

REPORT TO: Planning Committee

MEETING DATE: Tuesday 7 November 2017

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Application No. **17/00849/PCL**

Proposal Variation of condition 1c of outline planning permission 06/00770/OUT to extend the time period for a further 3 years

Location **Tesco Stores Limited
Inveresk Road
Musselburgh
East Lothian**

Applicant East Lothian Council

Per East Lothian Council

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

As the area of the application site is greater than 2 hectares, the development 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 and thus it cannot be decided through the Council's Scheme of Delegation. It is therefore brought before the Planning Committee for a decision.

Planning permission in principle (Ref: 06/00770/OUT) was granted in September 2008 for a mixed use development on some 8.8 hectares of land located close to Musselburgh Town Centre which at the time of determination of application 06/00770/OUT included land of the former Brunton Wire Works, land of the then Tesco supermarket, and the bus depot that was operated by First Bus. The bus depot is now operated by Lothian Buses PLC. When granted the planning permission in principle included for a retail store, residential development of up to 140 residential units, a primary health care centre, a care home for the elderly (including a day centre and associated specialist housing with support) and associated access roads and car parking.

The masterplan docketed to planning permission in principle 06/00770/OUT shows: (i) most of the southern part of the land of the then Tesco supermarket designated for

development as a care facility and the remainder of that land for residential development, (ii) the land adjacent to Musselburgh Bowling Club designated for development as a primary health care centre, (iii) a reconfiguration of the parking area of the flatted properties at the junction of Mall Avenue and Inveresk Road, and (iv) the remainder of the application site designated for development as a retail superstore. Planning permission in principle 06/00770/OUT does not allow for any change to the established use of the bus depot.

Condition 1 of planning permission in principle 06/00770/OUT states that:

“(a) Before development commences written approval from the planning authority must be obtained for the details of the siting, design and external appearance of any building(s), means of access and the landscaping (collectively these are termed "reserved matters”).

(b) Plans and particulars of the reserved matters referred to in (a) above shall be submitted for consideration by the planning authority and no work shall begin until the written approval of the authority has been given.

(c) Application for the approval of reserved matters shall be made to the planning authority within 3 years from the date of this permission.

(d) The development hereby permitted shall commence within 5 years from the date of this permission, or within 2 years from the date of approval by the planning authority of the last of the reserved matters to be approved.

Reason:

Pursuant to Section 59 of the Town and Country Planning (Scotland) Act 1997”.

In September 2008 planning permission (Ref: 06/00769/FUL) was granted to Tesco Stores Limited for the erection of a retail superstore, a petrol filling station, automated teller machine pod, car parking, and pedestrian and vehicular accesses on land approved in principle for such development by planning permission in principle 06/00770/OUT. Planning permission 06/00769/FUL has been implemented, that part of the site of planning permission in principle 06/00770/OUT has thus been developed and the Tesco retail superstore is trading.

In January 2010 approval of matters specified in conditions (Ref: 09/00500/REM) was granted for the erection of a primary care centre on the land designated for it in the masterplan and approved in principle for such development by planning permission in principle 06/00770/OUT. Approval of matters specified in conditions 09/00500/REM has been implemented, that part of the site of planning permission in principle 06/00770/OUT has thus been developed and the primary care centre is in operation.

In December 2011 planning permission (Ref: 11/00827/PM) was granted for the variation of Condition 1 of planning permission in principle 06/00770/OUT. The approved variation extended the lifetime of the permission by another 3 years (i.e. until the 25 September 2014) to enable submission of details of a residential and a care facility development of the still undeveloped part of the site the subject of planning permission in principle 06/00770/OUT and which are designated in the masterplan for such development.

In November 2014 planning permission 14/00757/PM was granted for the variation of condition 1C of planning permission in principle of outline planning permission 06/00770/OUT. The approved variation extends the lifetime of the permission by

another 3 years (i.e. until the 25 September 2017) to enable submission of details of a residential and a care facility development of the still undeveloped part of the site the subject of planning permission in principle 06/00770/OUT and which are designated in the masterplan for such development.

In September 2017 approval of matters specified in conditions (Ref: 16/01029/AMM) was granted for the erection of 140 flats and associated works on the land designated for residential development in the masterplan and approved in principle for such development by planning permission in principle 06/00770/OUT. Development of the 140 flats has not yet commenced.

To date, no detailed proposals have been brought forward for a care facility development of the remainder of the land the subject of planning permission in principle 06/00770/OUT (i.e. most of the southern part of the land of the former Tesco supermarket).

Through this current application planning permission is now sought for a further variation of Condition 1C of planning permission in principle 06/00770/OUT. The proposed variation would extend the lifetime of the permission by another 3 years (i.e. until the 25 September 2020) to enable submission of details of a care facility development of the still undeveloped part of the site the subject of planning permission in principle 06/00770/OUT and which are designated in the masterplan for such development.

