

**PLANNING COMMITTEE**

**1 SEPTEMBER 2015**

**PUBLIC DOCUMENT PACK**





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

**TUESDAY 30 JUNE 2015  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

**1**

---

**Committee Members Present:**

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

**Council Officials Present:**

Mr A McCrorie, Depute Chief Executive – Resources and People Services  
Mr D Proudfoot, Head of Development  
Ms M Ferguson, Service Manager – Legal and Procurement  
Mr I McFarlane, Service Manager – Planning  
Ms L McLean, Service Manager – Strategic Asset and Capital Plan Management  
Mr K Dingwall, Principal Planner  
Mr M Greenshields, Transportation Planning Officer  
Mr G Talac, Transportation Planning Officer

**Clerk:**

Ms A Smith

**Visitors Present:**

Item 2 – Mr J Aitken, Mr D Scott  
Item 3 – Mr S Wiseman, Mr J Steele

**Apologies:**

Councillor S Brown  
Councillor J Williamson

**Declarations of Interest:**

None

**1. MINUTE OF THE MEETING OF THE PLANNING COMMITTEE OF 2 JUNE 2015**

The minute of the Planning Committee of 2 June 2015 was approved.

**2. PLANNING APPLICATION NO. 14/00903/PPM: AMENDMENTS TO PLANNING PERMISSION IN PRINCIPLE 12/00924/PPM, INCLUDING AN INCREASE IN NUMBER OF RESIDENTIAL UNITS FROM 1050 UP TO A MAXIMUM OF 1450, RELOCATION AND REDESIGN OF OPEN SPACE, DEVELOPMENT FOR RESIDENTIAL PURPOSES OF AREAS PREVIOUSLY PROPOSED AS OPEN SPACE AND RELOCATION AND REDESIGN OF PROPOSED LOCAL CENTRE, LAND TO THE SOUTH, EAST AND WEST WALLYFORD**

A report was submitted in relation to Planning Application No. 14/00903/PPM. Iain McFarlane, Service Manager for Planning presented the report, summarising the key points. The report recommendation was to grant consent.

Mr McFarlane responded to several questions about the affordable housing provision. He clarified the Affordable Housing Policy position, outlining the hierarchy of options in the policy and how this provision was applied. The Convener gave an assurance that all possible would be done to ensure delivery of 25% affordable housing on site. In response to further questioning from Councillor Currie, the Convener gave an undertaking that if this could not be delivered on site then the matter would be reported to Council for consideration. Councillor Innes added that if some Members had an issue with the Affordable Housing Policy then this needed addressed. In relation to this application he agreed with the Convener, he did not anticipate affordable housing being provided anywhere other than on site.

Mr McFarlane and Grant Talac, Transportation Planning Officer responded to questions about the scheme of improvements and traffic calming measures at Salters Road. Regarding library provision queries Mr McFarlane referred to the consultation response from the Service Manager, Customer Services; as stated in the report community use of the new school library would be explored. In response to questions about sports pitches/floodlighting he advised that these issues would be covered in future detailed applications. He also answered questions about provision of the new school, community facilities and infrastructure requirements.

Jim Aitken, of East Lothian Developments Ltd, the applicant, informed Members they were keen to proceed with this development. He highlighted the level of investment made to secure and prepare the land. He hoped the Section 75 Agreement would be completed by the end of August, following this, house building would start; the first house should be built early next year. The next stage was the infrastructure application, hopefully brought to the September Planning Committee. He referred to their investment to the infrastructure, which would benefit Wallyford and the wider East Lothian. A significant number of construction jobs would be created. They were committed to affordable housing as part of the wider development. East Lothian Developments Ltd had delivered on all milestones and would continue to do so; they would not renege on any of their promises. He added that the development was now formally called St Clement's Wells, as suggested by the local community.

In response to questions from Members, Mr Aitken stated that there could be no delay, they were working to a strict timetable; immediately the Section 75 Agreement and infrastructure were sorted out, work would commence. He stressed it was key that the infrastructure application was brought to the September Planning Committee. Responding to Councillor Berry's questions, Derek Scott, of Derek Scott Planning, agent for the applicant, outlined the benefits of the development to Wallyford.

Local Member Councillor Forrest welcomed progress on this site, this development was long overdue. He acknowledged the applicant's discussions with the local community. He looked forward to the improvements and traffic calming measures. He would be supporting the application.

Local Member Councillor Caldwell also welcomed progress. This application would provide much needed affordable housing for the area. It also offered the possibility of employment in construction jobs or more sustainably in the business units. He supported the report recommendation.

Local Member Councillor Currie noted the desire from the applicant and agent to progress this site. He welcomed the application, highlighting the new school, with future expansion opportunity; job creation, a huge opportunity for apprenticeships; and crucially, new housing. Affordable housing was essential; a great boost for the area and would ensure that people could remain in their community. He made reference to the amount of investment from developer contributions coming into East Lothian as a result of this development. He supported the application.

Councillor McNeil stated this development was excellent news for this former mining community; Wallyford would become a town within East Lothian. He welcomed the investment towards secondary school provision. He also welcomed the proposed traffic improvements. He would be supporting the application.

Councillor MacKenzie reiterated that this was a hugely important development. He particularly welcomed the affordable housing provision, the open space, upgrading of the Core Path route and the new primary school. He drew attention to the historic significance of the area. He supported the report recommendation.

Councillor Berry remarked that many other former mining villages in Scotland were languishing, not progressing like this site. This application was sensible. He had some concerns however about infrastructure. He hoped that the next set of applications, for the detailed permissions, would be instrumental in developing the fully integrated community desired by all. He would be supporting the application.

Councillor Innes stated this development was a crucial element of the current Local Plan. It was important to approve this application; this would protect other areas that were not in the Local Plan. This site had to be progressed, it was long overdue. The development would provide a modern community with excellent facilities, a safer Salters Road and a new distributor road. He was delighted that this application had come forward and expressed support.

Councillor McLeod also welcomed progress on this long awaited development but voiced caution about assurances provided. He supported the application.

The Convener concluded the discussion. This site had been ongoing for a long time and had now finally come to fruition. He thanked all staff involved across many different Council departments for their skilfulness during the negotiation process. He

was confident that the development would deliver the best possible solution for Wallyford and East Lothian. He would be supporting the recommendation.

The Convener moved to the vote on the report recommendation:

For: 16

Against: 0

Abstentions: 0

### **Decision**

The Committee agreed to grant planning permission subject to the following conditions:

1. A direction to substitute the period of 3 years referred to in Section 59(2)(a)(i) and (3) of the Town and Country Planning (Scotland) Act 1997 (as amended) with a period of 8 years.

2. The undernoted conditions.

3. The satisfactory conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or some other legal agreement designed to secure from the applicant:

(i) the provision of two community sports pitches (one of which is a 3G pitch), a four changing room facility and an allotment site;

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

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

(iv) the transfer of the land required for the new school site as shown in the applicant's masterplan, with the site formed to meet masterplan boundary perimeter levels;

(v) a financial contribution to the Council of £11,307,811 towards the provision of the new primary school, £3,788,073 towards additional secondary school accommodation at Musselburgh Grammar School or any subsequently redefined provision of secondary education within the Musselburgh secondary catchment area and £80,000 towards temporary primary school provision;

(vii) the provision of 363 affordable housing units within the application site or if it can be demonstrated to the Council that this, or the off-site provision of 363 affordable units is not practicable, to secure from the applicants a commuted sum payment to the Council in lieu of such an on or off-site provision;

4. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reason that without the developer contributions to be secured by the Agreement the proposed development

is unacceptable due to insufficient future maintenance and ownership arrangements for, as relevant, Wallyford Community Woodland and the two proposed community sports pitches and the open space that is immediately adjacent to it, an insufficient provision of community sports pitches, related changing facilities and allotments, a lack of sufficient primary and secondary school capacity, and the lack of provision of affordable housing, contrary to the Council's Development Framework for the development that is titled Wallyford Settlement Expansion & Regeneration and, as applicable Policies INF3 and H4 of the adopted East Lothian Local Plan 2008.

- 1 The submission for approval of matters specified in conditions of this grant of planning permission in principle shall include details of the siting, design and external appearance of all the dwellings and other buildings, the means of access to them, the means of any enclosure of the boundaries of the site and of gardens and other subdivisions of the site and the landscaping of the site and those details shall generally accord with the Indicative Master Plan drawing no. 13052(PL)001-C docketed to this planning permission in principle, and shall address the following requirements:
  - a. The provision within the application site of recycling facilities.
  - b. Other than in exceptional circumstances where the layout or particular building type does not permit, houses and flats shall be orientated to face the street.
  - c. Notwithstanding that shown in the Indicative Master Plan docketed to this planning permission in principle there shall be no integral garages, unless it can be justified as an exceptional design feature, or where the house and garage would not be on a primary street frontage;
  - d. The detailed design of the layout shall accord with the principles set out in the Council's Design Standards for New Housing Areas and with Designing Streets;
  - e. The external finishes of the residential units shall be in accordance with a coordinated scheme of materials and colours that shall respect the layout of the development and shall promote render as the predominant finish to the walls of the residential units.
  - f. Notwithstanding the details shown in the Indicative Site Master Plan referred to above, there shall be a separation distance of at least 9 metres between facing windows of a proposed new building and the garden boundaries of existing or proposed neighbouring residential properties; and a separation distance of at least 18 metres between directly facing windows of a proposed new building and the windows of existing or proposed neighbouring residential properties.
  - g. Details of the play areas, including the equipment to be provided within it and a timetable for installation, shall be submitted to and approved in advance by the Planning Authority. The play areas shall be installed in accordance with the details so approved.
  - h. Parking for the residential, local centre and primary school components of the development hereby approved shall be provided at a rate as set out in the East Lothian Council's "Standards for Development Roads- Part 5 Parking Standards" For the local centre and school this shall include for cycle parking Private parking spaces in the local centre and other private parking areas shall be a minimum of 2.5 metres by 5 metres and spaces on the public road shall be a minimum of 2.5 metres by 6 metres. Access to private parking areas other than driveways shall be via a reinforced footway crossing and have a minimum width of 5.5 metres over the first ten metres. Private driveways shall be a minimum of 6 metres by 2.5 metres, double driveways shall be 5 metres by 6 metres or 3 metres by 11 metres.
  - i. All access roads shall conform to East Lothian Council's "Standards for Development Roads" in relation to roads layout and construction, footways and footpaths, parking layout and number, street lighting and traffic calming measures.
  - j. Cycle parking shall be included at a rate of 1 space per flat. The parking shall be in the form of 1 locker per flat or communal provisions in the form of a lockable room or shed.
  - k. The provision of a vehicular access from the new distributor road to the site of the residential institution/ non-residential institution unit/ retirement homes use hereby approved.

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

m. The provision of a 2 metres wide footway on the southern side of the A6094 road between the northern end of the existing footpath link that runs between Fa'side Crescent/ Fa'side Avenue South and the A6094 road, over the full extent of the new 30 mph speed limit to the western side of the western access; and the provision of a 2 metres wide footway on the south side of the A199 between the existing roundabout at Wallyford Toll to the point of the new 30mph speed limit on the eastern side of the eastern access to the site at Strawberry Corner.

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

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

p. provision of footpath/cycleway linkages between the existing core path network and the internal layout of the development and a footpath link to an adoptable standard between the development site and Wemyss Gardens.

Reason:

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

2 The details to be submitted pursuant to condition 1 shall include a revised phasing plan which shall accord with the following requirements:

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

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

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

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

(v) The Distributor Road shall be completed in its entirety to base course level and brought into use prior to the occupation of the first residential unit and all pedestrian links connecting the residential development areas shall be completed to adoptable standard prior to the first occupation of the new primary school.

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

(vii) The bus layover and passenger waiting facilities to be completed and available for use by occupation of the 675th residential unit unless otherwise agreed in writing with the Planning Authority.

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

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

The phasing of the development of the site shall be carried out in strict accordance with the phasing plan so approved, unless otherwise approved in writing in advance by the Planning Authority.

Reason:

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



- 3 The development of the site shall conform with the minimum density requirements established for the identified development areas shown on docketed drawing no. 13052(PL)005-B as well as generally complying with the range of house types and sizes shown on the same drawing.

Reason:

To ensure compliance with the provisions of the development plan.

- 4 No more than 1450 residential units shall be erected on the site.

Reason:

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

- 5 Unless otherwise approved in writing by the Planning Authority:

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

Year 1- 90 residential units  
Year 2- 150 residential units  
Year 3- 150 residential units  
Year 4- 150 residential units  
Year 5- 150 residential units  
Year 6- 150 residential units  
Year 7- 150 residential units  
Year 8- 150 residential units  
Year 9- 150 residential units  
Year 10- 150 residential units  
Year 11- 10 residential units

(b) If fewer than the specified number of residential units is completed in any one year then those shall be completed instead at Year 11 or beyond and not added to the subsequent Year.

(c) No more than 270 residential units shall be occupied prior to the completion of the primary school.

