

REPORT TO: Planning Committee
MEETING DATE: Wednesday 24 June 2020
BY: Head of Development
SUBJECT: Application for Planning Permission for Consideration

Application No. **19/01208/P**
Proposal Erection of chalet, shed and associated works (Retrospective)
Location **Hodges Farm
The Boggs
Pencaitland
Tranent
East Lothian
EH34 5BG**
Applicant Mr Ian Hodge

RECOMMENDATION **Application Refused**

REPORT OF HANDLING

PROPOSAL

The land the subject of this application is a roughly square shaped area of woodland measuring 0.01 hectares in size and is located within the countryside of East Lothian as designated by Policy DC1 of the East Lothian Local Development Plan 2018.

The site is within the ownership of the applicant and is located within an area of woodland known as Butterdean Wood. The wider woodland is bounded to the north by Hodges Farmhouse and garden, to the east by agricultural land, to the west by an existing private access road and public right of way and to the south by the U127 public road.

The nearest residential property to the application site is Hodges Farmhouse (the applicant) some 40 meters to the north. The property of Butterdean Cottage is some 108 meters to the northeast of the site, and those of numbers 1 and 2 Smuddle Ha are located some 100 meters to the south.

The site is accessed by a footpath from the garden ground of Hodges Farmhouse. There is no direct vehicular access to the application site.

The application site is within a defined Coal Authority Development High Risk Area; therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application.

In March 1997 planning permission (Ref: P/00117/97) was granted for a change of use of a yard at Hodges Farm to form a storage area for caravans. This was a temporary permission until 12th March 1999. After this time no further permission was sought and the consent expired.

In July 2000 planning permission (Ref: 00/00575/FUL) was granted for a change of use of agricultural land to form an enclosed raised horse exercise area at Hodges Farm.

Section 150 (4) of the Town and Country Planning (Scotland) Act 1997 states that an application can be made to the planning authority seeking a certificate of lawful use. If the application provides the Planning Authority with information that satisfies them of the lawfulness, at the time of the application, of the use, operations or other matter described in the application, or that description as modified by the planning authority or a description substituted by them, they are required to issue a certificate to that effect. In January 2018 a Certificate of Lawfulness (Ref: 17/01137/CLU) was granted to the applicant for the existing horse livery yard with storage buildings and for touring caravan storage at Hodges Farm.

In July 2016 a pre-application enquiry ref: 16/00206/PREAPP was made to the Council as Planning Authority by the applicant in respect of the building of a new house on Hodges Farm. The advice given was that Policy DC1 of the adopted East Lothian Plan 2008 would not support an application for a new build house in the countryside unless it could be demonstrated that there was a need for the new house to support an existing agricultural or horticultural business.

In September 2017 a pre-application enquiry ref: 17/00247/PREAPP was made to the Council as Planning Authority by the applicant in respect of the siting of a chalet on Hodges Farm which would be to accommodate his elderly in-laws. The advice given was again that Policy DC1 of the adopted East Lothian Local Plan would not support the siting of a chalet for permanent residential use unless it could be demonstrated that there was an operational need for the new residential unit to support an existing business.

In January 2019 a third pre-application enquiry ref 19/00006/PREAPP was made to the Council as Planning Authority by the applicant in respect of the clearing of some derelict buildings on Hodges Farm and the erection of a new house on that cleared site. The advice given was that the newly adopted East Lothian Local Development Plan 2018 did not support a new build house in the countryside unless it could be demonstrated through the submission of evidence that the new house was a direct requirement of an existing business in the countryside.

Planning permission is now sought retrospectively for the erection of a chalet, shed and associated works that include the formation of a timber recycling area, a timber decking area, a raised timber planter, a hardsurface path and a 1.2 meter high timber fence. The chalet is currently in use as a 2-bedroom residential unit by the applicant's mother and father in-law and the applicant's agent has confirmed that it is their permanent residence. Therefore as it is in residential use it is a new house in the countryside.

The chalet is clad in dark oak timber with a pitched roof consisting of green felt-covered concrete tiles. It has a floor area of some 70 square meters and faces northwest within the site.

The northwest (front) elevation of the chalet has a main entrance door opening and 4 window openings facing into the site. A further 4 window openings are on the southeast (rear) elevation overlooking woodland. 2 large window openings, one of which is of a double patio door style, are on the northeast elevation overlooking an agricultural field.

The timber recycling area, shed and decking area are sited adjacent to the north boundary. The raised planter abuts the west boundary fence. The hardsurface path has been formed in brick paviour and provides a link between the shed and chalet.