One objection has been received in respect of this application. The objection is made on behalf of Lothian Buses PLC and relates to the impact of the proposal on the operation of the adjacent bus depot. The objector contends that the further extension of the timescale for implementation the consent would materially impact the operation of the bus depot and that the relevant part of the application site is no longer suitable for use as a care home for the elderly (including a day centre and associated specialist housing with support). The objector has also made reference to the site not being specifically identified within the East Lothian Proposed Local Development Plan for use as a care home and specialist housing unit.

The East Lothian Local Plan 2008 is the current adopted Local Plan for the East Lothian area. The policies of the proposed Local Development Plan are also relevant to the determination of this planning application. The objector rightly notes that the site is not specifically identified within the East Lothian Proposed Local Development Plan for use as a care home and specialist housing unit. Notwithstanding this, the Proposed Local Development Plan does not preclude the development of the site for a care facility development. Moreover, the site is specifically identified by Policy BUS4 of the adopted East Lothian Local Plan 2008 partly for use as a nursing home, day centre and specialised housing. The proposed Local Development Plan was published for representation in 2016 and is presently at examination stage with the Scottish Government. Thus it cannot be accorded the same weight as an adopted plan. Thus the fact that a care facility development is entirely consistent with the adopted Local Plan outweighs the fact that the site is not specifically allocated for such use in the Proposed Local Development Plan.

Policies T1 (Development Location and Accessibility), T2 (General Transport Impact), NH11 (Flood Risk), DP2 (Design) and C12 (Residential Care and Nursing Homes - Location) of the proposed Local Development Plan are relevant to the proposed development. Notwithstanding the consideration of the status of the emerging plan, the policy presumptions of Policies T1, T2, NH11, DP2 and C12 of the proposed Local Development Plan are largely similar to the equivalent relevant policies of the adopted

East Lothian Local Plan 2008. The Proposed Local Development Plan also identifies the bus depot as a safeguarded transport facility.

Policy BUS4 (Bruntons Site, Musselburgh), of the East Lothian Local Plan 2008 allocated the former Bruntons wirework site in Musselburgh for redevelopment. Given the former employment uses of the site, the Council sought to promote the site for further employment uses such as retails as well as other uses such as healthcare facilities, a nursing home, day centre for the elderly and a limited number of specialised houses for the elderly. The whole site was therefore subject to a masterplan which has enshrined such uses within it.

Furthermore, Policy C12 (Residential Care and Nursing Homes - Location) of the adopted Local Plan states that developers of residential care homes and nursing homes are encouraged to choose sites within, or close to, existing settlements. In such cases, proposals must have reasonable access to the normal range of community services. The Council's Director of Community Services will be consulted on all planning applications for residential care homes and NHS Lothian for nursing homes.

The letter of objection contends that Policy HOU6 (Residential Care and Nursing Homes - Location) of the Proposed Development Plan is of relevance to the current application. This policy states that developers of residential care and nursing homes are encouraged to use sites within settlements. It further states that proposals must have reasonable access to the normal range of community services and be acceptable in terms of impact on amenity and the environment.

In the determination of planning application 06/00770/OUT the Planning Committee decided that given the nature of its use, a care home for the elderly with associated specialist housing would not be an inappropriate use for this edge of town centre site in Musselburgh. The site remains within the settlement of Musselburgh. It has good access to the normal range of community services and is acceptable in terms of impact on amenity and the environment. In all of this the principle of development of part of the site for a care facility development on the land designated for it is consistent with Policies BUS4 and C12 of the adopted East Lothian Local Plan 2008.

The impact of the proposed redevelopment of the former Brunton Wireworks on the ongoing operational use of the bus depot and the impact of the bus depot on the privacy and amenity of the future occupants of the care facility was taken into account in the determination of the original application for planning permission in principle (Ref: 06/00770/OUT) and in the determination of the subsequent applications to extend the lifetime for approved matters. Those determinations took into account the proximity of the proposed use to existing noise sources. There have been no material changes to where in principle the proposed residential and care facility uses would be located. It was considered at the time of those determinations that in principal those proposed uses could satisfactorily co-exist with existing neighbouring land uses, including the adjacent bus depot, subject to the requirement for a further acoustic report. On this matter, condition 12 of planning permission in principle 06/00770/OUT states:

"Development shall not commence unless and until an accoustic report has been submitted to and approved in writing by the Planning Authority. The report shall assess the impact of neighbouring land uses (including the operation of the existing bus depot, and the operation of the future retail store within the land designated for retail use by the docketed masterplan) on residential properties and the sheltered housing that are to be erected on the application site. The report shall identify any mitigation measures that are considered necessary to ensure that future residential properties have a satisfactory amount of amenity. Any noise mitigation measures recommended by the

findings of the noise consultants report shall be put in place and made operational prior to any use being made of the residential and sheltered housing components of the development hereby approved.

