this part of the Conservation Area and that they would be an overdevelopment of the site that would result in a harmful loss of privacy and residential amenity to existing neighbouring properties. The Applicant's Agent was also advised that the Council's Roads Services are of the opinion that the proposed Class 3 use in this location would be likely to have a harmful impact on road and pedestrian safety due to their being no land associated with the application site or land available to the Applicant on which to provide off-street parking spaces. Planning application 10/01049/P was subsequently withdrawn.

The land of the current application site extends to some 78 square metres in area. It comprises the southern part of the land of planning applications 07/00495/FUL and 10/01049/P, which were respectively refused and withdrawn. It is an irregular shaped area of land that is located to the north of the flatted building containing the properties of 2 & 2A Forth Street Lane and 40-42 High Street, and to the east and south of the flatted building of 4-6 Forth Street Lane. To the east of the site are neighbouring residential properties. As so bounded it is in the southeast corner of Forth Street Lane, a cul-de-sac on the southern side of Forth Street in North Berwick, within North Berwick Town Centre and North Berwick Conservation Area.

There is a single storey, flat roofed garage on the land, which is attached to the south elevation of the flatted building of 4-6 Forth Street Lane. The external walls of the garage building have a painted render finish. The site is enclosed along its west boundary in part by the flatted building of 4-6 Forth Street Lane and by a 1.55 metres high timber fence, along its east boundary by a 2 metres high rubble stonewall, and along its south boundary by a low timber fence. There is no means of enclosure along the north

boundary of the site.

The site does not have a direct frontage onto Forth Street Lane but is accessed from the southern end of Forth Street Lane, via an existing vehicular access located immediately to the west of the site and which measures some 3.5 metres in width at its narrowest point and some 4 metres in width at its widest point. That vehicular access serves the garage building on the site and also provides access for deliveries to the rear of the business premises of 40-42 High Street. That vehicular access is also used by pedestrians accessing the flats of 2 & 2A Forth Street Lane.

Historically, the land and garage comprising the application site were formerly used as garden ground by the flats at 2 and 2A Forth Street Lane but have not been used as such for some time.

There is a tree on the eastern part of the site adjacent to the east boundary wall.

The application site is within a mixed use area of the North Berwick Town Centre covered by Policy ENV2 (Town and Village Centres, Other Retail or Mixed Use Areas) of the adopted East Lothian Local Plan 2008.

Planning permission is now sought for the change of use of the area of former domestic garden ground for the erection of a part one and a half storey and part single storey building for office (Class 2) use, for the formation of a hardstanding area and for the erection of fencing and gates.

The proposed building would be part one and a half storey and part single storey in height. The one and a half storey part of it would have a dual pitched roof and the single storey part of it would have a flat roof.

The north elevation wall of the proposed building would in part be attached to the flatted building of 4-6 Forth Street Lane. It would be orientated with its front elevation facing west to the existing vehicular access. Due to the shape of the application site that front elevation would be in part set back some 2.5 metres from the vehicular access and in part it would abut the edge of the vehicular access. Its pitched roof would be clad with natural slates and its external walls would have a wet dash rendered finish. The frames of the large windows and entrance door of the west and southwest elevations of the single storey part of the building would be of powder coated aluminium construction. The frames of the windows, the external door frames and external door of the east, west and south elevations of the one and a half storey part of the building would be of timber construction. There would be two roof windows on the south elevation roof slope and three roof windows on the north elevation roof slope of the proposed building.

Small areas of land would be retained around the east, south and west sides of the proposed building. The area of land to the west side of the proposed building would be hard surfaced with block paviors.

A new 1.5 metres high timber gate and new 1.5 metres high timber fencing would be erected between the northeast corner of the building and the existing east boundary wall of the site, and a new 1.5 metres high timber gate and fencing would be erected along part of what would remain of the west boundary of the site with the existing vehicular access. The remainder of the west boundary of the site would be enclosed in part by the southwest elevation wall of the proposed building and in part by existing timber fencing. The existing low timber fencing and gate of the south boundary of the site and the rubble stone wall of the east boundary of the site would be retained.

