

REPORT TO: East Lothian Council

MEETING DATE: 28 June 2016

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: Appeal Statement – Submission to Directorate of Planning and Environmental Appeals for Appeal Against Non-Determination of Planning Application 11/00664/PPM Mixed Use Development at Goshen Farm, Musselburgh

1 PURPOSE

- 1.1 To inform Council of the response made to the Directorate of Planning and Environmental Appeals (DPEA) in respect of the non-determination of planning application 11/00664/PPM for Planning Permission in Principle for mixed use development comprising the erection of up to 1,000 residential units, local centre, including provision of employment accommodation, non-denominational primary school, community facilities, open space, landscaping, roads and associated infrastructure on land at Goshen Farm, Musselburgh.

2 RECOMMENDATIONS

- 2.1 That Council notes the response made by officers to the above-mentioned appeal.

3 BACKGROUND

- 3.1 Planning application 11/00664/PPM was registered as valid on 22 July 2011.
- 3.2 The applicant, Ashfield Commercial Properties Ltd, had been advised prior to submission that officers could not support the application, it being contrary in principle to the adopted East Lothian Local Plan 2008. The officer advice was that the applicant should participate in the Local Development Plan process so the site could be considered for allocation in the new Local Development Plan (LDP).

- 3.3 Whilst the site was being considered through the LDP process, the applicant declined to withdraw the application but requested extensions of time for its determination, which were agreed by officers.
- 3.4 On 10 February 2016 the applicant confirmed they would not agree to any further extension of time for determination and subsequently lodged an appeal against the Council's non-determination of the application on 3 March 2016.
- 3.5 When the appeal was registered by the DPEA on 4 March 2016 a response was requested from the Council. The DPEA required a response from the Council within 14 days of notification to give full details of the handling of the application and a response within 21 days to give its full response to the grounds of appeal.
- 3.6 These timescales did not give officers the opportunity to take the response on the grounds of appeal to a meeting of the Planning Committee or of the Council. An extension of time was requested but this was given only in respect of two days of public holiday which fell during the period within which the Council had to respond.
- 3.7 Officers therefore submitted the Council Officer Statement of Appeal as set out in Appendix 1 of this report, following discussions with the Convenor of the Planning Committee. The report refers to the Minute of the Council meeting of 17 November 2015 which considered the Draft Proposed LDP and amended it by the removal of the Goshen site.
- 3.8 The report sets out the reasons why officers are of the view the appeal should be dismissed and the application refused, specifically:
1. The proposal is dependent on education solutions that are subject to decisions of the Education Authority and subject to a separate statutory process. In the absence of clear and deliverable solutions for both primary and secondary education provision the proposal is premature and ineffective.
 2. The proposals require a significant abstraction from the Edinburgh Green Belt, of a scale that should be managed by the LDP process of consultation and examination rather than by the determination of a planning application. As such a decision needs to consider the green belt strategically through that LDP process, with due regard to other proposed sites, the proposal is premature
 3. The development of this site and others in the Musselburgh area requires the completion of significant technical work on cumulative transportation impacts, including for air quality management, without which the proposal does not have the support of the Council's Road Services or Transport Scotland. As such, a decision would again be premature.
 4. In all of the above, approval of a proposal of this scale and with its infrastructure implications would prejudice the emerging LDP and the sites therein which reflect the settled view of the Council.

4 POLICY IMPLICATIONS

- 4.1 There are no policy implications arising from the consideration of this report.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy

6 RESOURCE IMPLICATIONS

- 6.1 Financial - none
6.2 Personnel - none
6.3 Other - none

7 BACKGROUND PAPERS

- 7.1 None

AUTHOR'S NAME	Iain McFarlane
DESIGNATION	Service Manager, Planning
CONTACT INFO	imcfarlane@eastlothian.gov.uk Ext. 7292
DATE	23 May 2016

East Lothian Council

Council Officer Statement of Appeal

PPA-210-2054 Land at Goshen Farm, Musselburgh

11/00664/PPM Application for application for planning permission in principle for mixed use development comprising the erection of up to 1,000 residential units, local centre, including provision of employment accommodation, non-denominational primary school, community facilities, open space, landscaping, roads and associated infrastructure at Goshen Farm

Appeal against Non-Determination

For convenience of referencing, document references in brackets relate to the appellant's document list dated 2 March 2016 unless otherwise advised. Appendices refer to documents accompanying this statement.

1 Introduction

- 1.1 Ashfield Commercial Properties Limited has appealed against the Council's non-determination of the above mentioned application. This Statement of Appeal is submitted by officers of the Council, as the appeal submission deadline does not allow time for the Council to give its consideration to a submission. The minute of the Council meeting of 17 November 2015 (69) which considered the draft proposed plan sets out the views of the Elected Members on the Officer proposal that the appeal site be allocated through the Local Development Plan (LDP) process.
- 1.2 The appellant approached Council officers for discussions on a development of the site at Goshen Farm prior to making their application in 2011. The advice of officers was that the principle of a mixed use development of the site should be pursued through the LDP process and not as an application. This was on the basis that consideration of removing a site of this size from the Edinburgh Green Belt should rightly be considered as part of that LDP process rather than by planning application. It was also due to the requirement for the Council to consider the site in terms of the significant education and infrastructure (particularly transportation) issues which could be aligned with the LDP process. Since submitting the application the appellant had agreed a series of extensions of time for determination of the application, the most recent of which expired on 15 February 2016.
- 1.3 Officers promoted the site as part of the Draft Proposed LDP considered at a meeting of the full Council on 17 November 2015 (65). This was not a statutory stage of the plan making process but one convened in order to arrive at a settled view of the Council on the strategy and sites for the Proposed LDP, to enable the completion of cumulative technical work and a Finalised Proposed LDP.
- 1.4 The Draft Proposed LDP was approved subject to amendments. One of the approved amendments is to remove the proposed allocation of land at Goshen for mixed use

development, Proposal MH9, and the related proposed site for development of secondary education facilities, Proposal MH10 (68, 69). On that basis, the intent of part of PROP ED1 – Musselburgh Cluster Education Proposals as relating to Goshen requires to be removed from the Finalised Proposed LDP. It is noted from Para 3.3 of the appellant’s statement that the area of land shown on the revised masterplan does not form part of the appeal subjects.

- 1.5 As a statement from Officers who recommended the site be allocated through the LDP process, this appeal statement does not seek to rebut point by point the appellant’s statement. It is written in the context of an acknowledgement of housing land supply issues and due consideration of the context of the proposal in relation to the LDP process. It focuses on the key issues relevant to the site, including unresolved consultee responses.
- 1.6 Officers disagree with the appellant’s contention in Para 1.2 of the submitted appeal statement that the Council had all information available to determine the application, as amended in September 2015, as is set out below in terms of the relevant considerations for this proposal.

