

**PLANNING COMMITTEE**  
**TUESDAY 6 OCTOBER 2015**

**PUBLIC DOCUMENT PACK**





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

**TUESDAY 1 SEPTEMBER 2015**  
**COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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**Committee Members Present:**

Councillor N Hampshire (Convener)  
Councillor D Berry  
Provost L Broun-Lindsay  
Councillor S Brown  
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 J Williamson

**Other Members Present:**

Councillor M Libberton

**Council Officials Present:**

Ms M Ferguson, Service Manager – Legal and Procurement  
Mr I McFarlane, Service Manager – Planning  
Mr K Dingwall, Principal Planner  
Ms S McQueen, Planner  
Mr M Greenshields, Transportation Planning Officer  
Ms P Bristow, Communications Officer

**Clerk:**

Ms A Smith

**Visitors Present:**

Item 2 – Mr N Sutherland, Mr G Neill  
Item 3 – Mr G Gilbert, Ms J Souness, Mr B Hickman  
Item 5 – Mr I Duff  
Item 6 – Mr K Macdonald, Mr J Papworth  
Item 7 – Mr C Thomson, Mrs Lockhart

**Apologies:**

Councillor T Trotter

**Declarations of Interest:**

Councillor McMillan declared an interest in item 3; he had been closely involved with the business growth and social enterprise at Cockenzie House, which may be seen to prejudice his decision; he would leave the Chamber for this item.

Councillor Goodfellow declared an interest in item 7; his view had been stated in his reasons for taking this application off the Scheme of Delegation list; he would leave the Chamber for this item.

**1. MINUTES FOR APPROVAL**

The minutes of the Planning Committee of 30 June 2015 were approved.

**2. PLANNING APPLICATION NO. 15/00094/PPM: PLANNING PERMISSION IN PRINCIPLE FOR ERECTION OF 21 HOLIDAY LODGES AND 40 HOUSES AT WHITEKIRK GOLF CLUB**

A report was submitted in relation to Planning Application No. 15/00094/PPM. Keith Dingwall, Principal Planner, presented the report, informing Members that he had two changes to the recommended heads of terms on page 29 of the report, regarding the recommended Section 75 Agreement:

Clause 1 – Education colleagues had advised that the amount stated (£781,632.40) was incorrect and recommended that a financial contribution of £660,779 should be secured.

Clause 2 – at the site visit Councillor Day had requested clearer definition of what was meant by the internal fitting out of the hotel. Legal colleagues had also suggested that the wording of this clause be altered slightly. It was therefore recommended that Clause 2 should state: “Secure a control on the phasing of the proposed development to ensure that there shall 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), greenkeeper’s shed and compound, and alterations to the existing golf course (all as approved by planning permission in principle 08/00078/OUT and approval of matters specified in conditions 13/00229/AMM) have been completed. For the purposes of the Section 75 Agreement “internal fitting out” shall be defined only as “installation of sanitary ware, light fittings, furniture, electrical equipment and commencement of internal decoration”

Mr Dingwall then summarised the report. He drew attention to the District Valuer’s assessment, which accepted that an enabling housing development, of 40 units, was necessary to make the entire development viable. The report recommendation was to grant consent.

In response to questions regarding enforcement, he advised that these controls were exactly the same as those put forward previously; if it came to the Council’s attention that conditions were being breached then appropriate action would be taken. He answered further questions about commencement works of the hotel development as

referred to in the report. He clarified that an update to the 2008 viability study had not been carried out. He confirmed that if these houses had been proposed without them being justified as enabling development then they would contravene Policy DC1.

Neil Sutherland of Wardell Armstrong LLP, agent for the applicant, indicated that the main elements of the proposal were as per the 2011 and 2013 applications. This application was before Members due to a technicality; the previous consent had lapsed. He stressed the commitment to delivering a high quality hotel. He referred to the District Valuer's assessment, stating that the hotel would be provided before any housing development. A hotel partner was now in a position; the hotel would open in the second quarter of 2017. Around 100 construction jobs would be provided and 60 full-time and 30 part-time jobs created once the hotel was operational. The Council had signposted the A198 as Scotland's Golf Coast route; having a new, high quality hotel would bring economic benefits to the county.

Mr Sutherland responded to questions from Members. He clarified that no housing development work would be commenced until the hotel was completed less the internal fit out. He confirmed that a hotel partner was on board and the necessary finance was now in place. He advised that his client was bound by the District Valuer's appraisal figure of 40 houses. Regarding staff accommodation in the hotel, some rooms would be allocated for staff; the exact number was yet to be determined.

George Neill, Chairman of the Whitekirk Community Company, spoke against the application. He referred to the report; disputing statements that, in his opinion, were misleading or incorrect, including comments about the pre-application consultation. He stated that Whitekirk Community Company, Dunsper Community Council and Whitekirk residents were all against this development. He made reference to the economic arguments and to the District Valuer's appraisal. He stressed that 40 executive homes could not possibly preserve the character of the Conservation Area, as stated in the report. This application contravened planning policy.

Local Member Councillor Day stated that this application needed very careful consideration. He questioned whether consent would be given to this number of houses in an open large area if there was no enabling development; there had to be a balance of benefits against disbenefits. He supported economic development but it had to be viable; the economic case for the hotel had not been substantiated. He drew attention to golf research statistics which showed a decline in numbers. This proposal was too big a risk; a hotel enabling housing was the wrong way round. He would not be supporting the officer's recommendation.

Local Member Councillor Berry remarked that Members had been considering this for over a decade. Local residents were very concerned about this development. The DTZ report was from 2008, before the recession. The golf statistics quoted by Councillor Day were a warning. Houses were wholly unsuitable for this location; a new settlement would be created outside the village. This proposal could have been implemented at any point during the last decade, that it had not been was pivotal. The argument for enhanced tourism was not sustainable. He agreed with his colleague, he would not be supporting the recommendation in the report.

Local Member Councillor Goodfellow agreed with his fellow local members. He stated that constituents had consistently lobbied local members against this development. There were good planning reasons for refusing this application; it was based on a 2008 economic assessment, which was out of date and made when the economic situation was quite different. He would not be supporting the report recommendation to grant consent.

Councillor Currie remarked that all the requirements for the enabling development had been satisfied. Members had to take account of the officer recommendation and the statements from the District Valuer, Economic Development and the range of stakeholders, all of which were supportive of the application. He cautioned against ignoring these consultation responses. He supported the report recommendation.

Councillor Innes stated that as Members were aware this application had been considered previously. All aspects and concerns had been considered very carefully, and the Committee had determined then that the application was in the wider interests of East Lothian and had granted consent. Members had heard from the agent that the necessary finance was in place. He supported the application.

Councillor McMillan agreed with Councillors Innes and Currie. Policy DC1 existed to protect the countryside but also allowed for business opportunity, where applicable. Responding to some earlier comments, he gave details of recent positive golf tourism figures across the county. The Section 75 Agreement would provide the necessary protection. He appreciated that the local community did not support this application. He would however be supporting the recommendation in the report.

Councillor Grant stated that he had supported the previous applications and had heard nothing today to change his opinion. He noted that the local community was against this proposal but he would be supporting the application.

The Convener understood the concerns of the community and local members. He acknowledged the long delay in bringing this application to fruition. He stressed that approval had previously been granted by the Committee so it would not be rational to go against the application now. He understood the concerns about delivery of the hotel but assurances had been provided from the agent that the finance was in place. The proposal would deliver a high quality facility to Whitekirk, which would be beneficial for East Lothian. He would be supporting the application.

He moved to the vote on the report recommendation (to grant consent):

For: 13  
Against: 3  
Abstentions: 1

### **Decision**

The Committee agreed to grant planning permission in principle 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 £660,779 (£16,519.48 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 to ensure that there shall 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), greenkeeper's shed and compound, and alterations to the existing golf course (all as approved by planning permission in principle 08/00078/OUT and approval of matters specified in conditions 13/00229/AMM) have been completed.

For the purposes of the Section 75 Agreement “internal fitting out” shall be defined only as “installation of sanitary ware, light fittings, furniture, electrical equipment and commencement of internal decoration.

(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 40 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.

*Sederunt – Councillor McMillan left the Chamber*



**3. PLANNING APPLICATION NO. 15/00357/P: ERECTION OF CARE HOME AND ASSOCIATED WORKS AT COCKENZIE HOUSE, EDINBURGH ROAD, COCKENZIE**

A report was submitted in relation to Planning Application No. 15/00357/P. Mr Dingwall presented the report, summarising the key points. He referred to the application determined in October 2013 and to the reasons for refusal. He outlined the changes in this new application. The recommendation set out in the report was for refusal; he drew attention to the reasons for refusal.

Mr Dingwall added that if the Committee decided to go against the report recommendation and grant consent then under the provisions of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 the Council must first notify Scottish Ministers of their intended decision. The reason for this was that the Council would be proposing to grant planning permission for a development that may affect a Category A listed building and where the Scottish Ministers (acting through Historic Scotland) had advised against the granting of planning permission.

He responded to several questions from Members regarding the planning history of the site, previous applications for a care home and criteria for location of care homes. He referred to the required consideration of development planning policies and the updating of policies since consideration of earlier applications. He stressed that each case had to be considered on its own merits. The Convener remarked that it was acceptable on occasions to have modern buildings next to a Category A listed building, citing the Scottish Parliament and Holyrood House. Iain McFarlane, Service Manager for Planning, stated that the key was the positioning of the new building, the scale and height and how it would affect the principal elevation of Cockenzie House; this was why Historic Scotland had objected to the application. He added that Historic Scotland very rarely objected to planning applications.

George Gilbert of Gilberts, agent for the applicant, referred to the earlier application and advised that since then considerable work had been done to address concerns. This application was for a building with some architectural merit and the proposal would sit well in relation to, and remain subservient to, its neighbour, Cockenzie House. The material improvements included reduction of the number of bedrooms to 60, all accommodation on two storeys, natural stone and render finishes. The proposed building would sit within a very large open space. The perimeter wall would create a veil around the building. A specialist tree person would be engaged. Up to a 100 full and part time jobs would be created. His client's long term aim was to create a care facility that integrated with the community; there was no problem with the presence of allotments. He commended this application to Members.

Joyce Souness, representing the allotment holders, spoke against the application. She informed Members there were now 18 allotments in use and a long waiting list. There were very few allotment areas in East Lothian; the continuing provision of allotments should be taken into consideration. The benefit to the local community was invaluable; healthy eating, physical activity and improved mental health. She stressed that there must be a more suitable location in the county for a care home.

Bryan Hickman, representing Cockenzie House and Gardens, spoke against the application. Cockenzie House was now a community facility comprising small to medium business enterprises and a hub for tourism. It also had spaces for hire, hosted exhibitions and concerts. There was a tearoom and a community art room; studios were rented out to artists. The 2 holiday cottages available for rent had been fully booked throughout the summer. Around 500 people per week were now visiting

Cockenzie House; it was becoming a tourist destination. The economic value created over its short period of existence had been a remarkable achievement. All of this was now in jeopardy. The heritage of Cockenzie and Port Seton would be eroded. He did not deny the need for a care home but this was not the right location.

In response to questions, Mr Hickman stated that he did not think Cockenzie House, in its current form, would be able to survive the building phase if this application was granted.

Local Member Councillor Innes noted that Cockenzie House was much improved and had made a significant contribution to the local community and economy. He was not convinced however that introducing elderly people would jeopardise the business or atmosphere. Elderly people in this area currently had to be cared for outwith their community. There was a lack of residential sector capacity. He did not feel that the impact on the listed building would be as detrimental as stated in the report. The proposal would bring jobs to the area, would fulfil a need and would provide an excellent environment for elderly people. The residents, their families and staff could contribute positively to Cockenzie House. He would be supporting the application.

Local Member Councillor MacKenzie drew attention to the history of the area, the splendid setting of Cockenzie House itself, its distinctive wall and other features of note. He was very conscious of comments made by both objectors. The social enterprise currently taking place at Cockenzie House was exciting and welcomed, he congratulated all involved. This was jeopardised by the application; he drew attention to the many points detailed on pages 42/43 of the report. Historic Scotland objected to the application. He would be supporting the officer's recommendation for refusal.

Local Member Councillor Brown agreed with Councillor MacKenzie. The previous application for a nursing home had been refused; he saw no reason to go against the report recommendation. He had concerns about the significant number of trees that would need to be felled; this was against Policy DP14. He agreed with the officer recommendation to refuse this application.

Local Member Councillor Libberton stated that Cockenzie House had come alive over the past few years, due to the work of the local community; it was now a thriving community facility. This proposal for a care home was a concern, on several levels; the impact on its current usage, parking facilities and potential overspill onto the High Street and also the allotments. She was not a member of the Planning Committee so could not vote, but if she could it would not be in support of this application.

Councillor Berry made reference to comments made by Councillors Innes and Hampshire, remarking on previous care home provision in the county. The Committee had to consider the longer view; there was a need for care homes, suitable sites had to be identified; this was not such a site. He supported Councillor MacKenzie's comments. Mr Dingwall had reported that it was unusual for Historic Scotland to submit an objection; Members had to take account of this. This late 1870's house would be jeopardised if this proposal went ahead. He agreed with the report recommendation to refuse the application.

Councillor Currie stated that Historic Scotland's objection was key; if the Committee did decide to approve this application then Scottish Ministers had to be provided with the reasons for approval as this was a building of national importance. Councillor Libberton's points about the building coming to life were powerful and important; there was a risk this community facility could be jeopardised. The proposed building would be dominant. The number of trees to be felled would have a huge visual

impact on the area. He agreed with Mr Hickman that Cockenzie House, in its current usage, could not survive the construction phase. He supported the officer's recommendation, and Historic Scotland's recommendation, for refusal.

Councillor Grant understood the reasons for the previous refusal but remarked that the proposal had altered since the last application; capacity and height of the proposed building had been reduced. He agreed that the recent community usage of Cockenzie House had been a positive change. However health and social care provision had also altered significantly and formed a major part of required use in the area. He supported Councillor Innes; there were advantages to allowing this development to go ahead.

Councillor Goodfellow referred to Councillor Innes' point about the lack of a care home in this ward. He drew attention to the planning history of this application and site, referring to the application approved in 1994. This new application had modified plans, reduced mass and footprint; a compromise had been made to the proposal. He would be supporting the application.

Councillor Caldwell remarked that the proposed development could enhance Cockenzie House. He would be supporting the application.

Provost Broun-Lindsay expressed some sympathy with Councillor Innes' view, but remarked that once this new building was in place it would be a permanent structure. This proposal would damage this Category A listed building and curtilage. The 1994 application referred to had been granted in a very different historical context and was not germane to this application. There had been a radical change recently, a venture of some significance to the community now took place in Cockenzie House; to put a 60 bed care home in this location would not be at all beneficial. He supported the officer's recommendation for refusal of the application.