The applicant's agent has submitted a supporting statement with the application, which states that the area between High Street and Forth Street in North Berwick is characterised substantially by dense development of small residential infill units, both houses and flats, historic and recent. It is also stated that the area is characterised by a pattern of historical development in which there are old stone built residential properties, conversions of commercial premises to residential and redevelopment of old industrial and commercial sites to become residential and retail developments. The statement goes on to explain that the land of the application site was formerly part of the garden ground for 2 Forth Street Lane but that it has been detached from the ownership of that flatted property and is no longer connected to that property. A further part of the former garden ground lies to the north of the current application site but does not form part of this application for planning permission. The statement acknowledges that due to its remote nature from the flat at 2 Forth Street Lane and because it is overlooked by numerous neighbouring properties the site has been of little attraction as useable garden ground and has been historically disused.

The statement explains that the proposed Class 2 office use is a use that accords with the zoning and policies of the East Lothian Local Plan 2008 for this locality. The statement further explains that the design of the proposed building as part single and part one and a half storey is drawn from the historic arrangement, in which retail units have evolved through the addition of a single storey flat roofed element constructed as an extension in front of a taller building, which remains visible behind. The statement contends that the proposed building would make better use of the site than its former use as garden ground. The statement also explains that the proposed building would be of a modest scale for the location and would not allow for overlooking or overshadowing of the neighbouring residential properties.

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.

Policy 1B (The Spatial Strategy: Development Principles) 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 (Development within Conservation Areas), DP2 (Design), DP14 (Trees on and Adjacent to Development Sites), DP22 (Private Parking), T1 (Development Location and Accessibility), T2 (General Transport Impact) and NH5 (Protected Trees) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the planning application.

Material to the determination of the application are Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development within a conservation area given in Scottish Planning Policy: June 2014.

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 within conservation areas and proposals outwith which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area.

Proposals that do not harm the character and appearance of the conservation area should be treated as preserving its character and appearance.

Planning permission should normally be refused for development within a conservation area that fails to preserve or enhance the character or appearance of the area.

Six public representations to the application have been received. All of the representations raise objection to the proposed development and as summarised the grounds of objection are:

- i. the proposed development would have a significant impact on an already congested town centre/high street;
- ii. the proposed development would have a negative impact on the light received by neighbouring residential properties and would allow for overlooking of neighbouring properties;
- iii. the site is too small and the proposed development would be too cramped and the building would appear overly dominant;
- iv. the proposed development looks like a house and the development of the site for the erection of a house has been refused before by the Council and Scottish Government;
- v. the proposed development would block access to neighbouring properties;
- vi. the proposals would result in the loss of an important tree from this site in the Conservation Area;
- vii. the land of the site is not remote from the flat of 2 Forth Street Lane as it adjoins the access path to that flat; and
- viii. the west/south elevation of the building would be safer if the full height glazing were removed so that the wall would be solid up to 1 metre in height.

The proposal is for the erection of a building for office use (Class 2) not for the erection of a house. It is on this basis that the application stands to be determined. Any future application for a different use of a building on the site would stand to be determined on its own merits.

The Royal Burgh of North Berwick Community Council, as a statutory consultee, comment that the proposed building would look well beside the existing tenement building which has recently been re-harled, that due to the small size of the building any vehicle activity is likely to be slight, and that the revised form of the building would not adversely affect neighbours. They conclude that whilst the Community Council was initially uncertain of the application they now support the proposals as an asset to the town as it would offer small business accommodation and work, and would enhance the look of the Lane and fit in with adjacent properties without detriment to neighbours.

By being within North Berwick Town Centre the application site is part of a mixed-use area as defined by Policy ENV2 of the adopted East Lothian Local Plan 2008. Policy ENV2 states that within town and village centres and other established retail or mixed use areas, uses appropriate to such areas, including retailing, business and office use, restaurants, leisure and entertainment, will be acceptable in principle. Policy ENV2 also states that proposals that would have a significant environmental impact, particularly on existing housing, will not be permitted.

