

**REPORT TO:** Planning Committee

**MEETING DATE:** Tuesday 5 January 2016

**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 Scheme of Delegation List by Councillor Grant for the following reason: there is considerable interest in this application within the communities of Tranent and Macmerry therefore I believe the Committee should deliberate and consider its merits.*

Application No. **14/00860/P**

Proposal Change of use of agricultural land for storage and distribution (class 6) use and for use as 4 individual permanent Gypsy Traveller pitches (3 caravans per pitch), erection of amenity block for use as shower/toilet and kitchen facilities, erection of bin store, fencing, walls, gates and gate piers, formation of hardstanding areas and installation of lighting (part retrospective)

Location **Muirpark Steading  
Tranent  
East Lothian**

Applicant Mr Jason Irvine

Per Alan Seath Planning Consultant

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

This application relates to the site known as Muirpark Steading, which occupies a countryside location between Macmerry to the east and Tranent to the west. The site is on the south side of the A199 public road and is bounded by Muirpark Cottage on its west side. The application site is roughly square shaped and measures some 3241 square metres in area.

Planning permission is sought for:

(i) the change of use of the agricultural land of the site for use as 4 individual permanent gypsy/traveller pitches (3 caravans per pitch) and for the part change of use of the land to Class 6 storage and distribution use;

- (ii) the erection of an amenity block for use as shower/toilet and kitchen facilities;
- (iii) the erection of a bin store, fencing, walls, gates and gate piers; and
- (iv) the formation of hardstanding areas and the installation of lighting.

Planning permission is sought part retrospectively as the agricultural land has been changed in use to 4 individual permanent Gypsy Traveller pitches (3 caravans per pitch), the amenity block for use as shower/toilet and kitchen facilities has been erected, the fencing, walls, gates and gate piers have been erected and the hardstanding areas formed and lighting installed. The bin store has yet to be erected.

The land of the application site is enclosed on its north roadside boundary by a high stone wall, which extends southwards to enclose parts of the east and west boundaries of the site. A 1.8m high timber fence encloses the remainder of the east and west boundaries of the site as well as the southern boundary of the site.

Access to the site is taken from the A199 public road to the north. A tarmac driveway leads to a set of timber gates which have been erected at the entrance to the site at its eastern side.

In a supporting statement received with the application it is stated that the applicants are a gypsy/traveller family. They seek planning permission to establish this site as a permanent pitch stating there is no safe, secure, suitable, equitable alternative authorised site in East Lothian. Moreover the applicant is able to operate their business from the part of the site is use for Class 6 storage and distribution use. The site also has good connections to Tranent, hospitals, schools, colleges and community services.

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 DC1 (Development in the Countryside and Undeveloped Coast), DP2 (Design), DP22 (Private Parking) and T2 (General Transport Impact) and of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Also material to the determination of the application is the Scottish Government's policy on housing given in Scottish Planning Policy: June 2014.

A total of 45 written objections have been received in respect of this planning application. Most of the written objections take the form of a pro-forma letter.

The main grounds of objection can be summarised as follows:

- (i) the site is not suitable or appropriate for such development;
- (ii) the proposal constitutes development in the countryside which is contrary to Policy;
- (iii) the use of the site would have a detrimental effect on local amenity and Tranent;

- (iv) the use of the site is a road safety hazard;
- (v) lighting installed is a distraction to drivers;
- (vi) the application is made retrospectively; and
- (vii) the development would have an impact on house prices.

The fact that development has commenced on the site 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.

The impact of a development on house prices is not a material consideration in the determination of an application for planning permission.

The Tranent and Elphinstone Community Council, as a consultee on the application, object to it on the grounds that (i) the use of the site for business use is not consistent with the provisions of Policy DC1 of the adopted East Lothian Local Plan 2008, (ii) the applicant started the development without a grant of planning permission, and (iii) the applicant did not engage with the Community Council.

The Council's Corporate Policy and Performance Team have previously confirmed that a 2008 employment tribunal determined that Gypsy Travellers are a distinct ethnic group and therefore protected by equalities legislation in the form of the Equalities Act 2010. There is no burden of proof on any group so protected. As such any person or household may declare themselves as being gypsy/travellers. Also the Scottish Census 2011 recognised the specific category of gypsy/traveller as a distinct ethnic group covered by law, and which group has been added to the population profile.

It is stated in paragraph 133 of Scottish Planning Policy: June 2014 that suitable sites should be identified for Gypsy/Traveller communities taking into account their mobile lifestyles. Local development plans should consider whether policies are required for small privately-owned sites for Gypsy/Travellers. Gypsy and Traveller communities should be involved in decisions about sites for their use.

