

PLANNING COMMITTEE

6 DECEMBER 2016

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**MINUTES OF THE MEETING OF THE
PLANNING COMMITTEE**

**TUESDAY 1 NOVEMBER 2016
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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Committee Members Present:

Councillor N Hampshire (Convener)
Councillor D Berry
Provost L Broun-Lindsay
Councillor S Brown
Councillor S Currie
Councillor T Day
Councillor J Gillies
Councillor J Goodfellow
Councillor D Grant
Councillor W Innes
Councillor J McNeil
Councillor T Trotter
Councillor J Williamson

Other Councillors Present:

Councillor F McAllister

Council Officials Present:

Ms M Ferguson, Service Manager – Legal and Procurement
Mr I McFarlane, Service Manager – Planning
Mr K Dingwall, Principal Planner
Mr C Clark, Principal Environmental Protection Officer
Ms P Bristow, Communications Officer
Mr C Kiely, Planner

Clerk:

Ms A Smith

Visitors Present:

Mr B Train, Mr S Warren

Apologies:

Councillor J Caldwell
Councillor A Forrest
Councillor K McLeod
Councillor J McMillan
Councillor P MacKenzie

Declarations of Interest:

None

1. MINUTES FOR APPROVAL – PLANNING COMMITTEE 4 OCTOBER 2016

The minutes of the meeting of the Planning Committee of 4 October 2016 were approved.

2. PLANNING APPLICATION NO.16/00726/PM: VARIATION OF CONDITION 5 OF CONSENT 06/00769/FUL TO ALLOW FOR A SINGLE DELIVERY TO THE STORE BETWEEN THE HOURS OF 2300 AND 0700 AT TESCO STORES LTD, OLIVEBANK ROAD, MUSSELBURGH

A report was submitted in relation to Planning Application No. 16/00726/PM. Keith Dingwall, Principal Planner, presented the report summarising the key points. The report recommendation was to grant consent.

Mr Dingwall responded to questions from Members. He clarified that submission of a Noise Management Plan was a requirement of last year's grant of consent advising that discussions about this with the applicant had taken place. In relation to the number of complaints, he advised that two had been received by Planning Enforcement officers during the past year and one by Environmental Protection officers; these had been addressed. In response to further questions he clarified that the Planning Authority's position was that the applicant had submitted a Noise Assessment indicating that a single delivery to the front of the store would not breach the night time World Health Organisation guideline noise values, this remained the position; the applicant's proposal was the same as before and the same Noise Assessment applied. Mr Dingwall clarified that the reason for deliveries to the front of store had been to try and take these delivery vehicles away from the residential properties on Inveresk Road. Colin Clark, Principal Environmental Protection Officer, responded to questions, advising that the ambient noise level at night would not be greatly affected by the cessation of 24 hour trading at the store; the dominant noise at night came from the surrounding road network.

Ben Train, UK Town Planning Manager for Tesco Stores, informed Members that the overnight delivery had resulted in a significant improvement to the store's function in processing internet orders. The report prepared by their Acoustic Consultant indicated that noise levels were acceptable and complied with relevant guidelines. The temporary consent granted last year had included a range of mitigation noise measures. Regarding complaints, he was aware of an issue regarding the lorry tailgate noise and he highlighted measures taken to try and alleviate this. He confirmed that from 7 November 2016 the store would no longer be open 24 hours; it would be closed between midnight and 6am.

Simon Warren, Musselburgh Tesco Store Manager, re-iterated that the overnight delivery was essential to the internet shopping process. He highlighted potential adverse effects for the operation of the store if this delivery was cancelled. He stated that measures were in place to mitigate the noise and the refrigeration units were switched off during this delivery.

In response to questions, Mr Train outlined the importance of the overnight delivery to the operation of the internet business. In relation to why deliveries were to the front of the store and not the rear, he stated that deliveries to the rear would have been preferable, however due to the noise of delivery vehicles on Inveresk Road the advice from their Acoustic Consultant was for these to come to the front of the store. Regarding the direction of the vehicle as regards tailgate noise, the advice was that the vehicle direction did not make much difference; the key was having the appropriate matting in place. He detailed the process for accessing the car park for the overnight delivery. He clarified that their Acoustic Consultant had not undertaken full survey work on deliveries to the rear of the store.

Fraser McAllister, speaking as a neighbouring resident, made comments in objection to the application. He stated that for the past year residents had been regularly woken during the

night by the noise of these deliveries; it was excessive night time noise. The only testing had been carried out on behalf of Tesco; no independent testing had taken place by the Planning Authority. He highlighted several other factors. He stressed that this acoustic assault would continue if the application was granted. This was a growing residential area; one new housing development was in progress and a second, larger one, was planned. This application should be refused to safeguard the amenity of local residents.

He responded to questions. He stated that the mitigation measures had only been put in place recently by the applicant but even with these the situation was still unacceptable. In his opinion, deliveries to the rear of the store would be preferable. He confirmed that residents had not submitted complaints to the Council until recently as they had thought that an independent noise assessment would be carried out. He was not aware if other Local Members had received complaints from neighbouring residents. He confirmed that residents welcomed that the store would no longer be open 24 hours.

Local Member Councillor Currie remarked that the trial period had been helpful to enable reflection on the impact of the overnight delivery on the amenity of local residents. Constituents had raised this matter at his surgeries. The key issue was where the deliveries were going; to the rear of the store would be more appropriate. Based on the representations from constituents that deliveries should not come to the front of the store he could not support the application.

Councillor McNeil read out a statement on behalf of Local Member Councillor Forrest. He had concerns about granting permission for an overnight delivery on a permanent basis. This delivery had been ongoing for a year now and had had an adverse impact on the amenity of local residents. He urged the Committee to refuse permission because of the detrimental effect of this delivery on neighbouring residents.

Councillor McNeil referred to the original application in 2008 and to the many benefits the Tesco store had brought to Musselburgh. However, the noise issues had to be considered and given this he could not support the application.

Councillor Williamson remarked, given the objections, that he did not understand why more complaints had not been lodged with the Council. He made reference to the new housing development at Eskmills, stating that taking this into account he would prefer the trial period to be extended for another year in order to assess the impact of this overnight delivery on these new residents. He proposed this amendment.

Councillor Day expressed support for Councillor Williamson's amendment, indicating he would second this, providing Tesco investigated deliveries to the rear of the store.

Councillor Innes stated that he would also be prepared to support the amendment as long as an assessment of deliveries to the rear of the store was considered by the applicant.

Mr Train indicated that he would be willing to instruct their Acoustic Consultant to undertake a noise survey regarding deliveries to the rear of the store and would report the findings.

Councillor Grant remarked that after consideration he would be supporting the amendment.

Councillor Trotter indicated that he would also be supporting the proposed amendment.

The Convener indicated that Musselburgh Members had made a case for extending the temporary period to consider the effect on the new houses. He clarified the amendment proposed by Councillor Williamson, seconded by Councillor Day – that the trial period be extended for a further 12 months to assess the impact on the new housing development

and, in addition, that Tesco Stores Limited carry out a noise assessment on deliveries to the rear of the store.

The Convener then moved to the vote on the report recommendation (to grant consent), as amended, subject to the appropriate rewording of condition 5.

For: 11

Against: 2

Abstentions: 0

Decision

The Committee agreed to grant planning permission subject to the following conditions:

- 4 The superstore hereby approved shall have a gross floor area no greater than 8,175 square metres and a net sales floor area no greater than 4,830 square metres. Of the net sales floor area no more than 2,415 square metres shall be used for the sale of comparison goods. The superstore hereby approved shall not be subdivided to form more than 1 retail unit.

Reason:

In order to retain control over the format of retail development at the site and in the interests of safeguarding the vitality and viability of the retail function of Musselburgh Town Centre.

- 5 The operation of the store shall comply with the following requirements:

a) Until 03 November 2017:

i) With the exception of a single service delivery to the front of the store (accessed via the main vehicle entrance and not Inveresk Road), no service delivery vehicle or home delivery vehicle shall either access or egress the site nor be loaded or unloaded within the site outwith the hours of 07:00 to 23:00; and

ii) Notwithstanding condition 5ai) above, there shall be no service delivery to the site outwith the hours of 07:00 to 23:00 unless and until a Delivery Noise Management Plan has been submitted to and approved by the Planning Authority. Once approved the Delivery Noise Management Plan shall be complied with at all times during deliveries outwith the hours of 07:00 to 23:00.

b) After the 03 November 2017, no service delivery vehicle or home delivery vehicle shall either access or egress the site nor be loaded or unloaded within the site outwith the hours of 07:00 to 23:00.

Reason:

To ensure that the amenity of the occupiers of nearby residential properties is safeguarded.

- 6 The car wash and jet wash shall only be open for trading between the hours of 08:00 to 20:00 hours.

Reason:

To ensure that the amenity of the occupiers of nearby residential properties is safeguarded.

- 7 The superstore, petrol filling station and car wash shall be designed and constructed so that noise from any associated plant and equipment shall be such that any noise emanating therefrom does not exceed noise rating curve NR15 over the frequency range 63-8000Hz when measured in any neighbouring property with the noise measurement being taken with the window open at least 50mm. Noise measurements may be taken outside noise sensitive properties on the condition that an appropriate façade transmission loss can be applied to enable internal noise rating levels to be calculated from the external noise level.

Reason:

To ensure that noise emanating from the development is such that it will not have a harmful impact on residential amenity.

- 8 Prior to any use being made of the superstore building, the service yard of it shall be enclosed on all of its boundaries by a solid acoustic barrier, including service yard access gates at least 2.5 metres in height above ground level. Details of the height, physical form and positioning of the acoustic barrier (including service yard access gates and any retaining wall to be built in association with the acoustic barrier) shall be submitted to and approved by the Planning Authority prior to the erection of it and the acoustic barrier erected shall be in accordance with the details so approved. Details for the operational opening and closing of the gates so that they can effectively serve as part of the acoustic barrier shall

also be submitted to and approved by the Planning Authority prior to the erection of them and any other part of the acoustic barrier. The operational opening and closing of the gates shall thereafter accord with the details so approved.

Reason:

To ensure that noise emanating from the service yard of the building is such that it will not have a harmful impact on residential amenity and to control the appearance of the acoustic barrier and retaining wall in the interest of safeguarding the visual amenity of the area.

- 11 The recycling point shown on the proposed site plan docketed to this planning permission shall be provided prior to the superstore opening for trade.

Detailed figures on the material collected at the recycling point shall be submitted to the Council as Waste Services Authority on a quarterly basis.

Reason:

To ensure that adequate facilities are provided to ensure compliance with the Council's policies for recycling.

- 12 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 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 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 five 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.

- 18 A Green Travel Plan to minimise private car trips and to encourage use of alternative modes of transport such as buses, cycling, walking, and the use of home deliveries shall be submitted to and approved by the Planning Authority prior to the superstore opening for trade. Additionally the Green Travel Plan shall include details of the measures to be provided, the methods of management, monitoring, review, reporting and duration of the Plan.

The approved Green Travel Plan shall be implemented prior to the first opening of the superstore.

Reason:

In the interests of ensuring sustainable travel patterns in respect of the superstore use.

Signed

Councillor Norman Hampshire
Convener of the Planning Committee

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

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Note - this application was called off the Scheme of Delegation List by Councillor Caldwell for the following reason: This public house and gardens has a long historic connection with the oldest playing golf course in the world, and it is important that the committee visit this site to ensure that there will be no impact on the course or to the detriment of the current playing conditions for golfers using this facility.

Application No. **16/00466/P**

Proposal Erection of 1 house and associated works and alterations to existing building

Location **2 Ravensheugh Road
Musselburgh
East Lothian
EH21 7PP**

Applicant DS Musselburgh Ltd

Per Fouin & Bell Architects Ltd

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

The application site comprises the former Mrs Formans public house, restaurant and manager's flat and associated grounds that are located on the north side of Ravensheugh Road. The site is to the north side of the Levenhall Roundabout junction of Ravensheugh Road with Linkfield Road to the west, Pinkie Road to the south and Haddington Road to the east. The public house, restaurant and managers flat are presently vacant and un-occupied.