The proposed use of the building is as an office use within Class 2 (Financial, professional and other services) of the Town and Country Planning (Use Classes) (Scotland) Order 1997. Although the site is a backland site that is accessed from the southern end of the cul-de-sac of Forth Street Lane, which is itself accessed from Forth Street, and does not have a direct frontage on to a street, the application site is within the defined town centre of North Berwick, and the Class 2 office use of the proposed building is a use typically associated with the mixed commercial use of the town centre of North Berwick of which the site is a part. Such use would not be incompatible with the established mixed uses of the town centre. The office uses of the town centre contribute to its vitality and viability and so too would the proposed office use, which would add to a wider economic and social activity within the town centre. The office use of the proposed building would not have a significant adverse impact on the amenity of any neighbouring property or land use.

Thus the use of the proposed building as an office use (Class 2) in principle is not contrary to Policy ENV2 of the adopted East Lothian Local Plan 2008.

Thereafter, the considerations in the determination of this planning application are whether, with regard to national, strategic and local planning policy and guidance and other material considerations, the fitting of a building into the application site would be an acceptable form of backland/infill development, with due regard to the impact such development would have on the character and amenity of the area, including its impact on the Conservation Area, and whether or not it would have a detrimental impact on the privacy and amenity of neighbouring residential properties or on road and pedestrian safety and whether there would be a detrimental impact on the tree that is on the site.

Scottish Water has been consulted on the application however no response from them has been received.

The Council's Environmental Protection Manager raises no objection to the proposed use of the building as an office use (Class 2).

There are parking restrictions on Forth Street Lane, which do not allow for on-street car parking. No parking provision is proposed as part of the application, and nor does the applicant have access to any further land on which parking for the proposed development could be provided.

The Council's Roads Services advise that, although the proposed Class 2 office use has a requirement for parking to be provided at a rate of 1 space per 100 square metres of public floor area, in this case, with the total size of the proposed office being 37 square metres, it is unlikely that the proposed use would generate a large parking demand. Therefore, Roads Services confirm that in the particular circumstances of this case, given the small size of the premises in this town centre location, and the adjacent parking restrictions, it is not deemed necessary for dedicated on-site parking to be provided for the proposed office use.

Roads Services go on to advise that due to the constricted nature of the site and the adjacent parking restrictions a construction traffic method statement should be provided to minimise the impact of construction activity on road and pedestrian safety in the area. This matter could be controlled by a condition attached to a grant of planning permission for the proposed development.

Subject to the aforementioned planning control the Council's Roads Services advise that they raise no objection to the proposed development which is readily accessible by public transport, on foot and by cycle as well as by private vehicles and accordingly

which does not conflict with Policies T1, T2 and DP22 of the adopted East Lothian Local Plan 2008.

The tree that is on the eastern part of the application site adjacent to the east boundary wall of the site is not shown on the application drawings but due to its proximity to the proposed building it would be required to be removed in order to facilitate the erection of the building.

The landscape advice from the Council's Policy and Projects service is that the tree is a cherry tree and that it is an important tree in the landscape setting of the small area of open space that is the application site, and which would be significantly changed to accommodate the proposed development. Furthermore its amenity value has increased as it has grown and matured since the submission of the earlier applications (refs. 07/00495/FUL and 10/01049/P). The Council's Policy and Projects Manager goes on to advise that the application site is within a densely developed area of the North Berwick Conservation Area, and that the small area of open space that is the application site and the tree on the site, although not visible out with Forth Street Lane, help to soften this hard urban area and provide visual amenity for the residents of Forth Street Lane and the rear of properties of this part of High Street. Thus the removal of the tree and open space and its replacement with a one and a half storey building would be detrimental to the character and appearance of this part of the Conservation Area, contrary to Policies NH5 and DP14 of the adopted East Lothian Local Plan 2008.