Reason:

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

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

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

Reason:

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

- 7 No development shall take place until there has been submitted to and approved in writing by the Planning Authority a scheme of landscaping. The scheme shall provide details of : the height and slopes of any mounding on or recontouring of, the site; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development. It shall also include details of all planting and landscaping along the boundary of the site with the A1(T) trunk road.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with

others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason:

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

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

Reason:

To maximise the ecological potential of the proposed development.

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

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

The plan shall cover a 15 year period, to be split into 5 year periods, and shall include a timetable for implementation, including that the east-west path, which shall include street lighting and which shall be made up to an adoptable standard, be constructed and brought into use prior to the first occupation of the new school.

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

Reason:

To maximise the ecological potential of the proposed development.

- 10 A Green Travel Plan shall be submitted to and approved by the Planning Authority prior to the first use of any component of the mixed use development. The Green Travel Plan shall have particular regard to provision for walking, cycling and public transport access to and within the site, and will include a timetable for its implementation, details of the measures to be provided, the system of management, monitoring, review, reporting and duration of the Plan.

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

Reason:

In the interests of ensuring sustainable travel patterns in respect of the mixed use development and mitigating air quality impacts.

- 11 Prior to the commencement of development details of bus infrastructure shall be submitted. This shall include for:

- (i) A bus layover area shall be identified at the local centre. The bus layover area shall be designed to include passenger waiting facilities;
- (ii) Bus infrastructure on the Distributor Road including Kassel kerbing, bus shelters and at stops close to the local centre 'Crank' real time information poles;
- (iii) A timetable for its implementation.

Thereafter the details so approved shall be implemented prior to the use of the Distributor Road as a bus route, unless otherwise agreed in writing by the Planning authority. Cf above

Reason:

In compliance with Policy DP21 of the adopted East Lothian Local Plan 2008

- 12 Prior to the commencement of development the findings of an independent road safety audit of the traffic calming and other environmental improvements of Salters Road shown on docketed

drawing nos. ED1141-1047 to ED1141-1051 inclusive shall be submitted to and approved in writing by the Planning Authority.

The traffic calming and other environmental improvements of Salters Road shall thereafter be fully undertaken in accordance with docketed drawing nos. ED1141-1047 to ED1141-1051 inclusive and the approved findings of the independent road safety audit prior to the commencement of development, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of road safety.

- 13 Prior to the commencement of development the findings of an independent road safety audit of the design of the environmental improvements of Inchview Road shown on docketed drawing no. ED1141-1052 shall be submitted to and approved in writing by the Planning Authority.

The Inchview Road link to the new local centre shall be a pedestrian and cycle route only. Details of this, including turning facilities on both sides of the access point shall be submitted to and approved in writing in advance by the Planning Authority.

Prior to the first occupancy of the new primary school or of any of the other buildings of the local centre, whichever is sooner, the environmental improvement of Inchview Road and the pedestrian/cycle link and turning areas shall be fully carried out in accordance with docketed drawing no. ED1141-1052 and the approved findings of the independent road safety audit.

Reason:

In the interests of road safety.

- 14 Prior to their installation, details of formal signalised pedestrian crossing points on the Distributor Road shall be submitted for the approval of the Planning Authority. This shall include crossing points on relevant pedestrian desire lines to the local centre and school, as agreed with the Planning Authority. Thereafter the signalised pedestrian crossing points shall be constructed and brought into use prior to the occupation of any house or flat built to the south, east or west side of the Distributor Road.

Reason:

In the interests of road safety.

- 15 The new Distributor Road through the site shall have traffic calming measures to reduce vehicle speeds along its route and this shall include raised tables at junctions and crossing points with appropriate speed bumps at other locations, and shall have, where there are housing frontages to the Distributor Road, measures to stop residents and visitors parking on the Distributor Road; details of all of which shall be submitted for the prior approval of the Planning Authority.

Prior to the commencement of development the findings of an independent road safety audit of the traffic calming and other environmental improvements of the new distributor road shown on docketed drawing nos. ED1141-1040 to ED1141-1046 inclusive shall be submitted to and approved in writing by the Planning Authority.

The audit shall include all access junctions, bus stops, raised tables, and signalised junctions/crossing points. It shall include details of safe crossing locations for pedestrians travelling to and from the new Town Centre in a north to south direction.

The traffic calming and other environmental improvements of the new distributor road shall thereafter be fully undertaken in accordance with docketed drawing nos. ED1141-1040 to ED1141-1046 inclusive and the approved findings of the independent road safety audit prior to the whole of the new distributor road being opened to vehicular traffic.

Reason:

In the interests of road safety and in securing the vehicle deflection strategy set out in the Transport Assessment.

- 16 A monitoring program of traffic flows on Salters Road and the new distributor road shall be put in place to ensure that the deflection measures are operating to the satisfaction of the Planning Authority. Traffic count surveys shall be completed on occupancy of the 175th unit, the 450th unit, the 675th unit, and on completion of the development. The findings of the traffic count

surveys shall be submitted to the Planning Authority within a period of two months from the date of the traffic count, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interest of road safety.

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

Reason:

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

- 18 Prior to the commencement of development a detailed condition survey of the construction access route from Dolphingstone and Salters Road interchanges shall be jointly undertaken by the developer and East Lothian Council Roads Services. During the period of construction of the development a similar joint inspection shall be carried out to assess the condition of the route on each anniversary of the commencement of development. Any damage identified as a result of construction activities shall be repaired or resurfaced by the developer in compliance with the Council's specifications and requirements at no cost to the Council as Roads Authority.

Reason:

In the interests of road safety.

- 19 A Construction Method Statement to minimise the impact of construction activity on the amenity of the area and to ensure the protection of the water environment from potential pollution during the construction phase of the development, shall be submitted to and approved by the Planning Authority, following consultation with the Scottish Environment Protection Agency, prior to the commencement of development. The Construction Method Statement shall recommend mitigation measures to control noise, dust, construction traffic and shall include hours of construction work. It shall also address the temporary measures proposed to deal with surface water run off during construction in accordance with the requirements of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 and General Binding Rules. The Construction Method Statement shall also make recommendations in respect of how pedestrians and school children can safely access the new school during construction works. These recommendations shall include the eastern section of the distributor road and footpaths from the new Strawberry Corner access being finished to an adoptable standard with final surfacing prior to the opening of the new school.

The recommendations of the Construction Method Statement shall be implemented prior to the commencement of development.

Reason:

To minimise the impact of construction activity in the interests of the amenity of the area and to mitigate against surface water flood risk.

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

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

Reason:

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

- 21 Development shall not begin until a scheme to deal with contamination on the site has been submitted to and approved in writing by the Planning Authority. The scheme, which shall

include a detailed gas survey (long term monitoring) and a detailed groundwater monitoring exercise, shall contain details of the proposals to deal with contamination to include:

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

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

Reason:

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

22 No housing units of the development shall be occupied unless and until the following requirements have been met:

a. the existing 30 miles per hour speed limit has been extended along the frontage of the site on the A199 road from the existing 30 mph limit at Wallyford Toll, up to the eastern side of the proposed new access at Strawberry Corner; and

b. the existing 30 miles per hour speed limit has been extended along the frontage of the site on Salter's Road from the existing 30 mph limit at Fa'Side Crescent, up to the western side of the proposed new access on the A6094 road.

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

Reason:

In the interests of road safety.

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

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

Reason:

In the interests of road and pedestrian safety.

24 There shall be no commencement of development unless and until:

a) proposals for the alteration and re-activation of the existing traffic signal installation at the A1/A6094 junction have been approved in writing with the Planning Authority, in consultation with Transport Scotland; and

b) revised signal timing plans for the existing traffic signal installation at the A1/A199 junction have been submitted and approved in writing with the Planning Authority, in consultation with Transport Scotland.

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

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

Reason:

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

25 The development shall be carried out in accordance with an approved programme of archaeological work (watching brief and post excavation work) on the site of the proposed development in accordance with a written scheme of investigation which the applicant will submit to and have approved in advance by the Planning Authority.

Reason:

To facilitate an acceptable archaeological investigation of the site.

- 26 No residential unit shall be occupied unless and until details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority and the artwork as approved shall be provided prior to the occupation of the final residential unit approved for erection on the site.

Reason:

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

- 27 Prior to the commencement of development, a SUDS scheme shall be submitted for the written approval of the planning authority, in consultation with the Scottish Environment Protection Agency, and all work shall be carried out in accordance with the approved scheme.

Reason:

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

- 28 Unless otherwise agreed in writing by the Planning Authority, prior to the occupation of any of the houses of the development hereby approved the route of Core Path 168, from within the site south across the A1 footbridge to Fa'side Castle, shall be upgraded by the developer or any succeeding party to a specification to be agreed in writing in advance with the Planning Authority.

Reason:

In the interests of the amenity of the area and recreational access for the residents of the development.

*Sederunt: Councillor McMillan left the Chamber*

**3. PLANNING APPLICATION NO. 14/00868/P: ERECTION OF 41 FLATS, BUSINESS UNITS (CLASS 4 USE) AND ASSOCIATED WORKS AT TANTALLON ROAD/HEUGH ROAD, NORTH BERWICK**

A report was submitted in relation to Planning Application No. 14/00903/PPM. Keith Dingwall, Principal Planner, presented the report, summarising the key points. He drew attention to Policy BUS1 of the adopted East Lothian Local Plan 2008 advising that the proposed business use of part of the application site was consistent with this policy but the proposed housing element of the development was contrary to this policy. He referred to the requirement to consider whether there were any material considerations that outweighed this element, outlining those as detailed in the report. He drew attention to the District Valuer's comments. The recommendation was to grant planning permission subject to an affordable housing contribution equivalent to £430,000; on-site, off-site or as a commuted sum. The prime objective, in accordance with the approved Development Guidelines, was to ensure delivery of high quality business units.

Mr Dingwall responded to questions about class 4 business use, the business unit footprint, parking allocation and ownership of the land in question. He responded to further questions regarding the affordable housing contribution, clarifying the 3 contribution options. He confirmed that if it became apparent that on or off-site affordable housing provision was not possible then the financial contribution could be used for other areas/developments in North Berwick.

Stephen Wiseman of McCarthy and Stone, the applicant, informed Members they were the specialist providers of private retirement housing and had built over 80 developments in Scotland. They had an existing development in North Berwick at Craighleith View and had been looking for suitable sites for a new development. He referred to Scotland's ageing demographic and the need for suitable housing; many

elderly people wanted to move into this kind of complex. Site criteria were very important to this type of development, it had to be close to facilities and transport links; this site met all the relevant criteria. If the application was approved today, work would commence early 2016 and units would be delivered by February 2017.

Mr Wiseman and Jason Steele, also of McCarthy and Stone, responded to questions about the community consultation numbers/responses, car parking provision, anticipated percentage of local residents, warden and emergency call system operation and the potential purchase price of the flats. They clarified the position regarding the business units, parking provision and ownership.

Local Member Councillor Goodfellow stated he had brought this application to Committee as the housing element was contrary to Policy BUS1. There was no other industrial land available in North Berwick; business land was needed to sustain the economy of the town and East Lothian. There were other significant issues. This application would bring more elderly people into the town, increasing demand on the care system. He made reference to a previous application for North Berwick and to comments from a GP that the health centre was at capacity. Regarding adult care services, it was very difficult to recruit extra care assistants in the North Berwick area. He also raised concerns about visitor parking provision and parking allocation for the business units. He opposed this application and formally proposed rejection.

Local Member Councillor Berry indicated his concerns were similar to his colleague's. This development would not contribute anything to the community. He disputed the potential number of local residents who would relocate to this development. There was no business land available in North Berwick; he was disappointed by the response from Economic Development. Referring to affordable housing, he remarked that in areas like North Berwick, with the associated housing land values, this was never going to be viable. This application was not in the interests of the community, it was not good planning and losing these business units was not wise. This application should not be approved. He would second Councillor Goodfellow's proposal for rejection of the application.

Local Member Councillor Day remarked that he was always wary of applications seeking to vary policy; however, he felt the proposal was reasonable, it would provide some business units and some affordable housing contribution. Regarding the issue of shortage of business land raised by his colleagues this would be looked at through the current Local Development Plan process. He acknowledged that the requirements of elderly people needed further consideration. He would be supporting this application.

Councillor Currie voiced concern about some of Councillor Goodfellow's comments. His main issue regarding this application was the affordable housing element; according to the report it was unlikely this would be provided on site. He referred to the advice from officers regarding this application and their recommendation to grant consent; he would be supporting this recommendation.

Councillor Innes shared Councillor Day's view. Members had to be consistent; he made reference to previous decisions to release economic development land use for housing and allowing part of a housing development to utilise some of the allocated land for business use. He would be supporting the report recommendation.

Councillor Trotter also agreed with Councillor Day's comments; he would be supporting the application.

The Convener brought the discussion to a close. He noted the strong feelings regarding this application. There was an issue, throughout East Lothian, in relation to the ageing demographic, accommodation and health care. Regarding the affordable housing element, the intention was to look at having a shared ownership potential on some of these units. In relation to economic development land he acknowledged the shortage in North Berwick. This particular site however was a gateway to the town; it would be beneficial to replace the vacant building with an attractive development. He would be supporting the recommendation to grant planning permission.

