



**MINUTES OF THE MEETING OF THE  
PLANNING COMMITTEE**

**TUESDAY 4 FEBRUARY 2020  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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**Committee Members Present:**

Councillor N Hampshire (Convener)  
Councillor L Bruce  
Councillor J Findlay  
Councillor N Gilbert  
Councillor S Kempson  
Councillor K Mackie  
Councillor C McGinn  
Councillor K McLeod  
Councillor J McMillan  
Councillor F O'Donnell  
Councillor J Williamson

**Other Councillors Present:**

Councillor A Forrest

**Council Officials Present:**

Mr K Dingwall, Service Manager – Planning  
Mr D Taylor, Planning Officer  
Ms J McLair, Planner  
Ms J Mackay, Senior Communications Adviser  
Mr R Yates, Transportation Planning Office

**Clerk:**

Ms A Smith

**Visitors Present/Addressing the Committee:**

Item 2 – Mr A Sutherland, Ms K Nicoll  
Item 3 – Dr G Rintoul

**Apologies:**

Councillor W Innes

**Declarations of Interest:**

None

**1. MINUTES FOR APPROVAL – PLANNING COMMITTEE**

The minutes of the meetings of the Planning Committees held on 18 December 2019 and 14 January 2020 were approved.

**2. PLANNING APPLICATION NO. 19/01134/PM: REMOVAL OF CONDITION 17 OF PLANNING PERMISSION 16/00393/PM AT PINKIE MAINS, PINKIE ROAD, MUSSELBURGH**

A report was submitted in relation to Planning Application No. 19/01134/PM. David Taylor, Planning Officer, presented the report, summarising the key points. The report recommendation was for refusal.

In response to questions from Members, Mr Taylor clarified that there had been no contact from the developer until investigation by the Enforcement Officer due to the breach of condition. On the issue of diverting water from “The Drift”, he advised that if the path was constructed to appropriate adoptable standards this would be dealt with by run offs. He clarified that all paths were looked at as part of the wider path network. On ownership of the land, he indicated that no details had been submitted with the application so ownership was unknown. Keith Dingwall, Service Manager – Planning, stressed that the key question before Members was whether the condition in question met the 6 tests in Scottish Government Planning Policy (Circular 4/1998), including whether it was necessary and whether it was enforceable.

Alasdair Sutherland of Burness Paull LLP, agent for the applicant, informed Members that ownership was the key issue; the applicant did not own the land. Condition 17 sought to put an obligation on someone who did not own the land; this was invalid, unenforceable, unreasonable, and against planning law. On enforceability, he said that the report did not address the critical question of how the applicant had control of the land. As regards necessity, this was pegged to the school in Wallyford, which was a future, not a present need. He added that there were other paths in the vicinity.

Mr Sutherland responded to questions. He clarified that the applicant had had discussions with Planning Officers 6/9 months ago but these had stalled and then enforcement action taken. He stated that it was not until April 2019 that the applicant knew about this condition, there was no discussion about this prior to planning permission being granted in 2017. On queries about whether the developer reviewed the conditions attached to the grant of planning permission before works commenced, the necessity for this path, if there was an assumption by people moving into this area that the path would be upgraded and the cost of the work, Mr Sutherland indicated he was unable to comment. He added that many of the points raised were not relevant to this application.

Mr Dingwall informed Members that he had been the case officer in 2017 and had worked very closely with the developer. Responding to Mr Sutherland’s comments he said that every housing developer, if there was an issue with any condition, would normally discuss this with officers and conditions would be altered if required before an application came to the Planning Committee. Other developers would challenge a condition at the Planning Committee for their development. There had been no contact from the developer. The Council was unaware there were ownership issues until April 2019. On enforceability, a control condition could be imposed relating to land outwith the red line boundary and also on land outwith an applicant’s ownership. As regards necessity, in the Council’s opinion this path was necessary. He said that if Members were so inclined, this application could be continued to determine the issue of ownership. Regarding the cost, a definitive figure could not be given but the Access Officer and Road Services had given an approximate figure of £200,000 for the entire upgrade works.