The existing building comprising the public house, restaurant and managers flat is positioned on the southern part of the site with its south (front) elevation fronting onto the public footpath on the north side of Ravensheugh Road. The land to the north (rear) of the building was last in use as pub grounds and garden ground for the manager's flat. The building has a rectangular shaped footprint and is predominantly two storeys in height with a dual pitched and gabled roof. Attached to its east gable elevation is a one and a half storey component with a pitched and piended roof and a wall-head dormer on its south (front) elevation. Attached to the east elevation of that one and a half storey part of the building is a mono-pitch roofed component with an external staircase. Attached to

the north (rear) elevation of the two storey main part of the building is a two storey flat roofed component with an external staircase. The external walls of the building are finished in a combination of painted stone and painted render, and its roof is finished with red clay pantiles. The building has chimneys and stone copes to its gabled roof. The frames of its windows are of painted timber construction and the majority of the windows are of a traditional sash and case style opening method. The frames of the external doors are of painted timber construction and the external doors are of a painted timber construction or timber and glazed construction. There are painted stone bands around the windows of the south (front) and west side elevations of the building, and a painted string course on its south (front) and west side elevations. There is a dual pitched roofed porch canopy above the main entrance doors of the south (front) elevation of the main two storey part of the building.

The land of the application site rises up slightly from south to north with the land to the north (rear) of the existing building being at a higher ground level than the public footpath to the south (front) of the building.

The application site is enclosed along its south boundary in part by the south elevation wall of the existing building and in part by a high rendered wall with a pedestrian gate through it. The west boundary of the site is enclosed by a combination of the west gable elevation wall of the existing building, a 1.6 to 1.8 metres high rubble stone boundary wall with a 'sheeps heid' cope, a 1.6 metres high metal pedestrian gate and a cypress hedge some 5 metres in height. The north boundary of the site is enclosed by a 1.3 to 1.5 metres high rubble stone boundary wall with a 'sheeps heid' cope. The east boundary of the site is enclosed by a combination of 1.4 to 1.5 metres high rubble stone boundary wall with a 'sheeps heid' cope with 600mm high timber fencing attached to the top of it giving an overall height of some 2.0 metres, a 1.2 metres high rubble stone wall with 'sheeps heid' cope, trellis and hedging to 1.6 metres in height, and 1.5 to 1.8 metres high rendered wall with 500mm of timber fencing attached to the top of it giving an overall height of some 2.0 to 2.3 metres above ground level.

The application site is bounded to the east by the residential properties of 4 and 4A Ravensheugh Road, to the north by an area of open space on which there is a group of mixed evergreen and deciduous trees, to the west by land of the Musselburgh Old Golf Course and Musselburgh Racecourse, and to the south by the public road of Ravensheugh Road at the Levenhall Roundabout junction and an area of public off-street parking on the western part of which are positioned communal public recycling bins and charity collection bins.

Along with the cypress hedge that encloses part of the west boundary of the site there is a further holly tree positioned adjacent to the west boundary of the site and to the south of an existing pedestrian access gate of the west boundary, some small fruit trees are positioned roughly centrally on the land to the rear of the building and a larger evergreen tree is positioned alongside the east boundary of the site at a point roughly half way along that east boundary. There is also a tree outwith the site to the east on the edge of the shared driveway of the neighbouring residential properties of 4 and 4A Ravensheugh Road, as well as the trees outwith the site on the open space land to the north.

The application site is identified as being within an area of predominantly residential character and amenity by Policy ENV1 of the adopted East Lothian Local Plan 2008. It is not within a conservation area. The building is not listed as being of special architectural or historic interest.

In October 2015 planning permission (Ref: 15/00810/P) was sought for the erection of 3 houses, 1 flat and a garage on the site of the former Mrs Formans public house at 2

Ravensheugh Road. Planning permission was also sought for the formation of hardstanding areas and the erection of boundary enclosures. To facilitate the development, it was proposed to demolish the existing building of 2 Ravensheugh Road. That planning application was subsequently withdrawn by the applicant's agent.

On 19th April 2016, through a decision of the Planning Committee, planning permission 15/01035/P was granted, subject to conditions, for the change of use of the existing building on the site from pub/restaurant/managers flat and pub grounds to use as 1 house and domestic garden ground. Those conditions included a requirement for the retention of the west boundary hedge at a minimum height of 4 metres and at a minimum thickness of 4 metres.

In February 2016 a further planning application 16/00059/P was registered for alterations and change of use of the existing public house/restaurant/manager's flat of Mrs Formans at 2 Ravensheugh Road to form 1 house, for the erection of 2 new houses on the land associated with the former public house to the north of the former public house building, and for the formation of hardstanding areas and the erection of boundary enclosures. Planning application 16/00059/P was subsequently withdrawn by the applicant's agent in August 2016 prior to it being determined.

Planning permission is now sought for the erection of 1 detached house on the northern part of the site, for the formation of hardstanding areas, the erection of boundary enclosures and for the formation of a new vehicular access. Planning permission is also sought for alterations to the existing building on the site, which through the grant of planning permission 15/01035/P is approved to be converted to use as 1 house.

The proposed new detached house would be of a contemporary flat roofed design with large areas of glazing on its northeast, northwest and southwest elevations. It would be positioned on the northern half of the site with its front elevation facing southeast and would be set back from the north elevation of the existing building on the southern part of the site by a minimum of some 15 metres. The proposed house would be two storeys in height and would have a simple cube type form with a 'T shaped' footprint. It would comprise of 4 bedrooms, two with associated dressing rooms and en-suite bathrooms, a bathroom, living, dining, kitchen and family rooms, a utility room, circulation space, storage and cloakroom space and an integral garage. The external walls of the proposed house would be finished with a white render and there would be small areas of timber architectural detail. Its flat roof would be clad with a single ply roofing membrane. A first floor level balcony with a glazed balustrade would extend along part of the northwest elevation wall of the house. Further glazed balustrades would be installed at a window of a different part of the northwest elevation of the house and at a window of the southeast elevation of the house. The entrance door of the front (southeast) elevation would be of timber construction. Otherwise the frames of the windows and glazed doors of the proposed house would be of aluminium construction. There would be garden ground to the north, west, south and east of the proposed house.

A new vehicular access to the site would be formed in the southern boundary of the site, towards its eastern end. To facilitate the formation of the new vehicular access the existing one and a half storey component that is attached to the east elevation of the existing building of 2 Ravensheugh Road and its associated external staircase and the length of south boundary wall would be demolished and removed.

A new driveway would be formed along the eastern side of the site adjacent to the eastern boundary. Further hardstanding areas are proposed to be formed to the north, south, east and west of the proposed house. They would be in the form of paved patio areas, footpaths and parking and turning areas. Two off-street parking spaces for the

house approved to be formed through the conversion of the existing building by the grant of planning permission 15/01035/P would also be formed on the land between the rear (north) elevation of the existing building and the proposed new house.

New fencing and a length of wall are proposed to be erected along the west side of the proposed driveway to enclose what would be the garden of the house approved by the grant of planning permission 15/01035/P. Otherwise all existing boundary enclosures would be retained. The application drawings do not include any proposals for the erection of a new boundary enclosure along the south boundary of the site or the erection of gates at the proposed vehicular access.

A timber bin store for the proposed new build house is also proposed to be erected in a position to the east of that house.

The proposed alterations to the existing building comprise the blocking up of an existing ground floor door with a new section of rendered wall and the formation of a new first floor window opening and the installation in that new opening of a new window. These alterations would be carried out on the east elevation wall of the building which would be exposed as a result of the removal of the one and a half storey component that is attached to the east elevation of the building.

The application drawings show an intention to demolish and remove the one and a half storey component that is attached to the east elevation of the existing building and its associated external staircase, and the length of rendered south boundary wall, and in fact works to demolish the one and a half storey component of the building have commenced on site. The demolition and removal of what amounts to only part of the existing building and the boundary wall is not development requiring planning permission. Nor do they require listed building consent as the building is not listed as being of special architectural or historic interest or conservation area consent as the building is not within a conservation area. Thus, the demolition and removal of the one and a half storey component of the existing building, its external staircase and the length of south boundary wall do not form part of the assessment of this application for planning permission.

Since the application was registered the proposals have been amended to: (i) change the design of the roof of the proposed house so that it would be wholly flat by removing a dual pitched roof from the southern part of the proposed house; (ii) reduce the length of the front (southeast) elevation of the house by some 1.5 metres; (iii) reduce the height of the house by some 0.5 of a metre; (iv) change the size and position of the window openings of the northwest and southeast elevations; (v) include the provision of a privacy screen along the northeast side of the proposed first floor balcony of the northwest elevation of the proposed house; (vi) alter the size and position of roof windows on the roof of the house; (vii) alter the position of the proposed bin store; and (viii) alter the area of coverage of the hardstanding areas.

In addition, further details have been provided to: (ix) show the alterations to the east elevation of the existing building; (x) accurately show the position of the existing west boundary hedge and holly tree on the site; and (xi) accurately show the ground levels of the site relative to neighbouring ground levels.

All of these changes and additional details are shown on amended application drawings submitted by the applicant's agent.

At the request of the Council's Policy and Projects Landscape Officers an amended Tree Survey and Arboricultural Constraints Report for the retained hedge and tree on the site

has been submitted.

In addition, a design and access statement has been submitted with the application. That design and access statement has subsequently been amended twice by the applicant's agent.

In the design and access statement (received 12th September 2016) it is explained that the proposal is for the erection of a detached house on the northern part of the site of the former Mrs Formans public house at 2 Ravensheugh Road. Through the use of aerial maps, it is shown that the site is bounded to the west and north by land of the Musselburgh Racecourse and Old Golf Course, to the east by residential properties beyond which are commercial properties, and to the south by the public road network at Levenhall roundabout. Further to the northeast, east and south are more residential properties. It is further shown that the surrounding buildings vary between single storey and 3 storeys in height.

The statement goes on to provide 5 photographic examples of houses where a contemporary architectural form and design have been utilised, three of which are in Musselburgh. The statement explains that the overall design intent is to create a house that is contemporary in character but with materials and form that fits in with the existing area, and it is stated that the local examples shown in the statement show that contemporarily designed buildings can complement existing traditional buildings, and that the mix of old and new serves to enliven the existing architecture and create interest. The statement goes on to explain that the proposed development has been designed to meet accessibility requirements. It is stated that the design solution evolved through careful consideration of the planning constraints of the site, including distances to neighbouring properties and the requirement for a buffer to the golf course, all of which resulted in the 'T shaped' footprint of the proposed house. It is further stated that the timber architectural detail adds a contemporary twist to the otherwise crisp white render of the proposed house. The statement goes on to explain that floor to ceiling windows allow light to flood into the proposed house but that careful use of opaque glass on the east elevation protects neighbouring privacy whilst allowing for the contemporary design ethos of the proposal.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies C8 (Musselburgh Lagoons), ENV1 (Residential Character and Amenity), ENV7 (Scheduled Monuments and Archaeological Sites), DP7 (Backland, Infill and Garden Ground Development), DP6 (Extensions and Alterations to Existing Buildings), DP2 (Design), DP14 (Trees on or Adjacent to Development Sites), DP22 (Private Parking) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application is the Scottish Government's policy on infill housing development given in Planning Advice Note 67: Housing Quality.

Planning Advice Note 67: Housing Quality explains how Designing Places should be applied to new housing. In PAN 67 it is stated that the planning process has an essential

role to play in ensuring that: (i) the design of new housing reflects a full understanding of its context - in terms of both its physical location and market conditions, (ii) the design of new housing reinforces local and Scottish identity, and (iii) new housing is integrated into the movement and settlement patterns of the wider area. The creation of good places requires careful attention to detailed aspects of layout and movement. Developers should think about the qualities and the characteristics of places and not consider sites in isolation. New housing should take account of the wider context and be integrated into its wider neighbourhood. The quality of development can be spoilt by poor attention to detail. The development of a quality place requires careful consideration, not only to setting and layout and its setting, but also to detailed design, including finishes and materials. The development should reflect its setting, reflecting local forms of building and materials. The aim should be to have houses looking different without detracting from any sense of unity and coherence for the development or the wider neighbourhood.

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

Paragraphs 135 and 136 of Scottish Planning Policy: June 2014 state that the historic environment is a key cultural and economic asset and a source of inspiration that should be seen as integral to creating successful places, and that Planning has an important role to play in maintaining and enhancing the distinctive and high quality irreplaceable historic places which enrich our lives, contribute to our sense of identity and are important resources for our tourism and leisure industry. Paragraph 151 goes on to state that there is a range of non-designated historic assets, which do not have statutory protection and these resources are an important part of Scotland's heritage and should be protected and preserved as far as possible in situ wherever feasible.

