

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. **16/00707/PM**

Proposal Removal of condition 17 of planning permission in principle 15/00473/PPM

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

Applicant Hallam Land Management Ltd

Per Rick Finc Associates Ltd

RECOMMENDATION Application Refused

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 to remove Condition 17 of planning permission in principle 15/00473/PPM, such that the applicant would no longer be bound by its requirements.

In the Planning Supporting Statement submitted with the application it is stated that in respect of the cemetery Condition 17 effectively removes the control from the developer and the planning authority vesting it completely with SEPA, who is a consultee in this matter. There would appear to be no justifiable planning reason therefore to preclude the cemetery component from coming forward, should the geotechnical aspects be delayed or protracted, or indeed if it ultimately fails to meet appropriate environmental standards and the objectives of Condition 17. It is therefore proposed that Condition 17 is removed in its entirety and that the planning authority relies on information provided by the Stage 3 Risk Assessment (Peter Brett Associates) in purifying the condition. Removal of Condition 17 would allow both the residential and cemetery elements of the scheme to be progressed. Untying the cemetery will mean the site can be progressed by the Council's Community Services service towards a contract stage with greater confidence and certainty. Condition 17 essentially precludes the early delivery of the housing development and could prolong and complicate the delivery of the cemetery. Phase 1 of the housing development cannot commence prior to purification of Condition 17 unless it is amended or removed. It is considered that removal of the Condition will be of assistance to East Lothian Council.

Also submitted in support of the application is a Phase 3 Water Environment Risk Assessment carried out by Peter Brett Associates. The Water Environment Risk Assessment concludes that the investigations and assessments undertaken on the land proposed for the cemetery at the application site suggest that the site could be developed for use as a cemetery without presenting an unacceptable risk to the environment.

Through separate application 16/00706/PM planning permission is sought to vary Condition 17 of planning permission in principle 15/00473/PPM. A separate report on planning application 16/00706/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 have appraised the Phase 3 Water Environment Risk Assessment carried out by Peter Brett Associates. They advise that the Water Environment Risk Assessment contains some details of an intrusive site investigation to address some of the previously highlighted areas of concern, namely four boreholes and six trial pits have been formed to investigate the depth to groundwater. SEPA state the results from these are inconclusive as there is no clear plan showing their locations and the depth data has not been converted to a consistent datum (e.g. mAOD) to interpret the variation in groundwater level across the site and determine the groundwater flow direction and hydraulic gradient. Notwithstanding this, the maximum groundwater levels reported is 2.66m, this would be within 1m of a burial at 1.8m and therefore indicate an area unsuitable for the formation of standard lairs.

SEPA's guidance note LUPS-GU32 recommends a minimum of 12 months groundwater level monitoring in order to identify the seasonally highest groundwater level. The boreholes were drilled in February 2016. Additional monitoring through the coming winter is required to determine the likely maximum water levels and degree of variation in groundwater.

Six infiltration test pits have been dug and the results of a single infiltration test at each pit are presented. The locations of these pits are not available; therefore whether the tests are representative of the site cannot be assessed. Additionally only a single infiltration test at each location is not standard practice and normally at least 3 tests would be carried out at each location. However, as the results from the six locations are relatively consistent, assuming the tests were performed at appropriately spaced locations around the site, additional tests are not considered necessary. Contaminant fate and transport has been modelled using the Environment Agency's P20 spreadsheet. As the details of the site investigation and cemetery design are not available it is not possible to fully review the outputs of this modelling. SEPA is therefore not able to review the risks to the water environment due to a lack of information on the detailed design of the proposed cemetery development.

In conclusion SEPA state that it has not been demonstrated to their satisfaction that the proposed cemetery proposal would not have a harmful impact on the water environment and by completely removing Condition 17 of planning permission in principle 15/00473/PPM as proposed, this would remove the requirement of the applicant to demonstrate both to East Lothian Council and SEPA that the cemetery would have no unacceptable impact on the water environment. SEPA are not content that the submitted Phase 3 Water Environment Risk Assessment has satisfactorily demonstrated that there will be no harmful impact. SEPA therefore object to the proposed removal of Condition 17 of planning permission in principle 15/00473/PPM.

It has not been demonstrated that the cemetery element of planning permission in principle 15/00473/PPM would have no unacceptable adverse impacts on the groundwater of the area. In this there is no material change in circumstance since the determination of planning permission in principle 15/00473/PPM. Therefore, as there has been no material change in circumstance since the determination of planning

permission in principle 15/00473/PPM there is no justification for the removal of condition 17 of planning permission in principle 15/00473/PPM.

RECOMMENDATION

It is recommended that planning permission be refused for the following reason:

- 1 It has not been demonstrated that the cemetery approved by the grant of planning permission in principle 15/00473/PPM would have no unacceptable adverse impacts on the groundwater of the area.