The Convener made reference to the emphasis being placed on Historic Scotland's view. This Committee had previously allowed modern buildings in historic sites in East Lothian. The proposal was for a building in garden ground, to the east of Cockenzie House. Car parking should not be an issue, as family members would only be visiting for short periods of time. The economic development currently taking place was excellent and was supported by this Council. The proposed care home would however provide employment. Regarding the allotments, the applicant had indicated that some would be kept in the grounds; the Council would also look at where it could create more allotments. There was a need for a care home in East Lothian, especially in this ward. He would be supporting this application.

He moved to the vote on the report recommendation (for refusal):

For: 8

Against: 8

Abstentions: 0

Due to the equal number of votes, and in accordance with the Council's Standing Orders, the Convener used his casting vote – for approval of the application.

Mr McFarlane reiterated that Scottish Ministers had to be notified of the Committee's decision, including the recommended conditions, and suggested that the Committee delegate authority for these to be decided between the Convener, local members and officers; this was agreed.

### **Decision**

The Committee agreed to grant planning permission subject to conditions to be determined by the Convener, local members and officers.

*Sederunt – Councillor McMillan returned to the Chamber, Councillor Libberton left*

#### **4. PLANNING APPLICATION NO. 15/00322/P: CHANGE OF USE OF OPEN SPACE TO CAR PARKING AREA AT 13 HOPETOUN TERRACE, GULLANE**

A report was submitted in relation to Planning Application No. 15/00322/P. Mr McFarlane, presented the report, summarising the key points, including the site history and refusal of the previous application due to the impact of proposed bollards on the character and appearance of the Conservation Area, but not on grounds of the proposed use of the site for parking. The proposed decision set out in the report was to grant consent.

Local Member Councillor Berry referred to the number of objections listed in the report stating these were still valid; properties at 15 to 21 Hopetoun Terrace would still be affected. This was a neighbour dispute being escalated through the planning system. He disagreed with, and would not be supporting, the officer's recommendation; the proposal would block access.

Mr McFarlane clarified that a legal right of access was not a material planning consideration.

Local Member Councillor Day expressed disappointment that this application had again come forward, given its history. He agreed with his colleague, the planning system should not be used as a tool for settling neighbour disputes. The proposal was unacceptable; the change of use would be detrimental to the amenity of the area. He could not support the officer's recommendation to grant consent.

Local Member Councillor Goodfellow concurred with his fellow local members; he would not be supporting the application.

Provost Broun-Lindsay stressed that the applicant owned the land in question. He supported the officer's recommendation.

Councillor Currie agreed with the Provost; there was no material planning reason for refusal so he would be supporting the report recommendation.

The Convener expressed agreement with the local members; he would be going against the officer recommendation for the reasons outlined by Councillor Day.

He moved to the vote on the report recommendation (to grant consent):

For: 8

Against: 9

Abstentions: 0

### **Decision**

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

1. The change of use from open space to a car parking area would result in loss of amenity to the area.

**5. PLANNING APPLICATION NO. 15/00290/P: CHANGE OF USE OF PUBLIC OPEN SPACE TO DOMESTIC GARDEN GROUND AND ERECTION OF FENCING AT 7 GREEN APRON PARK, NORTH BERWICK**

A report was submitted in relation to Planning Application No. 15/00290/P. Mr MacFarlane presented the report, summarising the key points. The proposed decision set out in the report was to grant consent.

Ian Duff, agent for the applicant, informed Members that the Council had already agreed to sell the land in question, which would increase the size of the rear garden and create a new side garden. He outlined the reasons for the application, providing background details and other information in support of the proposal.

Local Member Councillor Goodfellow indicated that he had no major problems with most of the application but the open aspect at the front of these properties was the norm for this estate. If the proposed fence had finished further back then he would have had no concerns.

Local Member Councillor Day made reference to the first objection as detailed in the report, disagreeing with the “tunnel” comments. He supported the report recommendation.

Local Member Councillor Berry accepted Councillor Goodfellow’s concerns but did not think this application could be regarded as inappropriate. He would be supporting the recommendation in the report.

The Convener moved to the vote on the report recommendation (to grant consent):

For: 16  
Against: 1  
Abstentions: 0

**Decision**

The Committee agreed to grant planning permission. There were no conditions.

**6. PLANNING APPLICATION NO. 15/00287/P: CHANGE OF USE OF DOMESTIC GARDEN GROUND FOR THE ERECTION OF BUILDING FOR OFFICE (CLASS 2) USE AND ASSOCIATED WORKS AT SITE AT 2 FORTH STREET LANE, NORTH BERWICK**

A report was submitted in relation to Planning Application No. 15/00287/P. Stephanie McQueen, Planner, presented the report, summarising the key points. The proposed decision set out in the report was for refusal of the application.

In response to questions Ms McQueen clarified issues about the pre-application discussions, planning history and details in the report regarding use of the building for office space. She confirmed that it was the building itself, its proportionality on this small constrained site, that informed the recommendation for refusal.

Keith Macdonald of Somner Macdonald Architects, agent for the applicant, referred to previous applications and outlined the differences in this proposal. He made reference to the planning history of the area. He disputed the reasons for refusal detailed in the report. The proposal was very modest; the design was inoffensive and not harmful to the Conservation Area. The Council’s Road Services had raised no

objection. The Community Council was supportive of the proposal. He hoped the Committee would see the merits of the proposal.

John Papworth, neighbouring resident, spoke against the application. He was also representing two other neighbours, Mr/Mrs McMinn and Mr/Mrs Cucchi. He raised several points regarding access, informing Members there was no public road adjacent to this site. The access land was owned by Mr Cucchi, therefore the developer had no right of access so no opportunity to build or service the site. He also raised concerns about the removal of the cherry tree.

Mr Papworth, in response to questions, clarified the layout, positioning and garden area of the flats at 2 Forth Street Lane.

In response to further questions, Mr McFarlane clarified that the removal of any significant tree in a Conservation Area required the appropriate consent. Ms McQueen confirmed that the tree would have to be removed to facilitate the proposed building. Regarding ownership of the land, Mr McFarlane advised that this was not a material planning consideration. He explained that an applicant was required by legislation to state that they either owned the land of the site in question or to provide details of the owner. This site was in the ownership of the applicant; the access lane was in the ownership of Mr Cucchi.

Local Member Councillor Berry remarked that this was a controversial and sensitive site. He alluded to the planning history of this area and to the numerous dense, infill developments. He did not agree with the officer's position. He acknowledged that the legal issues regarding access, referred to by the objector, were not material considerations. Office space was urgently needed in the town centre; he would be supporting the application.

Local Member Councillor Day stated the proposal was an acceptable form of development. The legal issues were not matters for this Committee. This was an imaginative scheme; the business use was welcomed. He supported the application.

Local Member Councillor Goodfellow expressed concern about the loss of the cherry tree but felt that having a building on this site would be advantageous. He would be supporting the application.

Councillor Currie referred to approval granted in June for an application on this street; there was no reason not to support this application. This was an acceptable proposal, which he supported.

Provost Broun-Lindsay felt the proposal was quite ingenious use of this piece of ground. He was supportive of the application.

Councillor McMillan echoed those comments; the proposal for office use within the town centre would be beneficial. On balance, he would be supporting the application.

Councillor McLeod felt the proposal would enhance the area; he supported the application.

The Convener moved to the vote on the report recommendation (for refusal):

For: 2  
Against: 15  
Abstentions: 0

### **Decision**

The Committee agreed to grant planning permission, subject to conditions to be determined by the Convener, local members and officers.

*Sederunt – Councillors Goodfellow, Currie and Broun-Lindsay left the Chamber*

### **7. PLANNING APPLICATION NO. 15/00511/P: EXTENSION TO HOUSE WITH 1<sup>ST</sup> FLOOR BALCONY, FORMATION OF DECKED AREA AND ERECTION OF SCREEN AT 53 OLD ABBEY ROAD, NORTH BERWICK**

A report was submitted in relation to Planning Application No. 15/00511/P. Mr McFarlane presented the report, summarising the key points. He tabled drawings showing the overshadowing, as requested by Members, together with details of the design of the previously approved extension and the now proposed design. The proposed decision set out in the report was to grant consent.

Mr McFarlane responded to questions from Councillor Berry, providing clarification on the criteria of the applicable daylight/sunlight tests.

Christopher Thomson of Christopher Thomson Design, agent for the applicant, informed Members that planning permission had previously been granted for a 2 storey extension; for his clients this had been a key driver in purchasing this property. The proposal had met all the relevant planning criteria; there was nothing from a technical viewpoint to negate granting planning permission.

Mrs Lockhart, neighbouring resident, spoke against the application. She objected to the scale and size of the proposed extension; it was very large and technically 3 storeys high taking account of the basement. It would be an unsightly, permanent structure, not in keeping with the character of the house. There was no other extension of this height on this street. The proposal would have a major impact; their garden would be completely overshadowed and their garden amenity lost.

Local Member Councillor Day remarked that this was a difficult application. He had two areas of concern. The design was inappropriate, as were the materials proposed. There was a significant degree of overshadowing and the cumulative effect would have a considerable impact. He did not support the report recommendation.

Local Member Councillor Berry sympathised with his colleague's view; however Members were confined by planning rationale. He was inclined to support the application as there were not sufficient planning reasons for refusal.

Councillor McLeod supported the officer's recommendation.

The Convener moved to the vote on the report recommendation (to grant consent):

For: 13  
Against: 1  
Abstentions: 0

### **Decision**

The Committee agreed to grant planning permission subject to the following 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.

Signed .....

Councillor Norman Hampshire  
Convener of the Planning Committee



**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 6 October 2015  
**BY:** Depute Chief Executive  
(Partnerships and Community Services)  
**SUBJECT:** Application for Planning Permission for Consideration

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Application No. **15/00136/AMM**

Proposal Approval of matters specified in conditions of planning permission in principle 14/00903/PPM - Proposed infrastructure, access, landscaping and site development works including distributor road and access junctions onto the A199 and A6094, footpaths/cycleways, suds basins, acoustic bunds and development platforms

Location **Land To South, East And West  
Wallyford  
East Lothian**

Applicant East Lothian Developments Ltd

Per Derek Scott Planning

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

Although this application is for the approval of matters specified in conditions of planning permission in principle 14/00903/PPM it has to be determined as a major development type application because the area of the application site is greater than 2 hectares. Accordingly the application cannot be decided through the Council's Scheme of Delegation. It is therefore brought before the Planning Committee for a decision.

The application site is predominantly bounded to the north and west by agricultural land and by the northern part of Wallyford, to the south by the A1 trunk road, and otherwise to the east and to the south by agricultural land. The neighbouring agricultural land forms part of the Edinburgh Green Belt.

On 30 November 2009 planning permission in principle (Ref: 09/00222/OUT) was granted for a mixed use development on some 86 hectares of predominantly agricultural land to the east, south and southwest of Wallyford. The site included Wallyford Community Woodland, the public roads of Salters Road and Inchview Road, and the area of open space that is immediately to the southeast of Wallyford Community Centre.

That land is the strategic housing site of Proposal H7 of the adopted East Lothian Local Plan 2008.

Planning permission in principle (12/00924/PPM) was subsequently sought for renewal of planning permission in principle 09/00222/OUT, as submitted to the Council on 26 November 2012. On 1 April 2014 the Council resolved to approve the application subject to the required Section 75 Agreement and planning permission in principle was duly granted with conditions on 14 November 2014 following the registration of that agreement.

Subsequent to this the applicant sought and was granted permission for the following variations to the conditions of planning permission in principle 12/00924/PPM:

- Variation of condition 2 of planning permission in principle 12/00924/PPM to allow for the development and occupation of residential units from both the western (A6094 - Salters Road) and northern (A199) ends of the site (Ref: 14/00913/PM); and
- Variation of condition 5 of planning permission in principle 12/00924/PPM to allow for up to 90 units to be completed in Year 1, up to 150 units in Year 2, up to 150 units in Year 3 and up to 60 units in Year 8 (Ref: 14/00916/PM).

In September 2015 planning permission in principle (Ref: 14/00903/PPM) was granted for 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 the proposed local centre.

The elements of the approved mixed use development include residential development, community buildings including a new school and community facilities, office units, a restaurant, business units, general industrial units, storage and distributions units, trade counter units, a residential institution, a non-residential institution, hot food takeaways, playing fields, open space, allotments, landscaping and associated infrastructure provision.

Condition 1 of planning permission in principle 14/00903/PPM requires that the development of the site should generally accord with the Indicative Masterplan docketed to the planning permission in principle.

The approval of matters specified in conditions now sought is for infrastructure associated with the mixed use development of the Wallyford site.

When this application was first submitted approval was sought for matters specified in conditions of planning permission in principle 12/00924/PPM. The applicant subsequently requested that the description of the application be changed so that approval was sought for matters specified in conditions of planning permission in principle 14/00903/PPM. In terms of that request, the applicant did not seek to change any part of the proposed infrastructure works for which approval is sought. The application description was changed in September 2015 and the one party who had made a written representation was notified of this change and was offered the opportunity of making further comment.

The proposed infrastructure consists of (i) the construction of two access junctions, one onto the A199 road and one onto the A6094 road; (ii) the formation of a distributor road; (iii) the formation of paths; (iv) the formation of three SUDS detention basins; (v) the landscaping of parts of the site; (vi) the erection of a 1.4 metres high stone wall; (vii)

upgrading works to Wallyford Community Woodland; (viii) the creation of development platforms; and (ix) the installation of an acoustic barrier along the southern boundary of the site. The application site has an area of some 80 hectares.

The drawings submitted in support of the application shows how access to the site would be taken from the A199 road, via a new roundabout that would also provide access to the Strawberry Corner Garden Centre, and from the A6094 road, via a new priority junction. The proposed distributor road would run between the two new proposed access junctions. One of the proposed detention ponds would be formed in the northeast corner of the site, to the southeast of the proposed roundabout. Another would be formed in the southeast part of the site, to the southeast of part of the proposed distributor road. The third proposed detention pond would be formed at the western end of the site, to the northeast of the proposed priority junction. The proposed landscaping includes avenue tree planting along either side of the proposed distributor road and woodland belts that could be planted along the eastern, southern and much of the northern and western edges of the site. The 1.4 metres high stone wall would be erected along part of the northern boundary of the site, to the south of the A199 road. It would replace an existing stone boundary wall, which would be demolished to facilitate the proposed development. The submitted drawings also show the layout of paths that would be formed through the application site. The proposed upgrading works to Wallyford Community Woodland are contained in a woodland management plan, which is submitted with the application. The proposed upgrading works include the formation of a 3.0 metres wide footpath through the Woodland that would be on an east to west alignment. The footpath, which would be lit, would provide a safe route to the new school that has been approved by planning permission in principle 14/00903/PPM. Detailed drawings have been submitted with the application showing the ground levels of the different development platforms that are proposed within the site. Extensive cut and fill would be required to create the proposed platforms. The proposed acoustic barrier along the southern boundary of the site would take the form of a 2.0 metres high close boarded timber fence on steel posts atop of an earth bund or the existing embankment. It is also proposed to erect a 3.0 metres high acoustic barrier around the eastern, southern and western boundaries of the southernmost of the two playing fields approved by planning permission in principle 14/00903/PPM and along the western boundary of the northernmost of the two approved playing fields.

