

REPORT TO: Planning Committee

MEETING DATE: Tuesday 6 December 2016

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Application No. **16/00706/PM**

Proposal Variation of condition 17 of planning permission in principle 15/00473/PPM to restrict the timing of commencement of development of the cemetery land only

Location **Dolphingstone Farm
Land Adjacent B1361
Edinburgh Road
Prestonpans
East Lothian
EH33 1NH**

Applicant Hallam Land Management Ltd

Per Rick Finc Associates Ltd

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

As the area of the application site is greater than 2 hectares, what is proposed in this application is, under the provisions of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, defined as a major development type proposal and thus it cannot be decided through the Council's Scheme of Delegation. The application is therefore brought before the Planning Committee for a decision.

The application site is an area of agricultural land in the East Lothian countryside, located to the east of Prestonpans. It is within the Edinburgh Green Belt and some 8.5 hectares in area.

On 2 June 2016 planning permission in principle (ref: 15/00473/PPM) was granted for a residential development of the application site along with retail (class 1), office units (class 2) and restaurant/cafe (class 3) uses and a cemetery together with associated access, infrastructure, landscape and open space.

No applications for the approval of matters specified in conditions of planning permission in principle 15/00473/PPM have yet been submitted. Development of the site has not yet commenced.

Planning permission in principle ref: 15/00473/PPM was granted subject to 17 Conditions. Of these, Condition 17 stipulates that:

“No development shall commence unless and until it has been demonstrated to the satisfaction of the Scottish Environment Protection Agency that the cemetery use hereby approved would have no unacceptable adverse impacts on the groundwater of the area.

Reason:

In the interests of the water environment.”

The purpose behind the planning control embodied in Condition 17 is that SEPA advised, in their assessment of the cemetery aspect of the development approved by the grant of planning permission in principle 15/00473/PPM, that further information was required to be submitted to assess the risks to the water environment from the cemetery.

Planning permission is now sought through this application for a variation of Condition 17 of planning permission in principle 15/00473/PPM such that it would read:

“Development of the cemetery land shall not take place unless and until it has been demonstrated to the satisfaction of the Scottish Environmental Protection Agency that the cemetery use hereby approved would have no unacceptable adverse impacts on the groundwater of the area”.

In the Planning Supporting Statement submitted with the application it is stated that Condition 17 of planning permission in principle 15/00473/PPM precludes the commencement of the residential development on the application site until such time as the groundwater issue regarding the separate cemetery operations are agreed by SEPA and discharged. It is considered that this is an unreasonable burden and there is no reason why development of the residential element of the permission cannot go ahead irrespective of whether the cemetery is developed or not. The proposed variation of Condition 17 would allow it to be specific to the provision of the cemetery, as per the impact to which the condition relates, rather than to the separate residential development, to which it does not. An amended wording would not therefore frustrate the primary reason for the grant of planning permission in principle and would allow the housing element of that permission to be delivered with a degree of certainty.

Through separate application 16/00707/PM planning permission is sought to remove Condition 17 of planning permission in principle 15/00473/PPM. A separate report on planning application 16/00707/PM is reported elsewhere on this Agenda.

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.

There are no policies of the approved South East Scotland Strategic Development Plan (SESplan) or the adopted East Lothian Local Plan 2008 relevant to the determination of this application.

No written representation has been received to the application.

The Scottish Environment Protection Agency (SEPA) have been consulted on the application.

SEPA advise that they agree with the applicant's contention that it is unreasonable to tie the delivery of the cemetery element of the proposal to the proposed housing development as is currently the case with the wording of Condition 17. Therefore, in order to facilitate provision of a proportionate and flexible planning response to the application SEPA raises no objection to the proposed variation to Condition 17.

SEPA additionally advise it is not best practice to impose conditions which require applicant's to obtain authorisation from another body, in this case themselves as is the current wording of Condition 17 and how it is proposed to be varied. They therefore suggest the wording of Condition 17 be altered to take account of this by reading; "Development of the cemetery land shall not take place unless and until it has been demonstrated to the satisfaction of the planning authority in consultation with the Scottish Environmental Protection Agency that the cemetery use hereby approved would have no unacceptable adverse impacts on the groundwater of the area".

