

**REPORT TO:** Planning Committee

**MEETING DATE:** Tuesday 26 March 2019

**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 Gilbert for the following reasons: Although the land is designated for business use part of the site has already been developed and the remaining land seems unlikely to be used for business purposes. Affordable rent would seem an obvious alternative.*

Application No. **18/01344/P**

Proposal                      Erection of 4 houses, 22 flats and associated works

Location                     **Land West Of Johnnie Cope's Road**  
**Mid Road**  
**Prestonpans**  
**East Lothian**

Applicant                    LAR Housing Trust

Per                             Holder Planning

RECOMMENDATION         Application Refused

#### PLANNING ASSESSMENT

The application site is an area of land some 0.34 ha in size located at the southeast corner of Mid Road Industrial Estate, towards the southern edge of Prestonpans. The site is comprised of the southern half of the former IQ Textiles factory and its associated land.

The former IQ Textiles factory building has been demolished and the site cleared.

The site, is the subject of Policy EMP1 of the adopted East Lothian Local Development Plan 2018.

On 23 May 2013 planning permission in principle (Ref: 11/00851/PP) was granted for a development on the whole site of the former IQ Textiles factory and its associated land of a Class 1 retail store with car parking, servicing, landscaping and other associated works.

The three-year time period for the submission of matters specified in conditions of planning permission in principle 11/00851/PP has expired and thus it is no longer extant.

In May 2015 planning permission 15/00138/P was granted for the erection on the northern part of the former IQ Textile factory site of 4 commercial units comprising 1 retail unit (class 1 use), 1 veterinary surgery (class 2 use), a cafe/restaurant (class 3 use), a hot food takeaway (sui generis use) and for associated works.

Planning permission 15/00138/P has been implemented and the commercial units are in place. Two of the units are occupied – The retail unit (Cooperative supermarket) and the vets practice – and are operational. The remaining 2 units are vacant although one has recently been taken off the market. This new development is known as the Northfields Retail Area.

The application site is bounded to the north by the northern half of the former IQ Textiles factory site and its associated land which now has the Northfields Retail Area located on it. To the east of the site is Johnnie Copes Road with residential properties beyond, to the south is the East Coast Main Line railway with car park beyond. To the west of the site is the Mid Road industrial estate.

Planning permission is now sought for the erection on the site of (i) a terrace of 4 houses, (ii) a largely two storey flatted building with accommodation in its roof space that would contain 22 flats, and (iii) associated works comprising the formation of parking spaces and hard and soft landscaping.

The proposed terrace of houses would be located on the western part of the site with their rear elevations aligned with the west boundary of the site and with frontages facing eastwards into the site. They would each be two stories in height to the ridge of their pitched roofs.

The proposed flatted building would have an inverted L shaped footprint with 2 similar sized “ranges that would be largely two storey in height (11.5m). One range would be orientated from east to west the other would be orientated north to south. Both ranges would be some 35m in length and some 12m in width with their front elevations facing into the site westwards and northwards respectively.

The houses and the flatted building would be finished with render of a type and colours to be agreed with the Planning Authority and the roofs clad with tiles of types to be agreed with the Planning Authority. Windows would be double glazed with white UPVC frames. Doors would be constructed of timber and finished in colours to be agreed with the Planning Authority. Solar PV panels would be located on the rear (south) facing roof slope of one of the ranges and on the front (west) facing roof slope of the other range.

All of the 22 flats and 4 houses are to be for mid market rent affordable housing. The proposed mix is to be 3 x 1 bed roomed flats, 19 x 2 bed roomed flats and 4 x 3 bed roomed houses.

A total of 27 car parking spaces would be provided for the development and secure storage for 22 cycles.

A Planning Statement submitted with the application states that the proposal would provide 22 flats and 4 houses which would be 100% mid market affordable housing of a similar design and layout to LAR’s successful project at Cockenzie Harbour. The development would provide much needed affordable housing in East Lothian on a brownfield site which has been derelict for a number of years. The site benefits from

being near to many local services and facilities being a short walk from both Prestonpans Primary School and Preston Lodge High School. It is also a short distance away from Prestonpans Health Centres as well as Prestonpans Community Centre. A local supermarket is located directly adjacent to the site. The site is less than 100m from Prestonpans train station which has frequent services to Edinburgh and there are also bus stops located on Preston Road and West Loan to the north. The sustainable location of the site would provide access to local services, facilities and employment and would also support local shops in the area.