Kaye Nicoll spoke against the application. She informed the Planning Committee that one of the reasons she had moved to this estate 2 years ago was because Taylor Wimpey had said there would be a path to the railway and to Wallyford School. She had previously lived in Wallyford and “The Drift” path was an easy way to get to/from Musselburgh. Currently she had to cross 12 roads to get from her home to the school in Wallyford. Some of these roads were not safe for children to cross themselves. When the new secondary school was built all the children from this estate would be walking to this school. The path was needed for the safety of children and for ease of getting to/from Wallyford. It was also important in terms of reducing the use of transport and reducing the carbon footprint.

Local Member Councillor Mackie expressed disappointment that the developer was not prepared to proceed with this pathway. She felt that Ms Nicoll had made some very good points; there was a need for this pathway. She supported the officer’s recommendation.

Local Member Councillor Forrest, not a member of the Planning Committee, agreed that the attitude of Taylor Wimpey was disappointing. He referred to the 2017 application, stating there was an awareness then that there would be a safe route to school.

Local Member Councillor Williamson expressed disbelief that an organisation of Taylor Wimpey’s size had not looked at the conditions attached to the 2017 grant of planning permission. He agreed with colleagues and Ms Nicoll; this path was needed.

Councillor McGinn shared concerns expressed. It was disappointing that someone from Taylor Wimpey was not present to answer questions. Members had to take a stand when developers did not comply with conditions attached to a grant of planning permission. He agreed with Ms Nicoll’s comments. He would be supporting the report recommendation.

Councillor Gilbert agreed. He referred to the evidence provided by the 58 representations submitted against removal of this condition; the Committee should heed this.

Councillor Bruce, referring to the question of necessity, stated there was a very strong need for this path. He would be supporting the recommendation in the report.

Councillor McMillan stated that the condition had been accepted in 2017. There was an issue regarding compliance and enforcement. He was not in favour of continuation. He supported the recommendation and hoped the applicant would take on board the wider environmental and community issues.

Councillor O’Donnell stressed that there was a necessity now for this path, referring to Ms Nicoll’s comments about the path being a key factor in her decision to move to this development. The Council had a commitment to residents where a core path was needed.

Councillor Findlay supported colleagues’ comments. He felt that the issue of ownership was not a reason to go against the recommendation. He was also not in favour of continuation.

The Convener brought the discussion to a close. He referred to the number of representations submitted against removal of this condition. He would be contacting Taylor Wimpey regarding this; they needed to work in partnership with the Council and honour the conditions attached to the 2017 grant of planning permission. He moved to the vote on the report recommendation (for refusal):

For: 11  
Against: 0  
Abstentions: 0

## Decision

The Committee agreed to refuse planning permission 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.

### **3. PLANNING APPLICATION NO. 19/00692/PM: ERECTION OF BUILDING FOR VISITOR'S CENTRE/EXHIBITION/CAFE/SHOP AND ASSOCIATED WORKS AT MUSEUM OF FLIGHT, EAST FORTUNE**

A report was submitted in relation to Planning Application No. 19/00692/PM. Julie McLair, Planner, referring to points raised about badgers at the site visit, drew attention to condition 7, which stated that an Ecological Report would be carried out before any development work commenced. She advised that the Council's Biodiversity Officer had confirmed that a site walkover would be undertaken and if badger sets were found then works would not be permitted to start; there was separate legislation to deal with this. Members could be satisfied that the matter had been addressed. She then presented the report, summarising the key points. The report recommendation was to grant consent.

Ms McLair responded to questions. On the number of trees classified as mature, the Landscape Officer had indicated that 50 trees were classified as such. In respect of Policy NH8 and public benefit she stated that the expansion of tourism was the main benefit. Regarding vehicle movements she stated that this was an existing use to the site. On compensatory planting, she advised that the habitat, through compensatory planting, would be secured; she was not able to give planting classifications. The Landscape Officer had advised that it took 10 years for a tree to contribute and balance out its emissions. She clarified that 780 trees would be planted. In relation to retaining deadwood, condition 7 referred; the Biodiversity Officer would advise on the findings of the Ecological Report.