Given that the proposed variation would ensure that the planning purpose behind the control embodied in Condition 17 would still remain, as the cemetery element of planning permission in principle 15/00473/PPM would continue to be restricted until it has been demonstrated that it would have no unacceptable adverse impacts on the groundwater of the area, the proposed variation of condition 17 would not jeopardise the purpose or integrity of condition 17 of planning permission in principle 15/00473/PPM. Moreover, as it is the Council, as Planning Authority, that is the determining authority with SEPA as a statutory consultee, it would be prudent to vary Condition 17 in accordance with that suggested by SEPA.

A revised version of Planning Series Circular 3/2013 (Development Management Procedures) was published by the Scottish Government in September 2015. Annex I of the Circular gives guidance on applications for planning permission under section 42 of the Town and Country Planning (Scotland) Act 1997, as amended. The application that is the subject of this report is made under section 42 of the Act. Annex I states that "Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should apply and ensure (where appropriate) that permission is granted subject to the conclusion of any appropriate planning obligation". Therefore, it is recommended planning permission should be granted to the applied for variation to Condition 17 and subject to the prior conclusion of a planning obligation on the same terms as that of planning permission in principle 15/00473/PPM, and all of the conditions from planning permission in principle 15/00473/PPM, where it is intended these should apply. In this case, all of the other conditions should continue to apply. The wording of some of the conditions require to be altered to accurately reflect the planning permission to which they relate.

RECOMMENDATION

It is recommended that planning permission be granted subject to:

1. The undernoted conditions.
2. The satisfactory conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or some other legal agreement designed to:

(i) Secure from the applicant a financial contribution to the Council of £916,284.80 (£5,726.78 per residential unit) towards the provision of additional capacity at Prestonpans Infant and Nursery School, Prestonpans Primary School and Preston Lodge High School.

(ii) Secure from the applicant the provision of 25% of the final approved number of residential units within the application site as affordable residential units or if it can be demonstrated to the Council that this, or the off-site provision of 25% of the final approved number of residential units as affordable units is not practicable, to secure from the applicant a commuted sum payment to the Council in lieu of such an on or off-site provision.

3. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reason that without the developer contributions to be secured by the Agreement the proposed development is unacceptable due to a lack of sufficient school capacity at Prestonpans Infant and Nursery School, Prestonpans Primary School and Preston Lodge High School and the lack of provision of affordable housing, contrary to, as applicable, Policies INF3 and H4 of the adopted East Lothian Local Plan 2008.

1 The submission for approval of matters specified in conditions of the grant of planning permission in principle 15/00473/PPM in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended) shall include details of the siting, design and external appearance of the residential units, the neighbourhood centre and the cemetery, the means of access to them, the means of any enclosure of the boundaries of the site and the landscaping of the site. Those details shall generally comply with the Illustrative Masterplan docketed to planning permission in principle 15/00473/PPM, but additionally shall comply with the following design requirements:

a. The residential dwellings shall be predominantly two storeys in height and no higher than three storeys in height and the external finish to their walls shall be predominantly rendered and coloured in accordance with a co-ordinated colour scheme that respects the layout of the development;

b. Other than in exceptional circumstances where the layout or particular building type does not permit, the residential units shall be orientated to face the street;

c. There shall be no integral garages, unless it can be justified as an exceptional design feature, or where the house and garage would not be on a primary street frontage;

d. The detailed design of the layout shall otherwise accord with the principles set out in the Council's Design Standards for New Housing Areas and with Designing Streets;

e. Notwithstanding that shown in the Illustrative Masterplan docketed to planning permission in principle 15/00473/PPM, there shall be at least a 9 metres separation distance between the windows of a proposed new building and the garden boundaries of neighbouring residential properties and an 18 metres separation distance between directly facing windows of the proposed new building and the windows of existing or proposed neighbouring residential properties;

f. an independent road safety audit shall be undertaken for the proposed site access junctions onto the B1361 road;

g. the proposed site access junctions onto the B1361 road shall be designed in accordance with the Design Manual for Roads and Bridges, Volume 6;

h. visibility splays of 4.5m by 90m in both directions shall be provided and maintained at the proposed site access junctions with the B1361 road so that no obstruction lies within them above a height of 1.05 metres measured from the adjacent carriageway surface;

i. the proposed development shall be carried out in strict accordance with British Standard

