

REPORT TO: Planning Committee

MEETING DATE: Tuesday 19 April 2016

BY: Depute Chief Executive (Partnership and Services for Communities)

SUBJECT: Application for Planning Permission for Consideration

Note - this application was called off the Scheme of Delegation List by Councillor Goodfellow for the following reason: As this application has generated both public interest and discussion, I believe the Committee should have the opportunity to fully assess it.

Application No. **16/00023/PCL**

Proposal Change of use of grassed area to form car parking area

Location **Tantallon Terrace Car Park
Tantallon Terrace
North Berwick
East Lothian**

Applicant East Lothian Council

Per East Lothian Council

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

This application relates to an area of grassed ground located to the west of an existing car park on the north side of Tantallon Terrace, North Berwick. It is bounded to the north by a picnic area with the beach of Milsey Bay beyond, to the south by the public road of Tantallon Terrace/ Haugh Road with a Scottish Water Waste Water treatment works beyond, to the west by an area of grassed open space and to the east by a grassed area of open space with a car park beyond. The area of Milsey Bay beach beyond the application site to the north is within the Firth of Forth Site of Special Scientific Interest and within the Firth of Forth Special Protection Area.

In its coastal location the grassed area of open space the subject of this application is within an area covered by Policies DC1 (Development in the Countryside and undeveloped Coast) and C3 (Protection of Open Space) of the adopted East Lothian Local Plan 2008. The area of Milsey Bay beach beyond the application site to the north,

is within the Firth of Forth Site of Special Scientific Interest and within the Firth of Forth Special Protection Area and accordingly, is within an area covered by Policies NH1a (Internationally Protected Areas) and NH1b (Sites of Special Scientific Interest) of the adopted East Lothian Local Plan 2008.

The area of grassed ground measures some 38.6 metres long by some 5.2 metres wide. It is comprised of roughly grassed ground with shrubs planted on it. It forms part of an existing picnic area. It is enclosed on its south side by a low stone wall and is otherwise without enclosure.

Through this application East Lothian Council seeks full planning permission for the change of use of the area of ground to form a car parking area and the laying out on it of 15 parking spaces, one of which would be for a disabled user. The proposed car parking area would be an extension to the existing car parking area to the east of the application site.

There are other works of alteration to the existing car park and for sea defence works shown on the application drawings. Those works are normally defined as permitted development.

Regulations 60 to 63 of the Conservation (Natural Habitats Etc) Regulations 1994 provide that any development which is permitted development, is likely to have a significant effect on a European site and is not directly connected with or necessary to the management of the site, shall not be begun without the approval of the planning authority.

If the proposed works will not have a significant effect on a European Site, it will still enjoy the normal permitted development rights. However the Conservation (Natural Habitats Etc) Regulations 1994 provide a procedure for obtaining the opinion of Scottish Natural Heritage (SNH) to ascertain the effects of a proposed development on the European Site. In this case SNH, in providing pre-application comments on this application, advised that there would be no adverse effects on the integrity of the Firth of Forth SSSI and SPA. On these considerations and under the provisions of Class 33 of Part 12 of The Town and Country Planning (General Permitted Development)(Scotland) Order 1992, as amended, the other proposed works in the form of alterations to the existing car park and for sea defence are permitted development and as such do not require planning permission. They do not therefore part of this application and thus they are not a material consideration in the determination of this application.

This application is accompanied by a design statement and an appropriate assessment.

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), NH1a (Nationally Protected Sites), NH1b (Sites of Special Scientific Interest), C3 (Protection of Open Space), DP2 (Design), DP13 (Biodiversity and Development Sites), DP16 (Flooding), T2 (General Transport Impact) and T5 (Public Parking) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application is the Scottish Government's Scottish Planning Policy: June 2014 on development affecting internationally protected sites.

Scottish Planning Policy states that planning authorities, and all public bodies, have a duty under the Nature Conservation Act 2004 to further the conservation of biodiversity. This duty must be reflected in development plans and development management decisions.

Also material to the determination of the application is the Council's Transportation Strategy and the representations received from the public.