2 The Development Plan, planning policy and other material considerations

- 2.1 East Lothian Council is subject to the approved South East Scotland Strategic Development Plan (SDP) (78) together with its approved Supplementary Guidance on Housing Land (81), which defines the housing targets for each constituent authority of the SDP area.
- 2.2 The adopted East Lothian Local Plan 2008 (79) set out a spatial strategy for East Lothian and allocated land for housing in response to the then strategic plan, the Edinburgh and the Lothians Structure Plan 2015. At this stage a number of those allocated sites are not yet complete though significant progress has been made on them whilst some others await planning permission and commencement of development.
- 2.3 The Council has previously acknowledged the delays in delivery of these sites, partly though not wholly due to the economic recession, with a consequent impact on the five year effective housing land supply. It has also acknowledged that its adopted East Lothian Local Plan 2008 is out of date, being more than 5 years old. The Council’s Housing Land Supply: Interim Planning Guidance (IPG) has been introduced and subsequently modified in response to changing circumstances, most recently on 23 February 2016 (77) in relation to the approval with amendments of the Draft Proposed LDP, the forthcoming Proposed LDP and the due process that will follow.
- 2.4 The IPG and its appendices sets out the Council’s consideration of the development plan context, including SDP policies 5,6 and 7 (78) in respect of housing land, the five year housing land supply and the potential for grants of planning permission to supplement the housing land supply. It also sets out the Council’s consideration of the sites proposed for allocation for housing development (including mixed use) through the LDP process and their ability to provide for an adequate housing land

supply going forward. The Council is supportive of the general principle of development of these sites, subject to their technical assessment including where relevant the cumulative technical assessment of the impacts of those sites. The IPG also codifies the Council's position in respect of the material planning considerations relevant to the consideration of sites which are not allocated in the 2008 Local Plan and not proposed to be allocated in the Proposed LDP but which might potentially augment the effective housing land supply.

- 2.5 The IPG considers Scottish Planning Policy: June 2014 (51), its presumption in favour of development which contributes to sustainable development where development plans are out of date (Para 33) and its consideration (Para 34) that where a plan is under review, it may be appropriate in some circumstances to consider whether granting planning permission would prejudice the emerging plan. Such circumstances are only likely to apply where the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new developments that are central to the emerging plan. Prematurity will be more relevant as a consideration the closer the plan is to adoption or approval.
- 2.6 The IPG is a statement of the Council's position on these matters. As relevant to this particular case the considerations of the site being removed from the Proposed LDP, its technical assessment, including cumulative assessment, the scale of the site (more than 300 units), its forming part of the Edinburgh Green Belt and the consideration of prematurity in relation to the plan are all significant material considerations.
- 2.7 The Draft Proposed LDP before amendment included the Goshen sites and it is noted that the appellant's statement quotes from that document. However, that does not override the decision of the Council to remove the site such that it would not form part of a Finalised Proposed Plan for the reasons set out in the official minute of the Council meeting of 17 November 2015 as recorded in the appellant's statement Paras 3.45 to 3.50.
- 2.8 Council officers have worked with the appellant in respect of responses by consultees and the relevant matters arising. A number of these remain as unresolved material considerations.
- 2.9 There is objection to the original and revised proposals from Historic Scotland/Historic Environment Scotland, from the Community Councils of Musselburgh and Inveresk, Prestonpans and Wallyford, and from the Council's Archaeology Service and Executive Director of Education and Children's Services/Depute Chief Executive, Resources & People Services (on behalf of Education).
- 2.10 Where conditions meeting the test of Circular 4/1998 are recommended by consultees these are incorporated into the accompanying schedule of conditions to

be considered should it be concluded that planning permission in principle be recommended.

3 *External Consultees*

- 3.4 In respect of the original proposals **Historic Scotland** (2011, PARF submission) advised of its statutory remit as regards impact on the Category A listed buildings of Prestongrange House and Colliery and also gave advisory comments on the impact of the proposed development on the Battle of Pinkie, a nationally important site which appears on the Inventory of Historic Battlefields.

Historic Scotland advised that the proposed development would not have an adverse impact on the setting of the above listed buildings. However, it expressed concern that the appellant's Environmental Statement had not addressed the historic environment issue of greatest potential significance being the impact on the Battle of Pinkie site. It considers that the proposed development has the potential to impact adversely both on archaeological remains of the English Camp and the landscape context of this key part of the battlefield site.

Historic Scotland clarified that its position in this case does not mean objection to the principle of any development occurring within open areas of the battlefield designation but, given the presence of these key elements of the battlefield landscape and possible archaeological remains, any scheme coming forward as a planning application should give due consideration to the significance and presence of the battlefield and a full review of suitable mitigation proposals. It considers that the application has to balance the need to protect these two parts of the battlefield while delivering wider economic benefits. Historic Scotland acknowledged that this could be dealt with through matters specified by conditions.

In respect of the revised proposals **Historic Environment Scotland** (2016, PARF submission) objects to the application on the basis of the potential impact on the inventory battlefield known as the Battle of Pinkie. It clarifies that it has no objection to the principle of development in this location, and that concerns relate specifically to the scale and layout of development as demonstrated in the application. Its further advice is that the Council consult its own archaeological and conservation advisors, who may also wish to comment on potential historic environment impacts. This may include issues outwith Historic Environment Scotland's remit, such as category B and C listed buildings, and unscheduled archaeology.

In respect of this advice the Council's Archaeology/Heritage Officer (PARF submission) objects to the proposal (Para 4.6) and states that should it be seen appropriate to grant planning permission in principle, he would require to be re-consulted. He has clarified that there is the potential that adequate assessments of the impacts and formation of suitable mitigation strategies, which may include archaeological investigations and master planning design solutions, particularly in

relation to the impacts upon the Inventory Battlefield of Pinkie Cleugh, could overcome this objection. This reflects Historic Environment Scotland's position.

Whilst the reasons for Historic Environment Scotland objecting to the proposals could be mitigated by the use of matters specified in conditions it is clear that the appellant has not addressed these concerns in the revision of the proposal. The extent to which the level of change required to enable Historic Environment Scotland to withdraw its objection is not yet established and could influence the viability of the site and thereby its effectiveness. This remains an unresolved material consideration.

- 3.5 **The Scottish Environment Protection Agency (SEPA)** (2011, PARF submission) advised in respect of the original proposals that review of the Indicative River and Coastal Flood Map (Scotland) shows that there is no risk of flooding to the proposed development site and notes that the appellant's Flood Risk Assessment (FRA) assesses the flood risk from the Ravensheugh Burn through the site. In its analysis of the methodology and outcomes of the FRA, SEPA is of the opinion that there is no fluvial flood risk to the development site and therefore raises no objection to the proposals on this matter.

For waste water drainage provision SEPA objects unless a condition requiring the development to connect to the public waste water network is imposed.

For surface water drainage provision SEPA supports the masterplan layout which allows for a number of water bodies to be provided throughout the development as part of the site infrastructure but although some details of SUDS have been provided it objects to the proposals unless a planning condition is imposed requiring a full site specific surface water scheme be submitted.

SEPA also advised of its standing advice and requirements under its own regulatory powers in respect of some of these matters, and copied this information to the appellant.

In respect of the revised proposals SEPA (82) reiterated the above and that unless the planning condition on foul drainage is attached to the consent this representation should be taken as an objection. This is also the case for surface water drainage, including during the construction phase of any approved development. As regards flood risk SEPA comment that the FRA has been updated and although the comments made in its response of 16 September 2011 remain applicable to the updated application and offers the following additional observations:

- The SEPA surface water flood map shows that parts of the site are at risk of surface water flooding. We are aware that there is significant surface water issues adjacent to the site and the Council's flood officer has been made aware of these issues as a result of a third party representation in November 2014.

- The FRA does not take account of this source of flooding. We advise that planning authorities should ensure an appropriate assessment of surface water flood risk in consultation with their flood prevention officer.

In respect of SEPA's requirements for conditions on waste water connection and surface water drainage provision the Council assumes the appellant has no dispute over these. In respect of the views of the Council's flood officer (Structures, Flooding & Street Lighting Manager) the comments below at Para 4.2 would require an appropriately worded condition to be attached to any grant of planning permission in principle.