Condition 25 of planning permission in principle 14/00903/PPM states that the proposed development should 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 should submit to and have approved in advance by the Planning Authority.

In respect of condition 25, approval is also sought for an archaeological report that is submitted with the application. The report outlines the archaeological investigations that have already been undertaken and the further work that is still required. Given the findings of the current archaeological investigations, the report concludes that the further work required consists of the implementation of artefact analyses and documentary research and publication.

Subsequent to the registration of this application, amended plans have been submitted showing the proposed roundabout positioned further south than the position of the roundabout as it was originally proposed. An amended woodland management plan has also been submitted to address comments made by the Council's countryside officer.

The application is supported by a noise mitigation design report and a civil and ground engineering report.

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 H2 (Development Frameworks), DP2 (Design), T2 (General Transport Impact) and DP20 (Pedestrians and Cyclists) of the adopted East Lothian Local Plan 2008.

A material consideration in the determination of this application is the approved development framework for the Wallyford Settlement Expansion & Regeneration.

The framework sets out the land uses expected for the allocated site and how the Council requires the site to be developed.

Two written representations have been received. They are both made on behalf of Strawberry Corner Garden Centre and raise objection to the proposed development. The objections relates to the proposed roundabout, which it is felt would result in difficulties accessing the existing site and business, significantly undermining pedestrian and vehicular safety. In particular, it is stated that various customer and service traffic conflicts could materialise and an HGV would not be able to manoeuvre into the current parking position. Reconfiguring the existing arrangements would impose an unfair liability on the objector, a trading business. The objector therefore considers that the application should be refused.

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

Wallyford Community Council advise that the expansion of Wallyford has been widely accepted by the community, who look forward to the new primary school being in place.

By the grant of planning permission in principle 14/00903/PPM, approval has been given for the principle of the mixed use development of the allocated land at Wallyford. There can therefore be no objection in principle to the proposed infrastructure associated with the mixed use development of the Wallyford site.

Therefore, in the determination of this application the Council, as Planning Authority, can only concern itself with the siting, design and external appearance of the development and the landscaping of and means of access to the site. In this regard the detailed proposals have to be considered against relevant development plan policy, the Council's approved development framework for the Wallyford Settlement Expansion & Regeneration and the Indicative Masterplan and conditions attached to planning permission in principle 14/00903/PPM.

By virtue of their size, scale, proportions, positioning, form and materials, the access junctions and distributor road, paths, SUDS detention basins, landscape works and acoustic barriers are all appropriate for their locations, in keeping with their surroundings and acceptable to their purpose of serving the mixed use expansion of Wallyford.

The proposed stone wall would occupy a prominent roadside location. To safeguard the visual amenity of the area and to reflect the existing natural stone boundary wall, the

proposed wall should be constructed of natural stone. The wall should also be erected prior to any of the residential units approved by planning permission in principle 14/00903/PPM, unless otherwise approved in writing by the Planning Authority. This can reasonably be made a condition of the approval of matters specified in conditions for the proposed infrastructure development. Subject to the imposition of this condition, the proposed stone wall would be appropriate for its location and in keeping with its surroundings.

Detailed site levels drawings have been submitted with the application showing the ground levels of the different development platforms that are proposed within the site. Extensive cut and fill would be required to create the proposed platforms. However those drawings do not contain the ground levels of the existing ground that is outwith, but adjacent to, the application site. It is not therefore possible to clearly determine what impact the proposed change in ground levels would have on that adjacent land. For example, were the ground levels of one of the development platforms to be increased in height, then there is the potential that a development on it may well have an adverse effect on the privacy and amenity of neighbouring land, particularly if that land were in residential use. It would therefore be prudent to impose a condition requiring final site setting out details to be submitted to and approved by the Planning Authority. Those details should include finished ground levels of the development relative to existing ground levels of the site and of adjoining land and building(s).

By its nature and by its positioning the other proposed infrastructure would not result in any harm to any neighbouring land use or to the privacy or amenity of any neighbouring residential property.

Condition 20 of planning permission in principle 14/00903/PPM requires details of all noise mitigation measures to be submitted to and approved by the Planning Authority. The mitigation measures should include the erection of an acoustic barrier along the southern boundary of the site.

A noise mitigation design report has been submitted with the application. The mitigation measures proposed in the report includes the provision of an acoustic barrier along the southern boundary of the site, adjacent to the A1 trunk road.

The Council's Environmental Protection Manager raises no objection to the proposed development. He has carefully considered the noise report and agrees with the mitigation measures proposed. If those measures were implemented then the Environmental Protection Manager is satisfied that the future occupants of the residential units approved by planning permission in principle 14/00903/PPM would benefit from a sufficient level of privacy and amenity.

Condition 20 of planning permission in principle 14/00903/PPM also requires the submission of a timetable for the implementation of all of the proposed noise mitigation measures. The submitted noise mitigation design report does not include such a timetable. It would therefore be prudent to impose a condition again requiring a timetable for the implementation of all of the proposed noise mitigation measures to be submitted to and approved by the Planning Authority.

The proposed acoustic barrier, which would take the form of a 2.0 metres high close boarded timber fence on steel posts atop of an earth bund or the existing embankment, would be erected in close proximity to the A1 trunk road. The approved Development Framework states that the proposed landscaping framework must mitigate a corridor effect developing along the A1 trunk road. It requires the provision of a tree belt along the southern and south eastern boundaries of the application site.

The applicant's infrastructure landscape masterplan sets out the landscaping proposals for the site. It shows that a mixed native hedgerow would be planted along the southeast boundary of the site and along the southern boundary against the A1 trunk road. It also shows that woodland planting would be provided within boundary compartments of the site. It does not however clearly specify all of the boundaries that this would apply to. Therefore, for the clear avoidance of doubt, a condition should be imposed requiring that woodland planting also be provided along the southern and south eastern boundaries of the site. Along the southern boundary, the woodland planting should be planted on either side of the proposed acoustic barrier and a minimum of 15% of those trees should be of a standard variety.

The Council's landscape project officer advises that the other elements of the proposed scheme of landscaping are acceptable. He does however recommend that the trees along Fa'side Avenue should be protected during construction activity. This can be secured through the imposition of a planning condition.

On all of the foregoing considerations of layout, design, amenity and landscape, the proposed infrastructure development is consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy DP2 of the adopted East Lothian Local Plan 2008, with the approved development framework for Wallyford, and with the Indicative Masterplan docketed to planning permission in principle 14/00903/PPM.

The matter of site drainage was considered through the determination of previous application 14/00903/PPM. The Indicative Masterplan docketed to planning permission in principle 14/00903/PPM indicates how in principle three sustainable urban drainage scheme (SUDS) detention basins could be formed within the site to attenuate the flow of surface water run-off. Condition 27 of planning permission in principle 14/00903/PPM states that a SUDS scheme should be submitted for the written approval of the planning authority, in consultation with the Scottish Environment Protection Agency. The position of the three SUDS detention basins now proposed is consistent with the Indicative Masterplan. As required by condition 27, the Scottish Environment Protection Agency have been consulted on the application. They raise no objection to the proposed locations of the three SUDS detention basins. They are also considering the calculations that have been submitted by the applicant and which have informed the design of the three SUDS detention basins. At the time of preparing this report, no response on this matter has been received by SEPA and it therefore is an unresolved material consideration in the determination of this application.

Scottish Water were consulted on the planning application but have not commented on it.

The Council's Archaeology/ Heritage Officer confirms that, in accordance with condition 25 of planning permission in principle 14/00903/PPM, the applicant's archaeological report is generally to an acceptable standard.

In the applicant's civil and ground engineering report, it is stated that "there are recorded and unrecorded shallow coal mineworkings beneath the majority of the eastern half of the site and a relatively small area immediately west of the footbridge over the A1. There are thirteen identified mine shafts, two adits and the potential for unrecorded mine entries. These workings will be stabilised by drilling and pressure grouting as part of the enabling works permitted under The Town and Country Planning (General Permitted Development (Scotland) Order 1992 (as amended)). The shafts will also be treated and capped as part of these works. The treatment works commenced in August 2015 and are likely to take 9 months to complete."

The Coal Authority do not disagree with these proposals. They do however recommend that site investigation and remedial works should be submitted for the prior approval of the Planning Authority and thereafter implemented prior to the commencement of development (excluding groundworks and site regrading). These matters can be secured through the imposition of a planning condition.

The approved development framework recognises that the Community Woodland will have an important central location in the expanded settlement. Condition 20 of planning permission in principle 14/00903/PPM requires that a woodland management plan for the Woodland should be submitted to and approved in writing by the Planning Authority. The plan should further the value of the resource for biodiversity as well as people, and should 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.

A woodland management plan was submitted with the application. In May 2015 an amended plan was submitted to address comments made by the Council's countryside officer. The amended plan generally complies with the requirements of condition 20 of planning permission in principle 14/00903/PPM. The countryside officer is satisfied with the amended plan and raises no objection to the proposed development.

The Council's outdoor access officer raises no objection to the proposed development, being satisfied with the network of paths being proposed within the site. The proposed paths will, when all in place, provide a permeable network of connecting links for pedestrians and cyclists between the development plots of the Wallyford expansion and also between the site and the adjacent residential areas of Wallyford to the north and west.

The principles of the means of accessing the proposed mixed use development are already decided by the grant of planning permission in principle 14/00903/PPM. These are that vehicular access to the site will be provided via a standard roundabout off the A199 road to the south east, and from a priority junction off the A6094 road from the south west.

The submitted details for accessing the site are in accordance with these established principles of the means of accessing the mixed use development.

Strawberry Corner Garden Centre are concerned that the proposed roundabout would result in difficulties accessing their existing site and business and would significantly undermine pedestrian and vehicular safety.

The proposed roundabout is similar to the roundabout indicatively shown in the Masterplan docketed to planning permission in principle 14/00903/PPM.

This matter has carefully been considered by the Council's Road Services. They note that the proposed relocation of the roundabout further south has created stacking room for heavy goods vehicles whilst the gates to the garden centre are either closed or open. The roundabout access would be for service vehicles only and could be appropriately signed. Road Services also advise that the applicant has completed swept path analysis of heavy goods vehicle's entering and leaving the site which illustrates that these

manoeuvres can be safely and satisfactorily made. The proposals also show a second priority junction access point to the west of the proposed roundabout that would provide customer access to the Garden Centre via the existing customer access. Road Services advise that this segregated customer access would reduce the potential conflict between customer and service vehicles as there would be two separate designated accesses. Road Services are therefore satisfied that proposed access arrangements would not create a road safety hazard for customers of the garden centre or vehicles servicing it. They do however recommend that details of a signage strategy to promote the alternative road layout and access arrangements for the garden centre should be submitted to and approved by the Planning Authority. This can be secured through the imposition of a planning condition.

The works to create the new site access from the A199 road also involves the realignment of the section of the road between the Wallyford Toll roundabout and the proposed new roundabout. A new bus layby would be formed immediately to the north of the realigned section of road. Road Services recommend that the new layby should include a shelter and Kassel kerbs. This requirement can reasonably be made a condition of the approval of matters specified in conditions for the proposed infrastructure development.

Subject to the imposition of the aforementioned conditions, Road Services raise no objection to the submitted details.

On these foregoing transportation and other access considerations the proposed infrastructure development is consistent with Policies T2 and DP20 of the adopted East Lothian Local Plan 2008, with the approved development framework for the Wallyford Settlement Expansion & Regeneration, and with the Indicative Masterplan docketed to planning permission in principle 14/00903/PPM.

## RECOMMENDATION

That approval of matters specified in conditions for the proposed infrastructure development be granted subject to the following conditions:

- 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 finished ground 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.

Reason:

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

- 2 The stone wall to be erected along the A199 frontage of the site shall be constructed in natural stone. A sample of the natural stone to be used shall be submitted to and approved in advance by the Planning Authority. The stone wall shall thereafter be erected in accordance with the sample so approved and prior to the occupation of any of the residential units approved by the grant of planning permission in principle 14/00903/PPM, unless otherwise approved in writing by the Planning Authority.

The stone wall once erected, will thereafter be retained unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the northern stone boundary wall is erected in the interests of the visual amenity of the area.



- 3 Prior to the commencement of development, a timetable for the implementation of all of the proposed noise mitigation measures specified in the docketed RMP Technical Report No. R-6528E-RGM-CS shall be submitted to and approved by the Planning Authority.

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

Reason:

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

- 4 Unless otherwise approved in advance by the Planning Authority, no development shall take place on site until the existing trees along Fa'side Avenue have been protected by a fence, to be approved in writing by the Planning Authority, erected around each tree or group of vegetation at a distance from each tree trunk commensurate with the tree crownspread or such distances as may be agreed in writing by the Planning Authority. Within the areas so fenced off the existing ground level shall neither be raised or lowered and no materials, temporary buildings, plant, machinery or surface soil shall be placed or stored and no fires shall be lit thereon without the prior written approval of the Planning Authority. Details of any trenches or services required in the fenced off areas shall be submitted to and approved by the Planning Authority prior to any such works being carried out and such trenches or services shall be excavated and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

Reason:

To ensure the retention and maintenance of trees which are an important feature of the area.

- 5 The woodland planting detailed in the docketed infrastructure landscape masterplan shall be provided along all of the boundary compartments of the site, including along southern and south eastern boundaries of the site. Along the southern boundary, the woodland planting shall be planted on either side of the proposed acoustic barrier and a minimum of 15% of the trees within that woodland planting shall be of a standard variety.

Reason:

To satisfactorily integrate the development into its surroundings, in the interests of the visual amenity of the area.

- 6 Prior to the commencement of development: a) a scheme of intrusive site investigations for the site; and b) a scheme of remedial works, shall be submitted to and approved by the Planning Authority, following consultation with the Coal Authority.