Also material to the determination of the application is Scottish Government's policy on development affecting an archaeological site given in Scottish Planning Policy: June 2014 and Planning Advice Note 2/2011: Planning and Archaeology.

With regard to archaeological sites and monuments Scottish Planning Policy should be protected and preserved in situ wherever feasible. The presence and potential presence of archaeological assets should be considered by planning authorities when making decisions on planning applications. Where preservation in situ is not possible planning authorities should through the use of conditions or a legal agreement ensure that developers undertake appropriate excavation, recording, analysis, publication and archiving before and/or during development. If archaeological discoveries are made during any development, a professional archaeologist should be given access to inspect and record them. Planning Advice Note 2/2011: Planning and Archaeology similarly advises.

Twenty eight public representations to the application have been received. Many of these representations have been received from golfers both locally based and from around the world.

All of the representations raise objection to the proposals and as summarised the grounds of objection raised are:

1. the existing one and a half storey component that is attached to the east elevation of the existing building on the site should not be removed because the existing building is a historic building with links to the old golf course and is an intrinsic part of the streetscape of the old settlement of Levenhall and the removal of that part of the building, which is likely to be the oldest part of the building, would break the continuity of the elevations

facing onto the Levenhall roundabout, rather it is suggested that access to the rear of the site should be gained by forming an archway in the existing building but retaining the first floor above;

2. due to its historic links with the old golf course this is an iconic building and there should be no change to the use or appearance of the existing building and its land and no alteration to the old golf course;

3. the proposed house would be too close to the golf course and as such would be at risk from ball strike and thus there is potential for there to be a request in the future for the relocation of the very famous green (4th), which would be a tragedy for the old golf links and the game of golf, all for the sake of one house;

4. it is important that the gable end of the existing building is protected and that the boundary hedge remains, and that no house is allowed to be built that could endanger the golf course in future years;

5. Mrs Formans public house has historic significance in the history of golf and of Musselburgh Old Golf course and should be retained in its historic use as a public house and as such is a treasure in the community that needs protection, and it holds no lesser value in the community than does the Musselburgh Racecourse, which recently celebrated its 200th anniversary;

6. the proposed development could have serious implications for the continuing use of the 4th Green of the Old Course and could lead to pressure to relocate the Green which would change the historic significance of the golf course;

7. the proposal would bring no benefit for the people of Musselburgh and is for financial gain only;

8. the site has historic significance for golfers around the world, is of high cultural value, is the location of many well-known events in golf history, and forms the backdrop to 'Mrs Forman's green', the signature hole of the world's oldest golf course known as 'The Cradle of Golf', and it would be an opportunity missed not to retain the existing building for public use;

9. the proposed new house fails to respect its historic setting and involves the removal of adequate safety screening for the proposed house and its garden from the golf course which would lead to unacceptable modifications to the golf course to protect them from liability;

10. the public house is the world's oldest golf tavern and this is a site of historical importance and should be protected, and the proposals would destroy the oldest part of the existing building;

11. any changes to the old golf course as a result of the proposed development would undoubtedly impact negatively on the local economy;

12. Mrs Formans is the oldest golf pub in continuous existence in the world and the Council should use this as a basis for tourism and marketing;

13. the retention of the west boundary wall and hedge is an essential condition to protect the Old Course but it cannot be guaranteed in perpetuity, and liability for death and personal injury being unlimited and the necessary remedial actions being unquantifiable, there is a serious risk that will fall on the Council;

14. the design of the proposed house is entirely modern and totally at odds with the local setting and the Old Course as a nineteenth century Open golf championship venue;
15. the golf green at Mrs Forman's is the signature hole of the Open layout and any changes to the look or playing of this hole would have effects on the desirability of the course to visiting golfers and locals alike, which would affect the commercial viability of the Old Course and could ultimately lead to the closure of the Old Course;
16. the application drawings show a reduction in the width of the existing hedge that encloses the majority of the west boundary of the site and which planning permission 15/01035/P required to be retained at a height of no less than 4 metres and a width of not less than 4 metres, and without this protection any future residents would be able to claim that the Old Golf Course presented a 'nuisance' with the potential for changes to be carried out to the historic golf course;
17. the current proposal would nullify the earlier permission (ref. 15/01035/P) as it would remove the majority of the garden ground approved for the house to be formed through the conversion of the former public house, restaurant and managers flat;
18. the proposed development poses an operational risk to the historic Old Course;
19. the proposals seek to remove the existing hedge and trees from the site and the details of any replacement planting remain unspecified;
20. the existing trees on the site should be retained as they mediate the view of the back of adjacent houses and terminate the view of the Links in a subtle and understated way and therefore these trees should be protected as well as the integrity of the boundary wall and gable of the existing building;
21. the existing building should be used as a tourist attraction and the proposed development would remove the potential for this to happen;
22. the design and materials of the proposed house show little regard for 'sympathetic' design or density, and where they have been used elsewhere in the locality they have been disappointing;
23. Musselburgh Old Golf Course and the view of Mrs Forman's pub and its boundary wall have provided backdrop to many significant moments in golf history and are recorded in iconic paintings and photographs throughout the 194 years of its existence, and any change to these physical features would constitute damage rather than improvement of the Old Course, contrary to Local Plan Policy C8;
24. a design statement has not been submitted with the application;
25. the site is in a designated flood risk zone of the Scottish Environment Protection Agency and a flood risk assessment should have accompanied the application, and the proposals should take account of the sequential testing as set out in SPP7 'Planning and Flooding';
26. the golf course is the oldest golf course in the world in continuous use, has hosted 6 Open Championships, and is one of the two most important centres in the history of early golf before the first world war;
27. the loss of trees from the site would be harmful to the view of the golf course;

28. there is a risk to the health and safety of residents of any house from mis-directed balls from the publicly accessible golf course straying onto the site;
29. there would be a reduction in heritage value of the Old Golf Course and the potential adverse impact on it that would result from pressure to change the layout of Mrs Formans green would lead irreversible changes to the look and viability of this world renown golf course;
30. Mrs Formans, which is the oldest golf pub in the world, is of national and international historical significance in golf and is important to the continued reputation of the Musselburgh Old Golf Course and thus also to golfing tourism in East Lothian and Scotland;
31. no proposal that would have an adverse impact to the look of the Old Course or its viability should be supported;
32. not only is there potential danger to the occupants of the proposed house from golf balls coming over from the Old Course but also, given the substantial areas of hardstanding, to neighbours as well;
33. the attempt to incorporate the width of the west boundary hedge that overhangs the land of the Old Course is unacceptable as the golf course would be within their rights to cut that part of the hedge back and thus reduce the safety aspect to an unacceptable level;
34. the hedge would be likely to impact on the light received by the proposed house and any future occupants of the proposed house would need to be aware of the necessity to maintain the size of the hedge for their own safety as well as that of neighbours;
35. Musselburgh Old Course is an economic and cultural asset for the region and this proposed development would be a huge scar on that asset that would diminish the historic and tourist value of the site, and the Councillors and Officials of East Lothian Council have a responsibility to protect this legacy;
36. works have already commenced to remove part of the existing building;
37. the proposed retention of the hedge would be inadequate protection against golf balls coming over from the Old Course and the Council would acquire significant liabilities for costs and consequences as a result, furthermore there would be risk to the appearance and viability of the Old Course, which would in turn have costs and consequences for the Council and community;
38. the demolition of part of the building contravenes the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2010 which make it illegal to damage or destroy bat roosts, whether occupied or not;
39. the proposed development contravenes Local Plan Policies NH5, NH8, C8, DP4, ENV1, ENV2, DP14 and DP16;
40. the application drawings show inconsistencies in the size of the west boundary hedge and the positions of the existing trees;
41. there proposed parking spaces that would serve the existing building do not allow for adequate turning space and to provide such would result in the majority of the garden for that property being taken up by parking and turning space and thus would emphasize the

point that the proposals are an overdevelopment of the site;

42. the proposals do not adequately address the provisions of BS5837 and may result in development within the root protection area of the retained trees and hedge that would be detrimental to the health of those trees and hedge;

43. the proposed development would result in a loss of light and privacy to the neighbouring properties and noise nuisance;

44. the proposed building design is visually unappealing, large and ugly, and does not fit in with the character of the rest of the neighbourhood and would detract from the views of the golf course and thus would have a detrimental impact on the historical value of the Musselburgh Old Course;

45. the proposals include the provision for parking and garage space at a time when multiple car ownership should be discouraged especially when the site lies close to several local bus routes;

46. the proposals make no provision for bicycle storage, external drying space or energy efficiency measures;

47. the proposals would be an overdevelopment of the site that would not be in keeping with the surrounding area and would be overbearing, oppressive, out of scale and out of character with the mainly cottage style houses of the locality;

48. the proposals would lead to the loss of existing views from neighbouring properties, specifically views over the Levenhall nature reserve and golf course, that would adversely affect the amenity of those neighbouring properties;

49. the site is at risk from golf balls coming over from the Old Course and this risk would be increased by the erection of a new house on the site, even if the windows were to be toughened and fixed shut, the proposed house would be a demonstrably easier target than if the land were only to be used as garden ground for the existing building, in that golf balls could ricochet off hard surfaces, enter the house through open windows/doors, or break windows/doors, all at a risk to life and liable to be seen as a nuisance with inevitable cost and consequence for the Old Course; and

50. given that miss-hit shots on the 4th hole of the Old Course are 'short right' or 'long left' and that the proposed house would be positioned 'long left', a miss-hit shot could easily fly over the existing hedge and into the proposed house resulting in there being pressure to change the Old Course, and it seems short-sighted to threaten this importance golf course.

The change of use of the existing public house/restaurant/managers flat building to 1 house does not form part of this proposed development and is not therefore a material consideration in the determination of this application for planning permission. As noted above, planning permission

(Ref: 15/01035/P) has already been granted for the change of use of the existing building to form 1 house.

On the matter of the west boundary hedge the application drawings have been amended to accurately show the thickness of the hedge and to indicate that the hedge would be retained.

Planning permission 15/01035/P, which was granted in April 2016, remains extant and in

fact works to implement the permission have commenced through the discharging of condition 1 of that planning permission. Furthermore, although not works requiring planning permission, the internal alterations to facilitate the change of use of the building to form 1 house have commenced. The current application for planning permission stands to be assessed on its own merits and if granted would not nullify the grant of planning permission 15/1035/P.

The application site is within an area defined as being of residential character and amenity by Local Plan Policy ENV1 and is not within an area of coverage of Local Plan Policy ENV2 (Town and Village Centres, Other Retail and Mixed Use Areas).

The demolition of part of the existing building is not development requiring planning permission and therefore does not form part of the assessment of this application for planning permission. Whether or not such work contravenes other legislation is not material to the assessment of this application for planning permission but rather is for legislation other than planning to control.

Matters relating to the energy efficiency properties of the proposed house would be considerations of an application for building warrant.

Many of the objectors raise concern about the loss of the public house and restaurant use, as they consider that it is of national and international historical significance in golf and important to tourism within Musselburgh. However, the change of use of the existing building does not form part of this application for planning permission. The grant of planning permission 15/01035/P approves the change of use of the existing public house and restaurant use of the premises to use as a house. Furthermore there is no presumption in the adopted East Lothian Local Plan 2008 against the loss of the existing public house and restaurant use of the premises.

The application site is within a predominantly residential area as defined by Policy ENV1 of the adopted East Lothian Local Plan 2008. Policy ENV1 does not actively promote the development of land for new build residential development. The principal purpose of Policy ENV1 is to ensure that the predominantly residential character and amenity of existing housing areas is safeguarded from the adverse impacts of uses other than housing. However Policy ENV1 does state that infill, backland and garden ground development will be assessed against Policy DP7 of the adopted East Lothian Local Plan 2008.

The application site is within a predominantly residential area and there are existing residential properties to the east of it and further away to the northeast on Hope Place, to the east on Ravensheugh Road, to the southwest on the south side of Linkfield Road and to the southeast on the southeast side of the Levenhall roundabout. Furthermore, the grant of planning permission 15/01035/P approved the change of use of the existing building on the southern part of the site for use as a house and for the use of the land of the northern part of the site as domestic garden ground to serve that house. Works to implement planning permission 15/01035/P have commenced and that planning permission remains extant. In this context the erection of a detached house on the northern part of the site would amount to infill housing development within a predominantly residential area, the principle of which would not be contrary to Policy DP7 of the adopted East Lothian Local Plan 2008.

