

**REPORT TO:** Planning Committee

**MEETING DATE:** Tuesday 1 October 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 a) Councillor Akhtar and b) Councillor Hoy for the following reasons:*

*a) DC1 mentions an “operational requirement“ or “other direct operational requirement“. In this case, the “requirement“ is based on the occupant’s need for care and support to stay in his home provided by having family on hand. I believe this application highlights an issue in terms of demographics, case and wellbeing which may be a gap in policy and rural development strategy which ought to be addressed by Committee. If such cases show a need for care and were to be supported by appropriate evidence, I believe this should be a factor in determining similar and this application.*

*b) The Committee previously considered a similar application on this site. Since the last application a number of alterations have been made to address concerns and the material issues raised. I think it is now important that the Committee also consider this new application.*

Application No.      **19/00691/P**

Proposal              Erection of 1 house, double garage and associated works

Location              **Ground To The West Of Kiloran  
Ormiston  
Tranent  
East Lothian  
EH34 5DH**

Applicant             Mr and Mrs Allan and Janet Jemmett

Per                      Architectural Building & Design Consultants Ltd

RECOMMENDATION      Application Refused

#### PLANNING ASSESSMENT

This application relates to the western part of the property curtilage of the single storey detached house of 'Kiloran', set within its own large garden, located within an area of countryside to the east of Ormiston. The application site is bound to the east by the garden ground of 'Kiloran', to the north by agricultural land, to the west by the residential property of 'Landour' and its garden ground and to the south by the A6093 public road on the opposite side which lies agricultural land.

Planning permission was previously refused through application 91/00887/HIS\_P in June 1992 for the erection of a single storey house with living accommodation in the roofspace and garage on the current application site.

Planning permission was subsequently refused through application 18/00636/P in August 2018 for the erection of a single storey house with living accommodation in the roofspace and garage and associated works on the west part of the curtilage of 'Kiloran' being the current application site and the same application site as that which was the subject of application 91/00887/HIS\_P.

Through this current application planning permission is now sought for the erection of a single storey house with living accommodation in the roofspace and garage and associated works on the west part of the curtilage of 'Kiloran' which is currently in use as a paddock ancillary to the domestic use of 'Kiloran'. The application site would be accessed off the A6093 public road off a new access which is to be formed. The application site which is the subject of this current application is the same as the application site which was the subject of planning application 91/00887/HIS\_P and 18/00636/P.

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 Development Plan 2018 (ELLDP).

There are no relevant policies of the approved South East Scotland Strategic Development Plan. Relevant to the determination of the application are policies DC1 (Rural Diversification), DC4 (New Build Housing in the Countryside), DC5 (Housing as Enabling Development), DP2 (Design), T1 (Development Location and Accessibility), and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

Also material to the determination of the application is Scottish Government guidance given in Scottish Planning Policy: June 2014.

The application site is in a countryside location within East Lothian and is part of a much larger area that is characterised by a low density dispersed built form within an agricultural landscape. It is not identified in the adopted East Lothian Local Development Plan 2018 as being within a settlement and the Local Development Plan does not allocate the land of the site for housing development.

Consequently, the principle of the erection of one house on the application site must be assessed against national, strategic and local planning policy relating to the control of new housing development in the countryside.

In Paragraph 76 of Scottish Planning Policy: June 2014 it is stated that Local Development Plans should make provision for most new urban development to take place within or in planned extension to existing settlements. Paragraph 81 states that in accessible or pressured rural areas, where there is a danger of unsustainable growth in long distance car based commuting or suburbanisation of the countryside, a more restrictive approach to new housing development is appropriate.

In Paragraph 83 it is stated that in remote rural areas, where new development can often help to sustain fragile communities, sustainable development that would provide

employment and that would support and sustain fragile and dispersed communities through provision of appropriate development should be supported.

It is stated in paragraphs 5.1 and 5.2 of the adopted East Lothian Local Development Plan 2018 that while the LDP's spatial strategy guides the majority of new development to existing settlements in the interests of promoting sustainable travel patterns, it also seeks to support the diversification of the rural economy and the ongoing sustainability of the countryside and coast through support in principle for agriculture, horticulture, forestry and countryside recreation, as well as other forms of appropriate business, leisure and tourism developments. New rural development should be introduced sensitively to avoid harming the characteristics that attract people to live, work and visit East Lothian's countryside and coast.

Paragraph 5.10 of the adopted East Lothian Local Development Plan 2018 states that the LDP has a general presumption against new housing in the countryside but exceptionally a new house may be justified on the basis of an operational requirement of a rural business. In such circumstances, appropriate evidence clearly demonstrating the need for a new dwelling on the particular site in association with the business will be required. Such evidence should include that no suitable existing dwelling has been recently made unavailable for that purpose and that there is no existing building that could be converted to a house.