The development plan does not contain any specific planning policy relating to the provision of gypsy/traveller sites.

Although Policy DC1 of the adopted East Lothian Local Plan 2008 sets out the criteria against which new tourism development and new housing development proposals in the countryside of East Lothian may be acceptable it does not contain any criteria in which to assess the provision of gypsy/traveller sites.

The Council's Policy and Projects service advises that the provision of gypsy/traveller sites should not be treated as representing housing or tourism development and the policy provisions of Policy DC1 for such development types should not be applied in this instance. It would be appropriate for any such site to be in a countryside area rather than within the boundary of a settlement as defined by Policy ENV1 of the adopted East Lothian Local Plan 2008.

The draft Proposed Local Development Plan approved (with amendments) at the Council meeting of 17 November 2015 does not allocate any sites for such use but does propose a criteria based policy for determining applications for them. This provides that

applications will be assessed in relation to the accessibility of the site, proximity to community facilities and schools, impact on built and natural heritage and nearby uses, its having adequate levels of amenity and impacts on neighbouring amenity and its being on land not specifically allocated for other purposes. Whilst this policy has limited weight at this stage, its provisions reflect material planning considerations embodied in existing guidance and development plan policies.

Other than the above reference in Scottish Planning Policy: June 2014 there is no specific national planning policy guidance on the issue of gypsy/traveller site provision. In the absence of detailed planning guidance at national level and planning policies at local level recent planning appeal cases have confirmed that the following advice may be accorded weight when assessing such planning proposals:

\* The Secretary of State's Advisory Committee on Scotland's Travelling People (ACSTP) 'Guidance Notes on Site Provision for Travelling People': October 1997, and;

\* The ACSTP's Ninth and Final Report: 1998-1999 (adopted by the Scottish Executive in November 2000).

The ACSTP 'Guidance Notes on Site Provision for Travelling People': October 1997 states that applications for planning permission in respect of private gypsy/traveller sites should be sympathetically considered, noting that the principle task continues to be the provision of long stay sites. It notes that there is no such thing as the perfect location for gypsy/traveller sites with compromise being necessary to identify suitable locations. In this it sets out criteria which should be addressed when considering proposals for gypsy/traveller sites including, (i) sites being accessible to a main road network, (ii) sites shouldn't be too remote to allow the possibility of social integration, (iii) sites should be suitably screened or have the potential for screening, (iv) the location of sites should offer some prospect for gypsy/travellers to seek work opportunities in the area, (v) sites should be located within reasonable proximity to schools, and (vi) sites should be within reasonable proximity to as broad a range as possible of community facilities.

The ACSTP's Ninth and Final Report: 1998-1999 advises that applications by gypsy/travellers to develop a small site with one or two ancillary buildings should be treated as 'agricultural' as opposed to 'residential' development, in the recognition that the type of accommodation required and the types of vehicles involved are more akin to that form of development. It also advises that caravans are relatively small so a second caravan may be necessary to allow privacy for the elderly, teenagers and young people who still reside with their families and that the caravans of visitors who stay overnight, for a break or during family illness, will need to be accommodated.

The application site is not within a settlement. Nor is the adjacent property of Muirpark Cottage part of a settlement as designated by the East Lothian Local Plan 2008.

The site is accessed from the A199 public road and as such has easy access and connectivity to the surrounding road network. There are also good public transport links close to the site.

In being only some 330 metres east of Tranent and with good transport links to other towns and villages in East Lothian as well as Edinburgh, the site allows the possibility of social integration, offers prospects for gypsy/travellers to seek work opportunities in the area and is located within reasonable proximity to schools and community facilities.

The applicant's supporting statement advises that as a general guide a gypsy/traveller site must be capable of accommodating an amenity building, sufficient pitches for an

extended family, a large trailer and touring caravan(s), parking spaces and other associated hardstanding areas. The sizes of the pitches and number of caravans depends on the size of individual families and their particular needs.

By being enclosed on its north side by a high roadside boundary wall which extends along other parts of the east and west sides of the site and otherwise by high fencing, the site is well contained within its landscape setting. The interior of the site is mostly hidden from public views from the A199 public road with only the very top of the roofs of the caravans and the roof of the amenity building being visible and which are seen in relation to the built form of the house of Muirpark Cottage and thus not in isolation in their countryside location.