Thereafter the material considerations in the determination of this application are whether or not, having regard to national, strategic and local planning policies, guidance and other material considerations, the design, positioning and layout of the proposed development and the works associated with this are acceptable, with due regard to their

potential impact on the character and residential amenity of the area, including their impact on the amenity of neighbouring residential properties, the potential impact of the proposal on the existing trees that are on and adjacent to the site, whether or not the proposed development could be suitably accessed, and whether or not the proposed development would have an adverse impact on the Musselburgh Lagoons and the adjacent Musselburgh Old Golf Course.

The proposed alterations to the existing building comprise the blocking up of an existing ground floor door opening with a new section of rendered wall and the formation of a new first floor window opening and the installation in that new opening of a new window. These alterations would be carried out on the east elevation wall of the building which would be exposed as a result of the removal of the one and a half storey component that is attached to the east elevation of the building.

Subject to the rendered finish to be applied to the new section of wall to be used to block up the existing door opening matching in texture and colour the existing rendered finish of the external walls of the existing building, a detail that could be controlled by a condition attached to a grant of planning permission, the blocking up of the existing door opening with a new section of wall would not be harmful to the character and appearance of the existing building or of the wider area.

The size of the proposed new first floor window opening to be formed in the east elevation wall of the existing building would be proportionate to the size of the existing window openings of other elevations of the building. The new window to be installed in that new window opening would be of a sash and case look-a-like appearance. Subject to the frames of the new window being of timber construction and painted to match the frames of the existing windows of the building in order to be in keeping with the construction and colour of the existing windows of the south (front) and west (side) elevations of the building, details that could be controlled by a condition attached to a grant of planning permission, the proposed new opening and the window to be installed in it would be in keeping with the character and appearance of the existing building and would not cause the building as it is proposed to be altered to be harmful to the character and appearance of the area.

In its position on the east elevation wall of the existing building, which is approved by the grant of planning permission 15/01035/P to be used as a house, the proposed new first floor window would be less than 9 metres away from the east boundary of the site with the neighbouring properties of 4 and 4A Ravensheugh Road. However, the proposed first floor window would face towards the shared driveway of the properties of 4 and 4A Ravensheugh Road, which although not visible in public views the majority of the time due to the vehicular access gates being closed, is nonetheless a shared space and is not a private amenity space of either of the existing houses of 4 and 4A Ravensheugh Road. Thus, the proposed first floor window would not allow for harmful overlooking of the private amenity garden space of either of the houses of 4 or 4A Ravensheugh Road.

The proposed first floor window would also be less than 18 metres away from the west elevation wall of the single storey house of 4 Ravensheugh Road to the east. However, there is only one obscurely glazed window in that elevation wall. Thus the proposed first floor window would not allow for harmful overlooking of the neighbouring house of 4 Ravensheugh Road to the east. The neighbouring house of 4A Ravensheugh Road would be more than 18 metres away from the proposed first floor window and would not be directly facing that new window.

On these design and amenity considerations the proposed alterations to the existing building would not be contrary to Policy DP6 of the adopted East Lothian Local Plan

2008.

The houses in this part of Musselburgh are characterised by a mix of differing heights and architectural styles.

Linkfield Road to the southwest is characterised by predominantly two storey houses, some with attic accommodation in their roof spaces. The houses vary in age and architectural style, including Victorian and Georgian properties with stone external walls and slated dual pitched roofs, many with projecting bay windows to their front (north) elevations and pitched roof dormers on their roof slopes. There is a uniformity of appearance to these houses. The newer properties (circa 1930s) have a predominantly rendered finish to their external walls with slated dual pitched roofs. Again there is a uniformity of appearance to these houses. The pitch of the roofs of the different groups of houses varies and some of the houses have forward projecting gables to their front (north) elevations. Interspersed between these houses there is a four-storey flat roofed flatted building of contemporary design with a white rendered finish, and a three-storey flatted building of contemporary design with a white rendered finish, which incorporates large areas of glazing and balconies to its front (north) elevation, and has a part flat and part dual pitched roofed form.

To the east and northeast the houses of Hope Place and Ravensheugh Road are predominantly two storey and single storey with attic accommodation in height. The houses and other buildings of this area are predominantly finished externally with natural stone and render for their external walls and slate for their dual pitched roofs. Many have pitched roof dormers on their roof slopes. There are some more recent infill houses on both Hope Place and Ravensheugh Road, though these have been designed with slated dual pitched roofs in keeping with the existing buildings. The public house of the Levenhall Arms, that is located some 27 metres to the east of the application site, is a two storey rendered building with a slated dual pitched roof and a flat roofed rear extension. The garage buildings to the rear (north) and northwest of the public house are single storey flat roofed or mono-pitch roofed buildings.

In all of this, the size, architectural form and appearance of the houses varies, as does the ratio of built form to undeveloped garden ground, and consequently the area displays a mixed pattern and density of built form. It is within this wider context that the appropriateness of the proposed house has also to be assessed.

Within this part of Musselburgh the plot sizes and the size of the built form of the houses varies, as do the corresponding garden sizes. Furthermore, the majority of the houses have a frontage with the public road. There are however, some, including the neighbouring house of 4A Ravensheugh Road, that do not have a direct frontage with a public road but rather occupy a backland position to the rear of another property which itself has a frontage with the public road. That neighbouring house of 4A Ravensheugh Road was with the grant of planning permission P/0856/93 built as infill housing development on part of the garden of the house of 4 Ravensheugh Road.

The proposed house would be positioned on the northern half of the land of the application site and in this position would be to the rear of the existing building on the southern part of the site and as such would occupy a backland position. It would be positioned with its front elevation facing in a south-easterly direction and would have a not dissimilar relationship with the existing building of 2 Ravensheugh Road on the southern part of the site as does the house of 4A Ravensheugh Road with the house of 4 Ravensheugh Road to the east of the site. Although the size of the footprint of the proposed house would be somewhat larger than that of the existing building of 2 Ravensheugh Road on the southern part of the site it would not be dissimilar in size to

other houses of Hope Place further to the northeast of the site, and would not be so much larger as to be an overdevelopment of the plot or to be harmfully out of keeping with the density of development of its surroundings. In all of these circumstances the proposed house would integrate with the pattern and density of development of this part of Musselburgh and would not be a crammed form of development.

Furthermore, in that the proposed house would be two storeys in height with a maximum height of some 6.35 metres, it would fit comfortably with the varied heights of the buildings in the surrounding area and thus would be in keeping with the varied heights of the neighbouring and nearby buildings.

The design of the house proposed is contemporary (i.e. of a modern style). By its contemporary flat roofed design and mixed palette of external materials of painted render, timber and glass, the proposed house would be of a contrasting style with the majority of architectural styles of the buildings in the surrounding area. However, although the majority of the houses of this part of Musselburgh have traditional dual pitched roofs and have a traditional East Lothian vernacular appearance there are two flatted buildings further to the west on the south side of Linkfield Road that are of a similar contemporary flat roofed, cube like form with large areas of glazing. Therefore, flat roofed houses are also part of the character of the wider area. Furthermore, there are other infill houses on Hope Place and Ravensheugh Road that reflect a contemporary interpretation of the traditional vernacular. Thus, in the context of the mixed architectural form and design of the surrounding houses and buildings of this part of Musselburgh, the contemporary architectural form and design of the proposed house would sit comfortably in its relationship with the other neighbouring and nearby houses and would not be out of keeping with the varied architectural character of the area. Rather, its contemporary design, including its flat roofed form, would add further variety to the varied architectural character of this part of Musselburgh but in a complimentary rather than competing fashion, as do the existing contemporary flatted buildings of Linkfield Road.

Although the proposed house would occupy a backland position to the rear (north) of the existing building on the southern part of the site it would nonetheless be visible in public views from the west when approaching the Levenhall roundabout from Linkfield Road, and in views from the Racecourse and Golf Course land to the west of the site. There would also be glimpsed partial views between existing buildings from Hope Place and Ravensheugh Road to the northeast and east respectively. In such views, due to the existing 5 metres high evergreen hedge and tree that encloses the majority of the length of the west boundary of the site and due to the positioning of existing buildings and the group of trees to the north of the site, only the upper parts of the walls of the proposed house and its flat roofed form would be visible. Thus, in such views as there would be of it only a small part of the proposed house would be visible and this would be seen in the context of the other surrounding buildings and trees. Therefore, although the proposed house would be of a contrasting contemporary architectural form and design, in its position on the plot and due to the existing built form surrounding it and the existing trees and hedge both on and adjacent to the site, it would not appear prominent or obtrusive within its landscape setting and would not compete architecturally with any of the existing buildings of the surrounding area.

The external finishes of smooth white render with timber architectural detailing for its external walls and a single ply roofing membrane for its roof would be in keeping with the palette of external finishes and colours of the houses and buildings of the area.

There is sufficient land within the site to accommodate the proposed house, with a sufficient sized garden and adequate parking provision and vehicular and pedestrian access without there being an overdevelopment of it. The house approved by the grant

of planning permission 15/01035/P to be formed through the change of use of the existing building of 2 Ravensheugh Road would also retain a sufficient amount of private garden space, vehicular and pedestrian access and parking. Development of the site would not result in any loss of open space important to recreation or amenity requirements in the locality.

In all of this the proposed house, by virtue of its size, scale, height, positioning, form, design and external finishes, would not be an incongruous or overly dominant addition to the streetscape of this part of Musselburgh, and would fit comfortably within the somewhat varied layout of the houses in this part of Musselburgh and the pattern and density of the urban built form the wider area. Consequently, the proposed house would not appear harmfully incongruous in its setting and would not be harmful to the character and appearance of the area.

The proposed hardstanding areas to be formed to the north, south, east and west of the proposed house would provide off-street parking spaces for at least two cars, a turning area, footpaths and paved patio areas for the proposed house. In addition, a shared driveway to serve the proposed house and the house approved by the grant of planning permission 15/01035/P to be formed through the conversion of the existing building of 2 Ravensheugh Road, and two off-street parking spaces for that house would also be provided. The first 5 metres of the proposed driveway, measured back from the edge of the public footpath, would be surfaced with tarmac and otherwise the proposed driveway would be surfaced with monoblocks. The two parking spaces to serve the house to be formed through the conversion of the existing building of 2 Ravensheugh Road and the footpaths and patio areas would be surfaced with paving slabs. Subject to the surface of those hardstanding areas being finished with an appropriate material all of the hardstanding areas, in their relationship with the proposed house and with the existing building of 2 Ravensheugh Road, would not be untypical features for the garden of a house. Other than from the point of private access to the plot they would not be seen in public views.

The proposed bin store would be positioned to the east of the proposed house on a small area of land at the north end of the shared driveway and adjacent to the east boundary of the site. It would measure some 2.0 metres in length by some 1.0 metres in width by some 1.5 metres in height and would be of timber construction. In its position the proposed bin store would not be readily visible in public views from out with the site. By virtue of its size, form and external finish, and its visually contained position the proposed bin store would not, in its place and in association with the proposed house, be harmful to the character and appearance of the area.

The application drawings indicate that it is proposed to erect new timber fencing along the west side of the proposed shared driveway and a new length of wall along part of the dividing boundary between the garden of the proposed house and the garden of the house approved by the grant of planning permission 15/01035/P to be formed through the conversion of the existing building of 2 Ravensheugh Road. No details of the heights or appearance of the proposed fencing and wall have been provided. No means of enclosure of the south boundary of the site is shown on the application drawings.

The roadside boundary enclosures within the area predominantly comprise of stone or painted rendered wall, some with railings on top of them or hedges immediately behind them. Timber fencing is also evident along the dividing boundaries between properties. In its position within the site along the west side of the shared driveway the proposed timber fencing would be in keeping with the use of timber fencing elsewhere in the locality. Subject to the height of the proposed fencing being in keeping with the heights of other boundary enclosures in the locality, a detail that can be controlled by a condition

attached to a grant of planning permission for the proposed development, the proposed timber fencing would not, in its relationship with the proposed house and the house to be formed through the conversion of 2 Ravensheugh Road, appear harmfully incongruous in the limited views of it from the proposed vehicular access and would not be harmful to the character and appearance of the area.