Notwithstanding the comments from the Council's Policy and Projects service, due to the dense built form that surrounds the site the cherry tree that is on the site is not visible in public views from outwith the southern end of Forth Street Lane, and thus it has very limited visual amenity value in public views from this part of the Conservation Area. Therefore, due to such limited amenity value the removal of it from the application site would have a neutral impact on the landscape character and appearance of this part of the Conservation Area, and it would be unreasonable for the Council as Planning Authority to require its retention. Thus, the removal of the tree from the application site would not conflict with Policies NH5 and DP14 of the adopted East Lothian Local Plan 2008.

The application site is part of the older core of the North Berwick Conservation Area (i.e. High Street, Quality Street and the area around the harbour) which, according to the character statement for the Conservation Area given in the adopted East Lothian Local Plan 2008 is characterised by tightly packed buildings and narrow streets of a type common to many Scottish burghs. Buildings are generally compact and small scale fronting directly on to the streets and most buildings date from the 18th and 19th century. 20th century infill development is also commonplace. Use of colour and architectural detailing, differences in roof height, shop fronts that adhere to original plot widths and retention of many original features and shop fronts make for a busy centre of variety and interest.

The buildings in the immediate vicinity of the application site generally vary between two and three storeys in height. They have a variety of finishes on their external walls, with natural stone and painted stone and rendered finishes all being prevalent. The roofs of the surrounding buildings are mainly clad with natural slate, although in some instances within the Town Centre of North Berwick there are pantiled roofs.

The external finishes of the proposed building (i.e. rendered walls, a slate clad roof and timber framed windows) would be compatible with the mixed palette of external finishes of the buildings in the locality of the application site.

The use of powder coated aluminium frames for the windows and door of the west and southwest elevation of the single storey part of the proposed building is not normally acceptable in a Conservation Area in East Lothian. However, the building is proposed as an office and the windows and door would have the appearance of a glazed shopfront. The use of such materials for shopfront windows and doors has been accepted elsewhere in the North Berwick Conservation Area. Moreover, the proposed building is located in a backland location where it, including the ground floor windows and door of the west and southwest elevations of the single storey part of it, would only be readily visible from the southern end of the cul-de-sac that is Forth Street Lane and then only for the duration of the vehicular access that is to the west of the site. In these circumstances any glimpsed views of them from Forth Street Lane would be of short duration and in such circumstances the use of powder coated aluminium as the framing material for the ground floor windows and door of the west and south elevations of the single storey part of the proposed building would not have an appreciable effect on the character and appearance of this part of the North Berwick Conservation Area, and would not be harmful to the character and appearance of the Conservation Area.

In terms of its architectural design the proposed building would be inoffensive and with the exception of the use of bargeboards, which are not a feature of the buildings surrounding the site, its design would be sufficient in keeping with the varied architectural design of the surrounding buildings. The matter relating to the building having no bargeboards could be controlled by a condition of a grant of planning permission.

The proposed hardstanding area would be surfaced with block paviors. Although visible from the southern end of Forth Street Lane the proposed hardstanding area in its ground level positioning would be similar to the block paved surface of part of the vehicular access to the west of the site. Seen in the context of this and other hard surfaced areas in the locality the proposed hardstanding area would not appear harmfully intrusive or incongruous within the streetscape and would not be harmful to the character and appearance of this part of the North Berwick Conservation Area.

The proposed timber gates and fencing would be similar in height and form to other boundary enclosure fencing in the surrounding area. Seen in the context of this and other boundary enclosures in the locality the proposed timber gates and fencing would not appear harmfully intrusive or incongruous within the streetscape and would not be harmful to the character and appearance of this part of the North Berwick Conservation Area.

Planning application 07/00495/FUL refused permission for a building with a footprint size of some 37 square metres in area and a maximum roof ridge height of some 6.2 metres above ground level, and the building proposed in withdrawn application 10/01049/P had a footprint size of some 50 square metres in area and a maximum roof ridge height of 6.9 metres.