BS5837_2012 "Trees in relation to design, demolition and construction ~ Recommendations' sections 4, 5, 6, 7 and 8 and an arboricultural survey demonstrating this shall be submitted with application(s) for approval of matters specified in conditions;

j. parking for the residential development hereby approved shall be provided at a rate as set out in the East Lothian Council Standards for Development Roads- Part 5 Parking Standards;

k. all access roads shall conform to East Lothian Council Standards for Development Roads and Design Standards for New Housing Areas in relation to roads layout and construction, footways and footpaths, parking layout and number, street lighting and traffic calming measures;

l. driveways shall have minimum dimensions of 6 metres by 3 metres. Double driveways shall have minimum dimensions of 5 metres width by 6 metres length or 3 metres width by 11 metres length. Pedestrian ramps to houses may encroach by up to 300mm on the width (but not the length) provided they are no greater than 150mm in height above the adjacent driveway surface;

m. within residential private parking areas the minimum dimensions of a single parking space shall be 2.5 metres by 5.0 metres. All visitor parking spaces within these areas shall be clearly marked for visitors with the remaining private parking spaces allocated to individual dwellings;

n. vehicle accesses to private parking areas (i.e. other than driveways) shall be via a reinforced footway crossing and have a minimum width of 5.5 metres over the first 10 metres to enable adequate two way movement of vehicles;

o. cycle parking be included at a rate of 1 space per flat. The parking shall be in the form of 1 locker per flat or communal provisions in the form of a lockable room or shed;

p. the cemetery shall be designed with appropriate levels of parking so that no parking shall overspill onto the B1361 road;

q. the cemetery access be suitable for the two way movement of vehicles so that no vehicle has to wait on the B1361 road whilst a vehicle is egressing. Vehicles should also be able to enter and leave the site in a forward gear;

r. any access gates to the cemetery shall be set back a minimum of 20 metres from the access junction with the B1361 road so that no vehicle has to wait on the B1361 whilst the gates to the cemetery are opened and closed;

s. a toddlers play area shall be provided within the application site. Details of the toddlers play area, including the equipment to be provided within it and a timetable for its implementation, shall be submitted to and approved in advance by the Planning Authority and the play area shall be installed in accordance with the details so approved;

t. a dedicated landscape strip with an average width of 10 metres shall be provided along the entire northern frontage of the application site;

u. a natural stone wall shall be formed along the entire length of the southern side of the dedicated landscaped strip on the northern boundary of the site as required by 1t above and the stone wall shall have an average height of 1 metre. Details of the exact position, height and construction of the wall shall be submitted to and approved in advance by the Planning Authority and shall include a timetable for implementation and the stone wall shall be erected in accordance with the details so approved; and

v. pathways within the site shall link to the path that runs eastwards from the site, adjacent to the disused section of railway line.

Reason:

To enable the Planning Authority to control the development in the interests of the amenity of the development and of the wider environment and in the interests of road safety.

- 2 No more than 160 residential units are approved by planning permission in principle 15/00473/PPM. Unless otherwise agreed in writing with the Planning Authority: the annual completion rates shall be those set out by the applicant i.e. 40 units per annum over a 4 year development period; and any slippage in any single year shall revert to year 5 or beyond, and not be added to the subsequent year.

Reason:

To ensure sufficient education capacity can be provided for the pupil product of the development.

- 3 No development shall take place until there has been submitted to and approved in writing by the Planning Authority a scheme of landscaping. The scheme shall be generally based on the landscape proposals shown in principle on the Indicative Masterplan docketed to planning permission in principle 15/00473/PPM, shall include predominantly native species planting and shall otherwise fully accord with requirements of Conditions 1i and 1t above.