To support the submission of the planning application a coal mining risk assessment, a site investigations report and a Report on Railway Sound have been submitted.

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 (SESPan) and the adopted East Lothian Local Development Plan 2018.

Relevant to the determination of the application are Policies 1B (The Spatial Strategy: Development Principles) and 2 (Supply and Location of Employment Land) and Policies EMP1 (Business and Employment Locations), HOU2 (Maintaining and Adequate 5 year effective housing land supply), HOU3(Affordable Housing Quota), ED2 (Prestonpans Cluster Education Proposals), T1 (Development Location and Accessibility), T2 (General Transport Impact), T3 (Segregated Active Travel corridor), T32 (Transport Infrastructure Delivery Fund), DP2 (Design), DEL1 (Infrastructure and Facilities Provision), and NH8 (Trees and Development) of the adopted East Lothian Local Development Plan 2018.

Also material to the determination of this planning application is the Supplementary Planning Guidance (SPG) of the ELLDP 2018 on Affordable Housing. This supplements Policies HOU3: Affordable Housing Quota and HOU4: Affordable Housing Tenure Mix of the adopted East Lothian Local Development Plan 2018 and provides further information and detail on how the above policies of the ELLDP 2018 should be interpreted and applied.

Eleven representations have been received in support of the application all of which state that there is a need for affordable housing in this area and this development will provide more high quality affordable housing in a suitable location. All those letters of support are from existing tenants of other LAR properties.

One representation neither supporting nor objecting to the application has also been received. The matters raised in that representation are:

- \* There is a need for affordable housing in this area;
- \* The flatted building is very high; and
- \* Is there sufficient parking provided for the development?

Two letters of objection have been received to the application. The main grounds of objection are:

- Not all neighbours were notified;
- This is an overdevelopment of the site;
- Due to the height and size of the building it will cause loss of amenity to the occupants of neighbouring residential properties;
- There will be overlooking of neighbouring residential properties;

- Highway safety – heavy vehicles should not use the private road serving 1-4 Johnnie Cope's Road which has no pavement and is not the main route into the station;
- Concern over the suitability of the junction to cope with increased traffic numbers;
- Concern regarding heavy plant and lorries damaging gas supplies and interfering with foundations of nearby walls;
- The plans do not show the retention of mature trees or the privet and ivy fence along the east boundary;
- The construction of the building may damage the east boundary wall; and
- Inaccuracies within the supporting statements and application form.

All neighbouring properties within 20m of the application site were notified of the application on 7th January 2019. The application was also advertised within the local press on 11th January 2019. Therefore, the Council as Planning Authority has fulfilled its statutory obligations in the notification and advertisement of planning applications.

The inaccuracies in the applicant's supporting statement alluded to in the letter of objection in respect of missing address points do not materially affect the substance or the findings of the report.

If planning permission were to be granted a condition could be attached to any grant of planning permission to safeguard the retaining wall and ensure that its integrity was not compromised.

Prestonpans Community Council have objected to the planning application. The main grounds of objection are (i) that the development is too ambitious for the space, (ii) that the homes are very small and (iii) the delivery of affordable housing should not be used as justification for building terrible homes on unsuitable plots.

Whilst it is not essential to replicate existing building styles to build successfully in any given area, both national planning and development plan policy nevertheless state that in designing proposed new buildings developers should think about the qualities and the characteristics of places. The development should reflect its setting and local forms of building and materials. The aim should be to have buildings looking different without detracting from any sense of unity and coherence for the development or the wider neighbourhood

The area around the application is characterised by buildings of a variety of architectural forms and character. To the northwest is the mid road industrial estate which has a variety of industrial type buildings located on it. To the north of the site is the recently built Northfield retail Area which is within a large single storey flat roofed building. Between that retail area and the B1361 public Road (Gardiner Terrace) are 4 detached houses and a commercial garage with petrol filling station. Johnnie Copes Road bounds the site to the east with houses and Prestonpans train station beyond. The East Coast Rail line forms a robust boundary to southern edge of the site, beyond which is a car park.

