

**REPORT TO:** Planning Committee

**MEETING DATE:** Wednesday 24 June 2020

**BY:** Head of Development

**SUBJECT:** Application for Planning Permission for Consideration

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*Note - this application was called off the Scheme of Delegation List by Councillor McLennan for the following reasons: I believe the proposal would improve the appearance and amenity of the area, along with economic benefit and also the lack of objections. There is also a previous authorised building on site with an established use and existing planning consent/building control for the proposed development.*

Application No. **20/00169/P**

Proposal                      Erection of 1 house, triple garage and associated works

Location                     **Site Of The Former Old School Master's House**  
**Whittingehame**  
**East Lothian**

Applicant                    Mr David McMillan

Per                             Rick Finc Associates

**RECOMMENDATION            Application Refused**

## **REPORT OF HANDLING**

### **PROPOSAL**

The application site is located within the Whittingehame Estate some 1.4 km to the southwest of the village of Stenton. It is within the East Lothian countryside as defined by Policy DC1 of the adopted East Lothian Local Development Plan 2018. It is within the Whittingehame Designed Landscape.

Some 150m to the west of the site on the opposite side of the access road is Whittingehame House, which is listed as being of special architectural or historic interest (Category A). Some 200m to the northwest of the application site is a group of houses formed through the conversion of a group of former stables and associated buildings.

The site is bounded to the north, east, south and west by agricultural land. On the site there currently exists the remains of a house, a static caravan and another temporary cabin building. The site is accessed by an access track leading off the main access road to Whittingehame House from the B370, and which is located to the south of the application site.

In May 1992 (Ref: 92/00209/HIS\_P) planning permission was granted for an extension to a dwelling house that had previously existed on the application site.

In May 1998 planning permission (Ref: 97/01162/HIS\_P) was sought for the erection of domestic stable block and formation of private road on the application site. A report on the application was placed before the Planning Committee meeting of the 7 May 1998 and permission was granted. There is no evidence that planning permission 97/01162/HIS\_P was ever implemented or that this stable block was ever built.

In October 2001 (Ref: 01/00901/FUL) planning permission was granted for an extension to the dwelling house that had previously existed on the application site.

In June 2009 (Ref: 09/00345/FUL) planning permission was granted for extensions to the house that had previously existed on the application site and for the erection of a triple garage, fencing and gates on the application site. Works to implement planning permission 09/00345/FUL commenced sometime in 2010. In July 2010 the Planning Enforcement Service received a complaint ref: 10/00119/COM that alleged that the works taking place on site were not in accordance with those approved by planning permission 09/00345/FUL. As a result of this complaint an enforcement investigation was instigated where it was found that the house that had been the subject of planning permission 09/00345/FUL had largely collapsed and all that remained of it were 3 walls and the roof of a small part of it. As a large part of that house was no longer in situ, it was no longer possible to implement planning permission 09/00345/FUL without rebuilding the house. This rebuilding of the house would be contrary to Policy DC1 of the adopted East Lothian Local Plan 2008. Therefore the applicant was advised to cease works pending the determination of a new planning application. No such planning application was ever submitted.

Through this current application planning permission is now sought for the erection of a two storey house with a pitched roof on the site and for the erection of a detached triple garage and associated works within the application site. The application site still be accessed from the same access track as presently exists.

To facilitate the proposed development on site the remains of the house, the static caravan and temporary cabin building will be removed from site.

A supporting statement submitted with the application informs that the site is currently unoccupied being the site of a previously demolished house. Only one part of that former house remains on site. However, when Whittingehame House became the former Holt School for Boys in 1963 there had been 2 semi-detached houses on the site which were used by the Schoolmasters house and the groundskeeper. The school closed in 1980 and around that time the two semi-detached houses were combined into one house. The extensions described above (ref: 92/00209/HIS\_and 01/00901/FUL) were to that house.

In 2009 planning permission 09/00345/FUL was granted for the two storey extension and for the erection of the triple garage. This proposal was subject to the submission of an engineer structural report which confirmed that house could withstand such an extension being attached to it without substantial demolitions.

However during the construction of the extension sometime in 2010 the supporting statement informs that during severe weather conditions the older part of the house collapsed and the fabric removed from site. Following this collapse new foundations were set with the intention of rebuilding the house and the extensions as approved by planning permission 09/00345/FUL. However, East Lothian Council requested that the works stop as the works were no longer being carried out in accordance with planning permission 09/00345/FUL. The Council requested that a new planning application be submitted to erect a new dwelling. No planning application was submitted.

The applicant now proposes to build a house and triple garage on the site. The proposed

new house would be identical to the house as it was to be extended by the grant of planning permission 09/00345/FUL and thus would be a two storey house with a pitched roof. The applicant asserts that the principle of a dwelling house on the site is established and the extension to a dwellinghouse was consented and commenced and therefore has been implemented.