The applicant has submitted a statement in support of the application. The statement asserts that Hodges Farm is a mixed farm of 72 acres of arable land, horse livery, sheep and storage. The main focus of the farm is tending to livestock which at certain times of the year is labour intensive, for example at lambing time. During the summer month's time is spent preparing horses for shows. Although storage is a large part of the business much of the work centres around livestock. Additionally some 200 caravans are stored on site. The applicant states that they have been a victim of rural crime on occasions when they were not present on the farm. To safeguard the site the farm is locked up at 10pm every night and opened at 7am.

The farmhouse at Hodges Farm is occupied by the applicant and his family. The chalet is occupied by the applicant's mother and father in law who help out with childcare on occasion. Previously they resided in Dunbar and would need to make the 20 mile trip to help out if needed. They are also available to assist in security of the site.

The statement asserts that the application is made retrospectively because the applicant did not realise that planning permission would be required for the chalet as it is sited in the garden orchard.

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 relevant policies contained within the adopted South East Scotland Strategic Development Plan (SESplan). Policies DC1 (Rural Diversification), DC4 (New Build Housing in the Countryside), DC5 (Housing as Enabling Development), DP1 (Landscape Character), DP2 (Design), NH8 (Trees and Development and T2 (General Transport Impact) of the 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.

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.

REPRESENTATIONS

A total of 11 public objections to the application have been received.

The main ground of objection are:

- i) There is no operational requirement for the erection of a residential chalet on the farm;
- ii) Trees have been removed unlawfully to facilitate development;
- iii) The chalet is visible from public view;
- iv) Concerns over water provision and foul water discharge;
- v) Damage to native wildlife species through tree removal;
- vi) Increased traffic movements;

- vii) no information on the levels of the site;
- viii) neighbour notification;
- ix) SEPA and SNH have not been consulted;
- x) The applicant has carried out previous unauthorised development that has been the subject of planning enforcement investigation.

It is unclear what the issues with neighbour notification were. Records show that all relevant neighbouring properties within 20m of the red line outline of the application site were notified of the application, which is in accordance with the statutory requirements of legislation.

Sufficient information was submitted by the applicant to validate and register the application. There is no requirement to submit information on levels in order to determine the application. Furthermore, if required, details of the ground levels of the site and any changes to it, can be requested for approval as a condition of a grant of planning permission.

The matters of water provision and foul water discharge are controlled through legislation other than through Planning. Thus they are matters relevant to the Building Standards and Scottish Water and are not material planning considerations in the determination of this planning application.

The application site is not within an area of flood risk nor is it within any listed wildlife sites. Therefore and due to the nature of the application there is no requirement to consult either SEPA or SNH on the application.

The matter of the applicant having in the past carried out alleged unauthorised development does not prevent the submission of this retrospective planning permission for the chalet or the Council as Planning Authority determining this application.

PLANNING ASSESSMENT

Due to the siting of the chalet and associated development within a wooded area they are not readily visible from outwith the wooded area. Furthermore due to its distance from neighbouring residential properties the chalet does not result in a loss of amenity through overlooking or overshadowing to any neighbouring residential properties.

The Council's Biodiversity Officer was consulted on the application consulted but has made no comment on it.

Council Road Services were consulted on the application and have no objection to the application being satisfied that the siting of the chalet does not cause a risk to road safety, and is not contrary to Policy T2 of the adopted East Lothian Local Development Plan 2018.

The Council's Environmental Protection Manager was consulted on the application and makes no comment.

Scottish Water makes no objection to the application.

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.

The application is within a wooded field at Hodges Farm. The wooded field is enclosed to the east by a 1.5 meter high post and wire fence the primary purpose of which is to enclose an agricultural field which is to the east of the site. Otherwise the site is enclosed on the north, west and south boundaries by a newly erected 1.2 meter high timber fence with a gated access.

The Scottish Government's Policy on Control of Woodland Removal states:

- There is a strong presumption in favour of protecting Scotland's woodland resources;
- Woodland removal should be allowed only where it would achieve significant and clearly defined additional public benefits;

In siting the chalet, shed and associated works at this location a number of trees have been felled and the site cleared. In response to complaints of unauthorised tree felling at Hodges Farm Scottish Forestry investigated the tree felling, between October 2019 and January 2020. Based on findings Scottish Forestry have confirmed that no further action has been taken. This was due to the submission of the planning application, which was made in November 2019, and the subsequent control being given to the Council as Planning Authority to investigate and assess the felling of the trees.

Scottish Forestry were however consulted on the current planning application and have advised that they do not support the application due to the unauthorised removal of Native Woodland that has been undertaken on the site.

Policy NH8 of the adopted East Lothian Local Development Plan states that there is a strong presumption in favour of protecting East Lothian's woodland resources. Part b (i) of Policy NH8 states that Development affecting trees or groups of trees or areas of woodland will only be permitted where, in the case of woodland, its loss is essential to facilitate development that would achieve significant and clearly defined additional public benefits in line with Scottish Governments Policy on Control of Woodland Removal.