Policy DC1 sets out specific criteria for new development in the countryside, stating that there will be support in principle for new development where it is for agriculture, horticulture, forestry or countryside recreation; or other businesses that have an operational requirement for a countryside location, including tourism and leisure uses.

Policy DC4 sets out specific criteria for the erection of new build housing in the countryside, and allows for new build housing development in the countryside where the Council is satisfied that a new house is a direct operational requirement of an agricultural, horticultural, forestry or other employment use. Policy DC4 also allows for other small scale housing proposals that form a logical addition to an existing small scale rural settlement where they are promoted for affordable housing and evidence of need is provided and the registered affordable housing provider will ensure that the dwelling(s) will remain affordable for the longer term.

Policy DC5 sets out specific criteria for the exceptional circumstances where the erection of housing as enabling development in the countryside may be supported. Any such new housing development in the countryside should: (a) enable a desirable primary use supported in principle by criterion by Policy DC1 and the benefits of the primary use outweighs the normal presumption against new build housing in the countryside; or (b) fund the restoration of a listed building or other buildings of recognised heritage value, or other significant designated feature of the built or natural environment, the retention of which is desirable, and should satisfy the terms of Policies CH1 and where relevant CH6, and can be clearly demonstrated to be the only means of preventing the loss of the asset and secure its long-term future; and (c) the proposal satisfies the terms of Policy NH1. In all cases, the benefits of the proposed development must outweigh the normal presumption against new build housing development in the countryside.

On the matter of Policy DC5, the principle of the erection of one house on the application site is not promoted to enable a desirable primary use supported in principle by criterion b of Policy DC1. Thus, there are no benefits of such a primary use that would outweigh the normal presumption against new build housing in the countryside. Nor is the principle of the erection of one house on the application site promoted to

fund the restoration of a listed building.

Although the application site is adjacent to two existing residential properties, these houses are not defined as a settlement in the adopted East Lothian Local Development Plan 2018. Rather it is defined as being within the countryside. These existing houses and buildings are not new build development but are existing houses which are long established in their countryside location and which are part of the character and appearance of the area. Moreover, whilst the application site is situated to the west of the residential property of 'Kiloran' and to the east of the residential property of 'Landour' the erection of a house on the site would not be an addition to a settlement or an addition adjoining the edge of a settlement. Rather, it would constitute sporadic development in the countryside. There is no agricultural or other employment use presently in operation to justify the need for a new house on the application site. The applicant has not advanced any such case of justification of need for the principle of the proposed new house.

The applicant's agent has however submitted a supporting statement with the application explaining that 'the applicants have lived at 'Kiloran' for twenty five years and wish to continue living there. Mr Jemmett unfortunately has a degenerative disease and as his illness progresses he will require additional care. With the onset of time, Mrs Jemmett requires additional help from her family to provide sufficient round the clock care for her husband. To allow for the applicants to continue living in their own home, this additional help with care comes from their daughter and son in law, however they currently live in Pencaitland and to provide an appropriate level of care need to be in the immediate vicinity. It is therefore proposed that the site to the west of 'Kiloran' be developed to provide a single dwelling for family members to be in close proximity to the applicants. It should also be noted that the applicant's daughter and son in law currently live in a house which was bought from East Lothian Council where the opportunity arose. This is a 4 bedroom house which the applicant's son in law has lived in for 51 years. Should planning permission be granted for the proposed new house, the family would be willing to sell this house back to the Council to allow for an affordable house to become available'.

One letter of objection has been received to the application. The main grounds of objection are:

- i) there has been two previous applications for an almost identical proposal refused on the application site and the reasons for those applications being turned down are still valid;
- ii) the proposed development does not comply with Policy DC1;
- iii) unsuitable access, resulting in loss of residential amenity and real risk to life;
- iv) cesspit located towards the rear part of the garden of the proposed house and the existing outflow pipe would not be able to take the outflow from another cesspit;
- v) highly unlikely that existing water and electricity supplies would be adequate for a third house;
- vi) detrimental impact on residential amenity of neighbouring property;
- vii) proposed development would lead to the loss of valuable green space and would completely destroy the character and nature of the site.
- viii) the applicants acknowledge in their supporting planning statement that their application does not comply with local planning policy but seek to justify the application on the grounds of the applicant's personal health circumstances. The objectors sympathise with the personal circumstances of the applicant but this does not justify the building of a four bedroom dwelling with garage.