A total of 7 written representations have been received to the application. 5 of which raise objection to the application and 2 make general comment. They are made by or on behalf members of the public.

The main grounds of objection raised are:

1. The development appears to take up the full width of the beach and would mean at high tide it you would not be able to walk the length of the beach;
2. The year round amenity value of the beach should not be sacrificed to make parking easier for summer visitors;
3. It is shocking how little concern ELC shows for the environment, our precious commodity – it should be looked after and not threatened;
4. The proposal is contrary to SPP and the adopted East Lothian Local Plan 2008;
5. The effect of the proposed development on the Firth of Forth Ramsar Site, SSSI and SPA is unclear as no supporting information has been assessing the impact on the designated sites has been provided with respect to site assessment, ecology, landscape and visual impact and transport impact;
6. No imperative reasons of over-riding public interest have been demonstrated and is considered to be a high order test in planning policy terms;
7. The proposed coastal protection works will impede access to the beach, particularly during periods of inundation as a result of the MHWS resulting in an impact upon amenity for residents and visitors who use the beach for leisure and recreation;
8. An increase in the capacity of the car park will contribute to an increase in traffic in the local street network compounding the congestion already on these streets to the detriment of the residential amenity of local residents;
9. No justification has been given rationalising the requirement for additional car parking in this sensitive location;
10. Bringing more cars along the seafront is not a solution to the problem but will make matters worse;
11. The seafront car parks and roads cannot cope with the amount of cars pouring into the town;
12. The proposals will make what is already extremely hazardous for pedestrians crossing the road to the beach even more dangerous;
13. Consider alternative solutions that will have a positive impact on the town;
14. The proposals would have an impact on the attractiveness of the beach from Milsey Bay and would lead to a loss of amenity and impair an important habitat for many forms of wildlife;
15. There is an obligation for planning proposals to consider visual impact – changes which have outstanding views to the Bass Rock, Craigleith and May Island would ignore this obligation;
16. The works would cut the beach in two at high tide and other times.
17. People enjoying the beach will have to cross the car park to get to the other side of the beach – this would be dangerous, particularly for children and fundamentally at odds

with preserving the amenity and attractiveness of our seas and natural coastline;

18. Why is coastal protection required?
19. A query of the estimate of the mean high tide line;
20. Tides higher than the mean will hit the car park with all the risk and inevitable damage this will entail;
21. What assessment has been done on where excess water that hits the car park will be routed?
22. It seems wrong to encourage exhaust fumes down in an area where we all wish to go to take walks, fill our lungs with fresh air and encourage children to play and enjoy our beautiful environment;
23. The proposal would threaten the amenity of walkers from the caravan park;
24. A consultant report into car parking in North Berwick stated car parking at East beach is probably the most poorly accessed location for traffic from the west;
25. Traffic would need to be routed through the town centre via a circuitous route around the A198. Marine Parade is also a narrow street;
26. There is no connectivity with public transport;
27. Extending the car park is not sensible or logical – there should be a new car park at the west side of the town to attract visitors to the West or East Beach;
28. Building out to the MHWS does not take account of SPP with regard reducing carbon emissions and adapting to climate change;
29. The proposed development does not help to protect or enhance our natural and cultural assets and facilitate their sustainable use in respect of Outcome 3 of SPP;
30. The development does not complement local features such as landscape and ecology;
31. The development considers place and need of people before the movement of motor vehicles;
32. The development could include higher densities and a mix of uses that enhance accessibility by reducing reliance on the private car and prioritise sustainable and active travel choices;
33. It could have included paths and routes which connect places directly with facilities that link different means of travel;
34. No additional traffic should be attracted to this narrow no through road;
35. People will enjoy the beach more if it is not spoilt by cars and fumes; and
36. The proposals would conflict with Policies ENV4, ENV5 and C3 of the adopted East Lothian Local Plan 2008.