In relation to questions about the scheduled monument and comments from Historic Environment Scotland (HES), Ms McLair stressed that the consultee response from HES related solely to the application submitted. She highlighted the area of the scheduled monument site. A number of other sites had apparently been looked at but she stressed that officers could only determine the application as submitted. Mr Dingwall added that it was always difficult to obtain permission for any development on a scheduled monument site.

The Convener stated that it would have been helpful if the both Landscape Officer and the Biodiversity Officer had been present to answer questions from Members.

Gordon Rintoul of National Museums of Scotland (NMS), the applicant, informed Members that this was a key project. It would preserve historically important aircraft, create jobs for the county and have a significant role for the tourism economy of East Lothian and Scotland. Throughout the project the aim was to strike a balance and maintain the integrity of the scheduled monument. The National Museum of Flight (NMF) site was the best preserved WW2 airfield in the UK. There had been intensive discussions with HES over many years. This site was the only viable one; HES had been quite clear that they would not allow construction at any other point. Considerable work had been done with Council Officers and an Arboriculture Officer to protect Big Wood; none of the trees to be removed were protected and a large woodland belt would be created. The trees had to be removed to bring the aircraft into the new centre. Some of the aircraft wings could come off but not all. He reiterated the other public benefits of the proposal and that this was the only viable site.

Dr Rintoul and Gordon Gibb, from Hoskins Architects, responded to questions. Dr Rintoul clarified that the 40 jobs would be full time permanent posts. On use of the hangar currently housing Concorde being used as the new visitor centre he said the hangar was not large enough. Regarding the field to the west, he advised that this was owned by a neighbouring farmer; discussions had not taken place with him because HES stated they would not accept a building there as it would be visible from the scheduled monument. Mr Gibb added that the key consideration was the setting of the scheduled monument; the field was very visible. On the impact if planning permission was not granted, Dr Rintoul said that no new jobs would be created, and, if the building could not be done then the aircraft would probably have to be scrapped; there was not another viable option. Regarding how HES would respond if they had to take account of a climate emergency, he said he could not speak for HES but stressed that NMS was committed to creating a new woodland area with over 1,000 plants and 780 trees. He clarified that the NMF site was part of the scheduled monument, he outlined the area of the scheduled monument site. Mr Gibb outlined the considerations used by HES when assessing an application against their criteria. On the merits of the compensatory planting Dr Rintoul referred to advice from the Council's Landscape Officer and from their own Arboriculture Officer on carbon sequestration analysis.

In relation to queries about aircraft being left outside to degenerate Dr Rintoul stated that any aircraft outdoors, no matter what measures were taken, would suffer damage; these were historic aircraft and could not be preserved for the long term outdoors. On other options for containing/covering the aircraft such as transparent housing, he said that various options had been looked at; that particular suggestion would not be allowed by HES, it would be visually unacceptable as it would have an impact on the scheduled monument.

Councillor Findlay asked, if permission was granted, if an additional condition would be accepted by NMS to ensure as much of the planting was done before the aircraft were moved. Mr Gibb said that a substantial bank of woodland could be there before the planes were moved. Dr Rintoul added that they would be happy to do this. Councillor Findlay then proposed that additional condition; Councillor Kempson seconded this. Mr Dingwall advised that condition 4 could be amended, outlining the wording.

Responding to questions about the relationship between NMS and HES Dr Rintoul said there was a good working relationship between the organisations; he said the role of HES was to uphold the legislation in relation to scheduled monuments. He also replied to queries about the access road, improving transport links and working with other tourist organisations.

Opening the debate, Local Member Councillor Findlay referred to the conflicting arguments. He could see the tourism benefits, the NMF was very important to East Lothian and the extra jobs would be welcomed. However he felt that cutting down trees for the temporary purpose of getting aircraft into the hanger was not acceptable. He had other issues with the proposed location and would encourage the NMS to go back to HES for further dialogue specifically about the site to the west. He would not be supporting the recommendation.