The proposed house to be erected on the site is the same as that which was refused planning permission through previous planning application 18/00636/P, the proposed house being a detached, single storey in height house with pitched roof with living accommodation within the roofspace. The proposed house would have a ridge height of some 3.3 metres and would measure, at most some 18 metres by 12 metres. A detached double garage is proposed to be located in the north east corner of the new house plot. The garage would measure, at most some 6 metres by 6 metres, it would have a pitched roof with a ridge height of some 5.4 metres. The proposed house would be finished in white render with the roof clad with grey interlocking rooftiles and the windows and doors would be UPVC framed. The front elevation (south) of the building would have a number of openings including a front door, 4 windows, 4 floor to ceiling windows, a glazed patio door, 6 roof windows and 12 solar panels on the roof slope. The house would have a glazed patio door, glazed bi-folding 4 pane door, 2 windows, 2 floor to ceiling windows and 6 roof windows within the roof slope on the rear elevation (north). The west elevation (side) would have 1 window, 3 floor to ceiling windows and 6 solar panels on the roof slope with the east elevation (side) having 2 floor to ceiling windows. The south (front) and west (side) elevations of the house would feature timber clad Siberian larch elements on the gables. It is proposed that a new vehicular access some 3 metres wide be formed on the southern boundary of the application site off the A6093 public road to serve a new tarmac driveway which would provide vehicular access to a parking, turning area and detached double garage located within the site. The new access would be formed through the formation of a new access over an existing grass verge, to the south of the application site, between the A6093 public road and the existing private access road which serves the existing residential properties of 'Kiloran' and 'Landour'. It is proposed that two paved patio areas and a paved pedestrian access path from the tarmac drive to the front door of the house be formed. The boundaries of the proposed house plot would be enclosed along the west boundary by the existing close boarded timber fence, the north boundary being defined by an existing post and wire fence, the south boundary by the existing post and wire fence and hedge and with the east boundary between the proposed house plot and the existing house of 'Kiloran' being delineated by a new 1.2 metres high post and wire fence. The proposed house would comprise of an entrance hall, study/bedroom, bedroom, bathroom, large open plan kitchen/dining/living room and a sunroom at ground floor level with a further 2 bedrooms each with an en-suite being provided at first floor level. The position of both the proposed house and garage have been amended from that shown on the scheme of development which was refused planning permission through previous application 18/00636/P with the proposed house being relocated slightly to the north within the application site such that it at its closest point it would be some 8 metres from the northern boundary of the site, some 5.3 metres from the western boundary, some 12 metres from the eastern boundary and some 16.5 metres from the southern boundary. The proposed garage is now positioned within the north east corner of the application site such that at its closest point it would be some 4 metres from the northern boundary, some 0.7 metres from the eastern boundary, some 26 metres from the southern boundary and some 28.5 metres from the western boundary.

The existing house 'Kiloran' located to the east of the application site is a single storey detached house while the neighbouring property to the west of the application 'Landour' is a single storey detached house with living accommodation within the roofspace. The proposed house being a single storey detached house with living accommodation within the roofspace would by virtue of its scale, design and materials be inkeeping with the residential properties to the west and east of the application site and given its proposed positional relationship with the neighbouring residential properties to the west and east would not result in harmful overlooking, loss of privacy or loss of sunlight and daylight of the neighbouring properties and such that the occupants of the proposed

house would also be provided with sufficient privacy and amenity.

On these principles of development, the proposal to build a house on the application site would not conflict with the aims and objectives of Policy DP2 of the adopted East Lothian Local Development Plan 2018. However, these material considerations of the principles of design, loss of sunlight and daylight and privacy and amenity do not provide sufficient justification to grant planning permission for the principle of erecting a house on the site contrary to the other relevant policy provisions of the development plan in the form of Policies DC1, DC4 and DC5 of the adopted East Lothian Local Development Plan 2018 and Scottish Government policy guidance regarding the control of new housing development in the countryside given in Scottish Planning Policy: June 2014.

The application site is currently an area of undeveloped paddock ground within the western part of the curtilage of the existing house 'Kiloran'. A large number of mature trees are currently situated on the application site which occupies a countryside location.

The Council's Landscape Officer has advised that he has had previous discussions with the agent in respect of the necessary standards relating to tree root protection. The Council's Landscape Officer advises that the submitted drawing 'Tree root protection area plan' drawing number 08 dated 01/07/2019 by Architectural Building & Design Ltd has identified the construction exclusion zone correctly, which must be protected by temporary protective fencing in accordance with BS 5837:2012 "Trees in relation to design, demolition and construction". Other smaller less significant trees are shown to be removed to accommodate the development with the exception of tree T9, which is too close to the existing septic tank. The Council's Landscape Officer states that he is aware that this application was previously refused; however, if this application is now to be put forward for approval, he would recommend that a planning condition in relation to safeguarding the retained trees be imposed on any grant of planning permission. This matter could be controlled through a condition of a grant of planning permission.