Other main points raised in representation to the application are:

1. Scottish Water has concerns about the servicing of its own site on completion of the development;
2. The only way forward is to have park and ride facilities one at either end of the town;
3. Dealing with the perennial problem of car parking is absolutely vital if North Berwick is going to keep growing at the rate that developers would like;
4. Park & ride is a well recognised way of controlling car numbers in a town and the world over – money could be spent on this system and not on extending the car park;

The servicing of adjacent wastewater treatment works is not a material consideration in the determination of this application.

Whether the Council should seek to implement park and ride facilities within the town of North Berwick and matters concerning the rationale for doing so are not material considerations in the determination of this application for planning permission.

North Berwick Community Council, as a consultee for the application, raises no concern with the proposal. They do however comment that logs should be used to delineate the

15 parking spaces to discourage large vehicles from parking parallel to the sea across several parking spaces.

In respect of wider transportation matters, the adopted East Lothian Local Plan 2008 is one aspect of the Council's approach to transportation, which includes other policy documents such as the Local Transport Strategy (LTS) and Local Air Quality Strategy. The Council's first LTS was published in 2001 and sets out its transport and travel vision to the year 2020. The prime objective of the strategy is to reduce the overall dependence on the private car and to promote the availability and use of alternative, more sustainable modes of transport where practical to do so. The adopted East Lothian Local Plan 2008 does not contain any transportation policies relating to the car park at Tantallon Terrace or any proposals to extend the existing car park.

The Council's Road Services confirm that there have been a number of parking, traffic and environmental studies undertaken in North Berwick since 2000 all of which to some degree have highlighted the need to increase parking provision by various methods such as maximising the efficiency and the operation of parking, improving control and turn-over, increasing supply and demand management techniques. A questionnaire was placed on the Council's Consultation Hub between 24th March – 5th May 2014, seeking a consensus of opinion on various parking and traffic related issues.

One of the findings of the questionnaire was that there was support to upgrade and increase the capacity of beach front car parks including that of Tantallon Terrace/ Haugh Road.

Following on from this consultation exercise the Council's Depute Chief Executive, Partnerships and Community Services recommended in his report to Cabinet of 10 March 2015 on the 'North Berwick Parking Strategy Update' that Cabinet approve a 3 year strategy to amend or make the necessary Traffic Orders to purchase the requisite land, to obtain the necessary consents and to construct new car park provision as detailed in Appendix 1 of his Report. This includes the upgrade and increase in capacity of the sewage works car park at Tantallon Terrace/ Haugh Road. Furthermore the introduction of a Traffic Regulation Order (TRO) to ban overnight parking following an 18 month experimental order to establish the effectiveness and operational practicalities of the Order. These recommendations were approved by Cabinet on 10th March 2015.

Notwithstanding the consideration of the Council's accepted position that there is a lack of off street parking provision in North Berwick and Cabinet's decision to pursue additional parking improvements including, potentially, the provision of additional parking as an extension to Tantallon Terrace car park, the principal determining factor in this case is whether, the proposed development is acceptable having regard to national, strategic and local planning policy and guidance and other material considerations.

The Council's Transportation Planning Officer raises no objection to the application. However in responding to matters raised concerning general transport impact and the provision of additional parking, he advises that that proposals the subject of this application have been made to address a lack of parking provision. In adding much needed parking provision it is considered that the car park will off-set indiscriminate on-street parking within the area.

The Council's Transportation Planning officer is satisfied that the proposals will not have any adverse consequences for road safety, the capacity of the surrounding road network to deal with traffic unrelated to the development and thus residential amenity as a result of motorised traffic. On these considerations the proposals do not conflict with Policy T2 of the adopted East Lothian Local Plan 2008.

On the provision of publicly available short stay car parking the Councils Transportation Planning Officer is satisfied that the proposals will contribute to the vitality and viability of the town centre and on these considerations do not conflict with Policy T5 of the adopted East Lothian Local Plan 2008.

The applicant has submitted a design statement in support of this application. In it they advise that to improve the capacity of the car park an area of open space currently occupied by a picnic area would be used. The increase in the extent of the car parking at this location would extend beyond the Mean High Water Spring so as not to encroach on the SSSI to the north of the site. The existing stone wall to the south of the site would be demolished. Post and chain fencing was selected to improve visibility from the car park and to be more in keeping with its location.