The Convener noted the proposal to reject the report recommendation, proposed by Councillor Goodfellow and seconded by Councillor Berry; this was put to the vote:

For: 2  
Against: 13  
Abstentions: 0

The proposal therefore fell.

The Convener moved to the vote on the report recommendation:

For: 13  
Against: 2  
Abstentions: 0

### **Decision**

The Committee agreed to grant planning permission subject to:

1. The undernoted conditions.
2. The prior conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 designed to secure from the applicant the provision of an on site affordable housing contribution equivalent to £430,000. Only if it can be demonstrated to the Council that this, or an off-site provision equivalent to £430,000 is not practicable, then a commuted sum payment of £430,000 shall be made to the Council in lieu of such an on or off-site provision.
3. That in accordance with the Council's policy on time limits for completion of planning agreements the decision also is that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reason that without the Council securing from the applicant through an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 an affordable housing contribution equivalent to £430,000, the proposed development would not provide towards any affordable housing provision, and is contrary to the Development Guidelines: 1 Tantallon Road, North Berwick, which were approved by the Council in December 2011.

- 1 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance



Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and  
c. the ridge height of the proposed shown in relation to the finished ground and floor levels on the site.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

- 2 Notwithstanding the drawings docketed to this planning permission, the buff coloured cast stone and the white coloured render to be used in the walls of the flatted building are not hereby approved. Instead the cast stone shall be a red colour to match the red stone of the existing stone boundary wall and the white coloured render shall be of a darker colour. Samples of the materials to be used as external finishes of the flatted building, including the cast stone and render, shall be submitted to and approved by the Planning Authority prior to their use in the development. Only those materials approved by the Planning Authority shall be used as the external finishes of the flatted building.

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

Reason:

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

- 3 The use of the business units hereby approved shall be limited to uses within Classes 4 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 or any order, which subsequently amends or re-enacts this Order.

Reason:

To ensure the use is limited to that which is applied for.

- 4 There shall be no occupation of any of the flats hereby approved unless and until the four business units hereby approved have been fully constructed and are available for occupation.

Reason:

To ensure that the business units are delivered in order to adequately compensate for the loss of part of this allocated business and industrial site.

- 5 The flats hereby approved shall be occupied only by persons over 55 years old.

Reason:

To control the development of the site to the use proposed in the interests of the good planning of the area and to ensure that the occupancy of the houses and flats accords with Policies INF3 and DP22 of the adopted East Lothian Local Plan 2008.

- 6 The private foul drainage system shall be designed such that it could easily be connected to the public sewer. It shall be connected to the public system once this becomes available.

Reason:

To enable future connection to the public system in order to ensure the most sustainable approach to waste water drainage.

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

Reason:

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

- 8 No residential unit shall be occupied unless and until details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority and the artwork as approved shall be provided prior to the occupation of the final residential unit approved for erection on the site.

Reason:

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

- 9 Prior to the commencement of development details of the new vehicular access onto Heugh Road, including visibility splays, shall be submitted to and approved by the Planning Authority.

Prior to the occupation of any of the business units or flats the new vehicular access onto Heugh Road shall be formed in accordance with the details so approved and the widened footways at the northern and western edges of the application site and the internal access road, turning areas and car parking spaces, all as delineated on docketed drawing no. 1996.PL1.03 Revision C, shall have been formed and made available for use. Those areas thereafter shall remain available for use unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of road safety.

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

Reason:

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

- 11 Prior to the commencement of development the findings of a quality/ safety audit shall be submitted to and approved by the Planning Authority. The audit shall investigate ways to improve pedestrian crossing opportunities over Tantallon Road and Heugh Road in the vicinity of the application site. The audit shall also investigate whether crossing opportunities over Heugh Road would benefit from the narrowing of the road carriageway. The audit shall also include a timescale for when any such improvement works should be undertaken.

Any improvement works identified in the quality/ safety audit shall thereafter be undertaken in accordance with the details so approved.

Reason:

To enable the site to be accessible to local facilities and communities in the area as well as access to public transport provision, in the interests of road safety.

- 12 Prior to the commencement of development details of the cycle parking to be provided for the flats and business units hereby approved shall be submitted to and approved by the Planning Authority. The submitted details shall include a timetable for implementation.

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

Reason:

In the interests of road safety.

- 13 Any plant or equipment serving the proposed new business units shall be located, designed and constructed so that maximum noise levels associated with their use are within those levels as shown by Table 13 of the docketed Environmental Noise Assessment.

Reason:

To safeguard the residential amenity of existing nearby properties and the future residential amenity of the flats hereby approved.

- 14 The flats hereby approved shall be constructed in accordance with the following requirements:

(i) Any glazing units on facades indicated by the red line in Figure 5 of the docketed Environmental Noise Assessment shall have a minimum performance of RTRA 40dB and a ventilation unit capable of achieving a minimum  $D_{n,e,w}$  of 46dB; and

(ii) Any glazing units on facades indicated by the purple line in Figure 7 of the docketed Environmental Noise Assessment shall have a minimum performance of RTRA 35dB and Acoustic trickle ventilation unit capable of achieving a minimum  $D_{n,e,w}$  of 41dB when in the open position.

Those glazing units shall thereafter be retained in position, unless otherwise approved in writing by the Planning Authority.

Reason:

To safeguard the residential amenity of existing nearby properties and the future residential amenity of the flats hereby approved.

- 15 Notwithstanding the drawings docketed to this planning permission, the part of the 3.5 metres high timber fence that would be forward of the bus garage building is not hereby approved. Instead that section of the timber fence shall be no higher than the adjacent stone boundary wall. Otherwise the timber fence shall be 3.5 metres in height. The timber fence shall consist of closed boards on both sides of the fence, to be constructed with timber boards providing a mass of 10kgm<sup>-2</sup> both sides.

The timber fence shall in accordance with the requirements of this condition prior to the occupation of any of the flats hereby approved.

It shall thereafter be retained in place, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interest of safeguarding the character and appearance of the area and to ensure that the occupiers of the proposed flats would benefit from a sufficient level of residential amenity.

Signed .....

Councillor Norman Hampshire  
Convener of the Planning Committee



**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

**2**

---

Application No. **15/00094/PPM**

Proposal Planning permission in principle for the erection of 21 holiday lodges and 40 houses

Location **Whitekirk Golf Club  
Whitekirk  
North Berwick  
East Lothian  
EH39 5PR**

Applicant Whitekirk Developments Ltd

Per Wardell Armstrong LLP

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

As the area of the application site is greater than 2 hectares, 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: 14/00020/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 was submitted with this application. The report informs that some 20 people attended the pre-application public exhibition, which was held at Whitekirk Golf Club, and that those attendees made a number of comments regarding the proposals. The development for which planning permission in principle is now sought is the same as that which was the subject of the community engagement undertaken through the statutory pre-application consultation of the proposal.

The originally submitted pre-application consultation report included an incorrect statement regarding the phasing of the development approved by the grant of planning permission in principle 08/00078/OUT. This statement was subsequently corrected by the planning agent acting for the applicant, and a revised pre-application consultation report was received by the Council in March 2015.

This application relates to Whitekirk Golf and Country Club, which is located in the countryside to the northeast of Whitekirk.

In June 1999 planning permission (Ref: 98/00748/FUL) was granted for an extension to the existing club house of Whitekirk Golf Club to contain function rooms and a 30 bedrooms hotel. The approved extension was to adjoin the northeast corner of the club house so as to be aligned at a right angle to the existing building, creating an L-shaped footprint. The approved extension was to be two storeys in height. Development of the extension did not commence and planning permission 98/00748/FUL lapsed in June 2004.

In June 2011 planning permission in principle (Ref: 08/00078/OUT) was granted for the development of a 100 bedroom hotel, a new club house, relocation of a greenkeeper's compound, a new 18 hole golf course, 21 holiday lodges and 42 houses on some 138 hectares of land in the countryside to the north and east of Whitekirk. A docketed masterplan indicates how the different components of development could be laid out within the site. Planning permission in principle 08/00078/OUT was granted subject to the prior conclusion of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997.

The original Clause 3.1 of the Section 75 Agreement contained the obligation that there shall be no commencement of development of the housing component of the development unless and until:

- a) Commencement of development of the holiday lodges and the new golf course has occurred; and
- b) The hotel has been constructed and completed less only the internal fitting out of the hotel building.

In January 2012, through application 12/00001/OBL, Whitekirk Golf and Country Club Ltd sought a modification to the obligation of Clause 3.1 of the Section 75 Agreement to the effect that there shall be no commencement of development of the housing component of the development unless and until:

- a) Commencement of development of the holiday lodges and the new golf course has occurred; and
- b) A hotel of 70 bedrooms, of the 100 bedrooms to which planning permission in principle (08/00078/OUT) relates, has been constructed and completed less only the internal fitting out of the hotel building; and
- c) There shall be no commencement of development of any more than 30 houses of the 42 to which this planning permission in principle (08/00078/OUT) relates unless and until a hotel of 70 bedrooms has been constructed and completed less only the internal fitting out of the hotel building; and
- d) There shall be no commencement of development of the remaining 12 houses of the 42 to which planning permission in principle (08/00078/OUT) relates unless and until all

of the remaining 30 hotel bedrooms (of the 100 bedroom hotel to which planning permission in principle (08/00078/OUT) relates) have been constructed and completed less only their internal fitting out.

In March 2012 East Lothian Council approved that applied for modification to the obligation and determined that it be made.

In October 2012 East Lothian Council approved (Ref: 12/00007/OBL) that part a) of the obligation of Clause 3.1 of the Section 75 Agreement be discharged. This now allows commencement of development of the housing component of the development without the need for the commencement of development of the holiday lodges and the new golf course.

Clause 5 of the Section 75 Agreement is designed to secure from the applicant a financial contribution to the Council of £777,588 (£18,514 per house) towards the provision of additional educational capacity at Law Primary School and North Berwick High School.

In September 2013 East Lothian Council approved (Ref: 13/00001/OBL) that the obligation of Clause 5 of the Section 75 Agreement be modified. The approved modification allows a change in the amount of education contribution to a total of £620,256 with consequent changes to the amounts paid in the agreed phased instalments, and date for consideration of percentage increase of Tender Price Index.

In June 2013 approval of matters specified in conditions of planning permission in principle 08/00078/OUT (Ref: 13/00229/AMM) was granted for the details of the siting, design and external appearance of the 100 bed hotel and golf club house, greenkeeper's shed and compound, club store/trolley store and alterations to the existing golf course, the means of access, the landscaping of the site and of other principles of development.

Development of the car park to serve the hotel commenced in June 2015.

The site the subject of planning permission in principle 08/00078/OUT is bisected into two parts by the A198 road, which runs north-eastwards from Whitekirk towards North Berwick. The majority of the land within the north-western part of the site is in golf and leisure use, under the operation of the Whitekirk Golf and Country Club. It includes an 18 hole golf course, golf driving range, practice area, maintenance compound, club house and leisure facility and associated car parking.

The site that is the subject of this planning application has an area of some 16 hectares and forms part of the larger site the subject of planning permission in principle 08/00078/OUT. It consists of the following two parts of the larger site: (1) the land that is approved in principle for 42 houses; and (2) the land that is approved in principle for 21 holiday lodges.

The land approved in principle for 42 houses consists of the western end of the operational land of Whitekirk Golf and Country Club. It is bounded to the north and east by the golf course, to the southeast by the A198 road, and otherwise by farmland. The land approved in principle for 21 holiday lodges consists of farmland. It is bounded to the northwest by the A198 road, to the southeast by the Peffer Burn, and otherwise by farmland. The land immediately to the east of the Peffer Burn forms part of the Tynninghame Designed Landscape.

Planning permission in principle is now sought for the erection of 21 holiday lodges and 40 houses on the application site.

When the application was first submitted, planning permission in principle was sought for the erection of 21 holiday lodges and 42 houses on the application site. Subsequent to the registration of the application, the applicant confirmed that they were now seeking permission for the erection of 40 houses, instead of the 42 originally proposed. An amended site layout plan showing an indicative layout for the 40 houses has also been submitted.

The holiday lodges and houses would be erected in the same positions as those indicatively shown for them by planning permission in principle 08/00078/OUT. Moreover, the indicative details of the holiday lodges and houses are identical to those approved by planning permission in principle 08/00078/OUT.

The lodges are indicated with a rectangular footprint, a single storey height and walls of timber construction. The master plan shows that the lodges could be set in a landscaped woodland setting with a mix of native species. It is further advised that the site for the lodges could contain a woodland play area. The master plan indicatively shows that the lodges would be accessed off the A198.

The principle of the 40 houses is being promoted by the applicant as a necessary provision of enabling development to cross-subsidise the development of the proposed hotel and associated development, the details of which have already been approved (Ref: 13/00229/AMM).

The master plan indicates how the 40 houses might be located adjacent to part of the existing golf course and laid out on either side of the access road that would serve them. That access road would be an extension of the road that currently serves the existing green keepers compound. It is shown how the houses might be of coordinated architectural style with some detached and others semi-detached, each of a single storey height with accommodation in their roof space and with walls finished in wet dash render and timber cladding, stone base courses, chimneys and feature panels and a pitched roof clad in slate. It is also shown how the boundaries of the housing area might be landscaped with trees and how a toddlers play area could be incorporated into the housing area.