At some 43 square metres in area the footprint of the building the subject of this current application would be larger than the building proposed in refused planning application 07/00495/FUL. Additionally, with a roof ridge height of the one and a half storey part of it, at some 6.5 metres above ground level would be some 300mm higher than the roof ridge of the building refused through planning application 07/00495/FUL.

The application site is a small irregularly shaped area of land, which though accessed via an existing vehicular access from the southern end of Forth Street Lane, is severely confined by the built form otherwise around it. In its confined and awkward positioning between the neighbouring buildings that would be to the north and south of it and by its markedly smaller size, lower height and different proportions in comparison with those

neighbouring buildings, the proposed building would not be in keeping with the characteristic built form of its setting.

Moreover the proposed building would occupy a large part of the site with little open space to the south, east and west of it. Furthermore, due to the confined nature of the site and the proximity of the proposed building to the windows of the east elevation of the neighbouring flatted building of 4-6 Forth Street Lane, and by its one and a half storey height and positioning, the proposed building would appear overbearing and dominant when viewed that neighbouring property. Consequently even by the relatively dense pattern of development within this part of the Conservation Area, the proposed building would be a cramped form of development that would not be appropriate to its place but rather would be an overdevelopment of the site. In all of these respects the proposed building would be an incongruous, cramped form of infill development that would not preserve or enhance but instead would be harmful to the character and appearance of this part of the North Berwick Conservation Area.

On these considerations of form, scale, massing and density of development, the proposed building would be contrary to Policies ENV4 and DP2 of the adopted East Lothian Local Plan 2008.

On the matter of the impact of the proposed house on daylight and sunlight on neighbouring properties, guidance is taken from "Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice" by P.J. Littlefair.

The proposed building would be attached to the south elevation of the existing flatted building of 4-6 Forth Street Lane, and by virtue of its height, positioning and proximity to the existing flatted building, would have an impact on the daylight to the southern most ground floor window on the east elevation of that flatted building. That window serves a bedroom.

The guide states that whilst daylight to bedroom windows should be analysed, bedrooms are of lesser importance than main rooms (i.e. living rooms, dining rooms and kitchens). The daylight to that ground floor bedroom window is already restricted due to the heights and density of the built form surrounding the site. The proposed building would fail the daylight test for this window on a horizontal axis but would pass it on a vertical axis. Thus, in accordance with the methodology of the test, because it would not fail on both the horizontal and vertical counts, it would pass the day light test to this window.

However, due to the confined nature of the site and the proximity of the proposed building to that ground floor window and the due to its one and a half storey height and the 2.5 metres projection of it away from the east elevation of the existing flatted building, the proposed building would exacerbate that existing situation further reducing daylight to that bedroom window and appearing overbearing and dominant when viewed from that window, such that there would harm to the residential amenity of that property.

The proposed building would not cause harmful overshadowing of the garden ground of any neighbouring property relative to the existing overshadowing caused by the surrounding higher buildings. The proposed building should also receive a sufficient amount of daylight (skylight).

Although the proposed building would not cause harmful overshadowing of the garden ground of any neighbouring property relative to the existing overshadowing caused by the surrounding higher buildings, it would, by its height, positioning and proximity to the southern most ground floor window of the east elevation of the flatted building of 4-6 Forth Street Lane, exacerbate the existing limited daylight received by that window and

would appear harmfully overbearing and dominant when viewed from that window. Thus the proposed building would be harmful to the amenity of that neighbouring flatted property, contrary to Policy DP2 of the adopted East Lothian Local Plan 2008.

In assessing whether or not a proposed new development would result in harmful overlooking and therefore loss of privacy to existing neighbouring residential properties it is the practice of the Council, as Planning Authority, to apply the general rule of a 9 metres separate distance between the windows of a proposed new building and the garden boundaries of neighbouring residential properties and an 18 metres separation distance between directly facing windows of the proposed new building and the windows of existing neighbouring residential properties.

