

REPORT TO: Planning Committee

MEETING DATE: Tuesday 26 June 2018

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Application No. **18/00422/PM**

Proposal Deletion of condition 7(iv) to remove proposed footpath link to Muirfield Steading and variation of condition 18 of planning permission 16/00587/PM to amend landscaping detail.

Location **Fenton Gait East
Gullane
East Lothian**

Applicant CALA Management Ltd.

Per Apt Planning & Development 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 on the eastern side of Gullane. It is some 3.68 hectares in area and is roughly rectangular in shape. The land of the application site is defined by Policy DC1 of the adopted East Lothian Local Plan 2008 as being part of the countryside of East Lothian and is not allocated in that Plan for housing development.

On 21 November 2017 planning permission (ref: 16/00587/PM) was granted for the erection on the application site of 40 houses, 8 flats and associated works. Development of the site has commenced and some of the residential units on the site are constructed.

Planning permission ref: 16/00587/PM was granted subject to 19 Conditions.

Condition 7(iv) states that prior to the commencement of development, details showing compliance with the following transportation requirement shall be submitted to and approved in writing in advance by the Planning Authority:

‘a footpath link shall be provided to Muirfield Steading, and a crossing point to the footpath shall be formed on the pavement on the opposite western side of the public road of Muirfield Steading.’

Reason:

In the interests of road and pedestrian safety.

Condition 18 states:

‘All new planting as shown on the docketed landscape layout drawing no. 12-01f, and as specified on docketed drawing no. 12-02e and in the docketed documents titled 'Cala Management Limited, Fenton Gait, Gullane, Landscape Works, Grassed and Planted Areas, Planting Schedule' and 'Cala Management Limited, Fenton Gait, Gullane, Landscape Works, Grassed and Planted Areas, Planting Key' 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.

All the new planting shall be maintained in accordance with the maintenance programme as detailed in the docketed document titled 'Cala Management Limited, Fenton Gait, Gullane, Landscape Works, Grassed and Planted Areas, Maintenance Specification'.

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.’

Planning permission is now sought through this application:

(i) to delete part (iv) of Condition 7 of planning permission 16/00587/PM for the requirement for a footpath link to Muirfield Steading and a crossing point to the footpath to be formed on the pavement on the opposite western side of the public road of Muirfield Steading; and

(ii) for a variation of Condition 18 of planning permission 16/00587/PM to amend the approved scheme of landscaping in light of the proposal of (i) above.

In a letter submitted with the application, the applicant’s agent states that the pedestrian link to Muirfield Steading was included in the original landscape and layout plans for planning permission 16/00587/PM to facilitate pedestrian permeability through and beyond the Fenton Gait East site, enabling easy and logical access towards the rest of Gullane to the west (including Gullane Primary School). Since the granting of planning permission 16/00587/PM, East Lothian Council has been unable to confirm that it owns or has adopted the area of land outwith the Fenton Gait East site boundary that would be required to enable the pedestrian link to be delivered. Therefore as the applicant can no longer comply with this condition this application seeks to remove Condition 7(iv).

The letter continues that Condition 18 of planning permission 16/00587/PM refers to a number of documents that clarify the landscape planting proposed for the Fenton Gait

East site. The removal of the pedestrian link requires revisions to the suite of landscape documents which now have amended document reference numbers. Condition 18 therefore needs to be varied to account for these changes.

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.

Thirteen written representations have been received to the application. All the written representations are in support of the application. The written representations state that the provision of the footpath link to Muirfield Steading would have a seriously detrimental impact on the privacy, security and amenity of the residents of Muirfield Steading, and would inevitably have led to the private communal gardens and surrounding footpaths of the Steading becoming a 'short cut' to the amenities of the village.

Condition 7(iv) for the footpath link from the application site to Muirfield Steading requires such a footpath to cross an area of verge between the application site and the adjacent public road of Muirfield Steading. The Council's Road Services recommended the requirement for the footpath link from the application site to Muirfield Steading in their consultation response to planning permission 16/00587/PM, with the understanding that the area of verge the footpath would have to cross was part of the adopted road and thus deliverable.