It shall also provide details of: the height and slopes of any mounding on or recontouring of, the site; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall also include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of ten years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason:

In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

- 4 A Green Travel Plan shall be submitted to and approved by the Planning Authority prior to the occupation of any of the residential units approved by the grant of planning permission in principle 15/00473/PPM. The Green Travel Plan shall have particular regard to provision for walking, cycling and public transport access to and within the site, and will include a timetable for its implementation, details of the measures to be provided, the system of management, monitoring, review, reporting and duration of the Plan.

Reason:

In the interests of ensuring sustainable travel patterns in respect of the development.

- 5 A Construction Method Statement to minimise the impact of construction activity on the amenity of the area shall be submitted to and approved by the Planning Authority prior to the commencement of the development approved by the grant of planning permission in principle 15/00473/PPM. The Construction Method Statement shall recommend mitigation measures to control construction traffic and shall include hours of construction work and details of wheel washing facilities to be provided. Wheel washing facilities must be provided and maintained in working order during the period of operation of the site. All vehicles must use the wheel washing facilities to prevent deleterious materials being carried onto the public road on vehicle tyres.

Reason:

To minimise the impact of construction activity in the interests of the amenity of the area.

- 6 No development approved by the grant of planning permission in principle 15/00473/PPM shall commence unless and until the existing 40 miles per hour (mph) speed limit on the B1361 road has been extended along the entire length of that application site frontage which shall include village entry treatments. Details of the extension to the existing 40 miles per hour speed limit and village entry treatments shall be submitted to and approved in advance by the Planning Authority and shall include the provision of street lighting along the length of it. Thereafter the extended 40 miles per hour speed limit, village entry treatments and street lighting shall be implemented and installed in accordance with the details so approved.

Reason:

In the interests of road safety.

- 7 Prior to the occupation of any of the residential units approved by the grant of planning permission in principle 15/00473/PPM or any use being made of the neighbourhood centre also approved by the grant of planning permission in principle 15/00473/PPM:

a. a continuous 2 metre wide footway shall be provided on the south side of the B1361 road along the site frontage to link into the existing footway network, with dropped kerbs provided as necessary;

b. the footway on the northern side of the B1361 shall be upgraded to a minimum of 2 metres wide for a distance commensurate with the site frontage between the Royal Musselburgh Golf Club entrance and the U104 Drummohr Road;

c. two Double D Island crossing points shall be formed on the B1361 road to provide pedestrians with safe crossing points on appropriate desire lines.

Details of the new 2 metre wide footway, the upgraded footway and the crossing points shall be submitted to and approved in advance by the Planning Authority. Development shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of road safety.

- 8 Details of the proposed integrated sustainable urban drainage scheme (SUDS) for the application site shall be submitted to and approved in writing by the Planning Authority following consultation with the Scottish Environment Protection Agency and such detail shall provide for two levels of treatment.

The integrated sustainable urban drainage scheme (SUDS) for the application site shall thereafter be fully implemented in accordance with the details so approved.

Reason:

To ensure the provision of a satisfactory sustainable urban drainage scheme for the application site.

- 9 No development approved by the grant of planning permission in principle 15/00473/PPM shall take place until the applicant has, through the employ of an archaeologist or archaeological organisation, secured the implementation of a programme of archaeological work (Evaluation and Metal Detecting Survey) on the site of the proposed development in accordance with a written scheme of investigation which the applicant will submit to and have approved in advance by the Planning Authority.

Reason:

To facilitate an acceptable archaeological investigation of the site.

- 10 Prior to the commencement of the development approved by the grant of planning permission in principle 15/00473/PPM a comprehensive contaminated land investigation shall be carried out and a report on the findings of it shall be submitted to and approved by the Planning Authority. The report must include a site-specific risk assessment of all relevant pollutant linkages.

Where the site-specific risk assessment identifies any unacceptable risk or risks, development shall not begin until a detailed remediation strategy has been submitted to and approved by the Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved remediation strategy. Any subsequent amendments to the approved remediation strategy shall not be implemented unless approved in advance by the Planning Authority.