In changing the use of the existing grassed area of open space to form car parking it is proposed to demolish the low stone wall that encloses the south boundary of it to allow for vehicular access. The new car parking area would be surfaced in asphalt and would have laid out on it 15 parking spaces, one of which would be for a disabled user. In occupying an existing area of grassed land the proposed new car parking area would not occupy the full width of the beach.

Policy DC1 (Development in the Countryside and undeveloped Coast) of the adopted East Lothian Local Plan 2008 states that development, including changes of use, will be acceptable in principle within the countryside and undeveloped coast where it is of an appropriate scale and character for its proposed location, it can be suitably serviced and accessed and there are no significant traffic or other environmental impacts. Part 5 of Policy DC1 requires that, in all cases, development should be compatible with its surroundings, minimise landscape impact, have no significant adverse impact on nearby uses, minimise the loss of prime agricultural land and that suitable access and infrastructure is or can be made available.

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.

The proposed area of grassed land to be changed in use to car parking occupies a prominent coastal location. It forms part of an existing picnic area. The proposed car parking area would be visible in approaches to it from Tantallon Terrace to the west and in pedestrian approaches from Tantallon Caravan Park to the southeast. It would also be visible, when occupied, in long distance views from Marine Parade to the west. It would also be visible from the beach and thus from the area of public open space to the north of it.

The proposed new car parking area would be seen in relation to the size and massing of the existing car park. They would rationalise the form and functionality of the car park. It would not be unduly prominent and would not appear harmfully intrusive, incongruous or exposed in its coastal landscape setting. Due to its extent, form and appearance and the functional appropriateness of its positioning alongside the existing car park, it would not harm the character and appearance of the landscape of the area.

On these considerations the proposals do not conflict with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) or with Policy DP2 of the adopted East Lothian Local Plan 2008.

Policy C3 of the adopted East Lothian Local Plan 2008 states that recreational, leisure and amenity open space and facilities which make a significant contribution to the recreational needs of the community or the amenity or landscape setting of an area will

be retained in use as such. Alternative uses will only be considered where there is no significant loss of amenity or impact on the landscape setting and; (i) the loss of part of the land would not affect its recreational, amenity or landscape potential, or (ii) alternative provision of equal community benefit and accessibility would be made available, or (iii) provision is clearly in excess of existing and predicted requirements.

The area of grassed open space to be changed in use to form the new car parking area is only a very small part of the much larger area of public open space comprising Milsey Bay. Due to the extent of the land that would remain as public open space the loss of a small part of the existing grassed open space, in its position close to the existing car park would not compromise the landscape setting or recreational, leisure or amenity potential of the much larger area of recreational, leisure and amenity open space that surrounds it. Nor would it set a precedent of other changes of use to the remaining larger area of recreational, leisure and amenity open space.

Accordingly, the proposed change of use would not conflict with Policy C3 of the adopted East Lothian Local Plan 2008.

With regard to international, national and locally designated areas and sites Paragraph 202 of Scottish Planning Policy: June 2014 states that 'The siting design of development should take account of local landscape character. Development Management decisions should take account of potential effects on landscapes and the natural and water environment, including cumulative effects. Developers should seek to minimise adverse impacts through careful planning and design, considering the services that the natural environment is providing and maximising the potential for enhancement.

Paragraph 203 of Scottish Planning Policy states that planning permission should be refused where the nature or scale of proposed development would have an unacceptable impact on the natural environment. Direct or indirect effects on statutorily protected sites will be an important consideration, but designation does not impose an automatic prohibition on development.

Paragraph 204 of Scottish Planning Policy states that Planning Authorities should apply a precautionary principle where the impacts of a proposed development on nationally or internationally significant landscape or natural heritage resources are uncertain but there is sound evidence that significant irreversible damage could occur. The precautionary principle should not be used to impede development without justification. If there is any likelihood that significant irreversible damage could occur, modifications to the proposal to eliminate the risk of such damage should be considered. If there is uncertainty, the potential for research, surveys or assessments to remove or reduce uncertainty should be considered.

