

**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This is a substitute application submitted in favour of planning application 14/00880/P that has been withdrawn.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.