There would be one ground floor window and a door in the east elevation of the proposed building, which would be only some 1.7 metres away from the east boundary of the site with the garden of the neighbouring flatted building of 30 High Street to the east. That boundary is enclosed by a 1.8 metres high stone wall, which would prevent any harmful overlooking of the neighbouring flatted building of 30 High Street to the east. Thus, the ground floor window and door in the east elevation of the proposed building would not allow for harmful overlooking of any neighbouring residential property.

There would be a pair of ground floor windows in the south elevation wall of the one and a half storey part of the proposed building. Those windows would face onto the narrow strip of land of the southern part of the application site and towards the shared pedestrian access to the flats of 2 & 2A Forth Street Lane. They would be between 2.0 - 3.0 metres away from the south boundary of the site and would only be some 5.5 metres away from the north elevation wall of that flatted building and the rear of the commercial premises of 40-42 High Street. The glazed entrance door to the flats of 2 & 2A Forth Street Lane is accessed by an external stair and is raised some 1.5 metres above ground level, and above that there is a fanlight window and at second floor level a further window. That door, fanlight and second floor window serve a staircase which provides access to the flats of 2 & 2A Forth Street Lane but is not a habitable room of those flats.

There would also be two roof windows in the south elevation roof slope of the one and a half storey part of the proposed building. Those roof windows would face onto the narrow strip of land of the southern part of the application site and towards the shared pedestrian access to the flats of 2 & 2A Forth Street Lane and that flatted building beyond. They would be some 10 metres away from a living room window of the first floor flat of 2 Forth Street Lane. The pedestrian access to the neighbouring flatted building is a shared space and is already overlooking by both of those flats and the rear of other buildings of High Street and thus is not afforded the same degree of privacy as would a private garden area.

In addition, the bottom sills of the roof windows would be some 1.8 metres above the finished floor level of the mezzanine level of the proposed building and thus would not allow for harmful overlooking of the windows of the neighbouring flatted building. Thus the ground floor and roof windows of the south elevation of the proposed building would not allow for harmful overlooking of any neighbouring residential property.

A large glazed window is proposed for the southwest elevation wall of the single storey part of the proposed building. That large glazed window would face directly onto the vehicular access that is to the west of the site. That vehicular access is not an area of private garden ground but rather is a shared space that is used by the ground floor commercial premises of 40-42 High Street and the flats of 2 & 2A Forth Street Lane and furthermore is visible in public views from the southern end of the cul-de-sac of Forth Street Lane. Thus the large glazed window would not allow for harmful overlooking of

any neighbouring residential property.

The ground floor windows of the west elevation of the single storey part of the proposed building would face onto the vehicular access that is to the west of the site. On the opposite side of that vehicular access is a small rear yard of the building of 44-46-48 High Street. That yard is enclosed by a 2 metres high wall and thus the ground floor windows of the west elevation of the single storey part of the proposed building would not allow for harmful overlooking of that rear yard. The first floor windows of the west elevation of the one and a half storey part of the proposed building would also face towards the vehicular access that is to the west of the site and the rear yard beyond that access. The rear yard of the building of 44-46-48 High Street is already overlooked by the upper floors of that building, and thus although the first floor windows of the west elevation of the one and a half storey part of the proposed building would be less than 9 metres away from that yard they would not allow for harmful overlooking of that neighbouring yard which is already overlooked from elsewhere. Thus none of the windows of the west elevation of the proposed building would allow for harmful overlooking of any neighbouring residential property.