The southern part of the site for the proposed housing is within the Whitekirk Conservation Area. The remainder of the application site is within the North Berwick-Dunbar Coastline Area of Great Landscape Value.

In a letter submitted with the planning application, the applicant informs that due to the economic downturn it has taken longer than anticipated to commence the approved development. The applicant is therefore seeking what they consider to be in effect a duplicate permission for the enabling houses and the lodges. They further advise that the purpose is to provide more time to work up a detailed proposal for the enabling housing and lodges. In support of their case, the applicant have submitted a financial report, which they believe proves that the hotel development is not viable without the proposed housing.

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

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

Relevant to the determination of the application is Policy 1B (The Spatial Strategy:



Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies DC1 (Development in the Countryside and Undeveloped Coast), NH4 (Areas of Great Landscape Value), ENV4 (Development within Conservation Areas), DP1 (Landscape and Streetscape Character), DP2 (Design), DP17 (Art Works – Percent for Art), DP22 (Private Parking) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008.

Material to the determination of the application are Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and 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 that would have a neutral affect upon the character or appearance of a conservation area (i.e. does no harm) should be treated as one which preserves that character or appearance. The design, materials, scale and siting of new development within a conservation area should be appropriate to the character of the conservation area.

A total of 14 written representations have been received in respect of this planning application. Of these, 12 make objection to the proposed development. One of these is from Whitekirk Community Company, one is from the Woodland Trust and another is from the Architectural Heritage Society of Scotland. The other 2 written representations do 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:

- \* the need for enabling housing development is based on an economic feasibility study that was carried out in 2008. Since then, so much has changed that makes the original justification 'history';
- \* Insufficient infrastructure to support the proposed development;
- \* such a proposal fails to justify the erection of 42 houses;
- \* according to a survey undertaken by Whitekirk Community Company, local residents do not want this development (of the 36 households in the village, 30 said that the Community Company should oppose the development, 1 was in favour of the development proceeding, and 7 asked that the Community Company remain neutral);
- \* the lodges and houses would both be intrusive and unsustainable forms of development;
- \* it is questionable whether the pre-application consultation report is a true representation of the feedback from the local community; and
- \* two ancient woodlands (Whitekirk Covert and an unnamed woodland) would be indirectly and/ or directly threatened by the proposal.

Dunpender Community Council advise that the proposed houses and lodges are an enabling development for a new hotel and golf course. They consider that the hotel and golf course are no longer economically viable which means that there is no justification for this application. The Community Council refer to a report from DTZ, who were commissioned by East Lothian Council during the determination of previous planning application 08/00078/OUT to provide an independent appraisal of whether or not the long term operation of the hotel would be economically viable. The Community Council consider that this report did not make a very good case for the hotel/ golf course development. Now, seven years later, the Community Council advise that circumstances have changed, the economic benefit is even more questionable and the failure to start the work reinforces this. In this regard, they state that the market for golf tourism has declined since planning permission in principle 08/00078/OUT was granted. Hotels and pubs have continued to close in towns and villages, and the reduction in the drink drive limit has had an adverse effect on golf clubs, pubs and restaurants. The Community Council add that the proposed development breaches most current planning policies and is not environmentally sustainable. For these reasons Dunpender Community Council recommend that planning permission in principle be refused.

North Berwick Community Council have no comments to make on the application.

The adopted East Lothian Local Plan recognises that East Lothian is an important tourism destination. The Local Plan's policies and proposals seek to ensure that a balance is found between the encouragement of tourism and the economic benefits it provides, and the protection of, for example, important landscape and nature conservation interests.

The indicative details for the proposed 21 holiday lodges are identical to the indicative details for the proposed 21 holiday lodges that were approved by the grant of planning permission in principle 08/00078/OUT.

The applicant has confirmed in writing that the proposed holiday lodges would be either rented out in conjunction with the use of the proposed hotel, or sold to owners as part of a timeshare arrangement, or sold as holiday homes. It is likely that the holiday lodges would be occupied mainly by users of the golfing and other leisure facilities available at the Whitekirk Golf and Country Club. The proposed holiday lodges would positively contribute towards the further development of tourism in East Lothian.

In approving planning permission in principle 08/00078/OUT, the Council has already accepted that there is a clear operational requirement for the holiday lodges in their proposed countryside location that cannot reasonably be accommodated within an existing urban or allocated area. On this consideration the principle of the proposed holiday lodges remains consistent with Policy DC1 of the adopted East Lothian Local Plan 2008.

Although the lodges are not proposed for housing use they would nevertheless be capable of being used as houses. Whilst the principle of their use as holiday accommodation is consistent with development plan policy a proposal to build houses on this site would be contrary to the policies of the development plan that control the development of new build housing in the countryside. Therefore if planning permission in principle is to be granted for the principle of use of the proposed holiday lodges then it should be subject to the occupancy of them being restricted to short term letting, time sharing or by some other form of limitation on duration of stay to defined short periods of time. Such control can be secured by an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. The applicant has confirmed a willingness to enter into such an Agreement. This would have the effect of safeguarding the purpose

and integrity of the Council's policies for the control of new build housing development in the countryside.

The mixed use development approved by planning permission in principle 08/00078/OUT included for a 100 bedroom hotel. The details of the siting, design and external appearance of the 100 bed hotel were approved (Ref: 13/00229/AMM) in June 2013 and development of the hotel development commenced in June 2015. In taking the decision to approve planning permission in principle 08/00078/OUT, the Council accepted that the hotel could benefit the local and wider East Lothian economy and provide much needed overnight accommodation.

Another component of development approved by planning permission in principle 08/00078/OUT was the erection of 42 houses. The 42 houses were accepted as a necessary form of enabling development to provide the other elements of the proposed scheme of leisure and tourism development.

The principal local plan policies in the determination of the 42 houses proposed in previous application 08/00078/OUT was Policy TOUR1 of the adopted East Lothian Local Plan 2000 and Policy DC1 of the Finalised East Lothian Local Plan 2005. The principal local plan policy in the determination of the 40 houses now proposed is Policy DC1 of the adopted East Lothian Local Plan 2008. Policy DC1 is similar in its content to Policy DC1 of the Finalised East Lothian Local Plan 2005.

The adopted East Lothian Local Plan 2008 does not allocate any of the land of the application site for residential development. Rather, the area of land of the application site proposed for development in this application is defined by Policy DC1 of the adopted East Lothian Local Plan 2008 as being part of the countryside of East Lothian.

Policy DC1 is very restrictive in its support for new build housing development in the countryside of East Lothian. Through Part 1(b) of the policy new build housing is only permissible where the Council is satisfied that a new house is a direct operational requirement of an agricultural, horticultural, forestry or other employment use.

The housing development proposed in principle in this application is not to meet a direct operational requirement of an agricultural, horticultural, forestry or other employment use in the countryside to the northwest of Whitekirk and therefore it does not comply with Part 1 (b) of Policy DC1.

However, it is stated in Part 1(c) of Policy DC1 that “in the case of an employment, tourism or leisure use, an element of new build housing may be acceptable as enabling development where the Council is satisfied that (i) the wider public benefits of securing the primary use outweigh the normal policy presumption against new build housing in the countryside, and (ii) the enabling development is essential, it is the minimum necessary to achieve the primary use and it is not a substitute for normal development funding, including borrowing”.

The applicant seeks to justify the erection of 40 houses as a means of generating revenue required to provide the hotel component of the proposed scheme of leisure and tourism development that was approved in principle by planning permission in principle 08/00078/OUT and in detail by approval of matters specified in conditions 13/00229/AMM.

At the Planning Authority's request the District Valuer has carried out an independent appraisal of the applicant's case for the proposed houses as enabling development.

The District Valuer has appraised the applicant's case for the proposed houses as enabling development. Their appraisal takes into account the alterations to the existing golf course and the new greenkeeper's shed that would be required to facilitate the proposed hotel and enabling housing. They advise that the hotel development would only be viable with some element of enabling housing development. Moreover, the District Valuer concludes that the minimum amount of enabling housing development necessary to make the development viable would be 40 houses. It is for this reason that the applicant now seeks planning permission in principle for 40 houses instead of the 42 houses originally proposed.

Therefore, on the basis of the independent appraisal of the District Valuer, it can reasonably be concluded that the residential component of 40 houses is necessary and justified as an enabler for the delivery of the already approved hotel.

The Council's Team Leader for Business Development advises that he supports this application, as the proposal would help to achieve East Lothian Council's Economic Development Strategy 2012-22 strategic goal of increasing the number of businesses in East Lothian with growth potential. In particular, it would help to achieve the strategic objective of East Lothian being Scotland's leading coastal, leisure and food and drink destination.

Dunpender Community Council and some of the objectors express doubt about the long term viability of the proposed 100 bedroom hotel.

However, having regard to the findings of the DTZ report and with regard to the general expressions of interest given in letters from hotel operators and other management companies that were submitted with previous planning application 08/00078/OUT, it was concluded by the Council in the determination of that application that there was a reasonable prospect that the proposed hotel could be operated on an economically viable footing. There is no evidence to suggest that this is still not the case.

As justified enabling development the proposed housing is consistent with Policy DC1 of the adopted East Lothian Local Plan 2008.

The proposed 21 holiday lodges are indicatively shown to be located adjacent to the proposed golf course and on the lowest lying part of the site, being the northeast edge of the site. The holiday lodges are shown to be set within a substantial landscape framework of field boundary trees and woodland. If so and if appropriately designed and not significantly larger or higher than indicatively shown the proposed holiday lodges would not appear as intrusive, incongruous or exposed features harmful to the landscape character and visual amenity of the Area of Great Landscape Value or to the setting of the Whitekirk Conservation Area or to the setting of the Tynninghame Designed Landscape. The creation of an effective landscape setting for the proposed holiday lodges and a limitation on the size and height of them could be secured through conditions imposed on a grant of planning permission in principle.

As indicatively shown in the application the proposed 40 houses would be located in the south-western corner of the application site, adjacent to part of the existing golf course. They would be adjacent to but outwith the northwest corner of the Whitekirk Conservation Area. In that position, the houses would be readily visible both from the existing golf course and from the track that is immediately to the west of the application site. Additional tree belt screen planting could be used to define the landscape setting for the houses and to lessen their visual impact. This matter could be secured through a condition imposed on a grant of planning permission in principle. The matter of design and layout of individual houses would be detailed matters for consideration through the

determination of any subsequent application for the approval of reserved matters. If located in the positions indicatively shown for them the group of 40 houses would not appear as harmfully intrusive, incongruous or exposed features harmful to the landscape character and visual amenity of the Area of Great Landscape Value or to the setting of the Whitekirk Conservation Area.

The proposed houses and holiday lodges would be located some distance away from the Whitekirk Covert and the other wooded area referred to by the Woodland Trust in their written objection. Consequently the proposed development would have no harmful impact on the conservation or landscape value of those wooded areas.

The Scottish Environment Protection Agency raise no objection to the principle of the proposed development, although they recommend that the discharge of surface water to the water environment should be in accordance with the principles of the SUDS (Sustainable Drainage Systems) Manual (C697) published by CIRIA. This matter can be addressed through a conditional grant of planning permission in principle.

The 21 holiday lodges and 40 houses would be erected at some distance from residential properties in the area, the majority of which are located within the village of Whitekirk. The Council's Environmental Protection Manager has considered this application in respect of the environmental impacts that might arise from the proposed development. He recommends that prior to the commencement of development, a Construction Method Statement should be submitted to and approved by the Planning Authority. The Statement should include mitigation measures to be employed to control noise and dust. The implementation of an agreed Construction Method Statement would ensure that the construction activities did not have a significantly harmful impact on the environment or on the privacy and amenity of neighbouring properties. This matter can be addressed through a conditional grant of planning permission in principle.

In view of this advice it can be concluded that the site is capable of accommodating a development of the nature proposed without occupiers of nearby properties suffering a significant loss of privacy or amenity.

The indicative drawings satisfactorily demonstrate that 40 houses could be located and designed to ensure that future occupants of them would have a satisfactory amount of privacy and amenity.

The Council's Road Services recommend that a Travel Plan in respect of the proposed scheme of development be submitted to and approved in advance by the Planning Authority. The Travel Plan should include an assessment of whether or not new bus stops should be provided and whether or not a courtesy bus service should be provided by the developer for the transporting of guests of the holiday lodges to and from major public transport interchanges such as the airport and train and bus stations. Moreover a footpath link should be provided between the site access for the housing development and the existing pedestrian facilities at the edge of Whitekirk. The provision of wheel washing facilities for site vehicles and the submission of a method statement for the routing and traffic management of construction traffic is also recommended. These matters can all be controlled through conditions on a grant of planning permission in principle. The implementation of a Travel Plan, which might include provision of a courtesy bus service, and new bus stop(s) to serve the proposed scheme of development would help to encourage more sustainable travel patterns and reduce reliance on use of the private car, in accordance with national planning policy set out in Scottish Planning Policy: June 2014.

The Council's Road Services are satisfied that the local road network would be able to

accommodate increased traffic generated by the proposed development.