Road Services confirm that after a search of their records they can find no evidence of the area of verge being part of the adopted road. It is now the understanding that the area of verge is under the separate communal ownership of the residents of Muirfield Steading. It is clear from the written representations to this application that the residents of Muirfield Steading would not permit the formation of the footpath over the communally owned area of verge between the application site and the adjacent public road of Muirfield Steading.

In light of this, Council's Road Services have considered again the need for the provision of the footpath link and crossing point to Muirfield Steading. Road Services advise that the application site has good walking connections to the rest of Gullane via the A198 public road on the north side of the site, as new pedestrian crossing points, lengths of new footpath and a Double D island are to be provided to ensure safe pedestrian connectivity, and a safe route to school. Given this Road Services now advise that it is no longer necessary to provide an additional pedestrian route from the site to Muirfield Steading as advised in their consultation response to planning permission 16/00587/PM. They therefore raise no objection to the proposed removal of part (iv) of Condition 7 planning permission 16/00587/PM.

The Council's Landscape Projects Officer advises she is supportive of the proposed revised scheme of landscaping of the site. The provision of the proposed landscaping of the site can be made a condition of a grant of planning permission.

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".

At their meeting on 29 May 2018, East Lothian Council approved the East Lothian Local Development Plan (PELLDP) the Council intends to adopt, subject to Scottish Ministers approval, after the Reporters' Examination Report was issued on 14 March 2018. At the same meeting, East Lothian Council also approved for consultation a revised version of the Developer Contributions Framework (DCF) Supplementary Guidance.

The Council's Transport Appraisal (TA) provides the evidence base which has informed the Council's revised draft DCF Supplementary Guidance and has been produced in conjunction with the Local Development Plan TA so that Road Services can assess the cumulative impacts of the Local Development Plan allocations on the Transport Network. The TA has identified a number of hot spots on the network which require interventions to mitigate the impact of the Local Development Plan and the site was included within the East Lothian Council Transport Appraisal setting out the appropriate contribution levels for each of the Local Development Plan sites.

For the Fenton Gait East site the Council's revised draft DCF Supplementary Guidance sets the requirement for developer contributions towards each intervention as identified through the above process, which is different to that in the original draft DCF as secured by the planning obligation concluded prior to the grant of planning permission 16/00587/PM. The revised intervention figures are as follows (the works are detailed in the Transport Appraisal):

- * improvements to Salters Road Interchange and Bankton Interchange – £217 and £9,788;
- * Musselburgh town centre improvements - £1,196;
- * Tranent town centre improvements – £841.

The total contribution required for transportation improvements resulting from cumulative impacts of the development approved by the grant of planning permission 16/00587/PM is now £12,042.

Therefore, it is recommended planning permission should be granted for the applied for deletion of part (iv) of Condition 7 and for the variation to Condition 18 of planning permission 16/00587/PM, and subject to all of the conditions from planning permission 16/00587/PM, where it is intended these should apply. In this case, all of the other conditions should continue to apply. It is also recommended that planning permission should be granted subject to the prior conclusion of a planning obligation to secure the revised contributions outlined above, and otherwise on the same terms as that of planning permission 16/00587/PM.

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 £715,325.76 towards the provision of additional accommodation at Gullane Primary and Nursery School and North Berwick High School;

(ii) secure from the applicant 12 affordable residential units within the application site or if it can be demonstrated to the Council that this, or the off-site provision of 12 affordable residential 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; and

(iii) secure from the applicant a financial contribution to the Council of £24,816 for the provision of additional play equipment and/or for some other enhancement of the play area at Recreation Park, Muirfield Terrace, Gullane;

(iv) secure from the applicant a financial contribution to the Council of £27,216 for the provision of increased sports pitch capacity; and

(v) secure from the applicant a financial contribution to the Council of £12,042 for road improvements to Salters Road Interchange and Bankton Interchange, Musselburgh town centre improvements and Tranent town centre improvements.

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 Gullane Primary and Nursery School and North Berwick High School, a lack of provision of affordable housing, a lack of formal play and sports pitch provision and a lack of roads and transport infrastructure improvements contrary to, as applicable, Policies INF3, H4 and C2 of the adopted East Lothian Local Plan 2008.

1 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.