### **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 (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), DC3 (Replacement Dwelling in the Countryside), DC4 (New Build Housing in the Countryside), DC5 (Housing as Enabling Development), CH1 (Listed Buildings), CH6 (Garden and Designed Landscapes), 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 DC3 sets out specific criteria where replacement dwellings in the countryside will be supported. This includes:

- (i) be a like for like replacement of a dwelling recently rendered uninhabitable by unforeseen circumstances, such as a demonstrable and accidental fire, provided there is compelling evidence that the loss of the original habitable dwelling was recent and that it benefited from lawful use as a dwelling immediately prior to the loss;
- (ii) replace an existing dwelling with lawful use rights as such (not the plot of a previous, now demolished house) that the Council accepts that due to the construction of the building it is incapable of retention for habitation and that all reasonable efforts have been made to maintain the building.

Applicants must submit credible evidence at the time of the planning application to demonstrate compliance with this policy as relevant. Any replacement dwelling must be similar in size, scale and massing to the original and would be of an appropriate character for its location.

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

Five letters of representation have been made in relation to the application. One letter supports the application on the basis that the existing structure on site is an eye sore and new development would be welcomed. Three letters of objection have been received in relation to the application. The main grounds of objection are;

- o The incorrect address and omission of postcode were evident on the application form,
- o Uncertainty regarding neighbour notification and notification in local papers having actually been carried out;
- o Construction traffic would have a harmful impact on the existing access road;
- o Concerns regarding management of development if it were to go ahead. Works related to previous application 09/00345/P were not carried out however the house became damaged to the extent that it collapsed;
- o Concerns over drainage and water supply;
- o Incorrect information submitted through the planning statement in relation to foundations being built following 2009 application as no works were carried out;
- o Originally build became uninhabitable in 2009/2010 and policy DC3 states that circumstances have to be recent and 10 years cannot be considered recent;
- o Development will affect the setting and would not be in keeping with Whittingehame House, a Category A Listed Building;
- o History of disturbing neighbour onsite worries neighbours; and
- o Development would have a detrimental impact on already poor internet service in the area.

One letter of representation was received neither supporting nor objecting to the application with the main points covered above.

All relevant notification, neighbour and otherwise, were carried out as per procedure in relation to the application. Thus the Council as Planning Authority has carried out their statutory obligation in respect of neighbour notification, advertising of applications and land ownership.

The address of the application which is within a field is not unacceptable in the submission of a planning application. This is neither unusual or suspicious.

The matter of impact on internet service is not a material planning consideration in the determination of a planning application.

The matter of nuisance neighbours and drainage and water supply are matters controlled by legislation other than planning legislation. Therefore they are not material planning considerations relevant to the determination of this planning application.

## COMMUNITY COUNCIL

No comment.

## PLANNING ASSESSMENT

**The Council's Environmental Protection Officer** 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** has no adverse comment to make on the application, being satisfied that the development would not have an adverse impact on any road safety issues.

**The Councils Policy and Project's Landscape Officer** notes that no detail of the existing

tree's on or adjacent to the site have been submitted. Should planning permission be granted a landscaping scheme should be submitted to the Planning Authority prior to the commencement of any development. This can be controlled by condition.

The proposed house to be erected on the site is to be identical to that approved planning permission through previous planning application 09/00345/FUL. The proposed house would be centrally positioned within the site. It would be two storey in height with a pitched roof. The proposed house would have a ridge height of some 6.5 metres and would measure, at most some 18 metres by 20 metres. A terraced area measuring some 0.4 metres high from ground level would be formed projecting from the western elevation of the house. The proposed house would be finished in render with the roof clad with concrete tiles and the windows and doors would be timber framed. All elevations would have glazed openings at both the ground and first floor levels.

The proposed house would comprise of an entrance hall, study, sitting room, drawing room, dining room, open kitchen and living area and bathroom at ground floor level and four bedrooms with en-suites provided at the first floor level.

A detached triple garage is proposed to be located to the east of the application site. The garage would measure, at most some 12 metres by 8 metres, it would have a pitched roof with a ridge height of some 4.1 metres. It would contain three separate garage door openings, partially glazed, on the front (west) elevation and a glazed opening on each the side (north and south) elevation.

It is proposed that a new vehicular access some 3.8 metres wide be formed on the southern boundary of the application site, which can be accessed off a track off the public road B370, to serve a new driveway which would provide vehicular access to a parking, turning area and detached triple garage within the site. The driveway would be formed of stone paving. A metal fence and associated gate measuring some 3.8 metres wide and some 1.5 metres high would be erected along the southern boundary.

The proposed house would be positioned such that it would not harmfully impose itself on the setting of the listed building, Whittingehame House. It would not harm the setting of that listed building.

The proposed house, by virtue of its scale, design and materials would not be out of keeping with the area and given its position and location would not result in harmful overlooking, loss of privacy or loss of sunlight and daylight of any neighbouring properties or land uses and such that the occupants of the proposed house would also be provided with sufficient daylight, sunlight, privacy and amenity. On these matter, the proposed development is consistent with Policy DP2 of the adopted East Lothian Local Development Plan 2018.