On completion of the remediation strategy and prior to the commencement of the development approved by the grant of planning permission in principle 15/00473/PPM a validation report shall be submitted to and approved by the Planning Authority confirming that the remediation of the site has been carried out in accordance with the approved remediation strategy.

The presence of any previously unsuspected or unforeseen contamination that becomes evident during the development of the site shall immediately be brought to the attention of the Planning Authority to investigate whether further works shall be required to be carried out to determine if any additional remedial measures are required.

Reason:

To ensure that the site is clear of contamination.

- 11 Prior to the commencement of the development approved by the grant of planning permission in principle 15/00473/PPM intrusive investigation works shall be carried out at the application site in accordance with detail to be submitted to and approved in advance by the Planning Authority following consultation with The Coal Authority to assess ground stability due to former mine workings at the site. In the event that the intrusive investigation works confirm the need for remedial works to treat any areas of shallow mine workings, development shall not begin until a scheme of remedial works on the site has been submitted to and approved in writing by the

Planning Authority, and thereafter have been fully implemented as so approved.

Reason:

To ensure that the site is clear of coal mining features and hazards prior to the occupation of any of the buildings.

- 12 A Construction Method Statement to specify the measures to be adopted to protect the amenity of neighbouring residential properties from the effects of noise and dust arising as a result of the construction phase of the development approved by the grant of planning permission in principle 15/00473/PPM shall be submitted to and approved by the Planning Authority prior to the commencement of development.

Reason:

In the interests of the amenity of the area.

- 13 Prior to the commencement of the development approved by the grant of planning permission in principle 15/00473/PPM a noise report shall be submitted to and approved in advance by the Planning Authority which shall demonstrate compliance with the following requirements, and any measures necessary to achieve the requirements shall be fully implemented as so approved:

a. the garden areas of the residential dwellings shall achieve the upper limit for daytime garden noise levels of 55dB_LA_{eq,t} specified in paragraph 7.7.3.2 of BS8233:2014 "Guidance on sound insulation and noise reduction in buildings" due to noise associated with road traffic on the B1361;

b. within the residential dwellings daytime and night-time internal noise levels as specified in Table 4 of BS8233:2014 "Guidance on sound insulation and noise reduction in buildings" shall be achieved due to noise associated with road traffic on the B1361;

c. within the residential dwellings World Health Organisation "Guidelines for community noise" internal level of <45dB_LA_{max} (not to be exceeded more than 10-15 times a night) shall be achieved due to noise associated with the east coast main line.

Reason:

In the interest of safeguarding the residential amenity of future occupiers of the proposed residential development.

- 14 The design and installation of any plant or equipment associated with the operation of each of the commercial units proposed in the neighbourhood centre approved by the grant of planning permission in principle 15/00473/PPM shall be such that noise emanating from them shall not exceed Noise Rating Curve NR25 at any Octave Band Frequency when measured within any existing or proposed neighbouring residential property assuming windows open at least 50mm.

Reason:

To ensure the commercial units proposed in the neighbourhood centre do not harm the amenity of nearby residential properties.

- 15 The details of the extraction system to be used within the proposed class 3 restaurant/cafe space at the neighbourhood centre approved by the grant of planning permission in principle 15/00473/PPM, including efflux velocities of stack emissions and any odour control measures to be implemented in the form of primary, secondary and tertiary treatments shall be submitted to and approved in advance by the Planning Authority prior to the operation of the premises for Class 3 use, and such detail shall include a timetable for the implementation of such system.

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

Reason:

To ensure the Class 3 use does not harm the amenity of nearby residential properties by cooking odours.

- 16 No residential unit approved by the grant of planning permission in principle 15/00473/PPM shall be occupied unless and until details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority and the artwork as approved shall be provided prior to the occupation of the final residential unit approved for erection on the site.

Reason:

To ensure that artwork is provided in the interest of the visual amenity of the locality or the wider area.

- 17 No development of the cemetery approved by the grant of planning permission in principle 15/00473/PPM shall commence unless and until it has been demonstrated to the satisfaction of the Planning Authority in consultation with the Scottish Environment Protection Agency that it would have no unacceptable adverse impacts on the groundwater of the area.

Reason:

In the interests of the water environment.