As regards Air Quality SEPA referred to advice on air quality and noise being sought from the Council's environmental health team, as the lead authority, those comments are below at Para 4.4. SEPA considered the information submitted by the applicant, including the Environmental Statement and advised that the assessment failed to consider air quality in Musselburgh, where concentrations of NO₂ already exceed the air quality objective. It therefore advised that the air quality assessment be extended so that it includes Musselburgh High Street.

In relation to the revised Environmental Statement SEPA concludes that the appellant's statement (Paragraph 14.44a) that the newly declared Musselburgh AQMA is some distance away from the application site and is therefore unlikely to experience significant changes in traffic flows as a result of the proposed development is unsubstantiated by any evidence. SEPA acknowledges that East Lothian Council has identified road traffic as being the main source of the atmospheric pollution that has led to the designation of an AQMA, therefore an increase in the volume of traffic should be discouraged. SEPA therefore advise that the Council must have considered the cumulative impact of all development that will add traffic to the road network, particularly along main commuter routes, in order to address concerns in respect of air quality in the AQMA.

The above remains as an unresolved material consideration. The Council is carrying out a cumulative assessment of transportation impacts which will inform assessment of the impact of this and other proposals in the Musselburgh/Wallyford area on the AQMA.

SEPA also notes in respect of greenhouse gas emissions that the development is located some distance from local amenities (retail, employment etc.), therefore there is likely to be an increase in the number of journeys made by car. It advises that whilst this figure may appear to be insignificant, when considered alongside other developments across Scotland, the cumulative increase in the distance travelled by car – and subsequent emissions of carbon dioxide - could undermine the Scottish Government's commitment to reduce emissions of greenhouse gases.

- 3.6 In respect of the revised proposal **Scottish Natural Heritage (SNH)** (2016, PARF submission) advises that the current application is an Addendum to the Environmental Statement submitted in August 2011, for which it gave advice to the Council in a letter dated 31 August 2011. SNH also advises that its approach to

Planning and the context in which it works has changed substantially since 2011 and therefore this new letter supersedes its previous advice.

SNH considers that the revised Environmental Statement presents a thorough assessment of impacts upon the nearby Firth of Forth Special Protection Area (SPA) referring to its advice to the Council on 23 November 2011 that the revised HRA had addressed all the issues it had raised in relation to the SPA and was fit to be adopted by the Council as the basis of their appropriate assessment. However SNH does advise that the final conclusion in section 9.96 is not compliant with the Habitats Regulations and must be changed from: *“there will be no **likely significant** adverse effect on site integrity”* to *“there will be no adverse effect on site integrity.”*

SNH advises it is content with the level of ecological survey work carried out to date and the survey findings. It supports the package of ecological mitigation measures presented in the ES Addendum Chapter 8, sections 8.108 to 8.125 and recommends that the Council secures the delivery of this package of measures if planning permission is granted, although as the mitigation package does not include measures aimed at removal of giant hogweed from the site it recommends that the Council secures the removal of this invasive non-native species from the site. SNH also recommends that the Council secures the provision of a suitably qualified Ecological Clerk of Works (ECoW) to ensure that these ecological mitigation measures are implemented.

In relation to Green Belt considerations SNH notes the shift in site status from the Main Issues Report to the Draft Proposed LDP as amended. It comments that in its view the site has comparatively few adverse natural heritage impacts. However, in terms of SNH’s remit the non-inclusion of the site within the Proposed Plan means that the site’s role in delivering important long term strategic green infrastructure and regional green network connections cannot be communicated within the Finalised LDP or any proposed site briefs or strategic frameworks that would support it. SNH is therefore uncertain how this site may contribute towards delivery of wider planning and natural heritage issues such as strategic green networks or the emerging Strategic Active Travel Corridor, which may usefully pass through or near to the site.

SNH remains of the view that the proposal lies within the Green Belt and therefore any development in this location may affect the landscape setting of Edinburgh and neighbouring towns, challenging the policy objective of the SDP and adopted Local Plan relating to the Edinburgh Green Belt. SNH does note the Indicative Masterplan layout and the retention of open space south of the Ravensheugh Burn, which would act to reduce some of the impacts of settlement coalescence relating to the south side of the proposal. It also notes that to the east there is an active application for development of land at Dolphinstone Farm [ref 15/00473/PPM, further extension to Wallyford]. Whilst SNH notes and welcomes the statement in the landscape section of the Masterplan Report addendum to enhance the woodland boundary along the road to Drummohr this does not appear to be shown in the Indicative Masterplan drawings. Given the proximity of the appeal site and the other application SNH advises that if both of these proposals were to be approved then the

issue of coalescence between Goshen and the western edge of Prestonpans would require to be carefully considered.

With reference to landscape and visual impacts, green infrastructure and placemaking SNH advises that it considers that the layout and planting proposals set out in the draft masterplan *could* help reduce adverse landscape and visual impacts resulting from development, both at the immediate site level and in relation to wider issues of landscape setting and settlement coalescence. In respect of the possible siting of a secondary school on the site's principal open space SNH highlights that poorly sited development of this nature could reduce the public access and landscape benefits that this open space could deliver for the development.

SNH makes the following suggestions relating to enhancement of green infrastructure and the placemaking approach for the site:

- the potential to retain, repair and where necessary reposition existing stone walls which contribute to local landscape character and site identity;
- the potential to ensure that the Ravensheugh Burn is fully de-culverted within the development site with appropriate marginal habitats, paths and crossing points also delivered;
- the potential to strengthen tree planting within the development, with particular focus given to enhancing the boundary planting on the public road boundaries which may help accommodate the development within the landscape and as seen within wider views; and
- the potential to provide clearly defined active travel provision through the site, connecting to wider places and integrated with other aspects of on-site green infrastructure (for example, combining active travel routes with areas of enhanced boundary planting or along the de-culverted water course route).

SNH clearly has concerns that have not been addressed in the revised masterplan, which must be taken as an unresolved material consideration. Whilst these concerns could be mitigated by planning conditions, this may have a significant impact on the layout, viability and effectiveness of the proposal.

With reference to the preferred growth strategy and other alternatives for the Edinburgh City Region as set out in the SDP2 Main Issues Report (MIR), SNH notes and supports the general issues/aims for green network development as set out in the Green Network Technical Note. This identifies Goshen Farm as being within green network priority area *'11b Forth Coast – Musselburgh to Cockenzie, Port Seton, Longniddry and inland to Tranent*. The supporting text concludes there is a *"clear agenda for green network development in this area, particularly given the extent of development proposed"*. Area 11b is categorised as an area of *'high'* priority for green network development with important connections between existing and proposed developments needed, and to be delivered through co-ordinated effort.

Notwithstanding the other issues raised in its response SNH advises that, if the proposal were to be approved full further details of all aspects of the proposed open spaces, SUDS and structural landscaping areas are produced to appropriately high standards of design, and the long term maintenance and management of these aspects of the development are secured. These and the above matters could be made subject to matters specified in conditions.

- 3.6 **Transport Scotland** (15) raised no objection to the original proposal in itself though did have some concerns over its impacts and recommended some conditions in mitigation of these, for a maximum of 1200 units, provision of traffic calming measures in Wallyford and along the A6094 Salters Road, alterations to the signalisation of the A6094 Salters Road junction with the A1, modifications to the A1 Dolphingstone Interchange to replace signal control with roundabouts, and an agreed mechanism for addressing the impact of the proposal on the Old Craighall Interchange through either the implementation of agreed modifications or a financial contribution to agreed works.