2 Unless otherwise agreed in writing with the Planning Authority, housing completions on the application site in any one year (with a year being defined as being from 1st April to 31st March the following year) shall not exceed the following completion rates:

Year 2018/2019 - 9 residential units
Year 2019/2020 - 34 residential units
Year 2020/2021 - 5 residential units

If less than the specified number of residential units are completed in any one year then those shall be completed instead at Year 2023/2024 or beyond and not added to the subsequent Year.

Reason:

To ensure that the completion rate of residential development within the application site accords with the provision of education capacity.

- 3 Notwithstanding that which is stated on the drawings docketed to planning permission 16/00587/PM a detailed specification of all external finishes of the houses and flats hereby approved shall be submitted to and approved by the Planning Authority prior to the use of the finishes in the development. The external finishes of the houses and flats shall be in accordance with a co-ordinated scheme of materials and colours that shall be submitted to and approved in advance by the Planning Authority. This co-ordinated scheme shall in detail promote render as the predominant finish to the walls of the houses and flats, with a use of more than one render colour and with a strongly contrasting difference in the colours such that they will not each be of a light colour. All such materials used in the construction of the houses and flats shall conform to the details so approved.

Reason:

To ensure the development is of a satisfactory appearance in the interest of the amenity of the locality.

- 4 Prior to the occupation of the last house or flat hereby approved, the proposed access roads, parking spaces, and footpaths shall have been constructed on site in accordance with the docketed drawings.

Those areas of land shall not thereafter be used for any other purpose than for accessing and for the parking of vehicles in connection with the residential use of the houses and flats and shall not be adapted or used for other purposes without the prior written approval of the Planning Authority.

Vehicle access's 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.

Reason:

To ensure that adequate and satisfactory provision is made for access and for off-street parking in the interests of road safety.

- 5 The vehicular access junction from the A198 shall be designed in accordance with the Design Manual for Roads and Bridges, Volume 6.

Reason:

In the interests of road safety.

- 6 Within two months of the date of the grant of this planning permission a 30 miles per hour (mph) speed limit on the A198 public road shall be brought into effect in a location from the existing 30 miles per hour (mph) speed limit on the A198 public road eastwards to include along the entire length of site frontage. Details of the new 30 miles per hour speed limit shall be submitted to and approved in advance by the Planning Authority and shall include the provision of street lighting over the full extent of the proposed new 30mph speed limit and shall incorporate town entry treatments. Thereafter the new 30 miles per hour speed limit, street lighting and town entry treatments shall be implemented and installed in accordance with the details so approved.

Reason:

In the interests of road safety.

- 7 Within two months of the date of the grant of this planning permission, details showing compliance with the following transportation requirements, including a timetable for their implementation, shall be submitted to and approved in writing by the Planning Authority:

(i) pedestrian crossing points shall be formed on the A198 public road in close proximity to the site vehicular access junction to link the proposed new development's footways with the north side of the A198 and the wider footway network towards Dirleton and North Berwick;

(ii) a continuous 2 metre wide footway shall be provided on the south side of the A198 over the full extent of the new 30 mph speed limit as required by Condition 6 above (i.e. from the existing junction at the C111 Fenton Road to the new 30 mph speed limit on the eastern side of the site access junction). Dropped kerb tactile crossings are required at the junction with C111 public road;

(iii) a Double D island shall be constructed on the western side of the vehicular access junction with the A198 public road to provide a safe crossing point to the north side of the A198 for pedestrians wishing to access the wider footpath network to Dirleton and North Berwick;

(iv) a continuous 2 metre wide footway shall be provided on the west side of the C111 public road from its junction with the A198 (Main Street) to the pedestrian access link into West Fenton Gait; A raised table shall be introduced at this location to assist in reducing vehicle speeds;

(v) cycle parking shall 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.

The residential development shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of road and pedestrian safety.

- 8 A visibility splay of 2.4m by 70m to the west and 2.4m by 160m to the east shall be provided and maintained at the proposed site access junction with the A198 public road so that no obstruction lies within it above a height of 1.05 metres measured from the adjacent carriageway surface.

Reason:

To ensure that adequate visibility is provided at the access in the interest of highway safety.