The proposed length of wall to be positioned along the dividing boundary between the garden of the proposed house and the house approved by the grant of planning permission 15/01035/P would be wholly contained within the site and would not be readily visible in public views from out with the site. The proposed length of wall would extend from the western end of the driveway for a distance of 5 metres to a point abutting the existing rubble stone wall of the west boundary. It would be positioned close to the southern end of the hedge that encloses the west boundary of the site and to an existing holly tree that is positioned to the south of the existing hedge, both of which are to be retained. Subject to the positioning of the proposed wall not having a detrimental impact on the health of the hedge or the holly tree, and the height of the proposed length of wall being no higher than the existing west boundary wall and it being constructed in a material in keeping with the boundary walls in the locality (i.e. either natural rubble stone or painted render), the proposed length of wall would not, in its relationship with the proposed house and the house to be formed through the conversion of 2 Ravensheugh Road, appear harmfully incongruous in its setting and would not be harmful to the character and appearance of the area.

Other than the erection of the proposed length of fencing and wall, no other new boundary enclosures are proposed and all existing boundary enclosures of the west, north and east boundaries of the site would be retained.

Although the application drawings do not indicate an intention to erect a means of enclosure along part of the south boundary of the site between the west side of the proposed vehicular access and the east elevation of the existing building of 2 Ravensheugh Road it is anticipated that there may be an intention to do so. As the existing roadside boundary enclosures within the area are predominantly stone or painted rendered walls, the use of a timber fencing to enclose this length of the south boundary would not be appropriate but rather would appear incongruous within the streetscape. If a means of enclosure is proposed to be erected along part of the south boundary of the site between the west side of the proposed vehicular access and the east elevation of the existing building of 2 Ravensheugh Road it should be a length of wall. Subject to any such length of wall being constructed in a material in keeping with the boundary walls in the locality (i.e. either natural rubble stone or painted render), and details of its height, form and finish being submitted for the prior approval of the Planning Authority and its height being no higher than the height of the existing vehicular access gates of the neighbouring property of 4 Ravensheugh Road to the east, a length of wall erected in this position would not be harmful to the character and appearance of the existing building of 2 Ravensheugh Road or the character and appearance of the area. These details could be made a condition of a grant of planning permission for the proposed development.

In their relationship with the land of Musselburgh Racecourse and the Musselburgh Old Golf Course the existing rubble stone boundary wall with its 'sheeps heid' cope that encloses the north and west boundaries of the site and the existing black metal pedestrian gate of the west boundary of the site are part of the characteristic boundary enclosures of the area and contribute to the character of the area and the amenity of the Racecourse and Golf Course land, and as such these characteristic features should be retained in their existing forms and at their existing heights. This detail can be controlled by a condition attached to a grant of planning permission.

A new vehicular access onto Ravensheugh Road at the Levenhall roundabout would be formed towards the eastern end of the south boundary of the site, in a position to the east of the existing building of 2 Ravensheugh Road. The new vehicular access would not harm the established character and amenity of this part of Musselburgh, as there are a number of vehicular and pedestrian entrances along the north and south roadside boundaries of Ravensheugh Road.

All of this development would not, in its place and in association with the proposed house, be harmful to the character and appearance of the area.

On these matters of design, layout and density of development the proposed development does not conflict with Policy 1B of the approved South east Scotland Strategic Development Plan (SESplan), Policies DP2 and DP7 of the adopted East Lothian Local Plan 2008 and Planning Advice Note 67: Housing Quality.

Policies DP2 and DP7 require, amongst other considerations, that new development should not result in any significant loss of daylight, sunlight or privacy to adjoining properties as a result of overshadowing or overlooking.

On the matter of the impact of the proposed development on daylight and sunlight on neighbouring properties, guidance is taken from "Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice" by P.J. Littlefair.

On the matter of sunlight, the proposed house, by virtue of its height, positioning, orientation, and distance away from neighbouring properties would not result in overshadowing of what would be the garden of the house approved by the grant of planning permission 15/01035/P to be formed in the building of 2 Ravensheugh Road. It would however result in some overshadowing of the garden of 4A Ravensheugh Road to the east. However, that overshadowing would not be such that it would result in a harmful loss of sunlight to that property.

The garden of the proposed house would also receive a sufficient amount of sunlight.

On the matter of its impact on daylight received by the neighbouring residential properties of 2 and 4 Ravensheugh Road, the proposed house would not, by virtue of its height, positioning, orientation, and distance away from those neighbouring properties give rise to harmful loss of daylight to them and therefore on this matter would not have a harmful affect on the residential amenity of those properties.

However, the proposed house would be positioned parallel to and some 8 metres away from the east boundary of the site and the existing house of 4A Ravensheugh Road. Using the 25-degree daylight test, in such position the proposed house would impact on the daylight received by two ground floor windows of the west elevation of that existing house. One of the two windows serves a kitchen and the other a dining room of the existing house. The guidance includes other tests that can be carried out to further assess the daylight and sunlight received by windows of a neighbouring house.

The 'vertical sky component' is a measure of the amount of visible sky from a point on a vertical plane of the window and the measurements are taken on the external face of the window concerned. The guidance states that a diffuse daylight level of at least 27% will usually give adequate daylight to the room beyond.

The 'annual probable sunlight hours' assessment is a measure of sunlight availability. The guidance explains that sunlight availability may be adversely affected if the centre of the window receives less than 25% of annual probable sunlight hours or less than 5%

between 21st September and 21st March.

Further daylight assessments in the form of an assessment of the 'vertical sky component' and the 'annual probable sunlight hours' for each window have been undertaken by the applicant's agent and by the Planning Authority.

For both windows, the 'vertical sky component' and the 'annual probable sunlight hours' assessments carried out by the applicant's agent and by the Planning Authority demonstrate that each window would receive a minimum of 27% diffuse daylight and not less than 25% annual probable sunlight hours.

Thus, in accordance with the guidance, although the proposed house would result in some loss of daylight to the two ground floor windows of the west elevation of the existing house of 4A Ravensheugh Road, that loss of daylight would not be such that it would result in a harmful loss of daylight to those rooms of that property.

The proposed house would be positioned some 2 to 4 metres away from the existing west boundary hedge which is some 5 metres in height and is proposed to be retained. At such height the existing hedge would result in some loss of daylight to the ground floor windows of the southwest elevation of the proposed house. The ground floor windows of the southwest elevation of the proposed house would serve a utility room and a combined kitchen, dining and living room. In accordance with the guidance there is no requirement for the daylight to a utility room window to be assessed. The southwest elevation windows of the combined kitchen, dining and living room have been designed to be large glazed openings with a window head height of some 2.4 metres. Furthermore, that room of the proposed house also has windows on the northwest and northeast elevations of the proposed house, which would be of a similar form to the windows of the southwest elevation. Thus, the combined kitchen, dining and living room would receive daylight from the northwest and northeast as well as in part from the southwest. In such circumstances the ground floor of the proposed house would receive a sufficient amount of daylight (skylight).

In assessing whether or not a proposed new development would result in harmful overlooking and therefore loss of privacy to existing neighbouring residential properties it is the practice of the Council, as Planning Authority to apply the general rule of 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 neighbouring residential properties.

There are no neighbouring residential properties to the north and west of the proposed house, thus the windows of the southwest and northwest elevations of the proposed house would not allow for harmful overlooking of any neighbouring residential property.

The northeast elevation of the proposed house would be between 4 and 8 metres away from the east boundary of the site with the neighbouring property of 4A Ravensheugh Road. No windows are proposed to be formed in the part of the northeast elevation of the proposed house that would be 4 metres away from the east boundary of the site. Furthermore, that part of the proposed house would not be within 18 metres of any directly facing windows of that neighbouring house. Thus, there would be no harmful overlooking of the garden of that neighbouring house.

The part of the northeast elevation of the proposed house that would be 8 metres away from the east boundary of the site would have ground floor and first floor windows. Those windows would also be less than 18 metres away from directly facing ground and

attic level windows of the west elevation of the neighbouring house of 4A Ravensheugh Road. The east boundary of the site is enclosed by a combination of 1.35 metres high stone wall with 800mm high timber fencing attached to the top of it. Furthermore, the ground level of the house of 4A Ravensheugh Road is some 600mm lower than is the ground level of the application site. In these circumstances the existing wall and fence of the east boundary would prevent any harmful overlooking between the ground floor windows of the northeast elevation of the proposed house and the ground floor windows of the west elevation of the existing house of 4A Ravensheugh Road. In addition, the application drawings show that the first floor windows of the northeast elevation of the proposed house would be obscurely glazed. Subject to the retention of the existing east boundary enclosure at its present height and the fitting of obscure glazing to the first floor windows, details that could be secured through conditions attached to a grant of planning permission, none of the windows of the northeast elevation of the proposed house would allow for harmful overlooking of the neighbouring house and garden of 4 Ravensheugh Road to the east.

The southeast elevation of the proposed house would face towards the proposed driveway and beyond that, in part, the garden of the house approved by the grant of planning permission 15/01035/P to be formed in the building of 2 Ravensheugh Road. The southeast elevation of the proposed house would be only some 5 metres away from the boundary with the garden of that house. The part of the southeast elevation of the proposed house that would be less than 9 metres away from the garden of the house approved by the grant of planning permission 15/01035/P would have ground floor and first floor windows in it. Those windows would be within 9 metres of the neighbouring garden ground and would also be less than 18 metres away from ground and first floor windows of the north elevation of the building of 2 Ravensheugh Road. The application drawings windows show that the ground floor and first floor windows of that part of the southeast elevation of the proposed house would be obscurely glazed. The other windows of the southeast elevation of the proposed house would not be within 9 metres of the garden ground of the house approved by the grant of planning permission 15/01035/P and would not be within 18 metres of any directly facing windows of that house. Subject to the fitting of obscure glazing to the ground floor and first floor windows of the part of the southeast elevation of the proposed house that would be less than 9 metres away from the garden of the house approved by the grant of planning permission 15/01035/P and within 18 metres of directly facing windows of the north elevation of that house, a detail that could be secured through a condition attached to a grant of planning permission, none of the windows of the southeast elevation of the proposed house would allow for harmful overlooking of the neighbouring house and garden approved by the grant of planning permission 15/01035/P to be formed through the conversion of 2 Ravensheugh Road to the south of the proposed house.

Further windows or other openings could be formed at first floor level on the northeast elevation of the proposed house or on the southeast elevation of the proposed house at a later date with permitted development rights and thus without the need for planning permission. If formed they could cause harmful overlooking of the neighbouring properties to the east and south. Accordingly conditions should be imposed on a grant of planning permission to withdraw those permitted development rights in order to protect the residential privacy and amenity of the neighbouring residential properties to the east and south.

The first floor balcony to be formed on the northwest elevation of the proposed house would face towards the wooded open space land to the north. However, its northeast side would be less than 9 metres away from the east boundary of the site with the garden of the house of 4A Ravensheugh Road and less than 18 metres away from directly facing windows of the west elevation of that neighbouring house. It would be enclosed along its

northwest and southwest sides by a glass balustrade and along its northeast side by a 2.3 metres high wall that would form part of the northeast elevation wall of the proposed house. Thus, the proposed balcony would not allow for any harmful overlooking of the residential property to the east.

In these circumstances the proposed house would not have a detrimental impact on the privacy and amenity of any neighbouring residential properties as a consequence of overshadowing and overlooking. The occupiers of the proposed house would also have sufficient privacy and residential amenity.

On the forgoing considerations of overshadowing and overlooking the proposed development is consistent with Policies DP2 and DP7 of the adopted East Lothian Local Plan 2008.

The Council's Environmental Health Manager has no comment to make regarding the proposed development and raises no objection to the application.

Local Plan Policy C8 (Musselburgh Lagoons) states that the Musselburgh Lagoons will be retained primarily for recreational use. The Council supports the further development of and improvements to Musselburgh Racecourse and Old Golf Course. Development of new or existing uses or facilities will be assessed against their likely impact on: the character and amenity of Musselburgh Conservation Area; natural heritage interests, in particular the Special Protection Area; Musselburgh Old Golf Course and its setting; public access; traffic and parking and residential amenity.

The 4th hole of the Musselburgh Old Golf Course, known as "Mrs Forman's", and the 5th tee are located in close proximity to the west gable of the existing building of 2 Ravensheugh Road and the west and north boundary walls of the application site.

The Musselburgh Old Golf Course has no formal designation as a Scheduled Monument or Designed Landscape, and carries no special planning protection on account of its cultural value or historic importance.

Nonetheless, Scottish Planning Policy: June 2014 states that there is a range of non-designated historic assets, which do not have statutory protection and these resources are an important part of Scotland's heritage and should be protected and preserved as far as possible in situ wherever feasible.