Transport Scotland (2016, PARF submission) now advises that it is satisfied that original DBA Transport Assessment for the proposal remains suitable for determining the impacts and mitigation requirements if the development were to reduce from 1200 to 1000 units.

Transport Scotland understands that the appellant is content to deal with the Old Craighall Interchange impacts by an agreement under Section 48 of the Roads (Scotland) Act 1984.

Transport Scotland does advise, however, that a significant caveat to its comments is the uncertainty over what may be required to accommodate expanded development proposals within Wallyford (i.e. with reference to the proposals for further expansion of Wallyford at Dolphingstone, ref 15/00473/PPM).

Transport Scotland had previously responded on the application to intensify the allocated Wallyford site from 1050 units to 1450 units (planning permission 14/00903/PPM). In the Transport Assessment for this allowance was made for the Goshen proposal and Transport Scotland were satisfied the previously identified mitigation would be adequate. In the context of application 15/00473/PPM for up to 600 units at Dolphingstone, Transport Scotland sees a materially changed context for the Goshen proposal.

In relation to this context Transport Scotland is aware that East Lothian Council is undertaking a modelling exercise to assess the impacts of proposed LDP development, including the Dolphingstone site. Transport Scotland is of the view that if this exercise identifies that alternative mitigation is required at Salters Road and Dolphingstone to accommodate increased development, potentially in conjunction with Goshen, then it would reserve the right to revisit its response in order to establish how such alternative mitigation may be delivered.

Transport Scotland's position is that, in now having to consider the Goshen proposals against a background of development as set out in the Draft Proposed LDP as

amended, mitigation as previously agreed (in January 2013) would not in itself be adequate to address the cumulative impacts. In addition, Transport Scotland considers that it does not at this stage have any information that would allow it to conclude what mitigation would be required to address the impacts of the Proposed LDP and, therefore, what extra mitigation may be required to also accommodate the Goshen proposal. Transport Scotland therefore requires to revisit its position once a more definitive understanding of the proposed scale of development in the area is understood, allowing it to thereafter consider its position in view of the emerging planning landscape suggested by the Proposed LDP.

On that basis, Transport Scotland is not in a position to give its view of the cumulative impacts of this proposal as it relates to the strategy and sites which reflect the settled view of the Council and which will form the Finalised Proposed LDP. This is an unresolved material consideration.

- 3.7 **Scottish Water** (2016, PARF submission) advises that there are no drinking water catchments or water abstraction sources designated as Drinking Water Protected Areas under the Water Framework Directive in the area, that may be affected by the proposed development.

In respect of assets to service the site, its records indicate that there is Scottish Water infrastructure located along the southern and western boundary of the site including a 315mm trunk main and a 6" and 280mm distribution main.

Scottish Water notes that the Environmental Statement commits to managing surface water drainage for the Proposed Development by means of a Sustainable Drainage System (SUDS). It advises its requirements for the future management and adoption of such a scheme.

Scottish Water further advises it is undertaking a strategic review of the potential impacts of developments in the area and their likely impact on the water and waste water infrastructure network. This review will be followed by modelling work and identification of a solution, anticipated to be identified within the coming year. If modelling indicates that a growth project is required to provide new capacity to service this development, Scottish Water will be able to initiate this if the development meets our Ministerial Approved criteria for growth, which includes having full planning permission.

It is not fully clear from Scottish Water's response as to whether this means there is effective capacity for the proposal and this could be taken as an unresolved material consideration.

- 3.8 In respect of the Environmental Statement accompanying the application, the **Scottish Government Directorate for the Built Environment, Rural and Environment Directorate, Environmental Quality Division** (PARF submission) comments in respect of noise matters that it notes the potential for residual noise impacts in relation to the scheme despite the proposed mitigation measures. However, it makes no further comment or recommendation in respect of this.

- 3.9 The **Coal Authority** (2011, 2016 PARF submission) does not object to the proposal in original or revised form. It confirms that the proposal site falls within the defined Coal Mining Development Referral Area; therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application. The Coal Authority confirms that the applicant has obtained appropriate and up-to-date coal mining information for the proposed development site and has used this information to inform the Environmental Statement which accompanies the planning application.

The Coal Authority is satisfied with the conclusions of the Environmental Statement that the application site is not likely to be affected by shallow coal mine workings, but that the recorded mine entry within the eastern part of the application site will need to be treated for stability purposes. It therefore recommends that the Council impose a Planning Condition on any grant of planning permission in principle to ensure that the recorded mine entry is treated in accordance with the mitigation measures outlined in paragraph 6.73 of the Environmental Statement.

- 3.10 **Musselburgh & Inveresk Community Council** (2016, (PARF submission) advises that it is vehemently opposed to the revised proposal as it considers that development of the site is a step too far for local residents, with Musselburgh being boxed in on all sides by new developments and in danger of losing its identity. It also objects to the proposals in relation to the impacts on traffic management and pollution levels in the Musselburgh area.

- 3.11 **Prestonpans Community Council** (various, PARF submission) objected to the original proposal as it considered that it was not in line with the current local plan in numerous aspects. In respect of the revised proposal, it comments further that it is opposed to development on the site in principle and advises that community opposition is strong and growing, as awareness of the proposal and its effects become greater.

In relation to the amended 'Master Plan' the Community Council raises the following specific concerns:

- (a) flood control ponds appear to be greatly reduced (flooding is a huge concern on this site);
- (b) the alignment of open space in the original master plan which showed a modicum of respect for the setting of Drummohr House has been changed with the effect that there is now no such open space;
- (c) the East Drive is shown as one of the access roads to the development, which we think is entirely wrong: Manager's Brae is barely wide enough for two cars to pass, and the 18th century main gateway at the east end of the Estate Drive is too narrow to allow 2 vehicles to pass. (We understand that the gateway is also listed). Manager's Brae and the East Drive are entirely unsuitable as access for substantially increased traffic. We would oppose strongly widening of either road and the loss of historic walls that this would necessitate.

Prestonpans Community Council considers that discussion about potential educational provision on this site is highly contentious, since, if the Council were to favour educational provision on this site, that would effectively pre-judge the

principle of development on the site, which would turn the planning process on its head and would be highly objectionable. It also considers that a so-called 'super' school (i.e. a very large new secondary school) to the east of Musselburgh would have the incidental effect of favouring, in time, yet more housing to the immediate East of Musselburgh, and as such, that could not be supported.

Prestonpans Community Council further comments that the mining reports are at best incomplete, that traffic congestion and rail capacity issues mean the site is not sustainable despite applicant's claims of good transport links and accessibility and that the site is not 'semi urban' and of limited landscape value as the applicant claims. It considers that the start of infrastructure works on the Wallyford development demonstrate that that site is accordingly deliverable and strengthens its case that approval of the Goshen proposal would result in intolerable congestion and pollution in Wallyford, Musselburgh and elsewhere. It would additionally further overload public transport, specifically rail, which is already running at capacity and no realistic funded proposals to increase capacity have been made.

3.12 Wallyford Community Council (11, 13, 2016 PARF submission) objects to the proposal for the following reasons:

- The area is in the green belt and assurances were given that after [the Wallyford development] was granted planning permission no other areas would be removed from the Green Belt in this area.
- The current structure plan does not identify this area as a future area for development.
- This development will lead to the coalescence of Wallyford Ravensheugh and Prestonpans. Wallyford has a unique identity as a village and does not want to form part of a larger community. If [the Wallyford development] goes ahead Wallyford will have tripled in size in the last ten years and is in danger of becoming a dormitory for Edinburgh.
- The traffic in Salters Road in Wallyford is currently giving cause for concern due to the volume of vehicles, particularly during peak times. [the Wallyford development] was only approved on the condition that a distributor road was provided to take the traffic from Salters Road to the bypass. A further development at Goshen will only add to the current traffic problems in Wallyford.
- The provision of a primary school on the proposed lay out plan is of no benefit to the community of Wallyford due to the distance children would need to travel. Wallyford needs a new school but not in this location.
- There is no provision for healthcare/secondary schools
- The site is of historic interest and is now a recognised battle site of national importance.