The application site is within a Coal Authority Development High Risk Area. In such areas there are existing recorded risks to the ground stability which need to be assessed and mitigated as part of the new development proposals in the interests of public safety. The Coal Authority's Guidance for Scottish Planning Authorities: 2017 clearly states that any planning application for development which intersects the ground in the Development High Risk Area requires a desk based Coal Mining Risk Assessment and once this has been provided, consultation with the Coal Authority. A Coal Mining Risk Assessment Report has been submitted by the applicant with the application. The Coal Authority have been consulted on the application and advise that the Coal Authority concurs with the recommendations of the Coal Mining Risk Assessment Report submitted, that coal mining legacy potentially poses a risk to the proposed development and that intrusive site investigations works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site. The Coal Authority does not object to the planning application subject to the imposition of a condition on any grant of planning permission requiring prior to the commencement of development (i) the undertaking of a scheme of intrusive site investigations which is adequate to properly assess the ground conditions and the potential risks posed to the development by past coal mining activity; (ii) the submission of a report of findings arising from the intrusive site investigations, including details of any remedial works necessary for approval; (iii) implementation of those works. This matter could be controlled through a condition of a grant of planning permission.

The Council's Contaminated Land Officer has advised that the application site is in close proximity to the former Woodhall Colliery and railway siding and historically buildings occupied the site, given this there may be localised deposits of made ground associated with the former buildings (demolition rubble) and potentially from the nearby Colliery spoil. Investigation and mitigation to ensure that a suitable geo-environmental assessment of the site is carried out prior to the development of the site could be controlled by a condition, should planning permission in principle be granted.

The Council's Environmental Protection Manager has no adverse comment to make on the application, being satisfied that the development would not have an adverse impact on any neighbouring land uses.

The Council's Road Services advise that this application is for a new dwelling house at 'Kiloran', Ormiston. A previous application 18/00636/P was submitted and considered for the same site. For this previous application road services objected to the application due to the existing access onto the A6093 not being suitable for increased traffic. The current application provides an updated access arrangement which allows vehicles to enter and exit perpendicularly to the A6093, and the appropriate visibility splay to be achieved. As such the Council's Road Services raise no objection to the proposal being satisfied that it would not have an adverse impact on pedestrian or road safety, subject to conditions being imposed on any grant of planning permission relating to the provision of the required access and visibility splay.

The applicant's agent has submitted a supporting statement with the application which seeks to justify the requirement for a new house on the grounds that the current owner/occupier of the property 'Kiloran' has a degenerative disease which could potentially lead to him requiring round the clock care. While the health condition of the applicant is unfortunate it is not a material planning consideration in the determination of this planning application.

No case has been made for the proposed house to meet an agriculture, horticulture or forestry need. No other operational need has been advanced to justify the erection of a house on the application site in this countryside location such that the proposal is contrary to Policies DC1 (Rural Diversification), DC4 (New Build Housing in the Countryside) and DC5 (Housing as Enabling Development) of the adopted East Lothian Local Development Plan 2018 and Government policy guidance regarding the control of new housing development in the countryside expounded in Scottish Planning Policy: June 2014.

Furthermore, if approved the proposal would set an undesirable precedent for the development of new houses in the countryside, the cumulative effect of which would result in a detrimental impact on the rural character of the open countryside in East Lothian.

In conclusion there are no material planning considerations that outweigh the fact that the proposed development is contrary to Policies DC1, DC4 and DC5 of the adopted East Lothian Local Development Plan 2018 and Government policy guidance regarding the control of new housing development in the countryside expounded in Scottish Planning Policy: June 2014.

## REASONS FOR REFUSAL:

- 1 The erection of a house on the application site would be new build housing development in the countryside of East Lothian for which a need to meet the requirements of the operation of an agricultural, horticultural, forestry, countryside recreation, or other business, leisure or tourism use has not been demonstrated, and which is not proposed as affordable housing development of an existing rural settlement. The proposal is therefore contrary to Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018.
- 2 The erection of a house on the application site would be new build housing development in the countryside of East Lothian for which a desirable primary use supported in principle by criterion b of Policy DC1 and with benefits that outweigh the normal presumption against new build housing in the countryside has not been demonstrated; and which is not promoted to fund the restoration of a listed building, building of recognised heritage value or significant designated feature of the built or natural environment, the retention of which is desirable. The proposal is therefore contrary to Policy DC5 of the adopted East Lothian Local Development Plan 2018.
- 3 If approved the proposed development would set an undesirable precedent for the development of new houses in the countryside of East Lothian, the cumulative effect of which would be the suburbanisation of the countryside to the detriment of its character and amenity.