On the aforementioned transport considerations, the principle of the proposed development is consistent with T2 and DP22 of the adopted East Lothian Local Plan 2008.

The Council's Waste Services Manager raises no objection to the principle of the proposed holiday lodges. He does however raise some concern over access to the proposed 40 houses, particularly given the width of the road to allow vehicles to pass. If planning permission in principle were to be granted the details of the siting, design, external appearance and landscaping of and the means of access to the proposed development would be for the subsequent approval of the Planning Authority. It would be through the subsequent determination of such details that planning control would be exercised to ensure that the access arrangements for the proposed housing development is acceptable.

Given the scale of the proposed development, 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 can be achieved by means of a condition on the grant of outline planning permission. This is consistent with the requirements of Policy DP17 of the adopted East Lothian Local Plan 2008.

Given the enabling aspect of the proposed housing development of the site, it has to be taken to be an exception in respect of the Council's affordable housing policy and that consequently the proposals should not be subject to a required provision of affordable housing.

The Council's Services Manager for Strategic Asset and Capital Plan Management advises that a financial contribution from the proposed development towards the provision of educational accommodation requires to be £781,632.40 (£19, 540.81 per unit). 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 test of reasonableness of a planning agreement set in Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Subject to the Council securing the appropriate developer contribution the proposal is consistent with Policy INF3 of the adopted East Lothian Local Plan 2008, which stipulates that new development will only be permitted where the developer makes appropriate provision for infrastructure and community facilities required as a consequence of their development. Planning conditions and/or legal agreements will be used to secure this provision.

As proposed the housing component is necessary and justified as an enabler for the delivery of the other components of the proposed scheme of development. Otherwise it would be contrary to the Council's development plan policies for the control of new build housing in the countryside of East Lothian. Consequently, and if planning permission is to be granted for the proposed scheme of development it would be prudent through controls imposed on the phasing of the development to safeguard against the building of the houses without the assurance of the delivery of the new hotel, greenkeeper's shed and compound, and alterations to the existing golf course (all as approved by approval of matters specified in conditions 13/00229/AMM). In this regard there should be no commencement of development of any part of the housing component of the proposed scheme of development until the hotel building (less the internal fitting out of it), the greenkeeper's shed and compound and alterations to the existing golf course have been completed. This control of phasing can be secured by an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997.

## RECOMMENDATION

That planning permission in principle be granted subject to:

1. The undernoted conditions.

2. The satisfactory conclusion of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 to:

(i) Secure from the applicant a financial contribution to the Council of £781,632.40 (£19,540.81 per unit) towards the provision of additional educational capacity at Law Primary School and North Berwick High School.

(ii) Secure a control on the phasing of the proposed development such that there be no commencement to the development of any part of the housing component of the proposed scheme of development until the hotel building (less the internal fitting out of it), greenkeeper's shed and compound and alterations to the existing golf course (all as approved by approval of matters specified in conditions 13/00229/AMM) have been completed.

(iii) Secure a restriction on the occupancy of the holiday lodges to short term letting, time sharing or some other form of limitation on duration of stay to defined short periods of time.

3. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reasons that without the developer contributions to be secured by the Agreement the proposed development is unacceptable due to a lack of sufficient school capacity at Law Primary School and North Berwick High School Knox Academy contrary to Policy INF3 of the adopted East Lothian Local Plan 2008, and that without the control of the Section 75 Agreement to phase the proposed development and control the occupancy of the 21 holiday lodges the proposed development would be contrary to Policy DC1 of the adopted East Lothian Local Plan 2008.

1 The submission for approval of matters specified in conditions of this grant of planning permission in principle shall include details of the siting, design and external appearance of the 21 holiday lodges and 40 houses, the means of access to them, the means of any enclosure of the boundaries of the site and the landscaping of the site and those details shall generally accord with the drawings docketed to this planning permission in principle, and those details shall accord with the following principles of development for the site:

a. a toddlers play area shall be provided within the housing area. Details of the toddlers play area, including the equipment to be provided within it, shall be submitted to and approved in advance and the play area shall be installed in accordance with the details so approved;

b. The houses shall be no higher than single storey with accommodation in the roof space;

c. The holiday lodges shall each be no higher than single storey and with a footprint not significantly greater than is indicatively shown on the drawings docketed to this planning permission in principle and the holiday lodges shall be set within a well landscaped wooded setting, including a belt of trees that shall be positioned between the boundaries of Development Area 3 Lodges and the application site;

d. The group of 42 houses shall be set within a comprehensive framework of trees; and

e. The existing trees and hedgerows on field boundaries shall be retained and enhanced.

Reason:

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

- 2 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
- c. the ridge height of the proposed shown in relation to the finished ground and floor levels on the site.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

- 3 No residential unit shall be occupied unless and until details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority and the artwork as approved shall be provided prior to the occupation of the final residential unit approved for erection on the site.

Reason:

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

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

Reason:

In the interests of road safety.

- 5 A Travel Plan to minimise private car trips and to encourage use of alternative modes of transport shall be submitted to and approved by the Planning Authority prior to the commencement of development of any component part of the scheme of development hereby approved. The Travel Plan shall include an assessment of whether or not new bus stops should be provided and whether or not a courtesy bus service should be provided by the developer for the transporting of guests of the holiday lodges to and from major public transport interchanges such as the airport and train and bus stations. Additionally the Travel Plan shall include details of the measures to be provided, the system of management, monitoring, review, reporting and duration of the Plan.

The approved Travel Plan shall be implemented prior to any component part of the scheme of development hereby approved being brought into use.

Reason:

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

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

The recommendations of the Construction Method Statement shall be implemented prior to the commencement of development.

Reason:

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



- 7 A method statement for the routing and management of construction traffic shall be submitted to and approved by the Planning Authority prior to the commencement of development.

The recommendations of the method statement shall be implemented prior to the commencement of development.

Reason:

To minimise the impact of construction traffic in the interests of road safety and the amenity of the area.

- 8 The discharge of surface water to the water environment shall be in accordance with the principles of the SUDS (Sustainable Drainage Systems) Manual (C697) published by CIRIA.

Reason:

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

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

**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 1 September 2015  
**BY:** Depute Chief Executive  
(Partnerships and Community Services)  
**SUBJECT:** Application for Planning Permission for Consideration

3

---

*Note - this application was called off the Scheme of Delegation List by Councillor Innes for the following reason: Permission has been granted in the past for a building of similar size and scale in this location and I believe the committee should have the opportunity to assess this application.*

Application No. **15/00357/P**  
Proposal Erection of care home and associated works  
Location **Cockenzie House  
22 Edinburgh Road  
Cockenzie  
East Lothian  
EH32 0HY**  
Applicant Mrs Patricia Maria McDonald  
Per Gilberts  
RECOMMENDATION Application Refused

#### PLANNING ASSESSMENT

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

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

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

It is the eastern part of the tripartite walled garden that forms most of the application site. It consists of a central area of grassed open space, which is bounded to the north, east and south by tree planting. The application site also includes an area of land that is located to the east and northeast of Cockenzie House. Part of the application site is currently used as 16 allotments.

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

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

In April 2011 planning permission (Ref: 11/00363/P) was sought for the erection of a detached, 66 bedroom nursing home and associated works on the site that is the subject of this planning application (Ref: 15/00357/P). At their meeting of the 02 October 2013 the Planning Committee decided to refuse planning permission 11/00363/P for the following reasons:

1 The proposed nursing home by virtue of its size, scale and positioning would dominate and compete with the listed building within the site such that the listed building of Cockenzie House would no longer be the focus of its setting. Moreover, the open setting of the listed building would be significantly harmed by the presence of the nursing home buildings and its associated infrastructure. As it would harm the setting of the listed Cockenzie House, the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV3 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010 on development affecting a listed building or its setting.

2 The proposed development would significantly harm the conservation objectives of the Cockenzie House Designed Landscape, contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV8 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010 on development affecting a designed landscape.

3 The visual impact of the proposed nursing home would result in the loss of the open character of part of the tripartite gardens of Cockenzie House, to the detriment of the character, appearance and amenity of the Conservation Area. On this consideration the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV4 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010 on development affecting a conservation area.

At that same meeting the Planning Committee decided to grant listed building consent (Ref: 11/00363/LBC) for proposed alterations to the boundary wall, for the formation of a bin and cycle store, for the formation of hardstanding areas and for the part demolition of walls. Development of the approved scheme has not yet commenced.

In August 2014 planning permission (Ref: 11/00692/P) was granted for alterations and extension to and the conversion of most of Cockenzie House from a hostel, café and 2 houses to 19 flats and 1 house. One of the existing houses would be retained in use as a house. Planning permission was also granted for other associated works, including alterations to the existing vehicular access. Development of the approved scheme has not yet commenced.

Also in August 2014 listed building consent (Ref: 11/00692/LBC) was granted for alterations and extension to the building, for alterations to the boundary wall, for the formation of a bin and cycle store, the formation of hardstanding areas and for the part demolition of walls and steps. Development of the approved scheme has not yet commenced.

Cockenzie House is currently used as a community facility. It is open on a daily basis and offers exhibition and function space, a cafe, and studio space for artists and professional businesses. The two houses contained within the smaller wing that adjoins the eastern end of the main building are available as holiday accommodation.

Planning permission is now sought for the erection of a new, detached care home and associated works on the application site. The care home would contain 60 bedrooms.

The proposed nursing home would be erected within the eastern section of the tripartite walled garden of Cockenzie House. The proposed building would sit on a roughly north-south axis, perpendicular to the main House, and parallel to the path that runs from the formal entrance on Edinburgh Road to the central bay of the House. The proposed building would occupy the greater part of the east garden, with its front (west) elevation broadly aligning with the alignment of the east elevation of Cockenzie House. It would have a broadly rectangular shaped footprint and would be two storeys in height. The building proposed would be of a contemporary design. The roof of the building would be pitched and hipped and clad with zinc standing seam. The walls of the building would mainly be finished in white/ ivory coloured sprayed on wet dash render with smaller sections of wall being finished in natural stone. The frames of the windows and doors of the building would be dark grey/ green coloured and of aluminium construction.

The applicant claims that no primary or secondary tree stock within the east garden would require to be removed to facilitate the proposed care home.

It is proposed that a new vehicular access would be formed to the site from High Street, at a point close to the eastern end of the site's boundary with the High Street. To facilitate the formation of the proposed vehicular access and to provide appropriate visibility splays, some 25 metres of the existing roadside stone boundary wall would be removed and new, set back sections of wall, would be erected on either side of the proposed vehicular access. Access to the care home from the proposed vehicular access would be taken via a new access road that would be some 4.4 metres wide and would be finished in tarmac. The access road would serve a total of 22 car parking spaces, which would principally be provided immediately to the east of the care home building. The proposed vehicular access would also provide access to the proposed car park that would serve the 19 flats and 1 house that are the subject of planning permission 11/00692/P. Four trees in the northern part of the site would be removed to facilitate the proposed access and parking arrangements. An existing outbuilding that is located to the northeast of the

main House would be altered and extended to form a bin and cycle store. The mono-pitch roof of the outbuilding would be removed, the walls of it would be heightened and a new flat roof would be installed. The walls of the altered outbuilding would then be clad in timber cladding. The outbuilding as it is to be altered would be used for the storage of bicycles. A timber fence some 2 metres in height would enclose a small area of land to the southwest of the outbuilding. This would be used for the storage of bins. The remainder of the application site would be landscaped.

In a statement submitted with the application, the applicant notes that a previous proposal for a nursing home on the site was previously refused planning permission. The applicant has considered his options and has decided to seek to effect sufficient material improvements to the original proposal such they can then be reconsidered by the Planning Committee. In this regard, the number of bedrooms has reduced from 66 to 60, with all of the accommodation now on two storeys (part of the previous nursing home was proposed with three storeys of accommodation). The architectural style of the building has been designed to politely contrast with the listed Cockenzie House.

The applicant further informs that there is a nursing home operator prepared to develop and run the new facility. It is hoped that 100 full and part time jobs would be created in the care sector.

Through separate application 15/00357/LBC listed building consent is sought for the proposed alterations to the boundary wall, for the formation of the bin and cycle store, the formation of hardstanding areas and for the part demolition of walls. A separate report on application 15/00357/LBC is, at this time, on the Committee Expedited List.

Under Regulation 13 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, a design and access statement is required, as the application site is situated within a conservation area, within the curtilage of a Category A listed building, and within a designed landscape. Notwithstanding this, a design and access statement was not submitted with the application. This matter was taken up with the agent for the applicant, who agreed to submit one by the 10th July 2015. However, at the time of the writing of this report, a design and access statement has still not been submitted.

The agent for the applicant was also informed that the 'contextual elevations' drawing (drawing no. 1298-02-004), which was submitted with the planning application, is inaccurate, as the eastern part of the existing building is not accurately shown on that drawing. The planning case officer requested that this drawing be amended and submitted to the Planning Authority by the 10th July 2015. However, at the time of the writing of this report, a revised drawing has still not been submitted.

Notwithstanding the above, there is sufficient information currently available to enable the Planning Authority to determine this planning application.