Furthermore, in 2007 the Scottish Government reporter, in his findings on the evidence of the public inquiry into planning application 05/00661/FUL for development of a floodlit all weather and extended turf track and various associated works at Musselburgh Racecourse that is also located to the west of the current application site, concluded that although the Musselburgh Old Golf Course has no formal designation and carries no special planning protection on account of its cultural value or historic importance, its high value as a 'must play' golf course is attributable to its history as, reputedly, the oldest golf course in the world, and that this value lies in its cultural heritage value and primarily in its associative characteristics (i.e. the history, traditions, personalities and memories associated with it), and that the development the subject of that public inquiry would result in serious and irreversible adverse heritage impacts to the setting and character of the historic Golf Course.

The proximity of the Musselburgh Old Golf Course to the application site, the potential impact of the use of that part of the golf course on the amenity of future occupants of the proposed house and the consequent potential for the proposed development to impact on the setting and character of the historic Golf Course are significant material

considerations in the determination of this application for planning permission.

Due to the proximity of the application site to the 4th hole, known as "Mrs Forman's", and the 5th tee there is potential for hazards, particularly from stray golf balls, to impact on the amenity of the occupiers of the proposed house through wayward golf balls 'over-sailing' beyond the green towards its southwest elevation wall, the garden and any pedestrians exiting the existing pedestrian gate in the west boundary of the site.

Enjoy Leisure, the operators of the Musselburgh Old Golf Course raise concerns that the proximity of the 4th hole, known as "Mrs Forman's", and the 5th Tee of the Golf Course to the proposed house and its associated garden ground would result in significant risk to the occupiers of the proposed house from wayward golf balls 'over-sailing' the 4th hole and hitting the windows of the southwest elevation wall of the proposed house or landing in its garden. They also raise concerns that as a consequence of this hazard, and what may be considered to be a nuisance by the occupiers of the proposed house, there would be increased pressure to change the layout of the 4th hole either by shortening or severely altering it, which would have a detrimental impact on the integrity, layout and historical value of what is the most iconic hole of the Golf Course, that itself is the oldest golf course in the world, and would also result in a change to the relationship between the existing building and land of the application site and the Golf Course, which again is of significant heritage value. They explain that the west gable of the public house and the west boundary wall, gate and hedge are known worldwide and provide a backdrop for this iconic hole of the Golf Course, and that the relationship between Mrs Formans and the Golf Course dates to the early 19th century and has historically included the selling of refreshment from one of the ground floor windows of the west gable elevation of the existing building to golfers playing the 4th hole. The 4th hole is the signature hole of the Musselburgh Old Course and is best known, and certainly the most testing hole.

The comments from Enjoy Leisure are supported by a statement from a PGA Professional golfer of 7 years experience, who explains that the 4th hole is a par 4 of 431 yards and of some difficulty. He goes on to explain that the challenges inherent in the length of the 4th hole and the approach to its green combined with the mixed abilities of the golfers playing this public course increases the probability of wayward shots being played on the approach to the green and thus there is significant risk to any residential use from golf balls landing in the garden and hitting the windows of the west gable of the building. However, he goes on to explain that at present the existing rubble stone boundary wall and the existing cypress hedge of the west boundary of the site both provide a barrier to prevent golf balls entering the land of the application site. It is his opinion that the existing hedge would need to be retained at a minimum height of some 4.0 metres and at a thickness of no less than 1 metre to act as an effective barrier to wayward golf balls.

Thus, the considerations here are two-fold; whether or not the matter of 'over-sailing' golf balls would be harmful to the amenity of the occupiers of the proposed house and whether or not there would be any harmful impact on the cultural heritage value of the setting and character of the Old Golf Course.

In respect of the matter of the impact of potential wayward golf balls to impact on the amenity of pedestrians through their use of the existing pedestrian gate in the west boundary of the site, this pedestrian access from the site onto the eastern edge of the golf course and racecourse land is long established, and whether used by customers of the existing authorised public house use of the site or by the occupiers of the proposed house the subject of this current application for planning permission or the house approved by the grant of planning permission 15/01035/P to be formed through the conversion of the existing building of 2 Ravensheugh Road to residential use there would

be no change to the existing circumstances. Thus, the proposed residential use of the site would not result in any different impact for pedestrians using the existing pedestrian access gate of the west boundary than could already occur. Thus, there would be no change to the existing amenity impacts.

In respect of the matter of wayward golf balls hitting the southwest elevation and thus the windows of that elevation of proposed house, there is no doubt that the erection of a house on the site would increase the risk from 'over-sailing' golf balls as the proposed house would be new development on the site and a new, additional, use of part of the site, over and above the use of the existing building of 2 Ravensheugh Road. Thus, there would be an increased risk to the amenity and hazard to the occupiers of the proposed house from 'over-sailing' golf balls.

The windows of the southwest elevation wall of the proposed house would be particularly at risk from 'over-sailing' golf balls. Thus, it would be prudent to require that those windows should be fitted with toughened glass in order to reduce the risk of potential breakages. Furthermore, once the proposed house was built and occupied, new windows or other glazed openings could be formed in the southwest elevation wall without the need for further planning permission. Such new windows or other glazed openings would result in there being an increased risk to the occupiers of the proposed house from 'over-sailing' golf balls hitting them and thus also a detrimental impact to their amenity. Furthermore, the formation of such additional openings could result in increased pressure to change the layout of this part of the Golf Course, which would have a profound and detrimental impact on the integrity, layout and historical value of Musselburgh Old Golf Course. Thus, in order to protect the amenity of the occupiers of the proposed house and the cultural heritage value of the setting and character of the Musselburgh Old Golf Course permitted development rights for the formation of additional windows or other openings in the southwest elevation of the proposed house should be removed. These details could be controlled by conditions attached to a grant of planning permission for the proposed development.

In respect of the matter of wayward golf balls 'over-sailing' the 4th hole onto the land at the rear of the existing building of 2 Ravensheugh Road, which would be used as domestic garden ground for the house approved by the grant of planning permission 15/01035/P to be formed through the conversion of that existing building and for the proposed house the subject of this current application for planning permission, the existing rubble stone boundary wall and cypress hedging at present provide an effective barrier between the authorised public house use of the application site and the golf course. The PGA Professional golfer advises that if the existing boundary wall is retained at its current height, and the existing cypress hedging is retained at a minimum of some 4 metres in height above ground level and at a minimum thickness of 1 metre this would be a sufficient barrier between the proposed residential use and the existing established golf course use and should reasonably prevent 'over-sailing' golf balls from landing in the gardens of the proposed houses.

Notwithstanding the PGA Professional golfer's advice that the hedge should be retained at a minimum thickness of 1 metre, the actual hedge is some 4.3 to 4.6 metres thick on average and of that some 1.8 - 2.4 metres of its overall inner growth is brown. The landscape advice from Policy & Projects is that in order to ensure that the hedge would be retained and would not be cut back to such an extent that would lead to the hedge dying, the existing hedge should be maintained at a minimum thickness of 4 metres.

Thus in order to protect the amenity of the occupiers of the proposed house and the cultural heritage value of the setting and character of the Musselburgh Old Golf Course the existing west boundary wall should be retained at its current height of some 1.7

metres, and the existing cypress hedging along the west boundary of the site should be retained for its full length at a minimum height of 4 metres above the ground level of the site on which it is planted and at a minimum thickness of 4 metres. This requirement could be controlled by a condition attached to a grant of planning permission for the proposed development.

In addition there is a holly tree located adjacent to the west boundary wall at the southern end of the aforementioned cypress hedge. That holly tree also contributes, at present, to the provision of an effective barrier between the application site and the golf course, and thus also contributes to the safeguarding of the amenity of the occupiers of the proposed houses. The landscape advice from Policy and Projects is that this tree should also be retained. This requirement could be controlled by a condition attached to a grant of planning permission for the proposed development.

A Tree Survey and Arboricultural Constraints Report has been submitted with the application. The Report proposes the removal of all of the trees from the site with the exception of the existing cypress hedge that encloses the majority of the west boundary of the site. The Report also proposes reduction of the cypress hedge to some 3 metres in height and the planting of 4 replacement trees on the site to mitigate for the loss of the existing trees.

The Council's Policy and Projects Team has considered and assessed the Report and advises that, with the exception of the existing cypress hedge and the holly tree along the west boundary of the site, there would be no objection to the removal of the remaining four trees from the site and their replacement with four new trees in the positions shown on the proposed site plan drawing no. (PL)01/Rev G, as those existing trees do not make a positive contribution to the landscape character of the area. The existing cypress hedge and the holly tree contribute to the landscape character of the area and, along with the trees that are outwith the site to the north, create a green edge to the western end of the Golf Course and Racecourse land. Policy and Projects advise that they are satisfied that the proposed house and hardstanding areas would be outwith the root protection areas for the hedge and the trees outwith the site to the north. Nonetheless, Policy and Projects advise that the west boundary hedge and the holly tree adjacent to the west boundary should be protected by temporary protective fencing during construction on the site. The requirement for the retention of the cypress hedge and the holly tree, the replacement tree planting and the erection of temporary protective fencing could be secured through conditions attached to a grant of planning permission.

The Council's Policy and Projects Team also advises that at the size it has been allowed to grow to the existing cypress hedge will require sensitive maintenance in order to maintain its continued healthy growth. Policy and Projects advise that excessive pruning of the hedge could result in the removal of all of the green growth and only regular cutting of new growth (at least six cuts per year at 150mm maximum per cut) would be acceptable in retaining sufficient green foliage to maintain the hedges future health and longevity. Policy and Projects also advise that it should be borne in mind that this hedge species is vulnerable to a number of diseases, some of which are incurable so there can be no guarantees of the lifespan of the hedge as a barrier to 'over-sailing' golf balls, and if it is required to be replaced it would take several years to grow to the height and density necessary to act as a sufficient defence to safeguard amenity of the proposed house. In light of this Policy and Projects recommend that a management method statement for the retention and maintenance of the existing cypress hedge of the west boundary should be submitted prior to the commencement of development on the site. This requirement could be controlled by a condition attached to a grant of planning permission for the proposed development.

Notwithstanding the content of the Tree Survey and Arboricultural Constraints Report, in order for the amenity of the occupiers of the proposed house to be protected from 'over-sailing' golf balls the existing cypress hedge should be retained and maintained at a minimum height of some 4 metres as recommended by the PGA Professional golfer and Enjoy Leisure, the operators of the Musselburgh Old Golf Course.

Subject to the aforementioned planning controls preventing 'over-sailing' golf balls from landing in the garden of the proposed house, residents of the new house would benefit from an acceptable degree of residential amenity. Moreover, without the hazard of 'over-sailing' golf balls from landing in the garden of the proposed house, there would not be increased pressure to change the layout of the 4th hole either by shortening or severely altering it.

Thus, subject to the aforementioned planning controls, the proposed development would not have a detrimental impact on the cultural heritage value of the setting and character of the Musselburgh Old Golf Course. Accordingly, on these matters of amenity and the protection of the non-designated historic asset that is the Musselburgh Old Golf Course the proposed development is consistent with Policies C8, DP2, DP7 and DP14 of the adopted East Lothian Local Plan 2008.

The Council's Principal Amenity Officer supports the approach to retain and protect the existing west boundary hedge in order to safeguard the amenity of the area of the golf course and the amenity of the residents of the proposed house from 'over-sailing' golf balls.

There is no vehicular access or off-street parking spaces associated with the authorised use of the building and land of 2 Ravensheugh Road as a public house/restaurant/manager's flat.

A new vehicular access to the site from Ravensheugh Road on the north side of the Levenhall roundabout is proposed to be formed towards the east end of the south boundary of the site. To facilitate the formation of the new vehicular access the existing one and a half storey component that is attached to the east elevation of the existing building and its associated external staircase and the length of south boundary wall would be demolished and removed.

A new driveway would be formed along the eastern side of the site adjacent to the east boundary, and parking for two cars for the proposed house would be provided in front of the proposed house in a position to the west side of the northern end of the proposed driveway. A further two car parking spaces would be provided to the west side of the proposed driveway to serve the house approved by the grant of planning permission 15/01035/P to be formed through the conversion of the existing building of 2 Ravensheugh Road.

The Council's Road Services advises that the proposed vehicular access arrangements would provide the proposed house and the house approved by the grant of planning permission 15/01035/P with a safe means of vehicular access. However, Road Services recommend that: (i) the first 5 metres of the new vehicular access junction and driveway measured back from the back edge of the public road should be hard formed over its full width; and (ii) construction details and specifications for the new vehicular access should be submitted for the prior approval of the Planning Authority. These requirements could be controlled by conditions attached to a grant of planning permission for the proposed development. The application drawings show that the first 5 metres of the driveway would be surfaced with tarmac, thus complying with the requirement for the hard surfacing of the first 5 metres of the vehicular access and driveway.