In a later statement in respect of the approval of the SDP's Supplementary Guidance on Housing Land, Wallyford Community Council registered its continuing strong opposition to the proposal with additional grounds of objection in respect of the impact on the setting of Drummohr House, the land being prime agricultural land,

there being little or no prospect of increased rail capacity for commuters and the consequent traffic impacts on Musselburgh High Street and Salters Road, including on air quality and lack of mains water supply capacity

- 3.13 Due weight requires to be given to the substantive body of **public objection** to the proposals. Though no significant additional issues are raised in public comment, the 333 objections require weight to be given to them as material considerations.

4 *East Lothian Council Consultees*

- 4.1 Officers of the Councils's then **Transportation Service (now Road Services)** (16) raised no objection to the proposals as originally submitted, or to the appellant's Transport Assessment. Whilst some concerns were expressed in respect of impacts on the local road network and junction capacities and trunk road junctions, the mitigation measures proposed in the Transport Assessment and the measures set out as recommended conditions in Transportation's consultation response were seen to be sufficient for the development to be acceptable.

In response to the changes to the application, Road Services (2016, PARF submission) advise in respect of this and other nearby applications that:

the original transport data within the Goshen TA investigated the impacts of 1,200 houses with other community facilities plus the development at Wallyford for 1,050 houses. During this time there were slight amendments to these 2 applications with Goshen reducing to 1000 houses and Wallyford increasing to 1450. At that time like Transport Scotland, Road Services took the pragmatic view that the overall scale of development being proposed on the two sites was altering by 10% from 2250 to 2450 units and that the previously agreed mitigation identified in the 2013 Goshen response was satisfactory.

Further, as regards the changing context of the appeal case, Road Services acknowledge that the Draft Local Plan has added significant housing development into this area with the expansion Wallyford (2050 units), Windygoul, Tranent (550), Lammermuir Terrace (120), Dolphinstone (160), Greyhound Stadium (90), Bankpark (80) creating a total of 3,050 houses increasing to 4,050 houses if Goshen were to receive planning permission. In this context Road Services advise that:

Through scoping discussions on the 2050 Wallyford Transport Assessment, it was requested that the modelling exercise undertaken for the original application be updated to reflect all development proposals in the Wallyford area (including Goshen Farm). This exercise was undertaken by Aecom on behalf of East Lothian Development Limited and submitted for consideration in August 2015. This model identifies (like the Goshen TA before it) that there would be a package of measures which could be brought forward to mitigate the traffic impact for 2450 houses, however, the levels of congestion predicted to arise as a result of the combined development content would result in an unacceptable impact on the operation of the trunk road interchanges and the local road approaches to these. No package of

measures has been brought forward to date that would adequately address this cumulative impact.

The Council is currently undertaking a technical transport appraisal of the Draft Proposed LDP (as amended) to demonstrate through macro and micro modelling what the impacts of all the proposed development in the Wallyford area will be and identify the necessary mitigation to support that level of development.

Road Services therefore advise that the Goshen application now has to be considered against a background of development as set out in the Draft LDP and that the mitigation as agreed in January 2013 would not adequately address the cumulative impacts.

Road Services states in respect of this:

that the advice originally provided in 2013 requires to be revisited once the [Council's] technical appraisal has been completed and the proposed scale of development within Wallyford has been modelled....this clarifies Road Services current position on not just the Goshen Farm application but all development proposals within Wallyford and Tranent.

In this the transportation considerations of the appeal proposal in the context of the LDP process are an unresolved material consideration and evidence of the further technical work required to consider cumulative impacts and quantify required developer contributions.

- 4.2 The Structures, Flooding & Street Lighting Manager (2016, PARF submission) advises that he would expect the developer/applicant to submit a Drainage Assessment which is to include an assessment of culverts of the Ravensheugh Burn downstream to its outfall. This report should be prepared in accordance with the Water Assessment and Drainage Assessment Guide which was published in January 2016. This could be made a condition of a grant of planning permission in principle.
- 4.4 The Environmental Health Service (2011, 2016 PARF submission) raises no objection to the proposal but does recommend the use of conditions in respect of construction phase (Construction Management Plan to cover matters of dust and noise) and operational phase (noise assessments, Air Quality Management plan) of the development. These matters could be made conditions of a grant of planning permission in principle.
- 4.5 In respect of the original application the **Landscape Projects Officer** (2011, 2016 PARF submission) advised that the site is rural and undeveloped in character, provides visual and physical separation between the existing urban settlements of Musselburgh, Wallyford and Prestonpans and also provides a setting for them. This clarified in respect of there being clear boundaries between the existing urban and rural areas defined partly by the boundaries of this site, particularly to the west of the site. The proposal to develop this site will lead to its urbanisation, the loss of rural character of the area, the loss of important views, and visual and in part physical coalescence of existing settlements as well as harming their settings and

separate identities. The conclusion was that the proposed development would have a significant detrimental impact on the landscape character of the Edinburgh Green Belt and therefore it could not be supported, on grounds of visual and landscape impact.

In respect of the revised proposals the Landscape Projects Officer conclusion is that although some of the landscape issues raised in the landscape site appraisal of January 2012 have been considered, the proposal to develop the site in the current form will still lead to its urbanisation, the loss of rural character of the area, the loss of important views, and visual and in part physical coalescence of existing settlements as well as significantly harming their settings and separate identities. The proposed development at Goshen Farm will also have a significant detrimental impact on the landscape character of the Edinburgh Green Belt.

The inclusion of the site in the Draft Proposed LDP by Planning Officers was not without consideration that there would be visual and landscape impacts from development of the site, however, in the context of other green buffers between the settlements, subject to a detailed design of the site using appropriate green infrastructure to enhance these buffers and, in the context of a compact spatial strategy with significant sustainability benefits, those visual and landscape impacts being outweighed by the considerations of development that contributes to sustainable development.

The Landscape Projects Officer advises that any grant of planning permission in principle should be subject to conditions on the detailed layout with reference to the Scottish Government's Designing Streets and East Lothian Council's Design Standards for New Housing Areas, a full tree survey and arboricultural assessment and retention of trees and established landscaping on the site and full structure landscaping and planting for the whole site.

- 4.6 The Council's Archaeology and Heritage Officer recommends refusal of the proposals and that if planning permission were to be granted then the Archaeology Service be re-consulted. The recommendation for refusal is on the grounds that the proposed development is contrary to Local Plan ENV7 in respect of the direct impacts and setting impacts of a designated battlefield site, the Category B listed Drummohr House and having a negative effect upon the character of the historic landscape in which the proposal is located.

These constraints on the site were noted in the Site Assessment for the Main Issues Report (20, Appendix 4 Musselburgh Area p58-61). As in the consideration of Historic Environment Scotland's objection to the proposal it is considered that the masterplan of the site could be designed to take account of these. However, in its revised proposal the appellant has not sought to address this and, therefore, there is no firm evidence as to how it would be incorporated whilst maintaining the site's viability and effectiveness. This remains an unresolved material consideration.