The flatted building would be a large building that would be located in the southeast corner of the Mid Road Industrial Estate. It would be double the height of the single storey commercial building of Northfields Retail Area. In that position it would be prominent in views from Johnnie Copes Road and Prestonpans train station car park to the east and from Gardiner Terrace and Prestonpans Primary School to the northeast, from the car park on the southern side of the railway line and in longer distance views from Johnnie Copes road to the south. In those public views the residential character of the flatted building and terrace of would appear different to the mainly industrial/commercial nature of nearby buildings. However, the proposed flatted building and terrace of houses would not be inappropriate when seen in the wider context of an

area of varied character and mixed uses including residential use.

By virtue of this and of their size, materials, architectural form and appearance, the proposed flatted building, terrace of houses, new access road and car parking area, other hardstanding areas and landscaping would not appear harmfully incongruous or incompatible with the built form and character of this industrial/commercial area.

The application site is physically capable of accommodating the entire development, including satisfactory vehicular and pedestrian access and car parking, without resulting in an overdevelopment of it or increasing the density of development such that the established character of the area is harmfully altered.

The proposed flatted building, terrace of houses and associated works are acceptably designed for their place and are consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policy DP2 of the adopted East Lothian Local Development Plan 2018.

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.

The proposed flatted building and the terrace of houses would be positioned some 29m away from the nearest property to the east and some 60m away from the nearest residential property to the north. There are no residential properties to the south or west. Thus the proposed development would not allow for harmful overlooking of any neighbouring residential properties.

By virtue of their form, size and scale and given the distance away from neighbouring residential properties the proposed flatted building and houses would not allow for overshadowing or loss of daylight to those neighbouring residential properties.

The occupants of the flatted building and of the 4 houses would also enjoy sufficient privacy and amenity.

On the matter of amenity the Council's Environmental Protection Manager advises that he agrees with the findings of the report on Railway Sound submitted in support of the application that the proposed flatted block and 4 houses would not be subjected to unacceptable levels of noise generated from the adjacent rail line.

On those matters of amenity the proposal would not be contrary to Policy DP2 of the adopted East Lothian Local Development Plan 2018.

The landscape advice of the Council's Policy and Projects service is that the building alignment of the flatted building should be flipped which would give the southwest aspect better solar gain and would locate the parking to the rear of the building. However given that the planning assessment above is that the proposed development is acceptably designed for its place and is consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies DP2 of the adopted East Lothian Local Development Plan 2018 it would be unreasonable to insist on this.

The landscape advice of the Council's Policy and Projects also note that there is a

mature sycamore tree adjacent to the south west corner of the application site. If planning permission were to be granted a condition can be imposed to safeguard the health and vitality of the mature tree during the construction process. Subject to the aforementioned planning control the proposal is not contrary to Policy NH8 of the adopted East Lothian Local Development Plan 2018.

The Council's Depute Chief Executive (Resources and People Services) informs that the application site is located within the school catchment areas of Prestonpans Primary and Nursery School, and Preston Lodge High School.

He advises that Prestonpans Primary school has sufficient capacity to accommodate the additional children arising from this development. However Preston Lodge High School does not have sufficient capacity. Thus he objects to the application on the grounds of lack of permanent capacity at that school. However, he would withdraw that objection provided the applicant makes a financial contribution to the Council of £103454 (£3979 per unit) towards the provision of additional school accommodation at Ross High School.

Policy T32 of the ELLDP 2018 specifically relates to the package of transportation interventions to mitigate the cumulative impact of development on the transport network which have been identified by the Council in consultation with Transport Scotland. In line with Policy DEL1, relevant developments are required to contribute to the delivery of these transportation interventions, on a proportionate, cumulative pro-rata basis, as set out in Developer Contributions Framework Supplementary Guidance. The transport interventions are:

- \* Improvements to Old Craighall junction (PROP T15):
- \* Improvements to Salters Road Interchange (PROP T17):
- \* Improvements to Bankton Interchange (PROP 17):
- \* Musselburgh Town Centre improvements (PROP T21):
- \* Tranent Town Centre Improvements (PROP T27 and T28):
- \* Rail Network Improvements (PROP T9 and T10):
- \* Segregated Active Travel Corridor (PROP T3):