Road Services also advise that the proposed on-site parking arrangements would provide the proposed house and the house approved by the grant of planning permission 15/01035/P with a satisfactory provision of off-street parking.

Road Services also advise that due to the location of the site in close proximity to the Levenhall roundabout a construction traffic method statement should be submitted for the proposed development. This requirement could be controlled by a condition attached to a grant of planning permission for the proposed development.

Subject to these planning controls Road Services raises no objection to the proposed development and is satisfied that the proposed house would be provided with a safe means of vehicular and pedestrian access and a sufficient standard of on-site car parking provision.

On these considerations the proposed development is consistent with Policies T2 and DP22 of the adopted East Lothian Local Plan 2008.

On all of these aforementioned considerations the erection of the proposed house and associated works would not harm the amenity or character and appearance of the immediate area, the cultural heritage value of the Musselburgh Old Golf Course, or the amenity of any neighbouring residential property. There is sufficient land within the site to accommodate the proposed development and to provide the proposed house with a sufficient sized garden and adequate parking provision without there being an overdevelopment of it. Development of the site would not result in any loss of open space important to recreation or amenity requirements in the area. Accordingly, the proposed development does not conflict with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies C8, DP2 and ENV1 of the adopted East Lothian Local Plan 2008 and Scottish Government's policy on development affecting the historic environment given in Scottish Planning Policy: June 2014.

The application site is not within a flood risk area as defined by the Scottish Environmental Protection Agency's Indicative River and Coastal Flood Map (Scotland). However, it is in close proximity to such an area. Thus, on the matter raised by objectors that the application site is at risk from flooding, the Scottish Environmental Protection Agency (SEPA) and the Council's Structures, Flooding and Street Lighting Team Manager, who provides internal advice on flood risk matters, have been consulted on the proposed development.

SEPA advises that the application site lies outwith the flood risk area and as such is potentially at low likelihood of flooding. Thus, SEPA raises no objection to the proposed development.

SEPA does however note that the adjacent land of the golf course/racecourse is within an area at medium likelihood of flooding and thus they recommend that, where feasible, floor levels of properties are raised above surrounding ground levels. This information has been provided to the applicant's agent.

The Council's Structures, Flooding and Street Lighting Team Manager agrees with SEPA's findings and raises no objection to the proposed development.

The Council's Archaeology Officer advises that the existing building on the application site dates to at least the mid 19th century. It lies in close proximity to a prehistoric burial site and other prehistoric burials have been found further afield in the near vicinity. The application site is close to the Inventory Battlefield of the Battle of Pinkie Cleugh and a

late 19th century brickworks. As a result there is potential for previously unknown buried archaeological remains to lie within the proposed development site and the proposed development has the potential to disturb previously unknown buried archaeological remains and the demolition of part of the existing building of 2 Ravensheugh Road has the potential to result in loss/alteration to the existing historic building. Thus, the Archaeology Officer recommends that a programme of archaeological works (Historic Building Survey (Basic) and Monitored soil strip) be secured prior to the commencement of development. This can be secured through a condition attached to a grant of planning permission for the proposed development. This approach is consistent with Scottish Planning Policy: June 2014, Planning Advice Note 2/2011: Planning and Archaeology and with Policy ENV7 of the adopted East Lothian Local Plan 2008.

CONDITIONS:

- 1 No development shall take place on the site until the applicant has, through the employ of an archaeologist or historic buildings specialist, secured the implementation and reporting of a programme of archaeological work (historic building recording (basic) and monitored soil strip) in accordance with a written scheme of investigation which the applicant/agent shall submit to and have approved in advance by the Planning Authority.

Reason:

To record upstanding historical archaeological remains and to determine any further areas for more detailed recording.

- 2 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
- c. the ridge height of the proposed shown in relation to the finished ground and floor levels on the site.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

- 3 A Construction Traffic Method Statement designed to minimise the impact of construction activity and the movements of construction traffic shall be submitted to and approved by the Planning Authority prior to the commencement of development on the site. It shall include any recommended mitigation measures for the control of construction traffic, including hours of construction works, routing of vehicles and delivery time restrictions, which shall be implemented, as applicable, prior to the commencement of development and during the period of development works being carried out on the application site.

The Construction Traffic Method Statement shall take account of school opening and closing hours within school term times and shall avoid movement of construction and delivery traffic during those times.

Reason:

To minimise the impact of construction traffic in the interests of pedestrian, cyclists and road safety in the area and in the interests of safeguarding the amenity of the area.

- 4 Construction details and specifications of the new vehicular access hereby approved shall be submitted to and approved in writing by the Planning Authority prior to its formation in the development hereby approved, and thereafter the vehicular access shall be constructed in accordance with the details so approved, unless the Planning Authority give written consent to any variation.

Reason:
In the interests of road safety.

- 5 Prior to the house hereby approved being brought into use the proposed vehicle access, turning and parking arrangements shall be laid out as shown in docketed drawing no. (PL)01/Rev G, including the provision of two parking spaces for the house to be formed through the conversion of the existing building of 2 Ravensheugh Road, and thereafter the access, turning and parking areas shall be retained for such uses.

Prior to any use being made of the vehicular access hereby approved the first 5 metres of the vehicular access and driveway, measured from the back edge of the adjacent public footpath and for the full width of the access, shall be hard surfaced and thereafter retained as such.

Reason:
To ensure that loose material does not enter the public road and in the interests of road safety.

- 6 Notwithstanding that which is stated in the Tree Survey and Arboricultural Constraints Report docketed to this grant of planning permission, the west boundary wall of the site shall be retained in situ and maintained at its existing height of some 1.7 metres and the cypress hedge that is immediately to the east side of that boundary wall shall be retained in situ and maintained at a minimum height of 4 metres above the ground level of the site on which it is planted and the thickness of the hedge shall be maintained at a minimum of 4 metres.

Prior to the commencement of development a management method statement for maintenance and retention of the west boundary hedge, in accordance with the requirements set out above, shall be submitted to and approved in writing in advance by the Planning Authority. Thereafter, the west boundary hedge shall be maintained in accordance with the management method statement so approved, unless the Planning Authority gives written consent to any variation of that document.

In the event that the existing hedge dies, becomes seriously damaged or diseased, it shall be replaced in the next planting season with mature hedge plants of the same or similar species to establish a hedge of the same length, height and thickness as specified in this condition. Details of the replacement hedge plants shall be submitted to and approved in writing by the Planning Authority prior to their planting and thereafter any replacement hedge shall be maintained, and if necessary replaced, in accordance with the requirements set out above in this condition.

Reason:
In the interests of safeguarding the amenity of the occupiers of the proposed house and the cultural heritage value of the setting and character of the historic Musselburgh Old Golf Course.

- 7 A schedule and samples of the materials to be used as external finishes of the house, including the colour of the frames of the windows and external doors, hereby approved shall be submitted to and approved by the Planning Authority prior to their use in the development and thereafter the materials used shall accord with the samples so approved.

Samples of the materials to be used to surface the hardstanding areas to be used as driveway, paved patio, footpaths and vehicular parking and turning areas shall be submitted to and approved by the Planning Authority prior to their use in the development and thereafter the materials used shall accord with the samples so approved.

Reason:
To ensure that the external finishes are appropriate in the interest of safeguarding the character and appearance of the area.

- 8 Details of the height, form and finish, including the colour of any paint, stain or timber preservative to be applied to its external surface if relevant, of the fencing hereby approved to be erected along the west side of the driveway also hereby approved shall be submitted to and approved in advance in writing by the Planning Authority prior to the erection of the fencing as part of the development hereby approved, and thereafter the fencing as erected shall accord with the details so approved unless otherwise approved in writing by the Planning Authority.

Reason:
In the interests of safeguarding the character and appearance of the existing building and of area.

- 9 Details of the height, form and finish of the new length of wall hereby approved to be erected between the western end of the driveway also hereby approved and the existing west boundary wall of the site shall be submitted to and approved in advance in writing by the Planning Authority

prior to the erection of the length of wall in the development hereby approved, and thereafter the length of wall as erected shall accord with the details so approved unless otherwise approved in writing by the Planning Authority.

In accordance with the requirements above, the length of wall shall be no higher than the existing rubble stone west boundary wall.

The new length of wall shall be positioned so as to be out with the root protection area of the existing west boundary hedge and the holly tree that is adjacent to the southern end of the hedge, all in accordance with details of this and of the construction of its foundations to be submitted to and approved in advance in writing by the Planning Authority.

Reason:

In the interests of safeguarding the character and appearance of the area and the retention of vegetation important to the character and appearance of the area.

- 10 The south boundary of the site shall not be enclosed by timber fencing. If any means of enclosure of the south boundary of the site is proposed it shall take the form of a boundary wall unless otherwise approved in writing by the Planning Authority. Details of the means of enclosure of the south boundary of the site shall be submitted to and approved in advance in writing by the Planning Authority prior to its erection in the development. The details submitted shall include the height, form and external finish of the means of enclosure and thereafter the means of enclosure as erected shall accord with the details so approved.

In accordance with the requirements above, the means of enclosures shall be no higher than the existing vehicular access gates of the neighbouring property of 4 Ravensheugh Road to the east of the site.

Reason:

In the interests of safeguarding the character and appearance of the area.

- 11 The rubble stone west and north boundary walls of the site and the black metal pedestrian gate of the west boundary of the site shall be retained in situ and shall be maintained at their respective existing heights of some 1.7 and 1.6 metres.

Reason:

In the interests of safeguarding the character and appearance of the area, the amenity of the occupiers of the proposed house and the cultural heritage value of the setting and character of the historic Musselburgh Old Golf Course.

- 12 The existing 1.35 metres high stone wall with 800mm high timber fencing attached to the top of it shall be retained in situ along the east boundary of the site with the neighbouring property of 4A Ravensheugh Road, and shall be maintained at its present height unless otherwise approved by the Planning Authority.

Reason:

In the interests of safeguarding the privacy and amenity of the proposed house hereby approved and the neighbouring residential property of 4A Ravensheugh Road to the east.

- 13 Prior to the occupation of the house hereby approved the first floor windows of its northeast elevation shall be obscurely glazed, as shown for them on docketed drawing no. (PL)06/Rev C, in accordance with a sample of the obscure glazing to be submitted to and approved by the Planning Authority in advance of its use on the northeast elevation of the house. The obscure glazing of the first floor windows of the northeast elevation of the house shall accord with the sample so approved. Thereafter the first floor windows on the northeast elevation of the house shall continue to be obscurely glazed unless otherwise approved by the Planning Authority.

Reason:

To safeguard the privacy and amenity of the neighbouring residential property of 4A Ravensheugh Road to the east.

- 14 Prior to the occupation of the house hereby approved the ground floor and first floor windows of part of its southeast elevation shall be obscurely glazed, as shown for them on docketed drawing no. (PL)05/Rev C, in accordance with a sample of the obscure glazing to be submitted to and approved by the Planning Authority in advance of its use on the southeast elevation of the house. The obscure glazing of the ground floor and first floor windows of part of the southeast elevation of the house shall accord with the sample so approved. Thereafter those ground floor and first floor

windows of the southeast elevation of the house shall continue to be obscurely glazed unless otherwise approved by the Planning Authority.

Reason:

To safeguard the privacy and amenity of the neighbouring residential house approved by the grant of planning permission 15/01035/P at 2 Ravensheugh Road to the south.

- 15 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended by The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, or any subsequent Order amending, revoking or re-enacting that Order, no windows or other openings shall be formed at first floor level within the northeast elevation of the house hereby approved, no windows or other openings shall be formed at ground floor or first floor level within the southeast elevation of the house hereby approved, and no windows or other openings shall be formed at ground floor or first floor level within the southwest elevation of the house hereby approved, other than those shown for those elevations on the docketed drawings.

Reason:

In the interests of safeguarding the privacy and amenity of the house hereby approved and the neighbouring residential properties to the east and south.

- 16 The house hereby approved shall not be occupied until the screen wall at the northeast end of the first floor balcony to be formed on the northwest elevation of the house hereby approved has been formed as shown on docketed drawing nos. (PL)05/Rev C, (PL)06/Rev C and (PL)03/Rev C. Thereafter, that screen wall shall be retained unless otherwise approved by the Planning Authority.