4.7 The then **Landscape & Countryside Management Manager** (9) advised in respect of the original application that a housing development of this scale needs a green network that connects into the surrounding wider countryside and provide the setting for the development. For this and due to insufficient capacity for the development in existing service provisions, the green network should comprise of an interconnected network of woodlands, hedgerows, ponds and wetlands, grassland and other habitats; open spaces; outdoor sports facilities; play areas; allotments; community gardens; burial provision; civic spaces; SUDS systems and walking, cycling, horse riding and heritage routes and also link outwards to green spaces. She advised that the green network indicated on the Indicative Masterplan did not meet these requirements. It did not show open space in the eastern part of the site, had no indication of the hierarchy of open spaces proposed and required an Outdoor Access Impact Assessment to be carried out.

The then **Healthy Living Manager** (10) advised that a requirement for the original application was 2 x 11 aside football pitches and 1x 7aside pitch with a 4 team changing pavilion with associated showers, toilets first aid and storage to service the pitches. The **Sport, Countryside & Leisure Manager** (2016, PARF submission) now advises that the revised proposals would require two full size grass, unfenced sports pitches with associated four team changing pavilion. He further advises that if the proposal were to be approved it would require to contribute to a 6 court sports hall linked to any new Education solution for High School pupils in the cluster. This would allow a maximising of school and community provision together where it is sensible and possible to do so.

The **Biodiversity Officer** (2011, 2016 PARF submission) does not object to the proposals. He advises that developing the site would not have an impact on the integrity of the Firth of Forth SPA and, in respect of the site itself, that with the possible exception of curlew there are no biodiversity reasons why this form of development should not take place at Goshen. He recommends that a more ambitious plan for the Ravensheugh Burn through the site needs to be designed such that it becomes a much better feature of the landscape. He further advises that the creation of large areas of lower-lying ground beside the burn could assist with flood alleviation by creating temporary flood plains and that ecologically this would allow more light into the burn and an improved range of species can be encouraged.

The Access Officer (2016, PARF submission) reiterates previous comments in respect of path networks and connections for walking/cycling within and outwith the development site but also highlights the need for a path connection of appropriate specification from the site to the proposed Segregated Active Travel Corridor route.

These requirements for open space, access, biodiversity and sports provision can be met through the use of planning conditions and, as appropriate an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 as amended.

4.8 The Council's Contaminated Land Officer (2016, PARF submission) does not object to the proposals. He advises that he has reviewed the original Site Investigation report, which concluded that there were no contamination or gassing issues on the site. The report did, however, recommend that further intrusive investigations be carried out

to confirm potential ground stability issues - shallow mine workings in the southwest of the site and a 'capped' mine entry in the northeast – and that this would then inform as to whether any stabilisation (grouting) measures were required. The Contaminated Land Officer notes that there have been extensive grouting works carried out on the adjacent Wallyford site and it is possible these have had an impact on the gas regime in the area and he therefore raises concerns over the possible occurrence of mine gas and recommends, once site stabilisation works have been completed, that a further round of gas monitoring be carried out on the site to confirm the report's original findings. This could be required as a condition of a grant of planning permission in principle.

- 4.9 The site of this planning application is in the catchment area of Wallyford Primary School with its nursery class and the local catchment secondary school is Musselburgh Grammar School.

In respect of the original application the **then Executive Director of Education and Children's Services** (2011, PARF submission) objected on the basis that there was no capacity available at either pre-primary, primary or secondary levels to meet the anticipated pupil product of the Goshen proposal of 1,200 houses within the catchment schools. The evidence and reasoning for this in respect of the catchment schools and others is set out in his consultation response. This conclusion includes consideration of the possibility of primary pupils attending the envisaged replacement Wallyford Primary School and/or Pinkie St Peter's Primary School, which would require an education catchment review.

The Executive Director of Education and Children's Services noted that the appellant's '*Education Impact Assessment Report*' concludes similarly. He advised that the applicant proposed a solution where the Council undertakes a catchment review, either within the town of Musselburgh and the Musselburgh Grammar School catchment area or, more unusually, outside the existing catchment area to include the neighbouring town of Prestonpans, an approach he would not support. He advised that the arrangements for education of pupils from Musselburgh within the Musselburgh Grammar School cluster and for those from Prestonpans within the Preston Lodge High School cluster work well, that these clusters reflect town boundaries and traditional schooling patterns and are widely supported by pupils, parents and the wider communities within both Musselburgh and Prestonpans. He also advised that in the absence of any demonstrable need, there would be no educational requirement or desire to undertake a catchment review in respect of these areas at the time and further that it would be premature to assume the outcome of such a review would be a change to the catchment areas.

A catchment review must, in terms of the relevant statutory procedures, take due account of the views of the various stakeholders and it is not possible to predict at this time what the outcome might be with regard to the nature of any new catchment areas, the location of any new school(s), the size of those schools and any consequential and appropriate developer contribution that may be required towards the cost of providing the same.

He also advised that there is no context for undertaking a catchment review without a formal recommendation from the Planning Authority supporting the principle of the development and the subsequent agreement of the Council. Whilst Officers proposed the Goshen site and an Education provision solution in the Draft Proposed LDP, the Council did not agree on these points.

In respect of the revised proposals, the appeal and in the context of progress towards a Finalised Proposed Development Plan the **Depute Chief Executive, Resources & People Services** (Appendix 1) advises that at this point in time, the Education Authority is of the view that there is no acceptable primary or secondary solution for the appeal site.

In his letter of 24 March 2016, the Depute Chief Executive advises that the Education Authority notes that at paragraphs 4.86 to 4.97 of the appellant' statement, a case is made in relation to the associated infrastructure requirements to deliver primary and secondary education at the appeal site.

The Depute Chief Executive sets out the Education Authority's comments as follows:

At Para 4.89, the appellant notes that at the meeting of 17 November both the Draft Proposed LDP report and the accompanying report on secondary education provision in Musselburgh supported the provision of secondary education provision at Goshen. (The education report was withdrawn following the approval with amendments of the Draft Proposed LDP due to the amendment to remove the Goshen site from the plan). On that basis the appellant contends that "the secondary education solution was, therefore, entirely acceptable to the officers, including Education Officers of ELC"

The Education Authority accepts the position of the appellant that the secondary education solution was supported by officers.

The appellant states that the subsequent removal of the appeal site by amendment by the Elected Members does not change the factual position that the "Appeal Site is the most appropriate site". The Education Authority respectfully disagrees with this and is of the view that the removal of the appeal site from the Draft Proposed LDP does change the factual position. This is on the basis that it is an established and necessary process of decision making within local authorities that Officers make recommendations to Elected Members, who are not bound, in their role as decision makers, to approve the Officer recommendations. Rather, the approval of the Elected Members of the Draft LDP is an integral and crucial element in finalising the Draft LDP.

In this context it is clear that, as presented to Elected Members on 17th November 2015 the proposed LDP was in draft form and the appellant should recognise that at that time all proposals within the Draft LDP were open to further consideration and possible amendments by the Elected Members. The Council cannot be criticised for this process.

The Depute Chief Executive further advises that for the avoidance of doubt, the Education Authority would also state that the appellant's statement at Para 4.92 that "the New Education Provision proposal was neither deleted nor amended and remains the settled position of the Council" is not factually correct. The Education Authority directs the Reporter to the Minutes of the Council meeting which record that the Elected Members, as they are entitled to do so, directed that proposal MH10 Goshen New Secondary School be removed from the Draft LDP. The Education Authority is of the view that this amendment did change the factual position. It required the officers of the Council, including the Education Officers, to assess and consider an alternative solution that would be presented to the Elected Members at a future meeting. [Whilst PROP ED1 was not subject to the approved amendment, the removal of the site allocation from the Draft LDP has the effect of rendering that proposal ineffective].