Prior to the commencement of development (excluding groundworks and site regrading) the scheme of intrusive site investigations shall be undertaken and the remedial works shall be implemented in accordance with the details so approved.

Reason:

To secure the necessary site investigations for the shallow coal workings and the mine entries, together with the implementation of the necessary remedial works, in order to ensure that development does not occur above or too close to these mining hazards.

- 7 Prior to the commencement of development a signage strategy to promote the alternative road layout and access arrangements for Strawberry Corner Garden Centre shall be submitted to and approved by the Planning Authority. The strategy shall include a timetable for the display of any necessary signage.

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

Reason:

In the interests of road safety.

- 8 A bus shelter and Kassel kerbs shall be provided within the new bus stop layby to be formed to the west of the roundabout hereby approved. Unless otherwise approved in writing, the bus shelter, Kassel kerbs and bus stop layby shall be formed and made available for use prior to the occupation of any of the residential units approved by the grant of planning permission in principle 14/00903/PPM.

Reason:

To encourage sustainable forms of transport in the interests of road safety.

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

**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 6 October 2015  
**BY:** Depute Chief Executive  
(Partnerships and Community Services)  
**SUBJECT:** Application for Planning Permission for Consideration

**3a**

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*Note - this application was called off the List by Councillor Berry for the following reason: this controversial proposal to demolish a period building that fits well with the Conservation Area in which it lies seeks to replace it with a structure that is wholly disproportionate on its lot when compares to adjacent properties.*

Application No. **15/00563/P**  
Proposal Erection of 2 flats and associated works  
Location **21 Westgate  
North Berwick  
East Lothian  
EH39 4AE**  
Applicant Melrose and Porteous  
Per Somner Macdonald Architects  
RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

This application relates to the site of Melrose & Porteous Solicitors, which occupies a prominent corner location on the east side of the junction of Bank Street with St Andrew Street, and on the north side of Westgate, North Berwick. The application site comprises of a single storey detached office building on the southwestern part of the site and associated land on the north, east and south sides of the building, parking areas for the office building and a single storey garage building on the east side of the site which is the westernmost of a row of garages. The site is served by both a vehicular access taken from Bank Street, and a vehicular access taken from St Andrew Street. In its location the site is within North Berwick Town Centre and is therefore defined as a mixed use area by Policy ENV2 of the adopted East Lothian Local Plan 2008. The site is also within North Berwick Conservation Area.

The site is bounded to the north by a grassed and paved surfaced area in ownership of the applicant beyond which is the public road and footpath of Westgate, to the east by the substantial two-storey and attic flatted building of Marine Lodge with its associated garages, garden and car parking areas, to the south by St Andrew Street and to the west by Bank Street. A rubble stone wall encloses the majority of the west boundary of the

site and the entire south boundary of the site. The west elevation wall of the existing single storey detached office building also forms part of the west boundary of the site. Planning permission is sought for the erection on the site of a single storey and attic building containing 2 flats, the formation of 5 car parking spaces, the formation of an elevated pedestrian walkway, the formation of a new vehicular and pedestrian access into the site from Bank Street and the formation a new pedestrian access into the site from St Andrew Street.

To facilitate this proposed development the existing single storey detached office building on the site would be demolished. Through separate application 15/00563/CAC conservation area consent is sought for the demolition of the existing office building. A report on application 13/00627/CAC is at this time on the Committee Expedited List.

The proposed flatted building would be positioned on the majority of the larger southern part of the site at its western end and would be aligned with its principle elevation facing onto Bank Street. Its external walls would be finished in a mix of natural red sandstone and textured render. It would have a mansard roof comprised of central flat section clad in a single ply membrane which would be pitched down to eaves where it would be clad in natural slate. Within the roof slope would be formed a number of dormer windows which would have lead clad fascias and cheeks. Its windows and glazed openings would have grey coloured timber frames. A small external terraced area would be formed at ground floor level on its front (north) elevation.

The proposed flatted building would replicate the architectural form and materials of the existing building on the site which has a flat central and slated mansard roof, red sandstone walls, a large dormer window in its north elevation roof slope and a wallhead dormer in its east elevation roof slope.

It is proposed that the existing vehicular access into the site from Bank Street be built up in rubble stone to match the existing lengths of west boundary wall of the site. A new vehicular access would be formed further north along the west boundary of the site which would allow access to two car parking spaces within the site, which would be formed to the side (north) of the proposed flatted building. Three further car parking spaces would be formed to the rear (east) side of the proposed flatted building accessed from the existing vehicular access to the site from St Andrew Street. Also proposed is that a west boundary rubble stone wall would be formed from the west elevation wall of the existing single storey detached office building which would be demolished.

Two new pedestrian accesses would be formed into the site, one from Bank Street and one from St Andrew Street. An elevated pedestrian walkway would be formed at the new pedestrian access from St Andrew Street which would serve the flat to be formed at first floor level in the proposed flatted building. The proposed pedestrian walkway would be formed of steel with glass balustrades.

Since the application was registered, amended application drawings have been submitted detailing the following non-material changes:

\* Amendments to the footprint of the proposed flatted building for the purposes of tree retention.

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 ENV2 (Town and Village Centres, Other Retail or Mixed Use Areas), ENV4 (Development within Conservation Areas), DP2 (Design), DP7 (Infill, Backland and Garden Ground Development), DP14 (Trees on or adjacent to Development Sites), 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, Scottish Planning Policy: June 2014 on development within a conservation area, housing development and Scottish Government advice given in Planning Advice Note 67: Housing Quality.

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.

Further policy and advice on design is provided in Designing Places and Planning Advice Note 67: Housing Quality which explains how Designing Places should be applied to new housing. In PAN 67 it is stated that the planning process has an essential role to play in ensuring that: (i) the design of new housing reflects a full understanding of its context - in terms of both its physical location and market conditions, (ii) the design of new housing reinforces local and Scottish identity, and (iii) new housing is integrated into the movement and settlement patterns of the wider area. The creation of good places requires careful attention to detailed aspects of layout and movement. Developers should think about the qualities and the characteristics of places and not consider sites in isolation. New housing should take account of the wider context and be integrated into its wider neighbourhood. The quality of development can be spoilt by poor attention to detail. The development of a quality place requires careful consideration, not only to setting and layout and its setting, but also to detailed design, including finishes and materials. The development should reflect its setting, reflecting local forms of building and materials. The aim should be to have houses looking different without detracting from any sense of unity and coherence for the development or the wider neighbourhood.

A total of 42 written representations have been received to the application. Of these 41 raise objection to the proposed development 1 support it. The main grounds of objection can be summarised as follows:

- (i) the proposed flatted building would be too modern, have too many oversized windows, be bigger than the existing building and would be ugly and an abomination;
- (ii) the proposed flatted building would not preserve or enhance the character and appearance of the Conservation Area and would not be in keeping with the area, appearing as an eyesore;

- (iii) the proposed development would lead to the loss of a historic coach house that is part of the history, fabric and heritage of North Berwick and is architecturally distinctive;
- (iv) the proposed external ramp would not be in keeping with the Conservation Area;
- (v) the proposal is contrary to Policy ENV2 of the adopted East Lothian Local Plan 2008 as it involves a change of use and the building has not been marketed for all other acceptable town centre uses;
- (vi) there is no justification for the loss of the existing building;
- (vii) there is a lack of existing commercial properties in North Berwick;
- (viii) the proposed flatted building would lead to a loss of light, privacy and amenity to neighbouring residential properties;
- (ix) the proposed development would lead to traffic and parking problems; and
- (x) trees and shrubs on the site should be protected.

The representation in support of the application states that the proposals represent a balanced and proportionate revitalisation of a redundant building.

Policy ENV2, as it applied to town centres, states that changes of use to residential, other than from retail, will only be allowed where the Council is satisfied that that the premises have been suitably marketed for all other uses acceptable in principle within such an area and that no reasonable offers have been received.

Contrary to that which is stated by one of the objectors, the proposal does not involve the change of use of the existing building but a redevelopment of the site. Therefore there is no requirement in this case to market the existing building for all other uses acceptable in principle on a town centre area.

North Berwick Community Council, as a consultee on the application, advises that although this property is not listed it is viewed by many in the town to be a pleasantly different business property in charming red sandstone in an unusually open setting. It is commonly viewed as a surprising oasis glimpse on the entry and exit from the town. Although not marked with having any listing it forms part of a special Conservation townscape and highlights a part of the town history, unusual in that it has survived and is clearly visible. Prior to its sympathetic restoration in 1975 it was a disused coach house. The restoration architect received an award presented by the Queen for his design. The coach house tag is not unusual as there are others in the town that have been adapted into houses, but unlike this property are not visible or identifiable as such. The Community Council continue that while the proposed redevelopment would mean gaining an additional two town centre flats which would normally be welcomed, it would also mean losing a prime central business property, a loss that most certainly would not be welcomed and would not prove to be an improvement to this part of the Conservation area. The demolition of such a building of historic interest in a prime area which from the main street provides the opportunity of a glimpse to a quaint, conserved, historic, open area would be a sad loss to the street scene.

In relation to the proposed two flats the Community Council state that the revised design is a major improvement on the original block of flats put forward, however they do not see this current application as a good enough design to fill such a key position, which would also mean the loss of a key business opportunity for the town centre. In addition, the

proposed new flats would not meet the usual criteria for the ground level to be for business related use. The bridge to the upper flat would not be in keeping with the area and because of its setting and height may prove to be a barrier for some people with disabilities. The new property would not be so unusual that it would catch the eye of passers-by and a direct historic link with old North Berwick would be lost. Undoubtedly, the character of that part of the town's essence would be forever changed and as a small seaside holiday location North Berwick has to retain as much as possible of those elements that make it attractive and different.

In summary the Community Council could not see these proposals providing any enhancement to the town and are unable to support the application.

Policy ENV2 of the adopted East Lothian Local Plan 2008, as it applies to the mixed use area in which the site lies supports the principle of retailing, business and office use, restaurants and leisure and entertainment. It is stated in Policy ENV2 that housing may also be acceptable. Proposals that would have a significant environmental impact, particularly on existing housing will not be permitted.

The application site is currently in commercial use as a solicitor's office. The proposed use of the site for residential use with erection on it of the proposed flatted building is supported by Policy ENV2 of the adopted East Lothian Local Plan 2008. Whilst the existing office use is part of the service provision afforded to the Town Centre there is nothing in current planning policy that stipulates that this use of the site has to be retained.

Policy ENV2 states that new build development must reinforce the vertical mix of land uses typical of East Lothian's town and village centres. Where development of two or more storeys is appropriate, the Council will expect retail or commercial use on the ground floor and residential or other town centre use above.

As the proposed building is only single storey with accommodation within its roof space there is no requirement in this instance to have any retail or commercial use on the ground floor. The proposal is not contrary to Policy ENV2 of the adopted East Lothian Local Plan 2008.

The proposed development would be redevelopment of a brownfield site since it would replace an existing building to be cleared from the site. As the site is within the urban area of North Berwick the proposed redevelopment would be urban infill housing development.

With respect to infill, backland and garden ground development Policy DP7 of the adopted East Lothian Local Plan 2008 states that, amongst other principles of development, it must, by its scale, design and density be sympathetic to its surroundings and not be an overdevelopment of the site.

Policy DP2 of the adopted East Lothian Local Plan 2008, amongst other things requires that all new development must be well designed and integrated into its surroundings.

In this case regard must also be paid to the desirability of preserving or enhancing the character or appearance of the North Berwick Conservation Area as required by Scottish Planning Policy: June 2014 and Policy ENV4 of the adopted East Lothian Local Plan 2008.

Thereafter the main determining factor in this case is whether, with regard to national, strategic and local planning policy and guidance and other material considerations, the

fitting of the flatted building and associated works into the application site is acceptable with due regard to their potential impact on the character and appearance of the Conservation Area, including their impact on the character and residential amenity of the area, including their impact on neighbouring residential properties.

Whilst it is not essential to replicate existing building styles to build successfully in a conservation area and indeed in other locations, both national planning and development plan policy nevertheless state that in designing proposed new buildings developers should think about the qualities and the characteristics of place. The development should reflect its setting and local forms of building and materials. The aim should be to have buildings looking different without detracting from any sense of unity and coherence for the development or the wider neighbourhood.

The urban form of Westgate in the locality of the application site changes from east to west.

The eastern part comprises mostly of tightly packed traditionally designed stone buildings of varying heights fronting directly onto the public footpath of Westgate, many having commercial frontages at ground floor level.

The western part (including the application site) comprises substantial, detached and semi-detached two and two and a half storey traditional stone buildings with slated pitched roofs, the majority of which have smaller subservient buildings within their grounds. These buildings set back from the road with a lower density of development with open space to the front and rear of them giving a more generous pattern and density of development. This gives a defined density and character of layout and built form to this part of North Berwick Conservation Area.

In its position on the southwest side of Marine Lodge the proposed single storey and attic building would be in a roadside location in a prominent corner position readily visible in the streetscape. It would be a relatively modestly sized building positioned fronting Bank Street. It would not be significantly larger in height, scale and massing than is the existing single storey office building. The proposed flatted building, with its red sandstone and rendered walls and slate roof would be in keeping with the materials finish of the buildings in the vicinity of the application site. It would by its size and positioning appear as a subservient building to that of Marine Lodge maintaining the relationship of large buildings with smaller subservient buildings within their grounds that is a character of this part of North Berwick. It would, in its position to the south of its plot adjacent to the southwest corner of Marine Lodge and by its height, size and massing be a sympathetic and complimentary addition in its relationship with the building of Marine Lodge. By virtue of its size, height, massing and positioning the proposed flatted building would be appropriate to its place within the streetscape. It would be a sympathetic addition to this part of the streetscape of not only Westgate but Bank Street and St Andrew Street also and thus would be in keeping with its surroundings.

The proposed flatted building, by virtue of its single storey detached form, subservient proportionality and its positioning on the site of the existing building would be in keeping with the density of built form that characterises the distinctive streetscapes of Westgate, Bank Street and St Andrew Street and thus the character and appearance of this part of North Berwick Conservation Area. The proposed flatted building would respect the density and well defined streetscape of this part of Westgate, Bank Street and St Andrew Street. It would preserve and would not be to the detriment of the character and appearance of the Conservation Area.



In their well contained positions on and within the site adjacent to the proposed flatted building the proposed car parking spaces, vehicular and pedestrian accesses and pedestrian walkway would not be an intrusive, incongruous or exposed form of development in association with the proposed flatted building. They would not have a harmful affect on the streetscape or the character and appearance of the Conservation Area.

The site is capable of accommodating all of the proposed development including satisfactory vehicular and pedestrian access and amenity space without being an overdevelopment of it. The proposed development would not be of a density incompatible with existing densities of development in the locality. Development of the site would not result in any loss of open space important to recreation or amenity requirements.