Reason:

To safeguard the privacy and amenity of the neighbouring house and garden of 4A Ravensheugh Road to the east.

- 17 Prior to the occupation of the house hereby approved all of the windows and other glazed openings of the west elevation of the house shall be fitted with toughened glass in accordance with details of the toughened glass to be submitted to and approved in writing by the Planning Authority in advance of its use in the development hereby approved. The toughened glass of the windows and other glazed openings of the west elevation shall accord with the details so approved. Thereafter, the windows and other glazed openings of the west elevation of the house shall continue to be fitted with toughened glass unless otherwise approved by the Planning Authority.

Reason:

To safeguard the amenity of the future occupants of the house hereby approved and in the interests of safeguarding the cultural heritage value of the setting and character of the historic Musselburgh Old Golf Course.

- 18 The rendered finish to be applied to the section of new wall of the east elevation of the existing building shall match as close as possible the texture and colour of the existing rendered finish of the external walls of the existing building unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of safeguarding the character and appearance of the existing building and of wider area.

- 19 The frames of the new first floor window hereby approved to installed in the new opening also hereby approved to be formed in the east elevation of the existing building of 2 Ravensheugh Road shall be of timber construction and shall be painted to match as closely as possible the colour of the frames of the windows of the south (front) and west (side) elevations of the existing building, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of safeguarding the character and appearance of the existing building and of wider area.

- 20 Other than the trees numbered 1261, 1262, 1263 and 1264 on the site that are to be removed, as detailed on the site plan attached to the Tree Survey and Arboricultural Constraints Report docketed to this grant of Planning Permission, all other existing trees and hedges on the site shall be retained and shall not be damaged or uprooted, felled, lopped or topped without the prior written consent of the Planning Authority.

Reason:

In order to ensure the retention and health of trees or shrubs on and adjacent to the application site which are important to the landscape character of the area.

- 21 Notwithstanding the content of the Tree Survey and Arboricultural Constraints Report undertaken by TD Tree and Land Services Ltd and dated 28th July 2016, docketed to this grant of planning permission, the existing holly tree located immediately to the east side of the west boundary wall and to the south of the existing cypress hedge of the west boundary shall be retained in situ on the site, unless the Planning Authority gives written consent to any variation.

In the event that the existing holly tree dies, becomes seriously damaged or diseased, it shall be replaced in the next planting season a new tree of the same or similar species, in accordance with details of the replacement tree to be submitted to and approved in writing by the Planning Authority prior to its planting and thereafter the replacement tree shall be maintained in accordance with the requirements set out above.

Reason:

In the interests of safeguarding the amenity of the occupiers of the proposed house and the cultural heritage value of the setting and character of the historic Musselburgh Old Golf Course.

- 22 No development shall take place on site until temporary protective fencing to protect the west boundary hedge and the holly tree adjacent to the west boundary, in accordance with Figure 3 of British Standard 5837: 2012 "Trees in relation to design, demolition and construction" has been installed on the site in accordance with details of its position and specification to be submitted to and approved in writing in advance by the Planning Authority.

The fencing shall comprise HERAS, or similar approved, 2m high weld mesh enclosed panels supported on preformed weighted footings, tayed and fixed into the ground to withstand impact from machinery and access into the construction exclusion zone. The fencing shall be erected prior to work commencing and shall be retained on site fully intact through to the completion of the site development. All weather notices shall be erected on the fencing stating "Construction exclusion zone - Keep out".

Within the fenced off areas creating the construction exclusion zones the following prohibitions shall apply:-

- No vehicular or plant access;
- No raising or lowering of the existing ground level;
- No mechanical digging or scraping;
- No storage of temporary buildings, plant, equipment, materials or soil;
- No hand digging;
- No lighting of fires; and
- No handling discharge or spillage of any chemical substance, including cement washings.

Planning of site operations shall take sufficient account of wide / tall loads and plant with booms, jibs and counterweights (including drilling rigs), in order that they can operate without coming into contact with retained trees.

Reason

To ensure the retention of the hedge and tree which are important to the landscape character of the area.

- 23 In the first planting and seeding season (October - March) following the felling of the four trees hereby approved or the completion of the works, whichever is the sooner, four replacement trees shall have been planted on the application site in the positions shown for them on docketed drawing no. (PL)01/Rev G, and in accordance with the details for their planting, species and size, to be submitted to and approved in writing by the Planning Authority prior to their planting.

In the event that any such replacement tree(s) die, are removed, or become seriously damaged or diseased within a period of 10 years following planting they 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:

To ensure the implementation of landscaping in the interests of the character and appearance of the area.

Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation)

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

3

Note - this application was called off the Scheme of Delegation List by Councillor McNeil for the following reason: The area at present is a car park with disabled parking at rear of building. Members of Planning Committee may not be familiar with this public house and area in question. I feel that members should be allowed to consider the recommendations at a Planning Committee in the best interest of the wider community.

Application No. **16/00037/P**

Proposal Change of use of car park area to outdoor dining area, alterations to building, erection of wall and gate

Location **The Ship Inn
184 North High Street
Musselburgh
East Lothian
EH21 6BH**

Applicant Caledonian Heritable

Per Planning & Building Design Ltd

RECOMMENDATION Application Refused

PLANNING ASSESSMENT

This application relates to the Ship Inn public house and its associated car park which occupy a prominent position at the junction of North High Street with Market Street, Musselburgh. It is within a predominantly residential area as defined by Policy ENV1 of the adopted East Lothian Local Plan 2008.

Planning permission is sought for: (i) the change of use of part of the car park of the premises to form an outdoor dining area, (ii) alterations to the public house building and (iii) the erection of a wall and gate within the southern part of the car park of the premises.

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

Relevant to the determination of the application are Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development

Plan (SESplan) and Policies ENV1 (Residential Character and Amenity), DP1 (Landscape and Streetscape Character), DP2 (Design), DP6 (Extensions and Alterations to Existing Buildings), DP22 (Private Parking) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008.

One written objection to the application has been received. It is from a member of the public. The objector considers the loss of the function room of the public house will change the character of it and the Council should do all in its power to retain the existing facilities within it.

It is indicated on the planning application drawings the intention of the applicant to undertake internal alterations to the premises that would result in a change to its internal layout and thus the loss of the function space of the premises. The loss of the function room of the premises and the use of the space as a larger public bar area does not constitute a material change of use and as such is not development. Nor do the internal alterations to the premises constitute development. In which circumstance the loss of the function room and internal alterations do not require planning permission and do not form part of this application. They are not therefore material planning considerations in the determination of this application.

The proposed alterations to the premises comprise: (i) the formation of three large window openings in its north elevation and the installation within those new window openings of timber framed windows, (ii) the enlargement of an existing window opening in its south elevation to form a door opening and the installation within that new door opening of a solid timber door and, (iii) the enlargement of four existing window openings in the east (rear) elevation to form four new door openings and the installation within those new door openings of bi-folding doors.

The proposed alterations to the building in the form of new window and door openings are subservient to and in keeping with the building and would be well integrated into their surroundings. They would not be harmful to the character and appearance of the building or the character and appearance of the area.

The proposed new window and door openings would not allow for a harmful loss of privacy and amenity to any neighbouring residential property.

On the foregoing considerations the proposed alterations to the building are consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policy DP6 of the adopted East Lothian Local Plan 2008.

The proposed wall and gate would be erected between the west elevation of a storage building within the southeast corner of the rear curtilage of the building and the east elevation of the public house building. In their position they would be set back some 5.8 metres from the south building line of storage and public house buildings. Two car parking spaces would be formed in front of them on the area of car park to be retained. The wall would be some 2.2 metres high, finished in roughcast render and topped with a concrete cope. The gate to be formed in a part of the wall would be of metal construction painted black.

Provided the proposed wall is finished to match the exterior wall finish of the public house building and the other lengths of wall it would be seen in relation to, a matter that could be controlled by a condition of a grant of planning permission, the proposed wall and the gate to be formed in a part of it, would be in keeping with their surroundings and well integrated in their streetscape setting. They would not be harmful to the character and appearance of the area.

In occupying the majority of the existing car park to the rear of the premises, the proposed outdoor dining area would have capacity to accommodate 183 patrons. It would be accessed from the new doors to be formed in the rear of the public house building and from Market Street to the south via the proposed pedestrian access gate. It would be enclosed by existing walling on its east and north sides and by the proposed new wall and existing storage building on its south side. Views of it would be taken from North High Street. However it is indicated on the planning application drawings the intention of the applicant to provide a visual screen to the north boundary of the outdoor dining area by planting a hedge. There is no planning justification to provide the proposed hedge. In its location the proposed outdoor dining area would be seen from North High Street as an acceptable adjunct to the existing public house premises with which it would be functionally related. It would not appear harmfully intrusive or incongruous in its setting.

On the foregoing considerations the proposed development does not, where applicable, conflict with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) or Policies DP1 and DP2 of the adopted East Lothian Local Plan 2008.

Policy ENV1 of the adopted East Lothian Local Plan 2008 states that the predominantly residential character and amenity of existing or proposed housing areas will be safeguarded from the adverse impacts of uses other than housing. Development incompatible with the residential character and amenity of an area will not be permitted.

A number of tenement, flatted and terraced residential properties exist to the north of the application site comprising the north side of North High Street.

A material consideration in the determination of this application is whether or not the proposed outdoor dining area is acceptable relative to its relationship with those neighbouring residential properties.

In order to protect the amenity of neighbouring residential properties from noise associated with the use of the outdoor dining area the Council's Environmental Health Manager recommends that: (i) the outdoor dining area only be used between the hours of 09:00am and 23:00pm on any day and at no other time and, (ii) that there be no amplified music or speech permitted within the outdoor dining area. These controls could be imposed on a grant of planning permission. Subject to these controls the proposed outdoor dining area would not adversely impact on the amenity of neighbouring residential properties or be incompatible with the residential character and amenity of the area. Accordingly, the use of car park as an outdoor dining area does not conflict with Policy ENV1 of the adopted East Lothian Local Plan 2008.

The Council's Road Services advise the existing public house has a public floor area of some 240 square metres with an existing car park providing 7 car parking spaces. The internal floor area will be reduced to some 180 square metres with an additional external area of up to 190 square metres.

The current contemporary parking standards specify rates for a public house of 1 space per 7 square metres and 1 space per 10 square metres for function rooms. This equates to a requirement to provide between 24 to 34 car parking spaces for the premises as it currently exists. The existing premises are presently served by 7 car parking spaces, a shortfall of between 17 and 27 spaces.

The Council's Road Services further advises that in applying the contemporary parking standards to the proposal, the parking requirement for the premises would increase to between 37 to 53 car parking spaces. However, only 2 car parking spaces are proposed

to be provided, a shortfall of between 35 and 51 spaces.

There is therefore a requirement to provide between 13 and 19 additional car parking spaces to service the premises including the proposed outdoor dining area. As 7 spaces would be lost to the outdoor dining area and 2 spaces are proposed to be provided, there is an overall shortfall of between 18 to 24 spaces to serve the premises.

Road Services consider the shortfall in car parking will compound an already existing shortfall of car parking and as such recommend refusal of the application.

In addition to the considered shortfall of parking the principle of changing the use of car parking to other alternative uses, including outdoor dining areas and the resultant loss of parking provision would set an undesirable precedent for other licensed premises within the locality with similar car parking facilities to do the same. The cumulative effect of which would be to increase on-street parking demand to the detriment of the amenity of the area.

In that the proposed outdoor dining area would result in the loss of existing car parking and compound a shortfall in car parking to serve the premises and set a precedent for others to follow, the proposed change of use of the car park to an outdoor dining area is contrary to Policies DP22 and T2 of the adopted East Lothian Local Plan 2008.

REASONS FOR REFUSAL:

- 1 The proposed change of use of the car park to form an outdoor dining area would result in the loss of on-site parking provision and would compound an existing shortfall of parking on the site, contrary to Policies DP22 and T2 of the adopted East Lothian Local Plan 2008.
- 2 To grant planning permission for the change of use of the car parking area of the premises to an outdoor dining area would establish a precedent whereby it would be difficult for the Council, as Planning Authority, to refuse to grant planning permission for other changes of use of car parks to outdoor dining areas that conflict with the Council's planning policies for private parking and general transport impact, Policies DP22 and T2, including the Council's Parking Standards.

Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation)

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

4

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.

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

5

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.