Councillor McMillan stated that this proposal was about preserving the aircraft heritage of East Lothian and educating future generations. Also, as Dr Rintoul had said, this site was the most appropriate and only viable site. The proposal had been amended so that the Big Wood trees should not be affected. Rewilding was a good idea and with good planning this would be a sustainable place. This application would create jobs and showcase East Lothian's history; it would be of public benefit. He would be supporting the application.

Councillor O'Donnell stressed it was important during these debates that the environment was not seen as the enemy of economic development. However, taking into account the Council's decision to declare a climate emergency she had concluded that the loss of these trees was a price not worth paying. She would not be supporting the application.

Councillor Gilbert remarked that he had no problem with the large hangar but he did object to its proposed location and the resulting destruction of so many trees. Referring to the climate emergency he stressed that consideration of biodiversity had to be prioritised. Big Wood and Sunnyside Strip had to be protected. He would not be supporting the application.

Councillor McLeod said that the jobs created would be welcome however the loss of 299 trees was not acceptable. He would not be supporting the report recommendation.

Councillor McGinn stated that he would not be supporting the report recommendation to grant consent. This application was about competing demands. Further negotiation was needed with HES. The NMF was an important visitor attraction but it was crucial that the environment was protected for future generations.

Councillor Kempson supported colleagues' comments about preserving these trees. She felt there were other alternative sites available. She would not be supporting the application.

Councillor Bruce referred to the difficulty of weighing up commemoration of historical service and sustainability; creating sustainable places was important. However the NMF was very important to tourism in East Lothian. He would be supporting the recommendation.

Councillor Mackie agreed this was a difficult decision. She appreciated East Lothian's natural and historical heritage but supported Councillor Bruce's view. She felt that the replanting would eventually be compensatory. She would be supporting the application.

The Convener brought the discussion to a close. He referred to the key Policy, NH8, which did not support removal of trees unless there were essential reasons. He felt there was an alternative site for this proposal. He did support the NMF, they did excellent work for East Lothian and Scotland. However, on the basis that the Council had taken the decision to declare a climate emergency if Members did not protect this woodland they would be going against their own earlier decision. He urged NMS and HES to have further dialogue. He would not be supporting the recommendation in the report to grant consent.

The Convener asked Mr Dingwall to clarify the amendment to condition 4.

4 *Prior to commencement of development:*

*(a) a scheme of landscaping shall be submitted to and approved in writing by the Planning Authority. The scheme shall provide details of: the height and slopes of any mounding on or re-contouring of the site, tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development. The scheme shall include details of planting along the eastern boundary of the site along with details of the replanting area within the southern part of the site which should accord with the minimum replanting area as shown on Figure 2.1 Arboricultural Impact Assessment Drg. No. 10676-ARB-02 of the Arboricultural Impact Assessment and Arboricultural Method Statement dated December 2019 by Ecus Environmental Consultants.*

*(b) a timetable for the implementation of the scheme of landscaping approved by part (a) above shall be submitted to and approved in writing by the Planning Authority. The submitted timetable shall show the planting of at least some of the trees prior to the commencement of development.*

*Thereafter the approved scheme of landscaping shall be implemented in accordance with the timetable approved by part (b) below, unless otherwise agreed by the Planning Authority.*

*Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation. No trees or shrubs, detailed in the approved landscaping plans to be retained on the site, shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority.*

*Reason:*

*To ensure implementation and retention of landscaping important to the amenity of the wider area.*

The Convener moved to the vote on the report recommendation (to grant consent) with amended condition 4:

For: 3

Against: 8

Abstentions: 0

**Decision**

The Committee agreed to refuse planning permission for the following reason:

- 1 The development would result in the unacceptable loss of a significant number (299) of trees, to the detriment of the climate of East Lothian, and contrary to East Lothian's Climate Change Strategy.

Signed .....

Councillor Norman Hampshire  
Convener of the Planning Committee