There would be no windows in the north elevation wall of the proposed building however there would be three roof windows in its north elevation roof slope. Two of the roof windows would face towards the south gable of the flatted building of 4-6 Forth Street Lane. There is one first floor and one second floor window, which serve bathrooms, in the south gable wall of the flatted building. Those windows are positioned slightly off centre on that wall and are some 4.5 metres away from the southeast corner of the building. The proposed roof windows would not be directly in front of the first floor window of the south gable of the flatted building of 4-6 Forth Street Lane, and furthermore, their bottom sills would be some 1.8 metres above the finished floor level of the mezzanine level of the one and a half storey part of the proposed building. By their positioning and height above the finished floor level of the room they would serve the proposed roof windows of the north elevation of the proposed building would not allow for harmful overlooking of the neighbouring flatted building of 4-6 Forth Street Lane.

Due to the location of the application site in the Conservation Area, if built, further windows and other glazed openings could not be formed in the elevation walls of the building without the need for further planning permission.

The area of land to the north of the application site, which formed part of the land of refused planning application 07/00495/FUL and of withdrawn planning application 10/01049/P does not form part of the land of this application. Thus, the matters of overlooking of the ground floor windows of the east elevation of the flatted building of 4 and 6 Forth Street Lane from that land, which was raised in the assessment of refused planning application 07/00495/FUL are not relevant to the assessment of this application for planning permission.

As a building in office use the proposed building would not have the same requirements for privacy and amenity as would a residential house and thus there is no requirement to assess matters of privacy and amenity relative to the proposed building.

On these matters of privacy and amenity the proposed building would not conflict with Policy DP2 of the adopted East Lothian Local Plan 2008.

The fact that the proposed development would not result in any harmful loss of privacy to any neighbouring residential property, would be finished in materials in keeping with the locality, would be consistent with Policy DP2 and that the office use of it in principle would not conflict with the mixed use town centre area does not outweigh the principal policy

determination that:

(i) the proposed building would due to its proportionality and constricted position be an incongruous, cramped form of infill development that would not preserve or enhance but instead would be harmful to the character and appearance of this part of the Conservation Area contrary to Policies 1B of the approved South East Scotland Strategic Development Plan (SESplan) June 2013, Policies DP2 and ENV4 of the adopted East Lothian Local Plan 2008, and Scottish Planning Policy: June 2014; and

(ii) as a cramped form of overdevelopment of the application site the proposed building would be overbearing to the outlook of residents of the neighbouring flatted building of 4-6 Forth Street Lane the neighbouring flatted building of 4-6 Forth Street Lane result in a harmful loss of residential amenity to existing neighbouring properties, all contrary to Policy DP2 of the adopted East Lothian Local Plan 2008.

The existing garage that would be demolished is attached to the south elevation of the flatted building of 4-6 Forth Street Lane. It is of a simple design and of no particular architectural merit or historic interest and, though it is visible in public views of the site it neither enhances nor detracts from the character and appearance of the Conservation Area. Thus in the circumstances of an approved scheme of development of the application site that would justify the demolition of the garage, its removal would not harm the established character and appearance of the Conservation Area. However, as the proposed scheme of development for the site would not, as detailed in the assessment above, be acceptable there is no justification for the demolition of the garage. Accordingly, the proposed demolition of the garage is not consistent with Policy ENV4 of the adopted East Lothian Local Plan 2008.

Allowing the demolition of the garage without reasonable justification would set a precedent for the demolition of other buildings in the Conservation Area without justification. The combined effect of such incremental demolition would result in a degradation of the character and appearance of the Conservation Area.

REASONS FOR REFUSAL:

- 1 The proposed building would due to its proportionality and constricted position be an incongruous, cramped form of infill development that would not be appropriate to its place but rather would be an overdevelopment of the site and would not preserve or enhance but instead would be harmful to the character and appearance of this part of the Conservation Area contrary to Policies 1B of the approved South East Scotland Strategic Development Plan (SESplan) June 2013, Policies DP2 and ENV4 of the adopted East Lothian Local Plan 2008, and Scottish Planning Policy: June 2014.
- 2 As a cramped form of overdevelopment of the application site the proposed building would be overbearing and would result in a harmful loss of privacy and residential amenity to existing neighbouring properties, all contrary to Policy DP2 of the adopted East Lothian Local Plan 2008.