The Council's Planning Obligations Officer advises that as the development is for more than 4 dwellings, then it may be required to make contributions towards the ELDP 2018 Transport Proposals as set out in the Developer Contributions Framework Supplementary Guidance and Adopted ELDP 2018 Policies DEL1 and T32. As this proposal for 26 homes is a windfall proposal, its impacts and contributions have not been identified through the ELDP 2018 and Developer Contributions Framework Supplementary Guidance transport appraisal process. Under these circumstances the Council's Planning Obligations Officer advises that we would use the nearest ELDP 2018 site as a proxy to determine a per unit contribution rate for transport interventions, except for those towards the Segregated Active Travel Corridor. However, given the small scale of development he further advises that it would not be reasonable to ask the applicant to undertake a cumulative impact assessment to identify contribution levels for 6 of the transport interventions as the cost of this may exceed the value of the contributions.

Therefore, in this specific instance, the Planning Obligations Officer advises that it would not be reasonable to seek contributions towards 6 of the 7 transport interventions. However, the site does lie within the 1.2km buffer of the Strategic Active Travel Corridor (ELDP 2018 Proposal T3) within which the Council has evidenced a requirement for developer contributions. Contributions are set at £492 per dwelling in the and therefore a contribution of £12,792 should be sought towards the Strategic Active Travel Corridor. Subject to the payment of the required contribution towards the Strategic Active Travel

Corridor the proposal does not conflict with Proposal T3 or with Policies T32 and DEL1 of the adopted East Lothian Local Development Plan 2018.

The required payment of a financial contribution of a total of £103454 towards the provision of additional accommodation at Prestonpans High School and £12792 towards the Segregated Active Travel Corridor could be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Subject to the payment of the required contributions the proposal is consistent with Policy ED2 of the adopted East Lothian Local Development Plan 2018, which stipulates that developer contributions will be sought from developers of housing land to fund the costs of a phased extension to Preston Lodge High School to meet the need arising from new housing development within the cluster.

The Council's Environmental Protection Manager advises that there is contamination of the soils on the site. Consequently he recommends that a comprehensive contaminated land investigation shall be carried out prior to the commencement of development. This can be secured by a conditional grant of planning permission for the proposed development.

The Council's Road Services raise no objection advising that the junction from Johnnie Copes Road into the site has capacity to cope with the additional traffic generated by the development. Therefore subject to the submission of a Construction Method Statement being secured as a condition of a grant of planning permission the proposed arrangements for vehicular and pedestrian access, parking and turning are all of an acceptable standard and are therefore consistent with Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018.

Given the sites proximity to East Coast Main Line railway Network Rail have been consulted on the application. Network Rail advise that they raise no objection to the application provided that prior to the commencement of development (i) details of surface and foul drainage scheme be submitted to and approved by the Planning Authority which should not be within 10m of the railway boundary and (ii) a scheme of landscaping be submitted and approved by the Planning Authority, which should include hard and soft landscaping works and boundary treatment(s), details of trees and other features that are to be retained and a programme for the implementation of the landscaping in relation to the construction of the development.

Network Rail also advise that details of all changes in ground levels, laying of foundations and operation of mechanical plan in proximity to the rail line must be submitted to Network Rail by the applicant to ensure such works do not disturb the operation of the railway line. The applicant's agent has been advised of this.

The site is within a Coal Mining Development Referral Area and the Coal Authority have been consulted on the application. The Coal Authority advise that having reviewed the submitted coal mining and geological information they confirm the site is not underlain by past shallow coal mine workings and that there is no risk to surface stability. On this basis The Coal Authority raise no objection to the application.

Notwithstanding these technical considerations, an important material consideration in the determination of this application is whether or not the principle of the proposed residential development accords with development plan policy and other supplementary planning guidance, and if not, whether there are material considerations that outweigh any conflict with the development plan and other supplementary planning guidance

Policy 2: Supply and Location of Employment Land of the approved South East Scotland Strategic Development Plan (SESplan) supports a range of marketable employment sites of the size and quantity to meet the requirements of business and industry within the SESplan area. It states that the ELLDP is to support the delivery of 76ha of established strategic employment land supply within East Lothian and maintain a supply of employment land allocations to meet changing demand and should respond to the diverse needs and locational requirements of different sectors by ensuring that there is a generous range and choice of employment sites which are highly accessible to communities across the SESplan area.