Consequently the proposed development is consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies ENV4, DP2 and DP7 of the adopted East Lothian Local Plan 2008, Planning Advice Note 67 and with Scottish Planning Policy: June 2014, with respect to the affect of it on the North Berwick Conservation Area.

"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.

The Guide states that no more than two-fifths and preferably no more than a quarter of a back garden should be prevented by buildings from receiving any sunlight at all on 21 March due to overshadowing from new development. The test for assessing the loss of sunlight is conducted using sun-to-ground indicators that are placed over the application drawings and which are based on the sun's path on the 21st of March of any calendar year.

Application of the sunlight test to the proposed flatted building relative to the positional relationship it would have with the garden of the neighbouring flatted property of 21A Westgate demonstrates that the proposed flatted building would cause a loss of sunlight to that rear garden. The loss of sunlight would, to a variable extent, only be between the hours of 1300 and 1600 each day, when slightly more than a quarter of the rear garden of 21A Westgate would be in shadow. Overall the impact of the loss of sunlight to the rear garden of 21A Westgate would not be to such an extent and for so long that it would be detrimental to the amenity of that neighbouring residential property.

Given its height, positioning, orientation the proposed flatted building would not give rise to a harmful loss of daylight to any neighbouring residence or garden.

It is the practice of the Council to consider a distance of 18 metres between directly facing windows and 9 metres between a window and a garden boundary as a sufficient separation distance to prevent harmful overlooking of neighbouring residential properties from proposed new buildings.

By virtue of their positioning and distance away from any neighbouring property, the windows and other glazed openings to be formed in the elevations of the proposed flatted building meet those required separation distances and would not lead to harmful overlooking of any neighbouring residential building or private garden. The occupiers of the proposed flats would also benefit from a sufficient level of privacy and residential amenity. The proposed outdoor terrace would also meet these criteria.

The Council's Environmental Protection Manager has no comment to make on the proposed development.

On these considerations of privacy and amenity the proposed development is consistent with Policies DP2 and DP7 of the adopted East Lothian Local Plan 2008.

The Council's Road Services raise no objection to the proposed development, advising that the proposed arrangements for vehicular and pedestrian access and parking are of an acceptable standard. They do recommend that, (i) the proposed new access onto Bank Street be hard formed over the first 2 metres to prevent loose materials entering the public road, and (ii) that the proposed new access onto Bank Street should have a minimum visibility splay of at least 2 metres by 20 metres in both directions so that no obstruction lies within it above a height of 1.05 metres measured from the adjacent carrieway surface. Road Services confirm this is possible.

The existing road network is of an adequate standard to cope with the traffic levels likely to arise from the proposed development. Subject to the controls alluded to above the proposed development is consistent with Policies DP22 and T2 of the adopted East Lothian Local Plan 2008.

A tree survey has been submitted with the application.

The Council's Policy & Projects service has been consulted on landscape matters. In this regard the advice is that there are two significant trees that are recommended be retained for their high level of visual amenity value, a sycamore tree on the northern part of the site and a lime tree on the south-eastern part of the site. The applicant's agent has submitted a Sycamore and Lime Tree Arboricultural Implication Assessment which has been appraised by Policy & Projects and they are satisfied that subject to the recommendations of the Sycamore and Lime Tree Arboricultural Implication Assessment being made a condition on the grant of planning permission then the both the sycamore and the lime tree can be retained. On this consideration the proposed development does not conflict with Policy DP14 of the adopted East Lothian Local Plan 2008.

#### CONDITIONS:

- 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 Samples of the materials to be used as external finishes of the flatted building hereby approved 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.

Reason:

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

- 3 Prior to the occupation of any of the flats hereby approved the vehicular and pedestrian accesses into the site and the car parking spaces all as delineated on docketed drawing no. 1354-07-A shall have been formed and made available for use and thereafter shall remain available for use unless otherwise approved in writing by the Planning Authority.

A visibility splay of 2.0m by 20m shall be provided and maintained on each side of the new vehicular access junction with Bank Street and no obstruction within the visibility splay shall be above a height of 1.05m measured from the level of the adjacent carriageway of the public road.

The new vehicular access onto Bank Street shall be hard formed over the first 2 metres of it to prevent loose materials entering the public road.

Reason:

In the interests of road safety.

- 4 The development hereby approved shall be carried out in strict accordance with Part 4 of the 'Report on a Sycamore and Lime Tree and Arboricultural Implication Assessment in Relation to Proposed Development' report docketed to this planning permission.

Reason:

To ensure the retention and maintenance of trees which are an important feature of the Conservation Area.

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

**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 6 October 2015  
**BY:** Depute Chief Executive  
(Partnerships and Community Services)  
**SUBJECT:** Application for Planning Permission for Consideration

**3b**

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Application No. **15/00563/CAC**  
Proposal Demolition of building  
Location **21 Westgate  
North Berwick  
East Lothian  
EH39 4AE**  
Applicant Melrose and Porteous  
Per Somner Macdonald Architects  
RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

This application relates to the site of Melrose & Porteous Solicitors, which occupies a prominent corner location on the east side of the junction of Bank Street with St Andrew Street, and on the north side of Westgate, North Berwick. The application site comprises of a single storey detached office building on the southwestern part of the site and associated land on the north, east and south sides of the building, parking areas for the office building and a single storey garage building on the east side of the site which is the westernmost of a row of garages. The site is within North Berwick Conservation Area.

This application seeks conservation area consent for the demolition of the single storey detached office building on the southwestern part of the site.

The demolition of the single storey detached office building is proposed in association with a proposal in accompanying planning application 15/00563/P to erect a flatted building and associated works on the site. A report on planning application 15/00563/P is presented on the Scheme of Delegation List.

The single storey detached office building has a rectangular shaped footprint. Its external walls are in constructed in rubble stone and it has a central flat roof which is pitched down to eaves height where it is clad in natural slate. Its west elevation wall forms part of the west boundary enclosure of the site.

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) addresses the need to control development within conservation areas but is silent on the matter of the demolition of buildings and structures. Thus it is not relevant to the determination of this application.

Policy ENV4 (Development within Conservation Areas) of the adopted East Lothian Local Plan 2008 addresses the need to control development within conservation areas, including the demolition of buildings and thus is relevant to the determination of this application.

Material to the determination of the application are Sections 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Scottish Historic Environment Policy: December 2011 and Scottish Planning Policy: June 2014.

Section 64 of the Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that a planning authority, in exercising its responsibilities under planning legislation must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area. This statutory duty should always be borne in mind in the determination of an application for conservation area consent to demolish an unlisted building in a conservation area. As is stated in the Scottish Historic Environment Policy: December 2011 and also in Scottish Planning Policy: June 2014 a planning authority, in deciding whether or not conservation area consent should be granted should take account of the merits of the building to the character or appearance of the conservation area and of proposals for the future of the cleared site. The general presumption should be in favour of retaining buildings that make a positive contribution to the conservation area, particularly where it can be demonstrated that the building is able to support a new viable use. Where demolition is considered acceptable careful consideration should be given to a replacement scheme of new development in terms of its design and quality. In instances where demolition is to be followed by re-development of the site, consent to demolish should in general be given only where there are acceptable proposals for the new building.

A total of 53 written objections have been received to the application. The main grounds of objection can be summarised as follows:

- (i) the building should not be demolished;
- (ii) the building is part of the history, fabric and heritage of North Berwick and is architecturally distinctive;
- (iii) the demolition would not preserve or enhance the Conservation Area and would detrimental to the town;
- (iv) the building is a former Victorian coach house and is a distinctive and attractive historical building;
- (v) the building won a Civic Trust Award in 1975;
- (vi) it would be the demolition of a listed building;
- (vii) there is an existing lack of commercial property in North Berwick;
- (viii) a new building would lead to overlooking; and

(ix) a parking and access layout would be dangerous.

Contrary to what is stated in one of the written objections the building is not listed as being of special architectural or historic interest.

The redevelopment of the site does not form part of this application and therefore the written objections with regard to overlooking and parking and access layout are not material considerations in its determination.

North Berwick Community Council advises that although this property is not listed it is viewed by many in the town to be a pleasantly different business property in charming red sandstone in an unusually open setting. It is commonly viewed as a surprising oasis glimpse on the entry and exit from the town. Although not marked with having any listing it forms part of a special Conservation townscape and highlights a part of the town history, unusual in that it has survived and is clearly visible. Prior to its sympathetic restoration in 1975 it was a disused coach house. The restoration architect received an award presented by the Queen for his design. The coach house tag is not unusual as there are others in the town that have been adapted into houses, but unlike this property are not visible or identifiable as such. The Community Council continue that while the proposed redevelopment would mean gaining an additional two town centre flats which would normally be welcomed, it would also mean losing a prime central business property, a loss that most certainly would not be welcomed and would not prove to be an improvement to this part of the Conservation area. The demolition of such a building of historic interest in a prime area which from the main street provides the opportunity of a glimpse to a quaint, conserved, historic, open area would be a sad loss to the street scene.

In summary the Community Council could not see this proposal providing any enhancement to the town and are unable to support the application.

Although the existing single storey detached office building is of some historic interest and of some architectural merit, which makes a positive contribution to the character and appearance of the Conservation Area, it is not listed as being of special architectural or historic interest. Thus in the circumstances of an approved scheme of development of the application site that would be an acceptable replacement for the office building and thus which would justify the demolition of it, its removal would not harm the established character and appearance of the Conservation Area.

The planning assessment given in associate planning application 15/00563/P concludes that the erection of the flatted building and for the associated works on the site would be a form of development that would be appropriate to and would not harm the character and appearance of the Conservation Area. To facilitate such acceptable development on the site the proposed demolition of the existing single storey detached office building is justified. Thus in the circumstances of an approved scheme of development on the application site that would justify the demolition of the existing building, its removal would not harm the established character and appearance of the Conservation Area.

The demolition of the existing building is consistent with Policy ENV4 of the adopted East Lothian Local Plan 2008, the Scottish Historic Environment Policy: December 2011 and with Scottish Planning Policy: June 2014 with respect to the affect of it on the Conservation Area.

## RECOMMENDATION

That conservation area consent be granted subject to the following conditions:

- 1 The works to implement this conservation area consent shall begin before the expiration of 3 years from the date of this grant of conservation area consent.

Reason:

Pursuant to Section 16 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

- 2 No works for the demolition of the building shall be carried out unless written evidence that a contract has been entered into for the carrying out of the works authorised by planning permission 15/00563/P, or by some other detailed planning permission for the development of the site granted by the Planning Authority, has been submitted to and agreed by the Planning Authority.

Reason:

In order to safeguard the character and appearance of the Conservation Area.



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



**REPORT TO:** Planning Committee

**MEETING DATE:** Tuesday 6 October 2015

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

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

4

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*Note - this application was called off the List by Councillor Goodfellow for the following reason: I feel this application needs the full consideration of the Committee as it could have the potential to introduce an element of business use into a predominately residential area.*

Application No. **15/00492/P**

Proposal Alterations and change of use from domestic garage and part domestic garden to artist's studio and gallery (class 10) use

Location **The Coach House  
Broadgait  
Gullane  
East Lothian  
EH31 2DJ**

Applicant Mrs Stacey Karsgaard

Per Fiona Lumsden Architect

RECOMMENDATION Consent Granted

#### PLANNING ASSESSEMENT

This application relates to a single storey pitched roofed garage building and a small area of the garden forming part of the front garden of the house of The Coach House, Broadgait, Gullane. It is within a predominantly residential area as defined by Policy ENV1 of the adopted East Lothian Local Plan 2008.

In July 2015 planning permission 15/00461/P was granted for the alteration and change of use of a stable building within the northwest corner of the front garden of the house for use as holiday let accommodation. Planning permission has not been implemented and remains extant until 17 July 2015.

Planning permission is now sought for the alteration and change of use of the garage building to form an artist's studio and gallery including an area of garden to be used in association with it.

The proposed alterations to the garage building comprise the installation within the aperture of its garage door opening a timber framed door with a top light and side screen and the repainting of the dark brown stained timber elements of the building light blue (Farrow & Ball 22).

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 ENV1 (Residential Character and Amenity), DP22 (Private Parking) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008.

Nine written objections to the application have been received. They are from local residents. The main grounds of objection raised are:

1. The proposal would appear to fail to comply with the provisions of Class 10 of The Town and Country Planning Use Classes (Scotland) Order 1992 as it is instead a Class 1 retail outlet;
2. The retail outlet would be in a residential area and harmful to amenity which is contrary to Policies ENV1, DP6, DP7 and T2 of the adopted East Lothian Local Plan 2008;
3. The proposal would be contrary to R1 (New Shops) of the adopted East Lothian Local Plan 2008, which makes it clear that retail outlets should be located in a town centre, not an isolated and conspicuous commercial venture in a residential area. There is no similar isolated commercial facility anywhere else in Gullane;
4. It will result in increased footfall and most certainly increased traffic causing disturbance and noise for those living in adjacent properties;
5. If the commercial enterprise is approved it would be committed to increased business and therefore to increased dislocation to a settled and quiet community;
6. There is no provision for off-street parking;
7. The application if successful would set a precedent for other future applications of a similar nature;
8. The proposed glass frontage of the gallery would be visually unattractive; it will look like a shop and be totally out of keeping with the character of the neighbourhood;
9. Any restrictions that may be proposed for the development with regard to hours of operation and goods to be sold will not address concerns with regard to the impact of the proposed use on residential amenity; and,
10. The retail gallery would be set up without the overheads of business commercial rent, property maintenance, retail insurance and security systems and so would be in competition in an unfair advantage.

Two written representations have been made in support of the application. They consider the enterprise would:

1. be wonderful for the community to view works from local artists;
2. make great use of the garage building that in a thriving community such as Gullane can only be a positive; and would
3. have lower footfall than the former doctor's surgery that was nearby.

Gullane Area Community Council, as a statutory consultee on the application, considers the description of the application to be misleading in light of the applicant's intention to sell art from the premises. They are of the view that the retail function is one which falls within Class 1 of The Town and Country Planning (Use Classes)(Scotland) Order 1997 and incompatible with the location of the premises in a residential area. Furthermore customers visiting the premises would likely create a traffic hazard. They also consider the proposal, if approved, would set an undesirable precedent and that the anticipated footfall to be purely speculative estimate.

Commercial competition and the mechanisms for the financial operation of a business are not material considerations in the determination of an application for planning permission.

Any future application submitted for a similar proposal within a residential area, would be considered on its own merits or otherwise and in accordance with the provisions of the development plan.