With regard to international designations, paragraph 207 of Scottish Planning Policy states that sites designated as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) make up the Natura 2000 Network of protected areas. Any development proposal likely to have a significant effect on these sites which is not directly connected with or necessary to their conservation management must be subject to an "appropriate assessment" of the implications for the conservation objectives. Such plans or proposals may only be approved if the competent authority has ascertained by means of an "appropriate assessment" that there will be no adverse effect on the integrity of the site.

Policy NH1a of the adopted East Lothian Local Plan 2008 stipulates that development which would have an adverse effect on the conservation interest of a Natura 2000 area (including proposed Special Protection Areas or Special Areas of Conservation) or a

Ramsar site will only be permitted in the following circumstances, (i) there are no alternative solutions, and (ii) there are imperative reasons of over-riding public interest, including those of a social or economic nature.

Policy NH1b of the adopted East Lothian Local Plan 2008 stipulates that development affecting SSSI's will only be permitted where it can be demonstrated that; (a) the objectives of designation and overall integrity of the site will not be compromised; or (b) any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, economic or environmental benefits of national importance; and (c) there are no alternative solutions.

Policy DP13 of the adopted East Lothian Local Plan 2008 generally presumes against new development that would have an unacceptable impact on the biodiversity of an area.

The application site lies immediately to the south of the Firth of Forth Site of Special Scientific Interest (SSSI) and the Firth of Forth Special Protection Area (SPA). Scottish Natural Heritage (SNH) advises that these designations are in place to protect the nationally important geology (SSSI) and nationally and internationally important bird population (SSSI/ SPA) of the Firth of Forth.

SNH recognise there will be no land take from within the SSSI/ SPA of the Firth of Forth. However, they consider it likely that machinery required in the construction of the new car parking area may require access to the SSSI or materials may be temporarily stored there. They advise that the SSSI in this location serves to protect the nationally important geological feature: Carboniferous – Permian Igneous Stratigraphy and any exposed bedrock around the application site will form part of this geological feature. They therefore recommend a condition be imposed on a grant of planning permission to safeguard this geological feature and any exposed bedrock during construction from damage from machinery and the storage of materials.

To avoid damage to the SSSI, SNH recommend a condition be imposed on a grant of planning permission that the beach habitat be restored through the removal of construction materials and the reinstatement of any excavated areas.

These matters can competently be controlled by conditions of a grant of planning permission.

SNH advise that the proposals could affect the Firth of Forth SPA which is also notified as a Ramsar Site. The qualifying species of the Firth of Forth SPA are identified as wintering and passage birds (waders and wildfowl) that are known to use the area. These birds feed on the intertidal sands and mudflats (waders) and inshore waters (seaducks, grebes and divers) and also roost above the high tide line. SNH further advise that the potential effects on these species include disturbance and displacement during the construction works. In accordance with the Conservation (Natural Habitats, &c.) Regulations 1994, more commonly known as the 'Habitat Regulations', they recommend the Council undertake an appropriate assessment to ascertain the impacts of the development on the qualifying interests of the Firth of Forth SPA.

Regulation 48(2) of the Habitats Regulations states that the applicant shall provide such information as the Council may reasonably require for the purposes of the assessment.

In support of this application and in response to the recommendation made by Scottish Natural Heritage, an Appropriate Assessment has been undertaken by the Council. It has been undertaken in consultation with SNH. The Appropriate Assessment informs that SNH identified the potential for birds to be displaced or disturbed by the construction

or alteration of the car park. It advises that the Council agrees with this conclusion of 'likely significant effect'. The Appropriate Assessment has been carried out to determine whether displacement or disturbance will affect the integrity of the Firth of Forth Special Protection Area (SPA).

The Appropriate Assessment advises that a number of possible impacts on the SPA were considered by SNH, including;

1. Disturbance and/ or displacement of species during construction work;
2. Impacts on habitats within the SPA;
3. Impacts on the structure and function of the ecological processes in the SPA AND;
4. The potential for species to be lost from the SPA.