Under the provisions of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 the proposed development falls within the category of a Schedule 2 Development, being one that may require the submission of an Environmental Impact Assessment (EIA). Schedule 3 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 sets out the selection criteria for screening whether a Schedule 2 development requires an EIA. On 5 November 2012 the Council gave a formal screening opinion. The screening opinion concludes that the proposed development is unlikely to have significant effects on the environment to the extent that expert and detailed study through EIA would be necessary to properly assess any effect. Therefore, there is no requirement for the proposed

development to be the subject of an EIA.

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

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

Relevant to the determination of the application is Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies ENV1 (Residential Character and Amenity), ENV3 (Listed Buildings), ENV4 (Development within Conservation Areas), ENV8 (Gardens and Designed Landscapes), C12 (Residential Care and Nursing Homes- Location), DP2 (Design), DP14 (Trees on or adjacent to Development Sites), DP17 (Artworks- Percent for Art), T2 (General Transport Impact), DP20 (Pedestrians and Cyclists), DP22 (Private Parking) and NH5 (Protected Trees) of the adopted East Lothian Local Plan 2008.

Material to the determination of the application are Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's Scottish Planning Policy: June 2014 on development affecting a listed building or its setting, on development within a conservation area, and on development affecting a designed landscape.

Scottish Planning Policy echoes the statutory requirements of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that in considering whether to grant planning permission for development which affects a listed building or its setting a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Scottish Planning Policy 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.

It is stated in Scottish Planning Policy that planning authorities should protect and, where appropriate, seek to enhance gardens and designed landscapes included in the Inventory of Gardens and Designed Landscapes.

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

There are a total of 13 written representations, all of which make objection to the proposed development. One of the representations is from the Board of Cockenzie House and Gardens, a registered charity who aims to bring Cockenzie House and Gardens into community ownership.

The main grounds of objection are summarised as follows:

- \* Proposed care home would dominate and compete with Cockenzie House such that the listed building would no longer be the focus of its setting;
- \* There would be a detrimental impact on the current community and the 30 or so business uses at Cockenzie House, as existing users would find it extremely difficult to continue to operate effectively, draw in custom/ volunteers, or attract further funding to facilitate the ongoing maintenance and renovation of Cockenzie House and Gardens;
- \* The Gross Economic Value of the Cockenzie House and Gardens equates to and offers greater growth prospects for the community than a care home;
- \* Tourism and much needed extra spend in East Lothian would be destroyed by the proposed development;
- \* The proposed development would result in the loss of 16 allotments, with all the social, health and community benefits that they bring;
- \* Loss of the open character of part of the tripartite gardens of Cockenzie House would be detrimental to the character, appearance and amenity of the Conservation Area;
- \* Proposed care home would have an 'industrial' design;
- \* Proposed care home would significantly harm the conservation objectives of the Cockenzie House Designed Landscape;
- \* The extra traffic generated by the proposed development would be a danger to road safety;
- \* As there is no lawful use rights to convert Cockenzie House back to a nursing home, no weight should be given to the sheltered housing fall-back position advanced by the applicant; and
- \* The previous conduct of the applicant is questionable.

Concern over the previous conduct of an applicant is not a material consideration in the determination of an application for planning permission or listed building consent.

Cockenzie and Port Seton Community Council advise that since the determination of the last planning application, there have been significant changes at Cockenzie House. The house itself and adjacent gardens have been leased (25 year lease) to a registered charity, Cockenzie House and Gardens, a community led initiative which seeks to develop the house and gardens for the benefit of the community. The house now provides elegant spaces for hire, hosts exhibitions and concerts, and is proving to be an attractive wedding venue. It has a thriving tearoom and a community art room. Additionally, there are 30 studios rented out to artists, professional people and therapists. 2 holiday cottages available for rent are fully booked throughout the summer. Over 40 people are employed in various roles in these activities.

In view of the above, the Community Council advise that any development in the east part of the garden will have a significant impact on the house and the activities there.

The Community Council further advise that the building materials proposed are not suitable for the location, that the proposed development would pose an unacceptable risk to traffic in the High Street, both during the construction phase and when the care home is operational, that the digging of foundations for the care home could compromise



the integrity of the listed walls, that the proposed care home would compromise the view from Cockenzie House and its peaceful setting, and that the proposed development would destroy an area which is a haven for wildlife which includes bees.

For the aforementioned reasons, Cockenzie and Port Seton Community Council recommend refusal of this planning application.

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

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

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

This application proposes no change of use to the existing building, which is currently in community use and which contains a number of studios for local artists and small scale businesses.

The Community Council and many of the objectors are concerned that the proposed care home would have a detrimental impact upon this community led initiative. Whilst it is possible that the proposed development may have some detrimental impact on the existing community use of the building, the adopted East Lothian Local Plan 2008 does not require the building to be retained in community use. Indeed, planning permission (Ref: 11/00692/P) was granted in August 2014 for alterations and extension to and the conversion of most of Cockenzie House from a hostel, café and 2 houses to 19 flats and 1 house. It would therefore be unreasonable to refuse the planning application on the grounds that the proposed development may have some detrimental impact on the existing community use of the building.

The proposed development would result in the loss of the 16 existing allotments. These allotments are clearly valued by those who use them. However there is no policy presumption in favour of retaining that part of the site for allotment use and it would therefore be unreasonable to refuse the planning application on the grounds that the proposed development would result in the loss of the 16 existing allotments.

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

Planning permission (Ref: 90/00870/HIS\_P) was previously granted for, amongst other things, the formation of a new vehicular access at Cockenzie House, in a similar position to the new access now proposed. A section of the front boundary wall has been removed

in the position shown for the new access, although the new access has not been formed. The existing stone boundary wall that encloses the northern end of the grounds of Cockenzie House is, in association with the listing of Cockenzie House, listed as being of special architectural or historic interest (Category A). It makes a positive contribution to this part of the Conservation Area and to the Cockenzie House Designed Landscape. The formation of the proposed vehicular access and the realignment of the stone walls on either side of the new access would result in a noticeable change to this part of the boundary wall. Nevertheless, if the realigned lengths of walls were to be constructed in stone salvaged from the duntakings, then those proposed works would not have an unacceptable impact on the architectural or historic integrity of the stone boundary wall, on the character or appearance of the Conservation Area, or on the conservation objectives of the Cockenzie House Designed Landscape.

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

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

By virtue of its distance away from neighbouring residential properties and because of the presence of mature landscaping which would be retained, the proposed building and the use of it would not lead to harmful overlooking or overshadowing of any of the neighbouring residential properties. Neither would the use of the north and east parts of the site for access and car parking have a harmful impact on the amenity of neighbouring residential properties. The Council's Environmental Protection Manager raises no objection to the proposals, being satisfied that it would not be harmful to the amenity of any neighbouring property.

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

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

The Scottish Environment Protection Agency advise that the application site is outwith, but adjacent to, an area of known flood risk. As the site is not within an area of known flood risk and as they hold no information to the contrary, the Scottish Environment Protection Agency are satisfied that there would be no unacceptable flood risk in respect of the proposed care home.

The Council's Road Services raises no objection to the proposed care home development. In this they are satisfied that it would not have harmful impact on the local road network and that the proposed vehicular access, parking and turning arrangements within the site, including the level of parking proposed, are all acceptable. They recommend that a continuous footway be provided immediately to the north of the application site, in accordance with details to be submitted to and approved by the

Planning Authority. This can be made conditional by the grant of planning permission.

On these transportation considerations the proposed development complies with Policies T2, DP20 and DP22 of the adopted East Lothian Local Plan 2008.

The proposed development by its scale and prominent public location would result in significant change to the local environment and thus in accordance with the requirements of Policy DP17 of the adopted East Lothian Local Plan 2008 it should incorporate artwork either as an integral part of the overall design or as a related commission. This can be secured by a condition on the grant of planning permission for the proposed residential development.

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

The original building dates from around 1680, although over the centuries it has been altered and extended. The main building is three storeys in height, with some of its accommodation in the roofspace. The main building is positioned on the northern part of its grounds with its principal elevation facing southwards, towards Edinburgh Road. A smaller wing, which is partly two storeys in height and partly single storey, adjoins the eastern end of the main building. A three storey wing (known as the Hanseatic Barn) adjoins the western end of the main building.

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

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

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

It is the eastern part of the tripartite walled garden that forms most of the application site. This garden includes 16 allotments, which are in productive use. The application site also includes an area of land that is located to the east and northeast of Cockenzie House.

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

dimension, and the grotto provides architectural interest and is important as evidence of the occupation of the owners of the house.

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

The footprint of the building remains substantially unchanged from the footprint of the nursing home building that was previously refused planning permission (Ref: 11/00363/P). The length of its frontage would be significantly longer than the frontage of Cockenzie House and its total footprint would be similar, if not larger, to that of Cockenzie House.

The height of the proposed building has been reduced from the height of the proposed nursing home building that was previously refused planning permission (Ref: 11/00363/P). Notwithstanding, by virtue of its size, scale and positioning, the proposed care home building would dominate and compete with the listed building within the site such that the listed building would no longer be the focus of its setting. From significant parts of the central and west garden the proposed nursing home would be clearly visible and would have a significantly longer frontage than the main house. By being positioned only some five metres from Cockenzie House itself and six metres from the wall separating the east and central gardens of the tripartite walled garden, the proposed care home would appear as a prominent and incongruous feature from the central garden, from where its full length would be seen. The character of the east garden itself would be fundamentally altered, and it would be entirely dominated by the proposed care home. The open, undeveloped form of the east garden is an important part of the setting of the listed building. This setting would be significantly harmed by the presence of the care home buildings and its associated infrastructure. As it would harm the setting of the listed Cockenzie House, the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV3 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: June 2014 on development affecting a listed building or its setting.

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

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

The open and undeveloped tripartite garden layout to the front of Cockenzie House is an extremely important element of the Designed Landscape and its relationship with Cockenzie House. The proposed care home would result in the loss of much of the east garden of the tripartite garden. It would adversely affect the whole concept of the tripartite design with formal gardens to the centre framing the front of the house, flanked by less formal pastoral gardens and woodlands to the east and west. The proposed

development would significantly harm the conservation objectives of the Cockenzie House Designed Landscape. On this consideration the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV8 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: June 2014 on development affecting a designed landscape.

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

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

All of the trees within the grounds of Cockenzie House are protected by Tree Preservation Order 21- Cockenzie House. Those trees help to define the setting of the listed building of Cockenzie House and make an important contribution to the Designed Landscape and Conservation Area.

The Council's landscape advice of the Policy and Projects Service is that of the 149 trees that are protected by Tree Preservation Order 21, it is proposed to fell 73 of them. Of those 73 trees, half of them are to be felled solely to facilitate the proposed development. They advise that those trees make a significant positive contribution to the setting and amenity of the area. The landscape advice of the Policy and Projects Service is that planning permission for the care home should be refused, as the significant tree felling proposed would undermine the integrity of the Tree Preservation Order and would be detrimental to the setting and amenity of the area. On this consideration the proposed development is contrary to Policies NH5 and DP14 of the adopted East Lothian Local Plan 2008.

It is now necessary to consider whether or not there are any material considerations that outweigh the scale of the departure from the development plan.

In his statement submitted with the application, the applicant makes reference to a previous sheltered housing proposal for the site. Planning permission (Ref: 90/00870/HIS\_P) was granted in February 1994 for the conversion of the Hanseatic Barn to form an extension to the then existing Cockenzie House Nursing Homes, for the erection of a building to contain 30 sheltered housing flats within the eastern garden of Cockenzie House and for other associated works. This planning permission was partially implemented, as the Hanseatic Barn was converted. As that planning permission has been partially implemented, in previous correspondence with the Council the applicant has advised that the building to contain the 30 sheltered housing flats could therefore be erected at any time within the eastern garden of Cockenzie House. This position is generally referred to as 'fallback'.

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

In any event, even if the sheltered housing permission did remain extant and hence represent a lawful fallback position, it would only be appropriate to accord it weight in decision-making if there was a realistic prospect of it actually being exercised in the event of refusal. Case law suggests that the test should be made on the balance of probabilities rather than the balance of possibilities, i.e. whether there is an actual likelihood of the fallback being implemented as opposed to a theoretical possibility. This seems unlikely given the lack of evidence of any serious intention by the applicant to implement the permission (a stage II building warrant application has been pending since 2001, reference 00/00812/BW\_S2). Moreover, regulatory changes in respect of matters such as fire safety mean that the approved design is unlikely to be capable of implementation in its current form as it would not comply with current regulations.

In the statement submitted with the planning application, the applicant has offered to enhance the adjacent war memorial. The war memorial does not relate to the development proposed, and it would not therefore be reasonable to require the applicant to make a financial contribution towards the enhancement of the war memorial.

Other material considerations, including the jobs that would be created through the development of the care home, do not justify a departure of the scale proposed.