Part (c) of Class 10 Non Residential Institutions of the Schedule to Article 3 of The Town and Country Planning (Use Classes)(Scotland) Order 1997 includes the display of works of art (otherwise than for sale or hire).

In her original statement written in support of the application the applicant advised that the artist studio would be used for the production of wood and lithograph hand prints. The gallery space would allow the hand prints to be sold, but also include items for sale by local artists and artisans.

The applicant was advised that should the function of the proposed gallery the subject of this application be primarily for the sale of art it could not be considered a use consistent with the terms of Class 10 (Non- residential Institutions) of The Town and Country Planning (Use Classes)(Scotland) Order 1997. It would instead be considered a retail gallery under Class 1 (Shops) of the Schedule to the Order.

The applicant has advised in a revised written statement that the primary function of the gallery space is for the display of art, the focus being unique hand-made items including prints, ceramics and art from found and recycled objects. It is proposed to operate the gallery element Thursday to Sunday inclusive between the hours of 11am to 4pm and the artist studio element between Tuesday to Sunday Inclusive 11am to 4pm, both all year round. The applicant anticipates visitor footfall to be 5-8 visits per day.

Part (3) of Article 3 of The Town and Country Planning (Use Classes)(Scotland) Order 1997 states that a use included in and ordinarily incidental to any use in a class shall not be precluded from that use by virtue of being specified in another class.

Circular 1/1998: The Town and Country Planning (Use Classes) (Scotland) Order 1997 reiterates this point and advises that a use which is normally ancillary to a use in a class specified in the UCO is not excluded from the use to which it is ancillary merely because it is specified in the UCO as a separate use.

In which case, ancillary sales that may transpire from viewing works of art in the proposed gallery would be ancillary to the primary function of the gallery space and would not conflict with the provisions of The Town and Country Planning (Use Classes) (Scotland) Order 1997 or the advice given in Circular 1/1998.

If the gallery space was instituted and incidental sales were no longer ancillary to it, this would constitute a material change in use of the gallery to a retail space. In such circumstance planning permission would be required for it. The considerations of the impact of that retail use would need to be the subject of a new application for planning permission and determined on its own merits or otherwise.

In that a retail gallery does not form part of the proposals for consideration in this application Policy R1 (New Shops) of the adopted East Lothian Local Plan 2008, which relates specifically to proposals for new retail developments, is not relevant and is not therefore a material consideration in the assessment of them.

Whilst the proposal is for the change of use and alteration of a building within garden ground associated with the existing house of The Coach House it is not proposed that the use of the building and the land to be associated with it is put to use as a separate residential dwelling. In such circumstance Policy DP7 (Infill, Backland and Garden Ground Development) is not relevant and is not a material consideration in the determination of this application.

Policy ENV1 of the adopted East Lothian Local Plan 2008 states that the predominantly residential character and amenity of existing or proposed 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.

A material consideration in the determination of this application is whether or not the artist studio and gallery use of the garage building and a part of the garden of The Coach House is acceptable relative to its relationship with the neighbouring residential properties.

The Council's Environmental Protection Service has no comment to make regarding the proposed use of the garage as an artist's studio and gallery.

A condition can reasonably and competently be imposed on the grant of planning permission restricting the hours and days of operation of the artist studio and gallery to that stated by the applicant.

The artist studio and gallery is a use that falls within Class 10 (Non-residential Institutions) of the Town and Country Planning (Use Classes) (Scotland) Order 1997. Other uses within that Class (e.g. crèche, day nursery, day centre, public hall, etc) might be likely to have a different impact on neighbouring residential properties and the wider locality. Therefore, it would be prudent to restrict the Class 10 use of the garage building specifically to the artist studio and gallery use applied for. This can also be reasonably and competently controlled by a condition on the grant of planning permission.

The garage building is positioned in close proximity to the house of The Coach House and from where its use independently of the residential use of the house would harmfully impose itself on the privacy and residential amenity of the house.

In the interests of protecting the residential amenity of the occupier(s) of the house of The Coach House the use of the garage building as an artist studio and gallery should only be operated by the occupier of the house and by no other party. This matter can be

controlled by a condition imposed on the grant of planning permission.

Subject to the aforementioned controls the proposed use of the garage building as an artist studio and gallery neither by its nature nor scale of operation or otherwise by its detachment from other buildings and roadside location would it be harmful to the amenity of the neighbouring and nearby residential properties in the locality. It would not have an adverse impact on the residential character and use of the area. Accordingly it would not conflict with Policy ENV1 of the adopted East Lothian Local Plan 2008, which seeks to protect residential amenity.

It is indicated on the planning application drawings the intention to use an area of garden to the southwest of the garage building for use for the parking of vehicles associated with the proposed use of the building as an artist's studio and gallery. This area of garden is currently used for parking.

The use of the area of garden for a use in association with the use of the building as an artist studio and gallery would not impact on the privacy or amenity of any neighbouring residential property. On these considerations the proposed change of use of the area of garden for use in association with the proposed artist's studio and gallery would not conflict with Policy ENV1 of the adopted East Lothian Local Plan 2008.

The Council's Road Services advises that the small scale nature of the proposed use would not result in a significant increase in parking demand in the area. Furthermore that on-street parking demands are lower during the day and thus during the times of operation of the artist studio and gallery. They are satisfied that the artist's studio can be suitably served by off street parking immediately to the southwest of the building or beyond on the road side of Broadgait. Accordingly they raise no objection to the application. The proposed use of the building for the purpose intended does not on the matter of parking or general transport impact conflict with Policies DP22 and T2 of the adopted East Lothian Local Plan 2008.

The proposed glazed door with top light and side screen would infill the existing garage door opening. The existing garage doors would be retained, concealing the proposed infill when closed. With the extent of glazing proposed and the timber finishing of the frames that would hold it, the proposed glazed door with top light and side screen would not be unsympathetic to the proportions of the garage door opening or to the architecture of the building.

The proposed door with top light and side screen, including the repainting of parts of the building would where applicable by their extent, form, positioning, materials and finishes be in keeping with the existing building and well integrated into their surroundings. They would not be harmful to the character and appearance of the building or the character and appearance of the area.

On the consideration of design the proposed alterations are consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) June 2013 and Policy DP6 of the adopted East Lothian Local Plan 2008.

It is indicated on the application drawings the intention to display advertisements, one on the front elevation of the building in the form of painted letters and the other a chalk board on the south boundary wall of the garden of the house for the purposes of displaying the opening hours of the proposed gallery. These advertisements do not require planning permission and do not form part of this application. They can instead be displayed with the benefit of deemed consent under the provisions of Class 2 of Schedule 4 of The Town and Country Planning (Control of Advertisements)(Scotland) Regulations 1984.

## CONDITIONS:

- 1 The artist studio and gallery hereby approved shall be operated only by the resident of the house of The Coach House and shall not be used as an independent commercial enterprise by any party not resident in that house.

Reason:

In the interests of protecting the residential amenity of the occupants of The Coach House.

- 2 The hours of operation of: (i) the artist studio shall be restricted to 1100 to 1600 hours Thursday to Sunday (inclusive) and (ii) the gallery use shall be restricted to 1100 to 1600 Tuesday to Sunday (inclusive).

Reason:

To restrict the hours of operation of the artist studio and gallery to those applied for.

- 3 The artist studio and gallery use is the only use of Class 10 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 that is hereby approved.

Reason:

In the interests of safeguarding the amenity of the area.

- 4 The existing parking area formed to the southwest of the garage building hereby approved to be put to use as an artist's studio and gallery shall be retained for the provision of off-street parking associated with the approved use unless otherwise approved by the Planning Authority.

Reason:

To ensure an adequate standard of parking provision for the approved use.



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



**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 6 October 2015  
**BY:** Depute Chief Executive  
(Partnerships and Community Services)  
**SUBJECT:** Application for Planning Permission for Consideration

**5**

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*Note - this application was called off the List by Councillor Broun-Lindsay for the following reason: I believe Members should view this application and its juxtaposition to, and possible effect on, neighbouring properties.*

Application No. **15/00558/P**

Proposal Alterations to house, erection of walls, gate, handrails, formation of hardstanding areas, steps and pedestrian access

Location **Woodburn  
Garvald  
Haddington  
East Lothian  
EH41 4LN**

Applicant Mr & Mrs Simon and Eleanor Paterson

Per Bern Balfe Architect

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

The property to which this application relates is a two storey end-terrace house and its garden located in Garvald, within a predominantly residential area as defined by Policy ENV1 of the adopted East Lothian Local Plan 2008. The property is also within Garvald Conservation Area.

The property is bounded to the north by neighbouring residential properties, to the east and west by neighbouring residential properties and to the south by a public road.

As alterations to the house, planning permission is sought for the installation of three roof windows; two of which would be positioned on the east and west side elevation roof slopes of the outward projecting two storey pitched roofed component on the rear (north) elevation of the house. The other proposed roof window would be positioned on the north facing mono-pitched roofed outshot that abuts, and is set back from, the outward projecting two storey pitched roofed component on the rear of the house.

Planning permission is also sought for:

- (i) erection of two sections of stone wall to the rear (north) of the applicant's house, within the rear garden of the house;
- (ii) infilling of a short section of existing wall on the east end of the north boundary of the rear garden of the house, in a stone finish as opposed to the brick finish that exists within that part of it;
- (iii) formation of an area of hardstanding that would abut the full length of the rear (north) elevation of the house and otherwise within the east end of the rear garden of the house;
- (iv) erection of concrete steps at the eastern end of the rear garden of the house that would provide access to and from the higher ground level of the raised rear garden of the house; and
- (v) erection of a steel handrail with steel posts and cables that would extend along the south side of the proposed steps and hardstanding area at the east end of the rear garden of the house.

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 ENV4 (Development within Conservation Areas), DP2 (Design) and DP6 (Extensions and Alterations to Existing Buildings) 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.

Seven written objections and two letters of support to the application have been received. The objections are made on the grounds that:

- (i) the proposed roof windows and use of the proposed new steps and paved patio area would result in a loss of privacy to neighbouring residential properties;
- (ii) use of the steps and paved patio area will result in an increase in noise and activity and should be sited elsewhere;
- (iii) the proposal to extend the high wall and introduce planters will reduce the amount of daylight to a neighbouring residential property;

(iv) the proposed steel handrails, posts and cables are out of character given that this is within a conservation area;

(v) the proposed open style steel handrails would result in a Health and Safety hazard as it would present itself as a climbing frame for small children. Moreover, the handrails would be sited on top of the retaining wall that presents a drop of some 3 metres to a stone patio below;

(vi) the proposal to form a gate in the north boundary wall would allow the applicants to access land owned by East Lothian Housing Association. The Association will not grant access to their land. The short narrow footpath which runs between the rear gardens of the applicant's house and the houses of Kirkbrae serves private access to the rear gardens of 2 and 4 Kirkbrae only; and

(vii) use of the proposed gate would result in a harmful loss of privacy.

This application has to be determined on the merits of the development proposed in it and whether or not the proposed steps and paved patio area could be sited elsewhere is not a material planning consideration in such a determination.

Whether or not the proposed development would result in a health and safety hazard is not a material planning consideration in the determination of determination of this application for planning permission.

The matter of levels of noise and activity in the use of domestic gardens as part of the normal residential use of the property is not material to the determination of this planning application.

Subsequent to the registration of this application the applicant's agent has submitted revised drawings to show that it is no longer proposed to form a gate within the east end of the north boundary wall and to show the height of the proposed roof windows above the internal floor level of the house.

The proposed two roof windows to be formed in the east and west side elevation roof slopes of the outward projecting two storey pitched roofed component on the rear (north) elevation of the house would not be visible from a public place. Neither would the other proposed roof window in its position on the north facing mono-pitched roofed outshot on the rear elevation of the house. Therefore it is not essential that they be flush fitted. They would not result in an overdevelopment of the roof of the house. By virtue of their size, scale, form and positioning the proposed roof windows would be subservient alterations to the house that would not be out of keeping with its character and appearance. They would not harm the special architectural or historic interest of the Conservation Area.

The proposed two roof windows to be formed in the east and west side elevation roof slopes of the outward projecting two storey pitched roofed component on the rear (north) elevation of the house would be positioned more than 1.8 metres above the internal first floor level of the house and thus they would not allow for harmful overlooking of a neighbouring residential property to the east and west respectively.

The other proposed roof window to be formed in the north facing mono-pitched roof slope on the rear (north) elevation of the house would serve a staircase / landing area. Moreover, it would be positioned more than 9 metres away from north boundary of the rear garden of the house and off-set, at a distance of more than 18 metres, from the windows in the rear elevations of the neighbouring residential properties to the north. By virtue of this it would not allow for harmful overlooking of a neighbouring residential

property to the north.

The proposed stone walls and steps would be well contained within the rear garden of the house. By their extent, form and materials they would be appropriate to their location, in keeping with their surroundings and would not be harmful to the character and appearance of the house or to the character and appearance of the Conservation Area.

The use of the proposed steps would not allow for any harmful overlooking of a neighbouring residential property. In that the proposed stone walls and steps would, at their highest point, be at the same level as that of the higher ground level of the raised rear garden of the house they would not result in a harmful loss of overshadowing to any neighbouring residential properties.

The proposed areas of hardstanding would be well contained within the rear garden of the house. So too would the proposed stair handrails. By their positioning, extent, form and materials, neither the hardstanding nor the stair handrails would be harmful to the character and appearance of the house or to the character and appearance of the Conservation Area. The use of them would not allow for any harmful overlooking of a neighbouring residential property.

In particular, the area of hardstanding to be formed in the east end of the rear garden of the house would be at the same level as that of the higher ground level of the raised rear garden of the house. A person sitting on that part of the rear garden of the house at present can already look into the rear garden and windows in the rear elevation of the adjoining house named 'Dene Cottage' to the east within a distance of 9 and 18 metres. As the proposed area of hardstanding would not result in a change to the levels of the rear garden of the house the use of it would not allow for any greater overlooking that what can already occur at present.

It is proposed to remove the short section of brick infill within the stone wall on the east end of the north boundary of the rear garden of the house and infill it in a stone finish. Subject to a sample of the new stone being submitted prior to the infilling of that section of the boundary wall, it would, by virtue of its extent, form and materials, be in keeping with the stone finish of the existing wall. It would not be harmful to the character and appearance of the wall or to the character and appearance of the area.

Accordingly the proposals are, as relevant, consistent with Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan), Policies ENV4, DP2 and DP6 of the adopted East Lothian Local Plan 2008 and with Scottish Planning Policy: June 2014.

#### CONDITION:

- 1 A sample of the stone that would be used to infill a small section of the existing wall on the east end of the north boundary of the rear garden of the house hereby approved shall be provided for the inspection and approval of the Planning Authority. The stone used shall accord with that so approved.