Four gypsy/traveller pitches have been formed on the application site. It is the intention that each pitch could accommodate 3 caravans sited on it as well as a parking area. The applicant's supporting statement advises members of an extended family live together and thus an average family site must be capable of accommodating sufficient pitches for the extended family including a large principle caravan and further touring caravan(s) as well as an amenity building. The ACSTP's Ninth and Final Report: 1998-1999 recognises these necessities in the development of small gypsy/traveller sites.

In all of the above, and given the absence of specific planning policy relating to the provision of gypsy/traveller sites in the development plan, the use of the site as 4 individual permanent gypsy/traveller pitches is considered consistent with the recommendations for site selection and criteria as set out in The Secretary of State's Advisory Committee on Scotland's Travelling People (ACSTP) 'Guidance Notes on Site Provision for Travelling People': October 1997 and the ACSTP's Ninth and Final Report: 1998-1999 and thus in such circumstance can be supported, consistent with Scottish Planning Policy: June 2014. However to reflect the specialised nature of the proposal a condition should be imposed on a grant of planning permission to restrict occupation of each pitch to a single declared gypsy/traveller household.

The small part of the site which would also be used for Class 6 storage and distribution use would be used in conjunction with the use of the other part of the application site for 4 individual permanent gypsy/traveller pitches as part of the applicant's business. Due to the small scale of this use and the well contained location of the site the Class 6 storage and distribution use is of an appropriate scale and character for its proposed location in the countryside, consistent with Policy DC1 of the adopted East Lothian Local Plan 2008.

The site is well contained within its landscape setting due to the enclosure of the site. Thus the caravans, the area of land to be used for Class 6 storage and distribution use, the existing amenity block for use as shower/toilet and kitchen facilities, the proposed bin store, fencing, walls, gates and gate piers and the hardstanding areas and lighting that would facilitate the use of the land as 4 individual permanent gypsy/traveller pitches would be contained and would not harmfully impact on their countryside environment. In their location, neither individually nor cumulatively do they or would they appear harmfully prominent, intrusive, exposed or incongruous in their landscape setting.

On these design considerations the proposals are consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies DC1 Part 5 and DP2 of the adopted East Lothian Local Plan 2008.

The Council's Roads Services advises that in the interests of road safety (i) the site vehicular access from the A199 should be widened to a minimum width of 6m over the first 15m to accommodate the two way movement of vehicles, (ii) kerb radii at the access junction with the A199 should be a minimum of 6m, and (iii) the lights mounted on the

east elevation of the wall that encloses part of the east boundary of the site be removed as they give the appearance of oncoming vehicles.

Subject to the above recommended control which can be imposed as conditions on a grant of planning permission, Roads Services are satisfied that the site is capable of being safely accessed with no resultant consequences for road safety and that sufficient parking can be provided within the site. Consequently the proposals are consistent with Policies DP22 and T2 of the adopted East Lothian Local Plan 2008.

The Council's Environmental Protection Manager raises no objection to the application, being satisfied that the site is being used without harm to the amenity of the countryside area in which it is located, or to any nearby residential property.

As the site lies within an identified Coal Development High Risk Area, the Coal Authority has been consulted on the application. The Coal Authority advises that having reviewed the applicant's submitted Coal Mining Risk Assessment Report they confirm that it demonstrates that the application site is safe and stable and that there is no risk to surface stability. On this basis the Coal Authority raises no objection to the application.

On request from the Scottish Environment Protection Agency (SEPA) the applicant has submitted a Site Drainage Report. SEPA have reviewed the report and are satisfied that the site can be satisfactorily drained and they therefore raise no objection to the application.

Scottish Water have been consulted on the application but no response has been received.

#### CONDITIONS:

- 1 Each of the four individual permanent gypsy/traveller pitches hereby approved shall only be occupied by a single declared gypsy/traveller household.

Reason:

To restrict the extent of use of the pitches to that applied for and to reflect the specialised nature of the gypsy/traveller site proposal.

- 2 Within one month of the date of this grant of planning permission the lights mounted on the east elevation of the wall that encloses part of the east boundary of the site shall be removed.

Reason:

In the interests of road safety.

- 3 Within three months of the date of this grant of planning permission the site vehicular access from the A199 shall be widened to a minimum width of 6 metres over its first 15 metres to accommodate the two way movement of vehicles.

Reason:

In the interests of road safety.

- 4 Within three months of the date of this grant of planning permission the site access junction with the A199 shall be altered such that kerb radii into the access shall be a minimum of 6 metres.

Reason:

In the interests of road safety.