#### REASONS FOR REFUSAL:

- 1 The proposed care home by virtue of its size, scale and positioning would dominate and compete with the listed building within the site such that the listed building of Cockenzie House would no longer be the focus of its setting. Moreover, the open setting of the listed building would be significantly harmed by the presence of the care home buildings and its associated infrastructure. As it would harm the setting of the listed Cockenzie House, the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV3 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: June 2014 on development affecting a listed building or its setting.
- 2 The proposed development would significantly harm the conservation objectives of the Cockenzie House Designed Landscape, contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV8 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: June 2014 on development affecting a designed landscape.
- 3 The visual impact of the proposed care home would result in the loss of the open character of part of the tripartite gardens of Cockenzie House, to the detriment of the character, appearance and amenity of the Conservation Area. On this consideration the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV4 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: June 2014 on development affecting a conservation area.

- 4 The significant tree felling proposed would undermine the integrity of Tree Preservation Order 21-Cockenzie House, and would be detrimental to the setting and amenity of the area. On this consideration the proposed development is contrary to Policies DP14 and NH5 of the adopted East Lothian Local Plan 2008.

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



**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 1 September 2015  
**BY:** Depute Chief Executive  
(Partnerships and Community Services)  
**SUBJECT:** Application for Planning Permission for Consideration

4

---

*Note - this application was called off the Scheme of Delegation List by Councillor Berry for the following reason: I believe that change of use might impede neighbours' ability to access their own equivalent ground. This needs full consideration by the committee.*

Application No. **15/00322/P**  
Proposal Change of use of open space to car parking area  
Location **13 Hopetoun Terrace  
Gullane  
East Lothian  
EH31 2DD**  
Applicant Mrs Doreen Sinclair  
Per Colin Sinclair  
RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

The site that is the subject of this planning application consists of the residential property of 13 Hopetoun Terrace and an area of land that is immediately to the (rear) west of it. To the west of the rear boundary wall of the property of 13 Hopetoun Terrace is a small shrub bed, a grassed area of land, part of a mutual access that serves the residential properties of 13-23 Hopetoun Terrace and beyond that a planted area containing trees and bushes. The site is located within a predominantly residential area as defined by Policy ENV1 of the adopted East Lothian Local Plan 2008. It is also within Gullane Conservation Area.

In May 2014 planning permission (Ref: 14/00440/P) was sought for (i) the change of use of the part of the application site to the rear of the residential property of 13 Hopetoun Terrace from open space to a car parking area and (ii) the erection of six bollards that would enclose that area of land the subject of the proposed change of use. At their meeting on 2nd September 2014 the Planning Committee decided to refuse planning permission 14/00440/P. The reason for the refusal to grant planning permission was that "the visual impact of the bollards would be detrimental to the character of the

conservation area". Thus, the sole reason for the refusal of planning permission 14/00440/P related to the visual impact of the bollards. In that regard the Planning Committee considered that the proposed change of use was acceptable.

The applicant appealed against that decision to the Scottish Government's Directorate of Planning and Environmental Appeals on 29th December 2014.

On 23rd March 2014 the Reporter, appointed by the Scottish Ministers to determine the appeal, dismissed the appeal and refused planning permission 14/00440/P.

In reaching that decision he considered that the erection of six sizeable bollards would have an urban appearance out of character in this village location. Moreover, stainless steel would be a conspicuous and alien material in the context of the Conservation Area. He therefore found that the erection of the proposed bollards failed to have regard to the need for high quality design and would not preserve or enhance the Conservation Area.

In reaching his decision the Reporter stated that he agreed with the Council that the change of use of the small area proposed for domestic parking purposes would not be harmful to the character, appearance or residential amenity of the locality or to the preservation or enhancement of the Conservation Area.

Planning permission is now sought for the change of use from open space to a car parking area of the part of the application site to the rear of the residential property of 13 Hopetoun Terrace.

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.

Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policy ENV4 (Development Within Conservation Areas) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application are Section 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.

Six written objections to the application have been received.

The main grounds of objection are that:

(i) the area of land is amenity ground which is enjoyed by all the neighbours with access and any development encroaching onto this space will limit access and use of the area for all those who have rights over such;

(ii) the applicant was apparently party to an informal agreement made some 40 years ago to allow planting (comprising of trees and shrubs) on the mutual access to the rear of the row of terrace houses of Hopetoun Terrace (numbers 13-23). Unless the existing trees are removed and the original mutual access reinstated (as per is shown in Title Deed plans), which would need to be surfaced with appropriate material to allow the passage of vehicles, the residents of the neighbouring properties of 15-21 Hopetoun Terrace will be denied access to park their vehicles to the rear of their properties. Furthermore, as the trees are within the Conservation Area the removal of them would require approval from the Council's Landscape department;

(iii) the applicant has not provided any proposal to reinstate the mutual access to allow vehicle access to the neighbouring properties of 15-21 Hopetoun Terrace. Even without the bollards vehicular access would be severely restricted and only possible if the well established amenity belt of trees and shrubs were removed;

(iv) Delivery, maintenance and emergency vehicles would encounter severely restricted access as would dog walkers, families with push chairs and children walking through between Hopetoun Terrace and Goose Green. Reversing vehicles would be a serious hazard with drivers visibility severely restricted;

(v) the approval of this planning application will set a precedent for others to follow suit which would spoil and restrict the area even more;

(vi) the applicant could park his car on the main road or within Goose Green;

(vii) At present Hopetoun Terrace suffers very badly from the high number of vehicles parked on the carriageway. If this application was approved then up to eight additional vehicles could be forced to park on the carriageway.

Whether or not the applicant could park his car elsewhere is not a material planning consideration in the determination of this planning application.

Approval of this application would not set an undesirable precedent for similar proposals to be made elsewhere. Any future application seeking planning permission for the change of use of open space to a car parking area would be assessed on its individual merits.

The existing narrow access lane to the rear of the applicant's house and garden is a private road and thus no changes are being proposed to public paths, public rights of way nor would it affect any public rights of access as a result of the proposal.

Matters raised by the objectors concerning rights of access, title deeds, and mutual agreements made with other parties are not material planning considerations in the determination of this planning application.

There is no proposal to change the surface of the land the subject of the proposed change of use. The proposed change of use would not be harmful to the character, appearance and residential amenity of the locality or to the character and appearance of this part of the Gullane Conservation Area. Use of the land for car parking to serve the

applicant's house would not be harmful to the amenity of neighbouring residential properties.

The Council's Road Services raise no objection to the proposed change of use.

The landscape advice from Policy and Projects is that the proposed area of land the subject of the change of use is outwith the root protection areas of the small trees to the west of the site. They therefore raise no objection to the proposals.

On these considerations the proposal is consistent with Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV4 of the adopted East Lothian Local Plan 2008 and with Scottish Planning Policy: June 2014.

**CONDITION:**

1      None.

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



**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 1 September 2015  
**BY:** Depute Chief Executive  
(Partnerships and Community Services)  
**SUBJECT:** Application for Planning Permission for Consideration

**5**

---

*Note - this application was called off the Scheme of Delegation List by Councillor Goodfellow for the following reason: I feel the fence being forward of the front building line is outwith the norm for this estate.*

Application No. **15/00290/P**

Proposal Change of use of public open space to domestic garden ground and erection of fencing

Location **7 Green Apron Park  
North Berwick  
East Lothian  
EH39 4RE**

Applicant Mrs Helen Carlyle

Per Ian and Cathleen Duff

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

The property to which this application relates is a single storey detached house, with accommodation in its roof space, and its garden located within North Berwick in a predominantly residential area as defined by Policy ENV1 of the adopted East Lothian Local Plan 2008.

The property is bounded to the north by a large area of public open space, to the east by a small area of public open space beyond which there is an existing footpath, to the south by the public road of Green Apron Park and to the west by a neighbouring residential property.

Planning permission is sought for a change of use of part of an area of public open space to the east side of the residential property of 7 Green Apron Park, to be incorporated as additional garden ground for that house, and for the erection of a 1.8 metres high gap and board timber fence that would enclose the area of land the subject of the proposed change of use.

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.

Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies C5 (Change of Use of Public Open Space to Garden Ground) and DP2 (Design) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Six written objections to the application have been received. They are made on the grounds that:

(i) the 1.8 metres high fence will detract from the open community space to the park area. The existing pathway will be an unsightly 38 metres by 1 metre "tunnel" and could be perceived to be dangerous;

(ii) if approved this proposal will set a precedence for others to extend their gardens outwith their original plots reducing the amenity ground and changing the whole layout of the estate. It would also allow the applicant to consider building an extension on this land. These areas provide a safe environment for children playing and contribute to the open aspect of the area;

(iii) the area of land the subject of the proposed change of use is an integral part of the community amenity space of Green Apron Park which will deprive the rest of the community if fenced off;

(iv) the front gardens of Green Apron Park are open aspect and no high fences are allowed to the front. The proposal to erect a perimeter fence would adversely affect the visual appearance of the estate;

(v) there are currently trees on the area which should be safeguarded;

(vi) the proposed fence would narrow the sight line for women walking alone on the existing pathway presenting a potential risk to them;

(vii) a large section of land with picturesque views has already been lost to Walker Homes (Mains Farm) on the field opposite the entrance to Green Apron Park;

(viii) the reason for buying a house in this estate was based on the fact that there were natural and green areas which were pleasing to the eye. The proposed fence would spoil this and deprive views;

(ix) the Title Deeds indicate that this area is a play area.

Non-compliance with conditions set out in title deeds is a legal matter and not a material planning consideration in the determination of an application for planning permission.

A loss of a view is not a material planning consideration in the determination of an application for planning permission.

One of the objectors refers to a previous decision by the Council to grant planning permission for the erection of a residential development comprising of some 420 houses



on land at Mains Farm, North Berwick. That application, as granted, was determined on its own merits. It does not prejudice a determination on this application which must also stand to be determined on its own merits.

The submitted application drawings indicate that there are three existing trees on the area of land the subject of the proposed change of use. Those existing trees are annotated on the drawings to be 'kept and unchanged'.

Approval of this application would not set an undesirable precedent for similar proposals to be made elsewhere. Any future application seeking planning permission for the change of use of open space to domestic garden ground with or without the erection of fencing would be assessed on its individual merits. Any future development within the area of land the subject of the proposed change of use would also be assessed on its individual merits.

North Berwick Community Council confirm that as the path to the side door of the house of 7 Green Apron Park is very restricted they support this application.

Policy C5 states that a change of use of public open space to garden ground will be supported where it would not result in unacceptable loss of visual or recreational amenity or harm the integrity of a landscaping scheme, or set a precedent which if followed would do so.

The area of land that is the subject of the proposed change of use measures some 118 square metres and is rectangular in shape. A similar sized area of planted public open space land would remain to the east of it, between the proposed timber fence and the public footpath. The taking of part of this ground into garden ground in a position immediately to the east side of the applicant's house would not harmfully compromise the integrity or harm the character, appearance and amenity of the overall layout and provision of the public open space of the housing development of which the applicant's house and garden are a part. Whilst the area between the proposed fence and the footpath would be less than before, there would still be a reasonable distance remaining such that the pedestrian's perception of the path would remain as a pathway adjacent to open space and not a 'tunnel'. Nor would a pedestrian's perception of the visual openness of the path and planted space beside it be unduly diminished. There would still be a visual perception of path and open space leading to the larger open space and in this the proposals would not be harmful to the visual amenity of the area. It would not set a precedent for other changes of use to garden ground of other areas of open space within the housing development that might otherwise result in an unacceptable loss of visual or recreational amenity or be harmful to the integrity of the landscaping of the housing development.

Accordingly, the proposed change of use is consistent with Policy C5 of the adopted East Lothian Local Plan 2008.

The use of the land as garden ground for the applicant's house would not be harmful to the residential character and amenity of the area and would not be harmful to the privacy and amenity of neighbouring residential properties.

The Council's Principal Amenity Officer confirms that this proposal will not have an adverse effect on the amenity of the area or maintenance of adjacent areas. He therefore raises no objection to the proposed change of use.

Although it would be visible from the public road of Green Apron Park to the south, the proposed 1.8 metres high gap and board timber fence that would be erected inside the boundaries of the land the subject of the proposed change of use would not, in its relationship with the built form of the applicant's house and garage and the existing 1.8

metres high fence enclosing the rear garden of the neighbouring house of 17 Green Apron Park to the east, appear harmfully incongruous or intrusive in its setting. The streetscape to Green Apron Park is of set back house with large, flat roofed garages to the front of them. The fence would therefore be seen in relationship to the house and its garage and that streetscape. Viewed against the greater height and massing of the garage and house it would not be harmful to the character, appearance and amenity of the area. It would not compromise the integrity or harm the character and appearance of the overall layout of the housing development of which the applicant's property is a part.

The proposed fencing is consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and with Policy DP2 of the adopted East Lothian Local Plan 2008.

The Council's Road Services raise no objection to this planning application.

**CONDITION:**

1       None

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



**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 1 September 2015  
**BY:** Depute Chief Executive  
(Partnerships and Community Services)  
**SUBJECT:** Application for Planning Permission for Consideration

6

---

*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.