Reason:

To ensure that the future residential properties have a satisfactory amount of amenity."

The Council's Environmental Health Manager has been consulted on this planning application. He remains satisfied that in principle the proposed residential development and the proposed care facility development could satisfactorily co-exist without an adverse impact on the ongoing operational use of the bus depot and with future occupants benefitting from a satisfactory level of privacy and amenity. He advises that condition 12 above should ensure adequate protection of amenity due to noise. However, any noise report to assess impacts on occupiers of the care facility will need to take account of change of ownership of the bus depot and any associated changes in operational use of the depot. This will be in addition to assessing noise impacts from the new Tesco store and also the primary care facility on occupiers of the care facility. Subject to the imposition of this condition, the Environmental Health Manager raises no objection to the proposal.

The principle of residential and a care facility development of the mixed use development the subject of planning permission in principle 06/00770/OUT is consistent with relevant strategic and local planning policy, which is now Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies BUS4, INF3, H4 C12, T1 and T2 of the adopted East Lothian Local Plan 2008.

To extend the time period of planning permission in principle 06/00770/OUT by a further three years would not prejudice the integrity of that grant of planning permission in principle.

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, planning permission should be granted subject to the applied for variation to condition 1c and subject to all of those conditions from planning permission in principle 06/00770/OUT, where it is intended these should apply. In this case, the conditions that should continue to apply are 1, 2, 3, 4, 5, 6, 8, 10, 12, 13, 14 and 15.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

1 Condition 1

(a) Before development commences written approval from the planning authority must be obtained for the details of the siting, design and external appearance of any building(s), means of access and the landscaping (collectively these are termed "reserved matters").

(b) Plans and particulars of the reserved matters referred to in (a) above shall be submitted for consideration by the planning authority and no work shall begin until the written approval of the authority has been given.

(c) Application for the approval of reserved matters shall be made to the planning authority within 12 years from the date of planning permission in principle 06/00770/OUT (i.e. on or before the 25 September 2020).

Reason:

Pursuant to Section 59 of the Town and Country Planning (Scotland) Act 1997.

- 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 buildings 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 Each of the uses that are hereby approved shall be restricted to the area of the application site designated for it on the masterplan docketed to planning permission in principle 06/00770/OUT.

Reason:

To secure an acceptable mixed use development in the interests of the good planning of the area.

- 4 No more than 140 residential units shall be erected on the application site.

Reason:

To ensure that the site is not over developed relative to education provision in Musselburgh.

- 5 There shall be no development within any part of the application site that forms part of the Inveresk Roman Fort scheduled ancient monument. Instead that land shall be landscaped in accordance with details that shall be submitted to and approved in writing in advance by the Planning Authority.

Reason:

To safeguard the character, appearance and setting of the scheduled ancient monument and the Inveresk Conservation Area.

- 6 No development 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 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.

- 8 The details to be submitted pursuant to condition 1 above shall include details of any road or footpath improvement works on or off the application site that are required to facilitate the development of the designated areas of land use within the application site as these designated areas are shown on the docketed masterplan. The road or footpath improvement works so approved shall thereafter be fully undertaken prior to the use of any part of the mixed use development that is hereby approved.

Reason:

In the interests of road safety.

- 10 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.

- 12 Development shall not commence unless and until an acoustic report has been submitted to and approved in writing by the Planning Authority. The report shall assess the impact of neighbouring land uses (including the operation of the existing bus depot, and the operation of the future retail store within the land designated for retail use by the docketed masterplan) on residential properties and the sheltered housing that are to be erected on the application site. The report shall identify any mitigation measures that are considered necessary to ensure that future residential properties have a satisfactory amount of amenity. Any noise mitigation measures recommended by the findings of the noise consultants report shall be put in place and made operational prior to any use being made of the residential and sheltered housing components of the development hereby approved.

Reason:

To ensure that the future residential properties have a satisfactory amount of amenity.

- 13 Development shall not begin until a scheme to deal with contamination on the site has been submitted to and approved in writing by the Planning Authority. The scheme shall contain details of the proposals to deal with contamination to include:

- 1 the nature, extent and type(s) of contamination on the site,
- 2 measures to treat/remove contamination to ensure the site is fit for the use proposed,
- 3 measures to deal with contamination during construction works,
- 4 condition of the site on completion of decontamination measures.

No use shall be made of any of the components of development hereby approved unless and until the measures to decontaminate the site have been fully implemented

as approved by the Planning Authority.

Reason:

To ensure that the site is clear of contamination prior to the commencement of use of any of the components of development.

- 14 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 development. The Construction Method Statement shall recommend mitigation measures to control noise, dust, construction traffic and shall include hours of construction work.

The recommendations of the Construction Method Statement shall be implemented prior to the commencement of development.

Reason:

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

- 15 No lighting units shall be installed within the application site unless with the prior approval of the Planning Authority.

Reason:

To safeguard the amenity of surrounding residential properties.