In this instance the removal of the woodland was not to achieve additional public benefits and is contrary to the guidance within The Scottish Government's Policy on Control of Woodland and Policy NH8 of the ELLDP 2018.

The Council's Landscape Officer was consulted on the application. He advises that he does not support the application as the loss of trees is contrary to Policy NH8 of the adopted East Lothian Local Development Plan 2018 and that the chalet, shed and associated works be removed from site and the woodland replanted.

He advised that if there are material planning considerations that outweigh the loss of trees and result in the chalet and associated structures being retained on site he advises that as no arboricultural impact assessment has been submitted it is unclear whether the siting of the chalet and associated structures will result in any further tree loss. Therefore he recommends that, if the chalet is not to be removed from site a detailed arboricultural impact assessment be carried out specifically on the safety of the retained trees that have had their root protection areas significantly encroached upon by the development, as such assessment may result in the loss of further trees. If in the event the application were to be granted planning permission a condition should be attached to it requiring new tree planting to mitigate the loss of the existing trees.

As stated above policy DC4 sets out specific criteria if the erection of new housing in the countryside is to be supported. Where the Council is satisfied that a new house is a direct operational requirement of an agricultural, horticultural, forestry or other employment use then a new house may be supported.

A statement submitted in support of the application states that Hodges Farm operates as a business involving farming, horse livery and storage. The statement lists various functions the applicant may be called upon to perform to facilitate the running of the businesses. However, other than the provision of occasional childcare and additional security for the site the statement does not set out or explain how the occupants of the chalet will contribute to the operations of the business. Moreover, the applicant has presented no evidence to demonstrate why other security measures could not be used to deter and seek to prevent the farm and business being a victim of criminal activities. On this matter, there are many other farms and rural businesses operating in the countryside that do not require an additional house to be constructed on site to provide additional security for the business. Consequently there is no justification of need for a residential unit to be located on site to bolster security.

The applicant was advised on two occasions that insufficient information had been submitted to satisfy the Council as Planning Authority that the house was a direct operational requirement of the business. Therefore further information was requested on the operations of the business. However, no further information has been submitted in support of the application.

The submitted supporting statement advances no case for a residential unit being built on the application site to meet a direct operational requirement of an agricultural, horticultural, forestry or other employment use. The provision of occasional child care and the additional security of the site are not operational requirements of the farm business that would justify the erection or provision of a new house or residential unit. Therefore the erection of the chalet on the site is contrary to Policy DC4 of the East Lothian Local Development Plan 2018.

Furthermore the supporting statement does not seek to promote the erection of the chalet on the application site to enable a desirable primary use supported in principle by criterion b of Policy DC1, contrary to Policy DC5 of the East Lothian Local Development Plan 2018.

In the absence of any direct operational requirement for the erection of a house on the application site, or any justification of enabling development, the principle of such development on the site is inconsistent with national, strategic and local planning policy and guidance concerning the control of development of new build houses in the countryside.

Specifically, the erection of the chalet (residential unit) on the site is contrary to 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.

If approved the siting of the chalet (residential unit) would set an undesirable precedent for the development of new houses in similar circumstances elsewhere in the East Lothian countryside, the cumulative effect of which would result in a detrimental impact on the rural character and amenity of the countryside of East Lothian.

There are no material planning considerations that outweigh the fact that the development is contrary to 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.

Given the location of the site within a Development High Risk Area for coal mining legacy **the Coal Authority** have been consulted on this application. The applicant has not provided a Coal Mining Risk Assessment Report in support of the application. Therefore The Coal Authority object to the application. The objection from The Coal Authority was passed to the

applicant's agent, but no further information was provided in support of the application. Therefore the applicant has failed to demonstrate that the siting of the chalet in that location would not place it or persons occupying it at risk from past mining related activities.

The chalet and associated development are a form of unauthorised development and a breach of planning control. Unless the chalet and associated development are removed from site and the area re-planted with woodland then enforcement action will be taken to secure the removal of it, with the period for compliance with the enforcement notice being six months.

RECOMMENDATION

That planning permission be refused for the following reasons:

- 1 The erection of a residential chalet 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 residential chalet 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 The removal of the woodland was not required to achieve additional public benefits and is contrary to the guidance within The Scottish Government's Policy on Control of Woodland and Policy NH8 of the adopted East Lothian Local Development Plan 2018.
- 4 The site is within a Coal Authority Development High Risk Area and a Coal Mining Risk Assessment Report has not been submitted by the applicant. Consequently the applicant has failed to demonstrate that the proposed development would not place buildings or persons at risk from past mining related activities.
- 5 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.