In accordance with the SDP, the spatial strategy of the ELLDP prioritised the East Lothian Strategic Development Area / East Lothian Economic Cluster/Corridor as the location within which the majority of employment land allocations are directed (SDP Figure 1, 4 and 8). Overall, the ELLDP makes provision for a total of 231 ha of land for employment. Of this 89.8 ha is already operational employment land with 77.3 ha within the established land supply, including this site the subject of this application, and a further 63.9 ha of new employment land was allocated. In line with the spatial strategy of the ELLDP, the distribution of the new and established but undeveloped employment land allocations prioritised the west of the East Lothian Strategic Development Area/East Lothian Economic Cluster/Corridor, including the Prestonpans cluster.

Para 2.3 of the ELLDP notes that the best opportunities to locate new housing and economic development are in the west of East Lothian. Para 2.47 outlines how the Prestonpans community will grow with both employment and housing opportunities. Taken together these will allow future growth to be sustainable.

At the Examination into the ELLDP the Reporter agreed that the overall pattern of provision of employment locations around East Lothian is guided by policies of the Strategic Development Plan (SESplan) and that within East Lothian, SESplan identified a Strategic Development Area and an Economic Corridor, both of which focus on the key transport routes of the A1 road and the East Coast Main Line. The local development plan follows this pattern by directing most of the employment land allocations to locations within those areas, which include Prestonpans.

Paragraph 3.21 of the ELLDP acknowledges that not all allocated land for employment is in the control of parties seeking to develop the land for employment and that in recognition that the scale of demand for class 4, 5 and 6 uses may not be sufficient to deliver the investment needed to achieve the servicing and delivery of many employment sites. Accordingly the policy that applies to employment sites, Policy EMP1 was made more flexible to encourage other employment uses.

The ELLDP applies a new policy, Policy EMP1 to its employment sites. This policy was made considerably more flexible than its predecessor policy in terms of the types of employment development that might be acceptable on its employment sites. In addition to Classes 4, 5 and 6 of the Town and Country Planning Use Classes (Scotland) Order 1997, Policy EMP1 also supports other employment generating uses subject to the town centre first principle and provided there would be no amenity conflicts or other unacceptable impacts and where the uses proposed do not prejudice or inhibit the activities of nearby employment use.

The application site is within Prestonpans. It is covered by Policy EMP1 and thus is allocated for employment generating use. Policy EMP1 of the adopted East Lothian Local Development Plan 2018 supports in principle uses within Classes 4, 5 and 6 of the Town and Country Planning (Use Classes) (Scotland) Order 1997. Other employment



generating uses may also be supported in these locations subject to the town centre first principle (policy TC1) and provided there would be no amenity conflicts or other unacceptable impacts. Proposals to redevelop employment sites or premises for other employment generating uses will only be supported where the uses proposed do not prejudice or inhibit the activities of a nearby employment use. Proposals must not adversely affect amenity and must be able to co-exist satisfactorily with existing or proposed uses on the site and in the surrounding area.

Residential use falls within Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997. Policy EMP1 of the adopted East Lothian Local Development Plan 2018 of the adopted East Lothian Local Development 2018 does not give any support to residential uses on any part of the application site. The proposed residential development would be sited on and thus would result in the loss of land that is designated by the Planning Authority for employment generating uses as part of a larger area of land to meet part of an identified need for business land in East Lothian. Such business land is required to enable and sustain the economy of East Lothian and of the Lothians.

The proposed residential development is therefore contrary to Policy EMP1 of the adopted East Lothian Local Development Plan 2018.

The Council's Economic Development and Strategic Investments Service have been consulted on the planning application. They advise that their remit is the delivery of the East Lothian Economic Development Strategy 2012 - 2022 and the 2 strategic goals of:-

- 1) Increasing the number of businesses in East Lothian with growth potential; and
- 2) Increasing the proportion of East Lothian residents working in and contributing to East Lothian's economy.

The Council's Economic Development and Strategic Investment (EDSI) service EDSI advise that the East Lothian Council Economic Development Strategy 2012-22 was adopted by the Council on 9 October 2012.