Reason:

To safeguard the character and appearance of the Conservation Area.

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





**REPORT TO:** Planning Committee

**MEETING DATE:** Tuesday 6 October 2015

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

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

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*Note - this application was called off the List by Councillor Currie for the following reason: I have received representations in respect of this application and believe that the Committee would benefit from a site visit and determination at the full Planning Committee.*

Application No. **15/00556/P**

Proposal Erection of buildings for biomass boiler system with associated pipework and flue (Part Retrospective)

Location **19 Linkfield Road  
Musselburgh  
East Lothian  
EH21 7LQ**

Applicant Foresight Residential Ltd

Per John Tod Associates

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

The property to which this application relates is a two storey detached building with garden ground, in use as a residential care home. It is located within Musselburgh in a predominantly residential area as defined by Policy ENV1 of the adopted East Lothian Local Plan 2008. The property is within Musselburgh Conservation Area and listed as being of special architectural or historic interest (Category B).

Planning permission is sought for the erection of two pitched roofed timber clad buildings within the rear garden of the site. One of the buildings, in a position some 20 metres away from the building line of the rear (south) elevation of the applicant's property, would contain a biomass boiler system. It would have a stainless steel flue projecting some 3.1 metres above the ridge of its pitched roof. The other proposed building, in a position some 4 metres from the building line of the rear elevation of the property, would be used to store the fuel pellets for the biomass boiler system which would be transported via an underground pipe that would measure some 13 metres in length.

Planning permission is retrospectively sought for the installation of some 18 metres length of stainless steel pipework attached to the inner side of the east boundary stone wall of the rear garden, the flat roof of the single storey component on the east side of the building and along part of the front elevation (by some 1.2 metres).

This is a substitute application submitted in favour of planning application 14/00880/P that has been withdrawn. Planning application 14/00880/P sought retrospective planning permission for a large timber shed containing the biomass boiler system, together with its associated flue and pipework, in a position some 4 metres away from the building line of the rear elevation of the building and some 200mm away from the stone wall on the east boundary of the rear garden of the building at its closest point. What is now proposed is a smaller building, to be used as a fuel store, in a similar position as that of the existing biomass boiler system building but without the flue attached to it. A second building, to be positioned some 20 metres away from the rear elevation of the care home building, is now proposed to contain the biomass boiler system and its associated flue.

Through separate application 15/00556/LBC listed building consent is sought part retrospectively for the erection of buildings for biomass boiler system with associated pipework and flue. A separate report on application 15/00556/LBC is, at this time, on the Council's Committee Expedited List.

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 (Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies ENV3 (Listed Buildings), ENV4 (Development within Conservation Areas), DP2 (Design) and DP6 (Extensions and Alterations to Existing Buildings) 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 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.

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

(i) the previous application (relating to the erected building without having first gained planning permission for it) is a flagrant violation of the planning process. No building warrant has been applied for and thus there is no technical or compliance information available;

(ii) the existing large building is an eyesore and the flue projecting out from it emits invisible noxious fumes and there are already concerns that it may not conform to safe guidelines in terms of its height - it should therefore be dismantled;

(iii) the proposal is inappropriate in terms of its siting and materials in relation to the existing listed building including the ugly metal pipe on the front elevation of the building which detracts from the character of Musselburgh Conservation Area;

(iv) the proposal will be unsightly with the building being moved closer to a neighbouring residential property and, as the flue would be increased in height, fumes will be blown towards neighbours due to the westerly wind and will undoubtedly be an eyesore for surrounding neighbouring skylines and intrusive in the landscape;

(v) if this application is approved there will be another large and unsightly outbuilding erected within the garden causing more disruption in the short term bearing in mind that this application is for a business nature with no regard for neighbouring impact on residential properties and the environment;

(vi) the rear garden of a neighbouring property is considered by many to be a place of retreat from a substantive job, somewhere to garden, grow vegetables, entertain and meditate. The visual, physical and spiritual impact on neighbours, family and friends is very personal to one's well-being. The smell of smoke drifting into a neighbouring property is a concern;

(vii) there is little substantive information to illustrate how the biomass boiler system will operate and how this will impact on neighbours and its surroundings in terms of noise, smoke, odour and other emissions. There are no manufacturer specifications or details about how the implementation will be tailored for this site or how it complies with technical guidance;

(viii) the proposed extent of the applicant's biomass boiler system appears to be a non-domestic installation and thus wholly inappropriate to be located in the midst of a residential and conservation area. The scale of the building is more appropriate to commercial or agricultural businesses;

(ix) there is no reassurance about how fireproof or waterproof the boiler store and fuel store will be;

(x) the current shed appears to be in the same position as the proposed fuel store shed. Both will be within 1 metre of the stone boundary wall and should be sited further away;

(xi) the plans illustrate a 13 metres length of underground feeder pipe leading from the fuel store to the boiler house with no indication on how fuel will reach the boiler house or whether the system will be mechanised or what the noise levels will be;

(xii) the plans do not indicate how the heat generated by the boiler will be supplied to the house or what modifications will be required to the house to allow this;

(xiii) the proposal compromises road safety when the flue pellets are being delivered as the vehicle is so huge that it blocks the road and stops traffic which could cause a collision. Moreover, the noise levels from the fuel pellets being forced through the steel pipes to the fuel store are unacceptable;

(xiv) the applicant's property is 'B' Listed and not 'C' Listed as is stated in the application form; and

(xv) if approved the proposed buildings would create a precedent for the erection of other similar structures, or worse, the sale of land within the gardens for the construction of houses.

The fact that part of the development has already been constructed without planning permission having first been granted for it does not debar the applicant from applying retrospectively for planning permission and does not preclude a determination of this application on the merits of the proposed development, assessed against relevant development plan policies and other material planning considerations.

Whether the proposed buildings will be fireproof or waterproof is a matter for separate Building Standards legislation and thus it is not a material planning consideration in the determination of this application.

This application has to be determined on the merits of the development proposed and whether or not the proposed building could be sited further away from the boundary wall or elsewhere within the rear garden of the site is not a material planning consideration in such a determination.

Whilst there is no record of a building warrant having been sought nor granted for the existing building containing the biomass boiler system and flue it does not preclude a determination of this application.

The applicant's property is listed as being of special architectural or historic interest Category B and not Category C as is stated within the listed building application form.

Approval of this application would not set an undesirable precedent for similar buildings to be erected in the rear garden of a neighbouring residential property. Any future application seeking planning permission for such a development would be assessed on its individual merits.

The applicant has confirmed in writing that the biomass boiler system will operate by biomass pellets being delivered by lorry to the front supply pipe which conducts them to the proposed fuel storage building. The pellets are then pumped from the proposed fuel store building to the proposed biomass boiler building on an automatic call off basis via an underground pipe system, all to generate hot water used for heating and water supply for the care home building of 19 Linkfield Road. The fumes from the biomass boiler system are expelled into the atmosphere via the flue.

The stainless steel pipework and its associated fixings installed along and below the inner side of the stone wall on part of the east boundary of the rear garden of the building and otherwise over the flat roofed top of the single storey component on the east side elevation of the building are well contained from where they are not visible in public views of them. Only the short length (some 1.2 metres) of the stainless steel pipework, which

overhangs and abuts the front (north) elevation of the single storey outshot on the east side elevation of the building, can be seen in public views from Linkfield Road to the north.

Notwithstanding this, providing that this short section of its exposed stainless steel pipework be amended with a matt black coloured finish it would be seen in relation to the black painted cast iron rain water downpipes elsewhere on the building and thereby better integrated into its surroundings. By virtue of its form, size, scale, positioning and materials, and subject to such change of the exposed short length of it, the pipework associated with the proposed biomass boiler system is not harmful to the character and appearance of the building or stone wall to which it is attached to. It does not harm the special architectural or historic character and appearance of the listed building or the character and appearance of the Conservation Area.

Accordingly, the pipework is consistent with Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan), Policies ENV3, ENV4 and DP6 of the adopted East Lothian Local Plan 2008 and with Scottish Planning Policy: June 2014.

The proposed buildings would each measure some 2.6 metres long, some 2.8 metres wide and some 2.8 metres high to the ridge of their pitched roof forms. The external walls of them would be clad in timber boarding and their pitched roofs would be covered in felt. The proposed fuel store building would replace the larger unauthorised biomass boiler system building that presently exists within the rear garden of the application site. The proposed fuel store building would be positioned some 4 metres away from the building line of the rear elevation of the applicant's property and some 500mm away from the stone wall on the east boundary of the rear garden of the building at its closest point. A short length of pipework would abut the front (north) elevation of it and connect to the existing length of pipework installed along and below the inner side of the stone wall on part of the east boundary of the rear garden of the building. The other proposed building would contain the biomass boiler system and its associated flue. It would be positioned some 13 metres further southwards from the proposed fuel store building and at a distance of some 20 metres away from the building line of the rear elevation of the applicant's property. The proposed fuel store building and the proposed biomass boiler system building would be connected to one another by an underground pipe measuring some 13 metres in length.

The proposed fuel store and biomass boiler system buildings would be well contained within their rear garden setting from where they would not be visible in public views of them. Neither would the proposed lengths of pipework and the proposed flue. By virtue of their size, height, materials and positioning the proposed buildings would be appropriate to their rear garden setting and well integrated with their surroundings. They would not appear harmfully intrusive, incongruous or exposed in their rear garden locations. They would not harm the special architectural or historic character and appearance of the listed building or be harmful to the character and appearance of the Conservation Area.

The proposed fuel store and biomass boiler system buildings would each have solid timber double doors formed in the front (north) elevations of them. Otherwise there is no proposal to form any other openings within them. However, as the applicant's property is within the Musselburgh Conservation Area where there are no permitted development rights for the formation of windows or other glazed openings, any such future alteration to the proposed buildings would be within the control of the Planning Authority.

Owing to their size, scale, form, and position the proposed buildings would not give rise to a harmful loss of sunlight or daylight received by neighbouring residential properties.

On these considerations the proposed fuel store and biomass boiler system buildings, together with the lengths of pipework and flue, are consistent with Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESPlan), Policies ENV3, ENV4 and DP2 of the adopted East Lothian Local Plan 2008 and with Scottish Planning Policy: June 2014.

The applicant has appointed an environmental consultancy company named 'The Airshed' who provides independent specialist services in air quality, odour assessment and environmental noise. The information provided from them states that, as the proposed biomass boiler system and its associated flue would be positioned some 20 metres away from the rear elevation of the care home building with a stack height of 5.1 metres, it should ensure that the levels of air pollution from the installation of it would comply with EC Limit Values for NO<sub>2</sub> and the Scottish Objectives for particles (PM<sub>10</sub> AND PM<sub>2.5</sub>).

The Council's Principal Environmental Protection Officer notes that the proposed re-located boiler house will be located some 20 metres from the rear elevation of the main building at 19 Linkfield Road and the associated flue for the biomass boiler system will terminate at some 6 metres above the ground level. Accordingly he is satisfied that smoke, including the smell of smoke, will not result in any significant loss of amenity to occupiers of neighbouring residential properties.

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

The large unauthorised biomass boiler system building that presently exists within the rear garden of the application site is unauthorised and is therefore a breach of planning control. If within three months of the date of the grant of planning permission for this part retrospective planning application that existing building is not removed, then enforcement action will be taken to secure the removal of it, with the period for compliance with the enforcement notice being a further period of one month.

#### CONDITIONS:

- 1 Within two months from the date of this planning permission the exposed 1.2 metres length of stainless steel flue attached to the east end of the front (north) elevation of the building hereby approved shall have a black coloured matt finish. A sample of the black coloured matt finish shall be provided for the inspection and approval of the Planning Authority. The black coloured matt finish used shall accord with that so approved.

Reason:

To better integrate the flue into its surroundings in the interests of safeguarding the setting of the listed building and the character and appearance of the Conservation Area.

- 2 Within three months from the date of this planning permission the existing large unauthorised biomass boiler building and its associated flue, in its position some 4 metres away from the building line of the rear elevation of the applicant's property, shall be removed from its rear garden setting.

Reason:

To secure the removal of the unauthorised biomass boiler system building and its associated flue.

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





**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 6 October 2015  
**BY:** Depute Chief Executive  
(Partnerships and Community Services)  
**SUBJECT:** Application for Planning Permission for Consideration

**6b**

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Application No. **15/00556/LBC**

Proposal Erection of buildings for biomass boiler system with associated pipework and flue (Part Retrospective)

Location **19 Linkfield Road  
Musselburgh  
East Lothian  
EH21 7LQ**

Applicant Foresight Residential Ltd

Per John Tod Associates

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

The property to which this application relates is a two storey detached building that is listed as being of special architectural or historic interest (Category B).

Listed building consent is sought for the erection of two pitched roofed timber clad buildings within the rear garden of the site; one of which would contain a biomass boiler system, in a position some 20 metres away from the building line of the rear (south) elevation of the listed building, with a stainless steel flue projecting some 3.1 metres above the ridge of its pitched roof. The other proposed building would be used to store the pellets that would serve the biomass boiler system, in a position some 4 metres away from the building line of the rear elevation of the listed building, via an underground pipe that would measure some 13 metres in length.

Listed building consent is also retrospectively sought for the installation of some 18 metres length of stainless steel pipework that is attached to the inner side of the stone wall on part of the east boundary of the rear garden of the listed building and extends over the flat roofed top of the single storey component on the east side elevation of the listed building and along part of the front elevation of it by some 1.2 metres.

This is a substitute application submitted in favour of listed building consent 14/00880/LBC that has been withdrawn.

Through separate application 15/00556/P planning permission is sought part retrospectively for the erection of buildings for biomass boiler system with associated pipework and flue. A separate report on application 15/00556/P is, at this time, on the Council's Scheme of Delegation List.

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 Edinburgh and the Lothians Structure Plan 2015 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 ENV3 (Listed Buildings) of the adopted East Lothian Local Plan 2008 are relevant to the determination of this application.

Material to the determination of the application is Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development affecting a listed building given in the Scottish Historic Environment Policy: December 2011 and Scottish Planning Policy: June 2014.

The Scottish Historic Environment Policy and Scottish Planning Policy echo the statutory requirements of Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that in considering whether to grant listed building consent for any works to a listed building the planning authority shall have special regard to the desirability of preserving the building or any features of special architectural or historic interest which it possesses.