The Depute Chief Executive also advises that the Education Authority's view is that any conditional missives that were concluded prior to the 17 November 2015 are not to be viewed as giving an indication as to the Council's position in respect of proposals in the Draft LDP. The conclusion of conditional missives with the Appellant and with other parties was to allow the Council to identify which options were viable in order to enable the pursuit of same (c.f. Para 4.87).

It is further advice of the Depute Chief Executive that the Education Authority also rebuts the appellant's statement (Para 4.96) that there is "current capacity for 220 pupils" at Musselburgh Grammar School. The letter that the appellant refers to in evidence of this is dated 25th January 2015 and it is clear that the statistics detailed in that letter will have changed due to other sites coming forward (e.g. Wallyford). For that reason the Education Authority respectfully asks the Reporter to disregard same.

The Depute Chief Executive also communicates the Education Authority's response to the appellant's statement that "*The Goshen Farm planning application includes a primary school as part of its first phase*". He confirms that at this point in time, the Education Authority is not minded to pursue the necessary catchment review to make such a primary school effective at this time. As the Reporter will appreciate the outcome of this cannot be guaranteed and therefore this proposal of the application cannot be taken into account.

The Depute Chief Executive notes that the Council is currently progressing the Draft LDP and as part of that process, Officers are continuing to pursue the amendments as directed by the Elected Members of the Council on 17 November 2015. He anticipates that Officers will shortly make a recommendation to the Council on the secondary school options, including *inter alia* the location of same.

In respect of the above the provision of Education for pupils resulting from the development is an unresolved material consideration in respect of where those children would be educated and what the costs of that provision would be.

- 4.10 The Council's Economic Development & Strategic Investment Manager (12) advises that in respect of the revised proposal, out of 1000 units, 250 units are required to be provided to deliver 25% of the total number of housing units for affordable housing. In exceptional circumstances serviced land, offsite provision or a commuted sum may be considered. Subject to provision for this in an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended), the proposals would accord with the Council's Affordable Housing Policy and Policy H4 of the adopted East Lothian Local Plan 2008.

5 Key Determining Issues

- 5.1 In respect of all of the above matters it is not disputed that it should be feasible to design a development of the site which could be appropriately designed for its place subject to landscape, natural and cultural heritage, water environment, open space and movement considerations. A detailed layout and design of such a development could potentially comply with the Scottish Government's Designing Streets and the Council's Urban Design Standards for New Housing Areas.
- 5.2 Subject to matters specified in conditions on these technical material considerations a mixed use development of the site subject to an appropriate scale and density of development could be appropriate and could mean the proposals comply with the relevant design policies of the adopted East Lothian Plan 2008 and with national policy and guidance.
- 5.3 However, the unresolved objections from Historic Environment Scotland and the Council's Archaeology Service in respect of the site's inclusion in the Inventory of Historic Battlefields and Scottish Natural Heritage in relation to wider green belt issues, green networks and landscape settings of settlements are significant material considerations which require an evidenced response from the appellant as to how a redesign of the site could resolve those objections and maintain a viable level of development.
- 5.4 Also material considerations are the unresolved matters of transportation assessment and education provision. For both of these matters there are cost implications in terms of developer contributions as well as the issues of principle.
- 5.5 From the above there are three main issues of principal which require to be satisfied if planning permission in principle were to be granted:
- Abstraction of land on this scale from the Green Belt by a grant of planning permission
 - Cumulative Transport Assessment in relation to proposed LDP sites and mitigation measures, including for air quality management
 - Education capacity and education provision in the Musselburgh/Wallyford area

In addition in terms of Scottish Planning Policy due consideration needs to be given to the emerging LDP in terms of whether the approval of a site of this scale would predetermine decisions about the scale, location or phasing of new developments

central to the emerging plan and the requirement to avoid prejudicing the plan and its sites. In terms of the Council's IPG (4iii) due consideration must be given as to whether approval might prejudice the ability to provide infrastructure capacity for proposals emerging through the LDP as it is developed, or be dependent on the potential provision of infrastructure capacity associated with any emerging LDP strategy or site.

- 5.6 Clearly in respect of community and Community Council grounds of objection there is significant opposition to development of the site for residential or mixed use purposes. This is acknowledged, however, it is the case that proposals for new development do not always gain community backing. Equally it is clear in respect of the LDP process and as set out in the IPG that the Council does not underplay the importance of making sometimes unpopular decisions in allocating new land for housing or granting planning permission to support the effective housing land supply.
- 5.7 Indeed the Draft Proposed LDP and recent related Council decisions on planning applications demonstrate its commitment to meeting housing land needs through allocating a generous housing land supply, based on a compact strategy which seeks to maximise the possibilities of sustainable development. The strategy and sites are those that the Council has arrived at to meet the need for an effective five year housing land supply and this is close to being formalised in a Proposed LDP.
- 5.8 The Council has made several recent decisions which, as well as removing the appeal site from the Draft Proposed LDP, set out the context in which such a proposal should be considered. Officer support for the site through the LDP process, was, by the nature of the process, not an unqualified support and there remain significant issues as yet unresolved in terms of an effective masterplan for the proposal as well as matters of green belt abstraction, cumulative transport impact, education provision and emerging plan strategy and sites. These have at all stages of this application been prime considerations, thus why Officers were of the view that support for the site should be channelled through the LDP process and not by application.
- 5.9 It is not the case, as the appellant suggests (Para 4.39) that the Draft Proposed LDP as amended would allow a single developer to 'control the competition'. The amendments allow for a range and choice of sites to come forward and to allow for significant generosity in the housing land supply. In respect of comments on the effectiveness of the Wallyford site, the developer submitted a Notice of Commencement of Development with effect from 17 December 2015 and approved infrastructure works are progressing. Officers have concerns at the capacity of the housing industry to meet the challenging housing targets of the SDP, nonetheless the Draft Proposed LDP as amended provides a generous land supply.
- 5.10 It is of course the appellant's right to challenge the current situation and much is made of the Officer perspective that this is a site which in many respects can be seen to be of merit and potentially effective.

- 5.11 However, without a solution to the question of education provision it is not effective. In the absence of Council support for an Education solution on and providing in part for the site, the only recommendation Officers can make for the application is refusal. The Education Authority, subsequent to the Council's decision of 17 November 2015, is reviewing the potential for secondary education provision in the Musselburgh/Wallyford area and will bring this matter back to the Council for its decision. The Proposed LDP will take account of this decision.
- 5.12 The Planning Authority is therefore of the view that whilst the site has development potential, in the absence of an effective education solution, the site cannot be considered effective and therefore on this ground planning permission in principle cannot be granted.
- 5.13 In respect of transportation matters, the Council's Road Services and Transport Scotland are in agreement that the site must be considered in conjunction with the sites of the Draft Proposed LDP as amended. Therefore the appellant's site has to be considered in terms of both committed development in the area and the sites which will make up the Finalised Proposed LDP. These are to include the site at Dolphinstone as a further extension to the development at Wallyford which is underway. Any decision on the site cannot be made in advance of the findings of the Council's cumulative transport assessment and the mitigation measures (including for air quality management) which will be defined by it and quantified, which will be agreed by the Council's Road Services and Transport Scotland. On this consideration the proposal remains premature and could, if granted planning permission in principle, prejudice the emerging LDP.
- 5.14 On Green Belt considerations the site is not supported by the IPG due to its scale. Whilst the Council has been proactive in supporting appropriate small scale development in the green belt without requiring this to be a matter for the LDP process at Edinburgh Road, Prestonpans (57), the scale of the site and the extent to which it could change this part of the Edinburgh Green Belt should rightly be considered through the LDP process and not by a decision on an application. Such a decision needs to be made strategically with due reference to the overall impact of land allocations and development on the purpose, objectives, quality and robustness of the green belt as it is amended. On this point, as supported by Scottish Natural Heritage, the appellant has not demonstrated that the proposal complies with SDP Policy 7 (b) (78) in respect of Green Belt objectives. In this the proposal is premature and could prejudice the strategy and sites of the emerging LDP.
- 5.15 Taking the above considerations of education provision, cumulative transportation impacts and green belt objectives together it is clear that there are technical issues which still require to be resolved. In this the proposal is both premature and potentially ineffective.
- 5.16 In respect of Policy 7(c) there are infrastructure requirements which require further cumulative technical work and therefore it is unresolved as to whether the developer could or would agree to the level of funding required of them.

