

REPORT TO: Planning Committee

MEETING DATE: Tuesday 4 February 2020

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Application No. **19/01134/PM**

Proposal Removal of condition 17 of planning permission 16/00393/PM

Location **Pinkie Mains
Pinkie Road
Musselburgh
East Lothian
EH21 7TY**

Applicant Taylor Wimpey East Scotland

Per Burness Paull LLP

RECOMMENDATION Application Refused

REPORT OF HANDLING

PROPOSAL

As the area of the application site is greater than 2 hectares, the development proposed in this application is, under the provisions of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, defined as a major development and thus it cannot be decided through the Council's Scheme of Delegation. The application is therefore brought before the Planning Committee for a decision.

In March 2017 planning permission (Ref: 16/00393/PM) was granted for the erection of 74 houses, 24 flats and associated works on the southern part of the 23.9 hectares Pinkie Mains housing site.

Planning permission was granted subject to the imposition of 18 conditions. Condition 17 of that planning permission states:

"The external remote footpath on the southern site boundary that is referred to locally as "The Drift" shall be constructed to an adoptable standard including street lighting along the extent of it between Pinkie Terrace and the East Coast Main Line under bridge. Connections shall also be provided to this route from the 2 cul-de-sacs at the southern tip of the development.

Within one month from the date of this planning permission, details of the works to "The Drift" footpath, including a timetable for their implementation, shall be submitted to and approved by the Planning Authority. Development shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interest of road safety".

Planning permission is now sought for the deletion of condition 17 to remove the requirement to undertake the required footpath construction works relating to "The Drift Footpath".

DEVELOPMENT PLAN

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.

There are no policies of the approved South East Scotland Strategic Development Plan (SESplan) relevant to the determination of this application.

Within the adopted East Lothian Local Development Plan 2018 Policies T1 (Development Location and Accessibility), T2 (General Transport Impact) and T4 (Active Travel Routes and Core Paths as part of the Green Network Strategy) are relevant to the determination of this application.

Also relevant to the determination of this application is Scottish Planning Policy: June 2014, Scottish Government Planning Advice Note 67: Housing Quality and Scottish Government Planning Circular 4/1998 (the use of conditions in planning permissions).

REPRESENTATIONS

A total of 58 written representations to the application have been received, all of which raise objections to the proposals. Copies of the written representations are contained in a shared electronic folder to which all Members of the Committee have access.

The main grounds of objection in respect of the proposed development are summarised below:

- * Applicants contradict themselves, arguing it is not clear where "The Drift" path is located, despite being able to identify Route 170 on the Core Paths Plan;
- * Applicants should have submitted their plans to meet Condition 17 or any objections/applications for removal within a month of the date the Decision Notice for planning permission (Ref: 16/00393/PM) being issued, rather than at this late stage of development;
- * Applicants argue that they can only work on land that they own which is not the case;
- * Applicants misled customers prior to purchase of houses, as well as East Lothian Council as planning authority;
- * New homes were priced on a number of factors, one of them being ease of the commute and proximity to public transport;
- * Applicants argue that Condition 17 "not necessary". For residents, the Planning Authority,

and the Local Community, Condition 17 is a matter of critical importance in providing quick and safe access to the new Primary School and future Secondary School in Wallyford as part of East Lothian's Core Path Network;

reducing the number of children and young people using traffic heavy zones in the vicinity, increasing road safety and minimising preventable accidents;

providing excellent and safe public transport connectivity to residents in Almond Park and adjacent areas, reducing the time it takes to reach Wallyford station from the top of Clark Avenue by about two thirds;

encouragement for people to reduce car use, decreasing associated carbon footprint and alleviating impact on adjacent roads, increasing resident's wellbeing and air pollution;

provision of traffic free connectivity between Almond Park and Wallace Crescent/Wallace Avenue development in Wallyford, creating a safe corridor for people to visit Wallyford high street and services without the need to use car;

increased amenity value of the area;

increased general safety of the area and deter any illegal activity, as currently the pathway ends abruptly at the East Coast Main Line under the bridge; and

support for Scottish Governments green policy.

* Applicants have not requested clarification on any point of the Condition, nor presented a viable alternative to it, prior to requesting its removal;

* Reference to no requirement for upgrade of the Drift Path within masterplan or original planning application back in 2011 irrelevant in the context of Planning Application 16/00393/PM and Condition 17;

* meeting requirements of Condition 17 is not a complex or expensive job for applicant;

* path known as 'The Drift' will be an essential artery to walk or cycle to and from Wallyford Station, and indeed the new High School when it is complete; and

* provision of upgraded footpath is fundamental to achieving a development that is aligned with East Lothian's Strategic Plan.