- 9 Within two months of the date of the grant of this planning permission an independent road safety audit shall be submitted to and approved by the Planning Authority for the proposed site vehicular access junction onto the A198 public road.

Reason:

In the interests of road safety.

- 10 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 16/00587/PM. 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.

- 11 Within two months of the date of the grant of this planning permission 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. 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.

- 12 Within two months of the date of the grant of this planning permission an effective vehicle wheel washing facility shall be installed on the application site in accordance with details to be submitted to and approved by the Planning Authority prior to its installation. Such facility shall be retained in working order and used such that no vehicle shall leave the site carrying earth and mud in their wheels in such a quantity which causes a nuisance or hazard on the road system in the locality.

Reason:

In the interests of road safety.

- 13 The mitigation measures for the prevention of disturbance and/or displacement of pink footed geese during the construction and operational phases of the development approved by the grant of planning permission 16/00587/PM shall be implemented in strict accordance with those detailed in section 5.2 'Mitigation Measures' of the FENTON GAIT EAST: Assessment of effects on pink footed geese (*Anser brachyrhynchus*) as a qualifying feature of the Firth of Forth Special Protection Area (SPA) document by ITP Energised docketed to planning permission 16/00587/PM.

Reason:

To safeguard species of the Firth of Forth Special Protection Area.

- 14 A timetable for the provision of the erection of the boundary enclosures for the rear gardens of the houses approved by the grant of planning permission 16/00587/PM shall be submitted to and approved in advance by the Planning Authority and development shall thereafter be carried out in full accordance with the timetable so approved, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the satisfactory provision of the boundary enclosures in the interest of safeguarding the privacy and amenity of future residents of the development and residential properties nearby.

- 15 All the open space recreation areas indicated on the site layout plan docketed to planning permission 16/00587/PM shall be available for use prior to the occupation of the last house or flat on the site.

The open space recreation areas, when provided, shall be used for such purposes at all times thereafter unless otherwise agreed in writing by the Planning Authority.

Reason:

To ensure the satisfactory laying out of all areas of open space in the interest of the amenity of the future occupants of the dwellings hereby approved.

- 16 No trees or shrubs, which are to be retained on the site, shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the prior written consent of the Planning Authority.

Reason:

To ensure the retention and maintenance of the trees which are an important landscape feature of the area.

- 17 Within two weeks of the grant of this planning permission temporary protective fencing shall be erected in accordance with Figure 2 of British Standard 5837_2012 "Trees in relation to design, demolition and construction". This temporary protective fencing shall be retained on site and intact through to completion of development. The fencing shall be erected in the positions shown for it as indicated by the blue dashed lines on the docketed landscape layout drawing no. 12-01j.

All weather notices shall be erected on said fencing with words such as "Construction exclusion zone - Keep out". Within the fenced off areas the existing ground level shall neither be raised nor lowered, no materials, temporary buildings, plant, machinery or surface soil shall be placed or stored and no herbicides shall be used. Planning of site operations should take sufficient account of wide loads, 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. Any materials whose accidental spillage would cause damage to a tree shall be stored and handled well away from the outer edge of its root protection area. Fires on sites should be avoided if possible. Where they are unavoidable, they should not be lit in a position where heat could affect foliage or branches. The potential size of a fire and the wind direction should be taken into account when determining its location and it should be attended at all times until safe enough to leave.

Reason:

To ensure the retention and maintenance of trees which are an important landscape feature of the area.

- 18 All new planting as shown on the docketed landscape layout drawing no. 12-01j, and as specified on docketed drawing no. 12-02g and in the docketed document titled 'Cala Management Limited, Fenton Gait, Gullane, Landscape Works, Grassed and Planted Areas, Planting Schedule' 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.

All the new planting shall be maintained in accordance with the maintenance programme as detailed in the docketed document titled 'Cala Management Limited, Fenton Gait, Gullane, Landscape Works, Grassed and Planted Areas, Maintenance Specification'.

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.

- 19 No residential unit shall be occupied unless and until details of artwork to be provided on the application site or at an alternative location away from the site have been submitted to and approved by the Planning Authority. The details shall include a timetable for the provision of the artwork. The artwork shall thereafter be provided in accordance with the details so approved.

Reason:

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