- 5.17 The above are all key differences between this site and those at Old Craighall (Musselburgh) (32, 33) and Edinburgh Road (Prestonpans) (57) as referred to in the appellant's statement.

6 *Summary*

- 6.1 In short, whilst it may be possible to resolve some technical issues which are currently unresolved material considerations through the use of planning conditions and a planning obligation, East Lothian Council officers contend that a determination of the application is premature and therefore that a grant of planning permission in principle would be inappropriate on the grounds that:

1. The proposal is dependent on education solutions that are subject to decisions of the Education Authority and subject to a separate statutory process. In the absence of clear and deliverable solutions for both primary and secondary education provision the proposal is premature and ineffective.

2. The proposals require a significant abstraction from the Edinburgh Green Belt, of a scale that should be managed by the LDP process of consultation and examination rather than by the determination of a planning application. As such a decision needs to consider the green belt strategically through that LDP process, with due regard to other proposed sites, the proposal is premature

3. The development of this site and others in the Musselburgh area requires the completion of significant technical work on cumulative transportation impacts, including for air quality management, without which the proposal does not have the support of the Council's Road Services or Transport Scotland. As such, a decision would again be premature.

4. In all of the above, approval of a proposal of this scale and with its infrastructure implications would prejudice the emerging LDP and the sites therein which reflect the settled view of the Council.

- 6.2 In respect of the above considerations the proposal should be refused. Should it be considered otherwise then a grant of planning permission in principle would require to be subject to planning conditions reflecting the matters raised in this appeal statement and in the material circumstances of the case. A separate schedule of conditions will be provided.

- 6.3 Any such decision would also require to be subject to an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, as amended, to provide for developer contributions for:

Affordable housing, with 25% of the approved number of units to be provided as affordable housing with the mix and tenure to be agreed with the Council's Economic Development and Strategic Investment Service in order to be compliant with Policy H4 of the adopted East Lothian Local Plan 2008 and the Council's Affordable Housing Policy and with Scottish Planning Policy: June 2014.

Education provision for pre-school, primary and secondary pupils resulting from the development, in order to comply with Policy INF3 of the adopted East Lothian Local Plan 2008. With no solution for this provision as yet determined by the Education Authority, further work would be required to give precise and justified amounts for the required developer contributions.

Sports provision in the form of two full size grass, unfenced sports pitches with associated four team changing pavilion, to be transferred to the Council at no cost and a contribution to be assessed towards a 6 court sports hall in order to comply with Policy INF3 of the adopted East Lothian Local Plan 2008.

Green infrastructure provision in compliance with SPP

Mitigation/interpretation in respect of the battlefield site.

Appendix 1 – letter from Depute Chief Executive, Resources and People Services 24 March 2016

Our Ref : AMcC/PF
Direct Dial : 01620 827834

24 March 2016



Iain McFarlane
Planning Service Manager
East Lothian Council
John Muir House
Brewery Park
Haddington
EH41 3HA

ALEX McCRORIE
DEPUTE CHIEF EXECUTIVE
(RESOURCES & PEOPLE SERVICES)

John Muir House
Haddington
East Lothian
EH41 3HA

Tel 01620 827827
Email: amccrorie@eastlothian.gov.uk

Dear Mr McFarlane,

The Education Authority notes that at paragraphs 4.86 to 4.97, the Appellant states their case in relation to the associated infrastructure requirements to deliver the primary and secondary education at the Appeal Site. The Education Authority would respond as follows:-

At para 4.89, the Appellant notes that “the secondary education solution was, therefore, entirely acceptable to the officers, including Education Officers of ELC”

The Education Authority accepts the position of the Appellant that the secondary education solution was supported by officers.

The Appellant then states that the subsequent removal by the Elected Members of the Appeal Site (on the 17th November 2015) does not change the factual position that the “Appeal Site is the most appropriate site”. The Education Authority would respectfully disagree with this and direct the Reporter, that in the Education Authority’s view, the removal of the Appeal Site does change the factual position.

It is an established and necessary process of decision making within local authorities that Officers make recommendations to the Elected Members. The Elected Members are not bound, in their role as decision makers, to approve the Officers recommendations. The approval of the Elected Members of the draft Local development Plan is an integral and crucial element in finalising the draft Local development Plan.

It should also be noted that the draft Local Development Plan, as presented to Elected Members on 17th November 2015 was in draft form. The Appellant should recognise that on 17th November 2015, all proposals within the draft Local Development Plan were open to further consideration and possible amendments by the Elected Members. The Council cannot be criticised for this process.

For the avoidance of doubt the Education Authority would also state that the statement (at para 4.92) that “the New Education Provision proposal was neither deleted nor amended and

remains the settled position of the Council” is not factually correct. The Education Authority would direct the reporter to the Minutes of the Council meeting. The Minutes record that the Elected Members, as they are entitled to do so, directed that the proposal MH10 Goshen New Secondary School be removed from the draft Local Development Plan. The Education Authority is of the view that this amendment did change the factual position. It required the officers of the Council, including the education Officers to assess and consider an alternative solution that would be presented to the Elected Members at a future meeting.

The Education Authority would also comment that any conditional missives that were concluded prior to the 17 November 2015, are not to be viewed as giving an indication as to the Council’s position in respect of proposals in the draft Local development Plan. The conclusion of the conditional missives with the Appellant and other parties was to allow the Council to identify which options were viable in order to enable the pursuit of same. (cf the Appellants para 4.87)

The Education Authority would also rebut the statement by the Appellant (para 4.96) that there is “current capacity for 220 pupils”. The letter that the Appellant refers to was dated 25th January 2015. It is clear that the statistics detailed in that letter will have changed due to other sites coming forward (e.g. Wallyford). The Education Authority would respectfully ask the Reporter to disregard same.

The Education Authority would also respond to the Appellant’s statement that “*The Goshen Farm planning application includes a primary school as part of its first phase*”. At this point in time, the Education Authority is not minded to pursue the necessary catchment review to make such a primary school effective at this time. As the Reporter will appreciate the outcome of this cannot be guaranteed and therefore this cannot be taken into account.

The Council is currently progressing the draft Local Development Plan. As part of that process, the Officers are continuing to pursue the amendments, as directed by the Elected Members of the Council on the 17th of November 2015. It is anticipated that Officers will shortly make a recommendation to the Council on the secondary school options, including *inter alia* the location of same.

At this point in time, the Education Authority is of the view that there is no acceptable primary or secondary solution at the Appeal Site.

Yours sincerely



Alex McCrorie
Depute Chief Executive, Resources & People Services