COMMUNITY COUNCIL COMMENTS

Musselburgh and Inveresk Community Council have not provided any comments on this application.

PLANNING ASSESSMENT

The 74 houses and 24 flats approved by planning permission 16/00393/PM are being built on the southern part of the 23.9 hectares Pinkie Mains housing site. The Pinkie Mains site is allocated for a total of 580 residential units by Proposals MH6 and MH7 of the adopted East Lothian Local Development Plan 2018. Planning permission (Refs: 08/1090/OUT, 11/00974/AMM, 12/00559/AMC, 13/00636/AMC, 16/00392/P and 16/00393/PM) has already been granted for the erection of a total of 571 residential units on that allocated site, and most of those residential units are built and occupied.

Condition 17 of planning permission 16/00393/PM relates to an informal footpath, referred to locally as "The Drift", which is on the southern boundary of the site the subject of that planning

permission, and which runs between Pinkie Terrace, Musselburgh and a point which crosses under the East Coast Main Rail Line. It states:

“The external remote footpath on the southern site boundary that is referred to locally as "The Drift" shall be constructed to an adoptable standard including street lighting along the extent of it between Pinkie Terrace and the East Coast Main Line under bridge. Connections shall also be provided to this route from the 2 cul-de-sacs at the southern tip of the development.

Within one month from the date of this planning permission, details of the works to "The Drift" footpath, including a timetable for their implementation, shall be submitted to and approved by the Planning Authority. Development shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interest of road safety”.

No such detail or timetable for implementation has been submitted to the Planning Authority for approval.

This application follows on from investigations by the Councils Planning Enforcement Officer into an alleged breach of condition 17.

The applicant's agent has submitted a statement in support of the application, in which they advise that they are not able to comply with condition 17. They state that condition 17 of planning permission (Ref: 16/00393/PM) fails the tests set out in Scottish Government Planning Policy (Circular 4/1998).

Circular 4/1998 states that planning conditions should only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects.

The submitted statement in support of the application states that condition 17 is unenforceable as the land in question is outwith the red line boundary of the site consented within planning permission 16/00393/PM and is not in the ownership of the applicant who therefore has no powers to implement the requirements of condition 17.

The submitted statement further states that condition 17 is unreasonable as a consequence of it being unenforceable.

The submitted statement in support of the application states that the requirement within condition 17 to construct the external remote footpath is not necessary as the footpath in question has not been identified as infrastructure necessary to make development at this site acceptable within either East Lothian Councils Local Development Plan or within previous grants of planning permission relating to the site at Pinkie Mains.

The submitted statement also states that condition 17 is not precise in identifying either the location of the external remote footpath on the southern boundary of the site at Pinkie Mains referred to locally as "The Drift", or in substantiating how the upgrading of the path will serve the interests of road safety.

It is necessary to determine this application in accordance with the development plan, unless material considerations indicate otherwise. It is also necessary to consider whether the condition in question meets the 6 tests in Circular 4/1998.

Policy T1 of the adopted East Lothian Local Plan 2018 requires that new developments be

located on sites that are capable of being conveniently and safely accessed on foot and by cycle, by public transport as well as by private vehicle.

Policy T2 states that new development must have no significant adverse impact on:

- * Road safety;
- * The convenience, safety and attractiveness of walking and cycling in the surrounding area;
- * Public transport operations in the surrounding area, both existing and planned, including convenience of access to these and their travel times;
- * The capacity of the surrounding road network to deal with traffic unrelated to the proposed development; and
- * Residential amenity as a consequence of an increase in motorised traffic.

Where the impact of development on the transport network requires mitigation this will be provided by the developer and secured by the Council by planning condition and / or legal agreement where appropriate.

Policy T4 states that the Council will protect its existing core path and active travel networks and ensure that new development does not undermine them, including the convenience, safety and enjoyment of their use.

One of the main 'Outcomes' of Scottish Planning Policy is to create successful, sustainable places by supporting sustainable economic growth and regeneration, and the creation of well-designed, sustainable places.

Scottish Planning Policy highlights that new housing developments should be integrated with public and active travel networks, such as footpaths and cycle routes, rather than encouraging dependence on the car. There should be connectivity between new and existing streets with walking and cycling networks, and allow for links into future areas of development. In paragraph 228 it is also stated that local development plans should safeguard access rights and core paths, and encourage new and enhanced opportunities for access linked to wider networks.