Of these impacts, only the first impact was considered to have a 'likely significant effect' on the SPA. Since the proposal to the site is immediately adjacent to the SPA boundary there is the potential for construction work to disturb or displace roosting waders or wildfowl.

With respect to the effect of the disturbance/ displacement on the integrity of the SPA the Appropriate Assessment identifies a number of local factors that influence the extent to which disturbance or displacement is a significant issue:

1. Construction activity will be of short duration, i.e. up to a few weeks only;
2. The construction site covers only a small area only, and disturbance will affect an extremely small fraction of the SPA;
3. The application site is already subject to background levels of disturbance due to its location on a popular recreational beach within a settlement and;
4. There are extensive areas of similar habitat in the vicinity of the application site.

The conclusions of the Appropriate Assessment are that due to the short duration of the construction work disturbance will not be a permanent feature of the site. Any disturbed or displaced birds could make use of other areas of the SPA during the construction period. It is therefore considered that there will be no adverse effects on the integrity of the SPA.

The Council's Biodiversity Officer advises that the proposed car park extension would cause the loss of a relatively small area of coastal grassland. Habitat impacts would be small and landscaping of the extended car park would provide an attractive coastal setting and wildlife resource. He therefore raises no objection to the application being satisfied the proposals would not impact on coastal habitats adjacent to the Firth of Forth SSSI and SPA.

The Appropriate Assessment has identified that the proposals would not have any adverse effect on the conservation interests of the SPA. Subject to the aforementioned controls to safeguard the Firth of Forth SSSI the proposals would not compromise the objectives or designation and overall integrity of the SSSI. Accordingly, the proposals do not conflict with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies NH1a, NH1b and DP13 of the adopted East Lothian Local Plan 2008 or Scottish Planning Policy: June 2014.

Subject to the aforementioned controls to safeguard the Firth of Forth SSSI the proposals do not conflict with Policies NH1a, NH1b and DP13 of the adopted East Lothian Local Plan 2008 or Scottish Planning Policy: June 2014.

The Scottish Environment Protection Agency (SEPA) advises the site lies within the

0.5% annual probability floor extent of the SEPA Flood map and is potentially at medium likelihood of coastal flooding. The predicted 0.5% annual probability flood level in the vicinity of the site is 3.9m AOD based at extreme still water level calculations using Coastal Flood Boundary Method. This does not take account of the potential effects of climate change and wave action and as such the risk could be greater than this.

They further advise that the extension to the car park is considered low sensitivity and given the flood risk is only coastal, there is unlikely to be any impact on flood risk elsewhere as a result of the development. They therefore raise no objection to the application on flood risk grounds. They do however recommend that given the potential to be exposed to large waves that warning signs be erected to advise car park users of the potential rise of wave overtopping during storm events. This matter can reasonably be imposed on a condition of a grant of planning permission.

Subject to the aforementioned control the proposals are consistent with Policy DP16 of the adopted East Lothian Local Plan 2008.

CONDITIONS:

- 1 Prior to use being made of the car park as it is hereby approved to be extended and altered, warning signs shall be erected within the car park to alert users of it of the potential for exposure to large waves. Details of the form and positioning of the warning signage shall be submitted for the approval of the Planning Authority prior to it being displayed. Once displayed the signage shall remain in place and shall accord with the details approved of it, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of public safety.

- 2 No development shall take place until there has been submitted to and approved in writing by the Planning Authority details of the location and method of the storage of construction materials and machinery to be used during the construction phase. The details shall include the methods for protection of bedrock during construction. The means of storage of materials and machinery, the location for them and the method for protection of bed rock shall accord with the details so approved, unless otherwise approved in writing by the Planning Authority.

Reason:

To safeguard exposed bedrock that is an important geological feature of the Firth of Forth Site of Special Scientific Interest.

- 3 Prior to use being made of the car park as it is hereby approved to be extended and altered, or the completion of the development, whichever is the sooner, the beach habitat shall be restored through the removal of stored construction materials and machinery and any areas of beach excavated to facilitate the development shall be reinstated.

Reason:

To safeguard the Firth of Forth Site of Special Scientific Interest and Special Protection Area.