Three written objections to the application have been received. The objections are made on the grounds that:

(i) the previous application (relating to the erected building without having first gained planning permission or listed building consent for it) is a flagrant violation of the planning process. No building warrant has been applied for and thus there is no technical or compliance information available;

(ii) the proposal is inappropriate in terms of its siting and materials in relation to the existing listed building including the ugly metal pipe on the front elevation of the listed building;

(iii) the proposal will be unsightly with the building being moved closer to a neighbouring residential property and, as the flue would be increased in height, fumes will be blown towards neighbours due to the westerly wind and will undoubtedly be an eyesore for surrounding neighbouring skylines and intrusive in the landscape;

(iv) if this application is approved there will be another large and unsightly outbuilding erected within the garden causing more disruption in the short term bearing in mind that this application is for a business nature with no regard for neighbouring impact on residential properties and the environment;

(v) there is little substantive information to illustrate how the biomass boiler system will operate and how this will impact on neighbours and its surroundings in terms of noise, smoke, odour and other emissions. There are no manufacturer specifications or details about how the implementation will be tailored for this site or how it complies with technical guidance;

(vi) the proposed extent of the applicant's biomass boiler system appears to be a non-domestic installation and thus wholly inappropriate to be located in the midst of a residential and conservation area. The scale of the building is more appropriate to commercial or agricultural businesses;

(vii) there is no reassurance about how fireproof or waterproof the boiler store and fuel store will be;

(viii) the current shed appears to be in the same position as the proposed fuel store shed. Both will be within 1 metre of the stone boundary wall and should be sited further away;

(ix) the plans illustrate a 13 metres length of underground feeder pipe leading from the fuel store to the boiler house with no indication on how fuel will reach the boiler house or whether the system will be mechanised or what the noise levels will be;

(x) the plans do not indicate how the heat generated by the boiler will be supplied to the house or what modifications will be required to the listed building to allow this;

(xi) the applicant's property is 'B' Listed and not 'C' Listed as is stated in the application form; and

(xii) if approved the proposed buildings would create a precedent for the erection of other similar structures within the curtilage of a listed building.

The fact that part of the development has already been constructed without planning permission or listed building consent having first been granted for it does not debar the applicant from applying retrospectively for planning permission and listed building consent and does not preclude a determination of this application on the merits of the proposed development, assessed against relevant development plan policies and other material considerations.

Whether the proposed buildings will be fireproof or waterproof is a matter for separate Building Standards legislation and thus it is not a material consideration in the determination of this listed building application.

This application has to be determined on the merits of the development proposed in it and whether or not the proposed building could be sited further away from the boundary wall or elsewhere within the rear garden of the site is not a material consideration in such a determination.

Whilst there is no record of a building warrant having been sought nor granted for the existing building containing the biomass boiler system and flue it does not preclude a determination of this listed building application.

The applicant's property is listed as being of special architectural or historic interest Category B and not Category C as is stated within the listed building application form.

Approval of this application would not set an undesirable precedent for similar buildings to be erected within the curtilage of a listed building. Any future application seeking listed

building consent for such a development would be assessed on its individual merits.

The applicant has confirmed in writing that the biomass boiler system will operate by biomass pellets being delivered by lorry to the front supply pipe which conducts them to the proposed fuel storage building. The pellets are then pumped from the proposed fuel store building to the proposed biomass boiler building on an automatic call off basis via an underground pipe system to generate hot water used for heating and water supply for the listed building of 19 Linkfield Road. The fumes from the biomass boiler system are expelled into the atmosphere via the flue.

The stainless steel pipework and its associated fixings installed along and below the inner side of the stone wall on part of the east boundary of the rear garden of the listed building and otherwise over the flat roofed top of the single storey component on the east side elevation of the listed building would not be seen in relation to, and would not draw focus from, the principal front (north) elevation of the listed building. Only the short length (some 1.2 metres) of the stainless steel pipework, which overhangs and abuts the front (north) elevation of the single storey outshot attached to the east side elevation of the listed building, can be seen in relation to the principal front (north) elevation of the listed building. By virtue of its form, size, scale, positioning and materials, and subject to an appropriate finishing of it in matt black to relate to the existing rainwater goods of the building, the pipework associated with the proposed biomass boiler system does not harm the special architectural or historic interest of the listed building.

The proposed buildings would each measure some 2.6 metres long, some 2.8 metres wide and some 2.8 metres high to the ridge of their pitched roof forms. The external walls of them would be clad in timber boarding and their pitched roofs would be covered in felt. The proposed fuel store building would replace the larger unauthorised biomass boiler system building that presently exists within the rear garden of the application site. The proposed fuel store building would be positioned some 4 metres away from the building line of the rear elevation of the listed building and some 500mm away from the stone wall on the east boundary of the rear garden of the listed building at its closest point. A short length of pipework would abut the front (north) elevation of it and connect to the existing length of pipework installed along and below the inner side of the stone wall on part of the east boundary of the rear garden of the listed building. The other proposed building would contain the biomass boiler system and its associated flue. It would be positioned some 13 metres further southwards from the proposed fuel store building and at a distance of some 20 metres away from the building line of the rear elevation of the listed building. The proposed fuel store building and the proposed biomass boiler system building would be connected to one another by an underground pipe measuring some 13 metres in length.

The proposed fuel store and biomass boiler system buildings would be well contained within the rear garden of the listed building. So too would the proposed lengths of pipework and the proposed flue. By virtue of their size, height, materials and positioning the proposed buildings would not be seen in relation to, and would not draw focus from, the principal front elevation of the listed building. They would not harm the special architectural or historic interest of the listed building or its setting.

Historic Scotland raise no objection to this listed building consent application.

On these considerations the proposals are consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy ENV3 of the adopted East Lothian Local Plan 2008, The Scottish Historic Environment Policy: December 2011 and Scottish Planning Policy: June 2014.

RECOMMENDATION:

That listed building consent be granted subject to the following conditions:

- 1 The works to implement this listed building consent shall begin before the expiration of 3 years from the date of this grant of listed building consent.

Reason:

Pursuant to Section 16 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

- 2 Within two months of the grant of listed building consent, the exposed 1.2 metres length of stainless steel flue attached to the east end of the front (north) elevation of the building hereby approved shall have a black coloured matt finish. A sample of the black coloured matt finish shall be provided for the inspection and approval of the Planning Authority. The black coloured matt finish used shall accord with that so approved.

Reason:

To safeguard the special architectural or historic interest of the listed building.

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

**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 6 October 2015  
**BY:** Depute Chief Executive  
(Partnerships and Community Services)  
**SUBJECT:** Application for Planning Permission for Consideration

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*Note - this application was called off the List by Councillor McMillan for the following reasons: the original application was granted for a restaurant and hot food takeaway. To allow the building to be used solely as a takeaway changes the nature of the business and how it affects the town centre and neighbours. There has been much public comment and concerns that the business has operated as a takeaway from opening with detrimental effect on the town centre conservation area. I would wish the Committee to discuss this and the wider implications around PolicyENV2 as it might now be applied.*

Application No. **15/00421/P**

Proposal Alterations and change of use of Shop (Class 1) use to hot food takeaway (Retrospective)

Location **81 High Street  
Haddington  
East Lothian  
EH41 3ET**

Applicant Mr O Tildrim

Per Chalmers & Co

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

The premises that are the subject of this planning application occupy both the ground floor and the basement of a mid-terrace, three storey building located on the north side of Haddington High Street. The building is listed as being of special architectural or historic interest (Category B) and is within Haddington Town Centre and Haddington Conservation Area. To the east and north of the building are three-storey buildings and to the west is a two-storey building. The premises formally operated as a newsagent.

In October 2011 planning permission (ref: 09/00885/P) was granted for the change of use of the premises from a shop to a restaurant and hot food takeaway and for the installation of three louvre vent grilles on the rear (north) elevation of the building.

Following an investigation by the Council's Planning Enforcement service it was established that the premises had begun operating solely as a takeaway, in

contravention of planning permission 09/00885/P and therefore it was requested this situation be rectified by the operator of the premises by either applying for, and seeking planning permission to use the whole of the premises for takeaway use, or reverting to the authorised dual use the subject of planning permission 09/00885/P.

Planning permission is now sought retrospectively through this application for the change of use of the premises from a shop to sole use as a hot food takeaway and for associated works.

Through separate application 15/00421/LBC listed building consent is sought for alterations to the building.

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 DP6 (Extensions and Alterations to Existing Buildings), DP22 (Private Parking), ENV2 (Town and Village Centres, Other Retail or Mixed Use Areas), ENV3 (Listed Buildings), ENV4 (Development within Conservation Areas) and R3 (Hot Food Outlets) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application are Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Scottish Planning Policy: June 2014.

Scottish Planning Policy echoes the statutory requirements of Section 59 of the Act requires 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 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 conservations area should be appropriate to the character of the conservation area.

Four written objections to the application have been received. The main grounds of objection are that: (i) the proposed change of use would lower the tone of High Street, (ii) there are enough takeaways in Haddington, (iii) the premises is competition to other takeaways, (iv) the use of the premises leads to litter, noise, smells and people hanging around the street, and (v) the use may impact on the sale value of a neighbouring residential property. Additionally, one of the objectors raises concerns about private security.



The matter of private security and the affect of the proposal on property values are not material planning considerations in the determination of an application for planning application.

By being in Haddington Town Centre the premises are within an area defined by Policy ENV2 of the adopted East Lothian Local Plan 2008 as being of mixed use, in which uses appropriate to a town centre will be acceptable in principle. These uses include retail, business and office use, restaurants, leisure and entertainment. Policy ENV2 does not favour any one of these uses over another. Changes of use of retail units to other town centre uses will only be acceptable where the Council is satisfied that a retail use is no longer viable or the benefits of the proposed use to the viability and vitality of the area outweigh the loss of the shop. Proposals that would have a significant environmental impact, particularly on existing housing, will not be permitted.

Through the determination of previous application 09/00885/P it was established that the retail use of the premises is no longer viable. On this basis it would now be unreasonable for the Council to refuse to grant planning permission for the development on the basis that it has resulted in the loss of the shop use.

The hot food takeaway is a use appropriate to the town centre of Haddington. It is not be incompatible with the established mixed uses of the town centre. It is a town centre use supported by Policy ENV2 of the adopted East Lothian Local Plan 2008. It provides a service to the local community and by being in the town centre is centrally and thus conveniently located to the community. It contributes to the vitality and viability of the town centre. On these counts the change of use of the premises is not contrary to Policy ENV2 of the adopted East Lothian Local Plan 2008 and is consistent with national planning policy guidance given in Scottish Planning Policy: June 2014.

Policy R3 of the adopted East Lothian Local Plan 2008 supports the provision of hot food takeaways in town centres and other commercial areas subject to the criteria of the Policy being met, where applicable.

One criterion is for it to be demonstrated that the operation of a proposed hot food takeaway would not cause harm to local amenity and that in this consideration the cumulative effect of additional premises in locations already containing one or more hot food takeaways in close proximity will be relevant.

It is acknowledged that there are already several hot food takeaways in Haddington Town Centre. However, in their locations they are generally dispersed from one another. In the consideration of this application no evidence is presented through consultation on it or in public representation that approving the hot food takeaway use of the premises would, due to the location of the premises in the town centre and of the existing number of hot food takeaways result in a cumulative effect of hot food takeaway use harmful to town centre amenity.

A new vent grille and boiler flue have been installed on the rear elevation of the building to facilitate the use of the premises as a takeaway.

The Council's Environmental Protection Manager advises that any mechanical extract ventilation equipment used to vent the premises should be maintained to ensure their continued satisfactory operation and any cooking processes reliant on the extract system shall cease to operate if, at any time, the extract equipment ceases to operate. Such control can be imposed as a condition on a grant of planning permission.

The Environmental Protection Manager further advises that noise arising as a result of the premises should not exceed NR20 at any frequency when measured in any neighbouring residential property, assuming windows open 50mm. The Environmental Protection Manager states that following complaints regarding noise arising from the operation of the premises as a hot food takeaway due to the installed extract system, measurements made by Environmental Protection indicate that NR20 criteria is being exceeded within the residential property above the premises at Flat 1, 80 High Street and that this being taken up by Environmental Protection with the operator of the premises under Statutory Nuisance provisions. Therefore compliance with NR20 is controllable under legislation other than planning legislation. It is a principle of the planning system that its controls should not duplicate those of other legislation.

Subject to the above recommended control the hot food takeaway use would not have a significant adverse impact on the amenity of any neighbouring property and, in this, would be consistent with Policy ENV2 of the adopted East Lothian Local Plan 2008.

The applicant has not indicated intended opening hours for the hot food takeaway. In light of this and if planning permission is to be granted it would be prudent, in accordance with Policy R3 of the adopted East Lothian Local Plan 2008 to restrict the operation of the proposed hot food takeaway to the opening hours of between 7:30am and 12 midnight only.

On these considerations of amenity the hot food takeaway use of the premises is consistent with the requirements of Policies ENV2 and R3 of the adopted East Lothian Local Plan 2008 that town centre uses should not have a significant environmental impact, particularly on existing housing.

Police Scotland has been consulted on the application and have no comment to make on it.

Antisocial behaviour and litter matters are all controllable under legislation other than planning legalisation.

The Council's Road Services advises that taking into account the parking requirements of the former use of the premises as a shop it is unlikely that the use of the premises as a hot food takeaway generates a materially greater parking requirement and, therefore no significantly greater impact on the parking situation in the town centre. Road Services raises no objection to the hot food takeaway use of the premises and on the matter of traffic impact it is not contrary to Policies DP22 or R3 of the adopted East Lothian Local Plan 2008.

The vent grille and boiler flue have been installed on the rear elevation of the building, which does not contribute positively to the special architectural or historic interest of the listed building. By its architectural form and backland location, neither does it contribute to the architectural or historic character of the Conservation Area. The vent grille and boiler flue are not visible from the High Street and are only be seen from within the enclosed private courtyard area to the rear of the premises. By virtue of their size, form, proportions, materials and positioning the vent grille and boiler flue are not harmful to the special architectural or historic interest of the listed building or the character and appearance of the Conservation Area.

The vent grille and boiler flue do not conflict with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies DP6, ENV3 or ENV4 of the adopted East Lothian Local Plan 2008 or with Scottish Planning Policy: June 2014.

## CONDITIONS:

- 1 The mechanical extract ventilation equipment used to vent the premises shall be maintained to ensure their continued satisfactory operation and any cooking processes reliant on the extract system shall cease to operate if, at any time, the extract equipment ceases to function to the satisfaction of the Planning Authority.

Reason:

To ensure the use of the premises as a hot food takeaway does not harm the amenity of nearby residential properties by cooking odours.

- 2 The operating hours of the hot food takeaway hereby approved (including the operation of machinery) shall only be between 7:30 am and 12 midnight on Mondays to Sundays inclusive.

Reason:

To safeguard the amenity of the area, including the amenity of neighbouring residential properties.

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