Planning Advice Note 67 (PAN 67) explains how Designing Places should be applied to new housing. In PAN 67 it is stated that the planning process has an essential role to play in ensuring that, amongst other things, new housing is integrated into the movement and settlement patterns of the wider area.

PAN 67 further advises that the creation of good places requires careful attention to detailed aspects of layout and movement and that developers should think about the qualities and the characteristics of places and not consider sites in isolation. New housing should take account of the wider context and be integrated into its wider neighbourhood.

“The Drift” footpath is located immediately to the south of the housing site approved by planning permission 16/00393/PM. It currently provides informal pedestrian access between Pinkie Terrace, to the west of the application site and the East Coast main railway line underbridge that is located to the southeast of the housing site. A hard surfaced footpath, which is some 2.0 metres in width and which is lit, provides a convenient route for pedestrians and cyclists between the underpass and Wallyford Train Station and recreation Ground. There are also pedestrian links to other parts of the village of Wallyford.

It is clearly the applicant’s intention that the “Drift” footpath will be used by residents of the new housing, as footpath links have been formed between the housing site and the footpath. It is likely to be well used by new residents, both for recreation and as a convenient and safe means of accessing the village of Wallyford, including its train station and recreation ground

that can both be accessed by pedestrians in less than fifteen minutes. In time, it would also form a potential new route to the proposed High School in Wallyford. The Council's School Estates Planning Officer confirms that the new housing is in the Pinkie catchment area which will feed into the new Wallyford secondary school once it is built.

In all of this, condition 17 is seeking to deliver the policy ambitions of Policies T1, T2, T4, Scottish Planning Policy and PAN67 in relation to the convenience, safety and attractiveness of walking in the area, encouraging new and enhanced opportunities for access linked to wider networks, and integrating new housing into its wider neighbourhood.

Both the Council's Access Officer and the Council's Road Services recommend refusal of this application, as they consider that the upgrading of the footpath is essential in order to facilitate enhanced opportunities for access linked to wider networks. In this regard, and in terms of Circular 4/1998, it is necessary to impose condition 17. Condition 17 is also necessary to ensure that development approved within that planning permission does not undermine an existing core path, including the convenience, safety and enjoyment of its use.

Circular 4/1998 also states that, amongst other things, conditions should only be imposed where they are precise. In this case condition 17 is precise, as the framing of it ensures that the condition is enforceable. In this, the condition clearly defines the extent of footpath that requires to be upgraded (i.e. the external remote footpath on the southern site boundary that is referred to locally as "The Drift" between Pinkie Terrace and the East Coast Main Line under bridge) as well as what the upgrading requires to consist of (i.e. constructed to an adoptable standard including street lighting, with connections to be provided to this route from the 2 cul-de-sacs at the southern tip of the development). Moreover the framing of it sets out a mechanism for requiring when the works will be carried out (i.e. within one month from the date of this planning permission, details of the works to "The Drift" footpath, including a timetable for their implementation, shall be submitted to and approved by the Planning Authority. Development shall thereafter be carried out in accordance with the details so approved).

Circular 4/1998 also states that, amongst other things, conditions should only be imposed where they are enforceable. The applicant argues that they do not own the land on which "The Drift" is constructed and therefore has no power to ensure compliance with the second paragraph of Condition 17.

However it is common for planning authorities to impose conditions requiring new or upgraded footpath links on land outwith an application site and, on occasion, on land outwith the ownership of the applicant.

This approach is endorsed by Circular 4/1998, which states that it is the case that a planning authority may impose conditions regulating the development or use of land even if it is outside the site which is the subject of the application. Indeed Circular 4/1998 advises that the Courts have held that the question whether land is under the control of an applicant is a matter to be determined according to the facts of the particular case. It is only necessary to have such control over the land as is required to enable the developer to comply with the condition. In this case, the applicant would have been in no doubt that before development commenced there was a requirement to submit details of the works to "The Drift" footpath, including a timetable for their implementation. Those works were then to be implemented in accordance with the timetable so approved.

Condition 17 is necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. There is therefore no justification for the removal of condition 17.

RECOMMENDATION:

It is recommended that planning permission be refused for the following reason:

- 1 The construction works to the external remote footpath on the southern site boundary that is referred to locally as "The Drift" are necessary to ensure a convenient and safe means for new residents to access the village of Wallyford, including its train station and recreation ground, and, in time, the proposed High School in Wallyford.