It sets out clear strategic direction and is the foundation of the vision set out in the Council Plan of increasing the number of businesses in East Lothian with growth potential and to increase the proportion of East Lothian residents working in and contributing to East Lothian's economy by an increase in East Lothian's jobs by an additional 7,500. Over the 10 year period of the East Lothian Economic Development Strategy 2012 to 2022 the average number of new jobs which need to be created in the Prestonpans area as part of achieving the creation of 7,500 new jobs across East Lothian is 138 new jobs annually.

EDSI note that in order to meet the continued need for business and industrial land and premises in East Lothian the East Lothian Local Development Plan continues to designate the application site in its entirety for employment use by Policy EMP1, which supports uses within Classes 4, 5 and 6 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 and for wider employment generating uses. The Reporters in their Examination Report endorsed this designation.

EDSI views the development proposed in this application as having a clear negative impact in terms of delivery of the East Lothian Economic Development Strategy 2012-22 and the 2 strategic goals of increasing the number of businesses in East Lothian with growth potential and increasing the proportion of East Lothian residents working in and contributing to East Lothian's economy. They advise that a clear demand exists for employment land/commercial units in East Lothian, including in Prestonpans, as

identified in the Business Base survey 2017 and based on the 2 strategic goals in the aforementioned Economic Development Strategy 2012-22. The recent submission of a planning application 18/01404/P for a proposal to build 10 commercial units on the last remaining vacant plot of land on the Mid Road Industrial Estate supports this position and is a clear indicator of demand. Moreover, if planning application 18/01404/P is granted and the 10 commercial units are built then there would be no other land designated for employment uses in Prestonpans.

Therefore, the proposed development of the application site for a residential use would lead to a further reduction in available employment land in Prestonpans, contrary to the Development Strategy 2012-22.

Thus, EDSI conclude that as the residential use of the application site would result in the removal of existing viable employment land in Prestonpans, which would contribute to the aims and objectives of the Council's East Lothian Economic Development Strategy 2012 to 2022, they recommend the application be refused.

EDSI point out that whilst the Planning Statement asserts that the site has been actively marketed there is no indication on the price that the site has been marketed at.

Notwithstanding this, it is necessary to consider whether there are material considerations in this case that outweigh this element of development plan policy.

In granting planning permission in principle 11/00851/PP for the development of all of the application site and adjacent land of a Class 1 retail store with car parking, servicing, landscaping and other associated works it was accepted by the Council, as Planning Authority, that none of the land of the application site was required to be retained for business and industrial use for the reason that the redevelopment of the site for a business or industrial use was not financially viable. This material consideration outweighed the departure from Policy BUS1 of the adopted East Lothian Local Plan 2008.

Given this there can be no objection to the loss of the business and industrial use – those within Classes 4 (Business), 5 (General Industrial) and 6 (Storage and Distribution) of the Town and Country Planning (Use Classes) (Scotland) Order 1997.

The advice from the Policy & Strategy (Planning) manager is that since the decisions on planning applications 11/00851/PP and 15/00138/P were taken the East Lothian Local Development Plan 2018 has been adopted and Policy BUS1 has been replaced with Policy EMP1. Policy EMP1 allows for a more flexible policy approach than Policy BUS1 whereby other employment generating other than Classes 4, 5 and 6 uses may also be supported on these sites. This is in recognition that the scale of demand and potential users associated with traditional Class 4, 5 and 6 uses may not be sufficient to deliver the investment needed to achieve the servicing and delivery of many employment sites. The decision taken by Council on planning permission 11/00851/PP did not consider whether or not the site was viable for employment generating uses beyond Classes 4,5 & 6.

Therefore, the advice from the Policy & Strategy (Planning) Manager is that it is necessary to consider whether there are any material planning considerations that would justify departure from the development plan with regard to those wider employment generating uses.

The Planning Statement raises the following as material considerations in support of the application: (i) pre application advice given in 2016 that affordable housing would be acceptable on the site, (ii) the site not being viable for employment generating uses, (iii)

the provision of affordable housing and SESplan2 requiring East Lothian Council to provide more affordable housing than is provided for within the ELDP 2018.