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



**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 1 September 2015  
**BY:** Depute Chief Executive  
(Partnerships and Community Services)  
**SUBJECT:** Application for Planning Permission for Consideration

7

---

*Note - this application was called off the Scheme of Delegation List by Councillor Goodfellow for the following reason: I believe the level of overshadowing of neighbouring gardens is unacceptable.*

Application No. **15/00511/P**

Proposal Extension to house with 1st floor balcony, formation of decked area and erection of screen

Location **53 Old Abbey Road  
North Berwick  
East Lothian  
EH39 4BP**

Applicant Mr Niall Middleton

Per Christopher Thomson Design

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

This application relates to a two storey detached house and its garden ground that is located within North Berwick, in a predominantly residential area as defined by Policy ENV1 of the adopted East Lothian Local Plan 2008.

In September 2013, planning permission 13/00620/P was granted for a two storey flat roofed extension to be attached to the rear elevation of the house, as a replacement for an existing extension. That planning permission was also for the change of use of an area of land formerly used as a builders yard that abuts the north side of the garden ground of the house to domestic garden ground. Planning permission 13/00620/P has not been implemented and is extant until September 2016.

In October 2014 planning permission 14/00717/P was granted for the erection of a two storey detached house with ancillary residential accommodation in the garden ground to the west side of the house. Planning permission 14/00717/P has been implemented and the house and ancillary accommodation are under construction.

Planning permission is now sought for a two storey extension of a different architectural form and appearance to the two storey extension approved by the grant of planning permission 13/00620/P, again to be attached to the rear (north) elevation of the existing extension.

The now proposed extension would have a ground floor component with a narrower first floor, monopitch roofed component above it. There would be a 1st floor balcony formed at the northern end of the first floor component and additionally a split-level area of decking would be formed at ground floor level.

It is also proposed to heighten the existing brick wall enclosing the east boundary of the rear garden by installing a timber screen opposite the proposed ground floor decking, taking the total height to 2 metres or 1.8 metres above finished floor level of the ground floor decking.

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) 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) and Policy DP6 (Extensions & Alterations to Existing Buildings) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

One letter of objection has been received in relation to the proposal. The main grounds of objection are:

- 1) Loss of privacy
- 2) Harmful overshadowing/loss of light
- 3) Visual amenity/loss of view
- 4) Design, appearance and materials
- 5) Layout and density
- 6) Ownership of the boundary wall upon which screening will be installed
- 7) Accuracy of plans with regards to cardinal directions (north point)
- 8) Accuracy of plans with regards to proximity of 47 Old Abbey Road
- 9) Planning policy contravention

The loss of a view from existing neighbouring residential properties is not a material consideration in the determination of the application.

The ownership of the boundary wall is a private legal matter between the neighbours of 53 and 47 Old abbey road and is not a material consideration in the determination of this application.

The accuracy of the plans has been examined via a site visit during which distances between buildings and the positioning of existing buildings were confirmed to be accurate. The cardinal directions of the supplied plans were initially inaccurate, however these have been rectified via submission of amended drawings.

The proposed extension would require the removal of the current pitched roof of the existing extension. Planning permission is not required for this so it is not the subject of the application.

The current pitched roof would be replaced with a shallow mono pitched zinc roof containing solar panels. The roof height of existing extension component would slope with a height difference of 700mm from east to west, and the roof being some 7 metres in

height at its highest point. There are no glazed openings to be formed in either the east or west elevation walls.

The ground floor flat roofed component of the proposed extension would measure some 7.65m out from the rear (north) elevation of the existing two storey extension attached to the rear of the house and would be some 3.7 metres in height from ground level at its highest point, and some 10.8 metres wide at its widest point. An area of decking would protrude a further 3.5m out from the rear elevation of that ground floor component of the proposed extension, split into two areas with a height difference of some 0.5 metres. The higher area of decking would be surrounded by a 1600mm opaque glass screen. It is proposed there would be glazed openings formed on all elevations of the proposed ground floor component. The side (west) elevation would contain 3 high level hopper type windows. The other side (east) elevation would contain 2 high level hopper type windows. The front elevation would contain 2 sets of large sliding glazed door openings with additional glazed surrounding windows. The vertical walls of the proposed ground floor component would be clad with 'Corten' steel mesh cladding.

The first floor component would extend some 5.5 metres out from the rear elevation and wrap around the west elevation of the existing extension, with an enclosed first floor timber balcony fully covered by the shallow monopitched roof finished in zinc. The building lines of the eaves of the east elevation of the first floor component would be set some 2 metres in from the east edge of the ground floor flat roofed component. The building lines of the eaves of the west elevation of the first floor component would be set some 0.5 metres in from the west edge of the ground floor flat roofed component. The flat roofed area left by the setback would contain a live (grassed) roof covering. The roof height of the first floor component would slope with a height difference of 100mm from west to east, and the roof being some 6.3 metres at its highest point. The side (west and east) elevations would contain no glazed openings. The front elevation would contain a large expanse of glazed openings with a glazed door opening allowing access onto the proposed balcony. The east side elevation of the proposed first floor component would be finished with zinc cladding, whilst the west side elevation would be clad with vertical timber battens.

The proposed extension would be architecturally different to the existing house. It would in part be two storey in height and with the decking would extend some 11m into the rear garden of the house. Thus it would have a substantial footprint. The ground and first floor components would however have a smaller combined footprint than the existing house and extension. Therefore and as the flat top of the first floor component extension would be some 4 metres lower in height than the existing house it would, in terms of its size and scale, be a subservient addition to the house. By virtue of this and of its modern architectural form and building materials with large modern style glazed openings it would be a contemporary, subservient addition to the rear of the house that would not compete with but would complement the character and appearance of the house.

Due to its positioning some 3.7m away from the east boundary of the property and by virtue of its architectural form, size and upper floor setback, the proposed extension would not be of such a size as to have a harmfully dominating or overbearing affect on the neighbouring house to the east, the house being built to the west or the ancillary accommodation to that house. Therefore and as the extension would be visually contained to the rear of the house and only be seen in limited public views from Old Abbey Road it would not harm the character and appearance of the house or the character and appearance of the streetscape of Old Abbey Road.

Although large in size the proposed extension would not be an overdevelopment of the large rear garden. A 3m length of the existing rear garden ground would remain beyond

the proposed area of decking and the 3.7m wide driveway that exists on the east side of the property would also remain in place. Furthermore through the grant of planning permission 13/00620/P planning permission has been granted for the change of use of the area of land beyond what is presently the rear boundary of the garden, land which was formerly used as a builder's yard, to garden ground. This gives the house of 53 Old Abbey Road an additional 196 square metres of garden ground and a parking and turning area. Therefore the proposed extension would not be an overdevelopment of the garden ground of the house.

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 separating distance between the windows of a proposed new building and the garden boundaries of neighbouring residential properties and an 18 metres separating distance between directly facing windows of the proposed new building and the windows of existing neighbouring residential properties.

The glazed openings on the north elevations of both ground and first floor components of the proposed extension and the first floor balcony and area of decking would face directly over the rear garden of the applicant's house and onto the railway beyond. Thus they would not give rise to harmful overlooking of any neighbouring residential properties.

The glazed window openings proposed for the east and west side elevations of the ground floor component of the proposed extension would face towards and be within 9m of the east and west boundaries of the property. However those openings would be of such a height above floor level that it would not be possible for occupants of the ground floor to see out of them. Therefore they would not give rise to harmful overlooking of any neighbouring residential properties to the east and west.

With regards the first floor balcony, it would be fully enclosed at both ends, preventing anyone using the first floor balcony from looking directly onto the rear gardens of the neighbouring houses to the east and west. Furthermore, the east elevation wall of the proposed first floor component would extend 1 metre beyond the balcony, forming a screen, further preventing anyone using the first floor balcony from looking obliquely onto the rear gardens of the neighbouring houses to the west. Provided the screen is installed prior to any use being made of the balcony, which can be made a condition of a grant of planning permission, then that balcony would not allow for harmful overlooking of the rear garden of the neighbouring residential property to the west.

Similarly, the raised timber deck on ground floor level would have its north and west edges enclosed with 1.6m high obscurely glazed screens. Those screens would be of sufficient height to mitigate potential overlooking from the raised decking to the rear garden of the neighbouring house to the west. Provided the screen is installed prior to any use being made of the raised timber deck, which can be made a condition of a grant of planning permission, then that timber deck would not allow for harmful overlooking of the rear garden of the neighbouring residential property to the west.

The proposed timber screen to be added on to the east boundary wall would, by being some 1.6 metres above the finished floor level of the lower area of decking, ensure that there would not be overlooking of any neighbouring residential properties to the east from the proposed decking extending from the north elevation of the proposed extension. It can be made a condition of a grant of planning permission that the timber screen is in place prior to any use being made of the decking.

Other openings could be formed in the east and west elevations of the extension under

permitted development rights. Therefore to safeguard the privacy and amenity of the occupiers of the neighbouring houses to the east and west it should be made a condition of a grant of planning permission that the permitted development rights to form new openings in the first and ground floor of the east and west elevations of the proposed extension be removed. Subject to this planning control the proposed extension would not allow for harmful overlooking of any neighbouring residential properties.

"Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice" by P.J. Littlefair gives guidance on the impact of a proposed extension on the daylight and sunlight received by neighbouring properties.

In the Guide it is stated that in designing an extension to a building it is important to safeguard daylight and sunlight to nearby buildings.

The Guide states that no more than a quarter of a main back garden of a neighbouring residential property should be prevented from receiving any sunlight on the 21st of March due to overshadowing from new development.

The neighbouring garden to the east - the garden of 47 Old Abbey Road - is a north facing garden. Consequently that garden is already overshadowed for parts of the day by the shadow cast by the combined built form of the pair of semi detached houses comprising 47 Old Abbey Road and 45 Old Abbey Road. At present that neighbouring rear garden begins to move out of shadow at 2pm on the 21st of March.

Application of the sunlight test on the proposed extension demonstrates that it would cast shadow onto part of the rear garden of 47 Old Abbey Road between the hours of 2pm and 4pm. Although the shadow cast by the proposed extension is of some size, because it is only cast for a period of two hours, it is not so significant as to have a detrimental effect on the amount of sunlight received by the rear garden of 47 Old Abbey Road.

The test demonstrates that the proposed extension would cast a shadow onto the rear garden of the new house adjacent to 53 Old Abbey Road between the hours of 8am and 10am. Because it is only cast for a period of two hours it is not considered to have a detrimental effect on the amount of sunlight received by the rear garden of the new 53 Old Abbey Road.

Consequently, the proposed extension would not, due to its height, size, and positioning, result in a harmful loss of sunlight to the adjoining houses of 47 and adjacent to 53 Old Abbey Road. Nor would it result in a harmful loss of sunlight to any other neighbouring residential property.

With regard to daylight the Guide gives a two-part test, one part measured horizontally and the other vertically. The Guide advises that there will not be a harmful loss of daylight if a proposed extension passes at least one part of the test when applied to a window of a neighbouring house. This two-part test is applied to the proposed extension relative to the existing windows on the rear (north) elevations of adjoining houses of 47 and that adjacent to 53 Old Abbey Road.

Application of the horizontal and vertical daylight tests to the proposed extension relative to those windows demonstrates that the proposed extension passes both the horizontal and vertical daylight tests. Consequently, the proposed extension would not, due to its height, size, and positioning, result in a harmful loss of daylight to the adjoining houses of 47 and the new 53 Old Abbey Road. Nor would it result in a harmful loss of daylight to any other neighbouring residential property.

On all of these considerations of design and amenity, the proposed extension and fencing would be consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies DP2 and DP6 of the adopted East Lothian Local Plan.

#### CONDITIONS:

- 1 No use shall be made of the raised decking at the ground floor north elevation of the extension hereby approved unless and until its north and west boundaries are enclosed by an obscurely glazed screen, of a height at least 1.6 metres above the height of that area of decking, along its western edge as specified on the drawings docketed to this planning permission.

Thereafter the screening so approved shall remain in place unless otherwise approved by the Planning Authority.

Reason:

In the interests of the privacy and amenity of the neighbouring residential property to the west.

- 2 No use shall be made of the north facing, first floor balcony of the extension hereby approved unless and until the full height screen to be formed by the denoted 1 metre long extension of the timber clad west wall, at the northwest corner of the first floor component of the extension, is completed as specified on the approved drawings docketed to this planning permission.

Thereafter the screening so approved shall remain in place unless otherwise approved by the Planning Authority.

Reason:

In the interests of the privacy and residential amenity of the adjoining house and ancillary accommodation to the west.

- 3 The lower decking hereby approved as part of the extension shall not be used either: unless and until a timber screen fence is erected along the 8.5 metres partial length shown for it on the drawings docketed to this planning permission, either on top of or alongside the existing brick wall of the east boundary enclosure of 53 Old Abbey Road, to an effective height of 1.6 metres above the finished floor level of that area of decking; or, some other appropriate screening achieving a height of at least 1.6 metres above finished floor level of that area of decking is installed in accordance with details to be submitted to and approved by the Planning Authority in advance.

Thereafter the screening so approved shall remain in place unless otherwise approved by the Planning Authority.

Reason:

In the interests of the privacy and residential amenity of the neighbouring house to the east.

- 4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended by Part 1 of the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011), or of any subsequent Order amending, revoking or re-enacting the 1992 Order, no windows or other glazed openings shall be formed within the ground and first floor east and west elevation walls of the extension hereby approved, unless otherwise approved by the Planning Authority.

Reason:

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



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