On the matter of the pre application advice given to the applicant the Planning Statement advises that the applicant sought pre application advice from the East Lothian Council's Planning Service in 2016 regarding the likelihood of getting planning permission for development of the site for affordable housing. The pre application advice given was that; (i) whilst the land was designated for Class 4,5 and 6 uses it had been accepted through the grant of planning permission 11/00851/P and 15/00138/P that the development of the site for those uses was not viable, and (ii) given there was a shortfall in the 5 year effective housing land supply that these matters could be used as material planning considerations in the determination of any planning application submitted for housing on that land. Therefore, those material planning considerations may at that time have justified a departure from the development plan.

It is the case that the Planning Service gave written pre application advice back in June 2016 advising that whilst the land was designated by Policy BUS1 of the adopted East Lothian Local Plan 2008 for Class 4, 4 and 6 uses that (i) it had been accepted that through the grant of planning permission 11/00851/PP and 15/00138/P that the development of the site for those uses was not viable, and (ii) given that there was a shortfall in the 5 year effective housing land supply that these matters were material planning considerations that may justify a departure from the provisions of the development plan. However the pre application advice email made it clear that the advice given represented the opinion of an officer of the Council and did not prejudice any decision the Council may make on any forthcoming applications. The advice was based on the development plan at that time which was the adopted East Lothian Local Plan 2008. This has since been superceded by the adopted East Lothian Local Development Plan 2018, which has broadened the acceptable uses on an employment site beyond those in Classes 4, 5 and 6. Also there is no longer a shortfall in the 5 year effective housing land supply. The most recent Housing Land Audit demonstrates that there is more than an adequate 5 year effective land supply. This pre-application advice therefore no longer applies, as the circumstances are materially different.

With regard the matter of viability the Planning Statement submitted with the application informs that the site has been vacant since 2011 despite numerous attempts to market it for employment use. The applicant's agent has also stated in an email that the site was marketed as "open to offers" with no guide price attached to it. It also informs that following enquiries were received in respect of the site:

- Balmoral Estates - development of the site for a care home but which concluded that the site was not big enough for this use;
- Marston's/ Green King - Development of a pub/restaurant on the site. However the Planning Statement informs that Green King which also concluded that the site was not prominent enough for this use;
- workshop units but was concluded that this use was not viable;
- Other housing developers (Crudens, AS Homes and 3 others) made enquiries about the site but it was concluded by them that it was not big enough for those potential developers;
- Coal yard and log store but enquirer did not pursue this, no reason given.

In a further submission, the agent for the applicant states that, as well as the above marketing history, SLD were appointed to market Lot 2 (the subject site) in July 2018. The site has been widely advertised (for all uses) through prominent on site signage, the SLD website and by sending the site to our extensive data base via email. The lack of

interest despite such broad marketing reflects the reality that the location is not considered viable for employment uses; this may be due to the fact that the site is located in what is considered a tertiary location with low passing trade and lack of roadside visibility compared to comparable sites. "If the site was suitable for a care home or waste facility use, then we would have no doubt received some interest, but there was none. Both such operators are active in the market if the right site comes along. From our experience we cannot think of other employment generating uses for which this site is likely to be in demand, and the marketing exercise, in our view, would have generated such interest if it was there." The applicant maintain their position that the marketing history demonstrates that there is no such interest and no offers for an employment use.

Notwithstanding what is stated by the applicant, an offer was made to purchase the site in June 2017. This was from the Estate's division of East Lothian Council, who were seeking to purchase it for the development of affordable housing. This offer was made as they were aware of the positive pre-application advice given at that time. On that basis the District Valuer was asked to value the site for residential use, and they advised that a reasonable value for a 20 unit affordable housing development of the site would be £200000. A bid of £200000 was made by the Council to the land agent on behalf of the land owner, Rettie's, in June 2017 for the site but this bid was rejected. In the refusal email from Rettie's it is stated that their client would sell the site for £400000 on the basis of a subject to getting planning permission for 40 residential units on it.

It is unclear whether the land owner would now be willing to sell the site for less than £400,000. As the applicant says, the marketing information set out above does not have a guide price for the site. If the land owner were to maintain that selling price then EDSI advise that this may preclude some employment uses from being able to be developed on the site. It would be premature at this time to approve the site for residential use, particularly given that the Local Plan has only been adopted since September 2018. Furthermore, it should be noted that the site is currently being advertised on the SLD website as a "Residential Development Site" with potential for 40 residential units, care home or retail/ leisure uses.

On the matter of affordable housing the ELLDP 2018 SPG on Affordable Housing states that the Scottish Government's Strategy and action plan for housing for the period 2011-20 identifies a need to build new high quality affordable homes (including social housing) to meet need and demand from a growing and ageing population, including households on lower incomes. The SPG also states that SPP suggests the quota of affordable homes that can be expected from a market housing site should normally be no more than 25% of units. The ELLDP requires sufficient land is available to deliver 10150 homes in the period 2009-24. Housing development in East Lothian is therefore likely to continue to grow at a fast pace, aiming to make an appropriate contribution to the Scottish Government target of 50000 new affordable homes by the end of this parliament. It is therefore critical that East Lothian Council maximises its opportunities to increase the supply of affordable housing through the ELLDP 2018.

The applicant's Planning Statement informs that the need for affordable housing in East Lothian has increased since the adoption of the ELLDP 2018 because the ELLDP 2018 is based on SESplan 1 rather than the Housing Need and Demand Assessment (HNDA) that underpinned SESplan 2. The applicant states that this is acknowledged in the Council's Local Housing Strategy (LHS) which explains that the ELLDP, LHS and HNDA cycles are not currently aligned with the ELLDP being informed by SESplan HNDA 1 Housing Supply Targets. The applicant goes further to contend that given the ELLDP was based on the older, lower affordable housing figure, this means that there is not enough housing land identified in the adopted plan to meet the affordable housing need identified in the LHS.

The advice of the Policy & Strategy (Planning) manager is that Policy HOU2 (Maintaining and Adequate 5 year effective housing land supply) of ELDP 2018 has used the same Housing Land Requirements as those set by SDP1 and its associated Supplementary Guidance on Housing Land. The approved ELLDP makes available an appropriate and sufficient amount of housing land, which in overall quantitative terms meets and exceeds the SDPs Housing Land Requirement. The ELLDP also provides an appropriate and sufficient range and choice of site types and sizes in marketable locations that are effective or able to be made effective during the plan period. Therefore, release of any further housing land over and above that set out within the LDP cannot be reasonably justified and would be unnecessary and inappropriate.

The Policy & Strategy (Planning) manager also advises that it should be noted that the ELDP 2018, as required by legislation, is informed by SESplan HNDA1 and corresponding HSTs as opposed to HNDA2. It is also noted that the LHS sets out SESplan HNDA1 figures in comparison with SESplan HNDA2 figures for transparency, although it aims to meet HSTs as per SESplan HNDA2. This reflects the timing of the separate documents and it is anticipated that during the lifetime of this LHS, these key documents will become aligned. The statutory position in respect of housing land is provided by the ELDP 2018 at this time. SESplan 2 is not yet approved by Scottish Ministers therefore it would be premature to rely on the affordable housing figures being proposed.

The Policy and Strategy (Planning) manager therefore concludes that the residential development proposed in this application is contrary to the development plan, specifically Policy 2 of the approved South East Scotland Strategic Development Plan (SESplan), Policy EMP1 of the adopted East Lothian Local Development Plan 2018 and there are no material planning considerations that would justify a departure from the development plan.

If approved the proposed housing development would set an undesirable precedent for the development of new housing on land elsewhere in East Lothian that is allocated for employment use, the cumulative effect of which would be the depletion of Council's supply of established land for employment use to the detriment of the economy of East Lothian.

In conclusion, the proposed housing development is a significant departure from the development plan, and there are no material considerations, including the provision of affordable housing, that would outweigh this planning conflict and would justify a grant of planning permission for the proposed development.

#### REASONS FOR REFUSAL:

- 1 The proposed housing development would result in the loss of allocated employment land that is part of the established employment land supply of Prestonpans, to the detriment of East Lothian's economy, contrary to Policy 2 of the approved South East Scotland Strategic Development Plan (SESplan), Policy EMP1 of the proposed East Lothian Local Development Plan and contrary to the Council's East Lothian Economic Development Strategy 2012 to 2022.
- 2 If approved the proposed housing development would set an undesirable precedent for the development of new housing on land elsewhere in East Lothian that is allocated for employment use, the cumulative effect of which would be the depletion of Council's supply of established land for employment use to the detriment of the economy of East Lothian.