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.

Due to its distance from Whittingehame House and that there are intervening trees, the erection of a house, triple garage and associated works on the application site would not harm the setting of the listed building of Whittingehame House and would not be contrary to Policy CH1 of the adopted East Lothian Local Development Plan 2018.

Due to its size, scale and positioning and as it would facilitate the removal of the remains of the existing house that had previously existed on the site the erection of a house, triple garage and associated works on the application site would not be harmful to the Whittingehame House Designed Landscape and would not be contrary to Policy CH6 of the

adopted East Lothian Local Development Plan.

However, notwithstanding that the proposed house, triple garage and associated works is in terms of its design, impact on privacy and amenity and impacts on the historic environment are acceptable it remains to be established whether there is sufficient justification to support the principle of erecting a house on the site and whether such a proposal is consistent with other relevant policy provisions of the development plan in the form of Policies DC1, DC3, 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, or whether there are any other material planning considerations that would outweigh the policies of the Development Plan that would justify the erection of the house.

The application site is within an area defined as being within the countryside by the adopted East Lothian Local Development Plan. Although Whittingehame House is located close by and there are other houses located a short distance from the site those 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 may previously have had a house located on it, the majority of that building has been removed and what is left is not habitable, can no longer be occupied and therefore can no longer be regarded as a house with lawful use rights. Rather what would be built is a new house which would not be an addition to a settlement or an addition adjoining the edge of a settlement but instead would constitute new build housing development in the countryside.

Therefore notwithstanding that the application site may have previously had a house erected on it, the remains of that former house are no longer capable for human habitation and therefore it can no longer be regarded as a house with lawful use rights. Consequently, the principle of the erection of one house on the application site in the countryside must be assessed against national, strategic and local planning policy relating to the control of new housing development in the countryside.

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. The proposed house is not being promoted to support an existing business or leisure use the principle of which would be supported by Policy DC1. Therefore the proposed house is contrary to Policy DC1.

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. The proposed house does not meet any of the criteria of Policy DC4 and cannot therefore be supported.

Policy DC5 states that housing in the countryside may exceptionally be supported as enabling development where (i) it would enable a desirable primary use supported in principle by Policy DC1 or (ii) it will fund the restoration of a listed building or building with recognised heritage value. 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. In this instance 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 or any building with recognised heritage value. Therefore the erection of a house on the site would not be consistent with Policy DC5.

Therefore as 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. No case has been put forward that the proposed house has an operational requirement for its countryside location or that it would be required to support a use which in principle requires a countryside location. Neither has the proposed house been promoted for affordable housing use, would not be a logical addition to an existing small rural settlement and would not enable a desirable primary use supported by Policy DC1 or fund the restoration of a listed building. Therefore the erection of a new build house on the application site is contrary to Policies DC1, DC4 and DC5 of the adopted East Lothian Local Development Plan 2018.

On the matter of Policy DC3, The Council's Policy and Projects officer notes that Policy DC3 deals with the principle of providing replacement dwellings in the countryside and sets out two criteria under which a replacement dwelling would be in principle be acceptable.

Firstly a replacement dwelling may be supported if the existing house was rendered uninhabitable by unforeseen circumstances such as a demonstrable and accidental fire provided there is compelling evidence that the loss of the original habitable dwelling was recent; Secondly a proposal may be acceptable if the house, with lawful use rights as such (not the plot of a previous now demolished house), that the Council accepts that due to the construction of the building it is incapable of retention for habitation and that all reasonable efforts have been made to maintain the building.

With regards the first criteria the policy states that the loss of the original structure that the application is replacing must have been 'recent'. Whilst there is no indication of what times scales would be considered "recent" in the adopted East Lothian Local Development Plan 2018 the original incident that led to the collapse of most of the original structure of the house took place 10 years ago. This cannot be argued to be a recent event. Neither has the applicant provided any credible evidence to demonstrate the circumstances and justification for the loss of the original structure. The collapse of most of that former house was brought to the attention of East Lothian Council in July 2010 when the Planning Enforcement Service received a complaint ref: 10/00119/COM that alleged that the works taking place on site were not in accordance with those approved by planning permission 09/00345/FUL. It was 5 months later in December 2010 that the Planning Service of East Lothian Council received a letter from the planning agent at that time advising that "due to unforeseen complications as explained to you, larger areas of the dwelling were demolished than firstly envisaged". There is no mention of a storm or other natural cause. No subsequent evidence has been provided to justify the demolition as a result of a storm. Therefore the erection of a new build house on the site as replacement for a house demolished 10 years ago and with no compelling evidence to justify the demolition of the house would be contrary to criteria (i) of Policy DC3.

Moreover, as this proposal is for a new build house, triple garage and associated works on a site where there is no existing house with lawful use rights, then criteria (ii) of Policy DC3 does not apply.

Therefore, the proposal for a new build house, triple garage and associated works on the site is contrary to both criteria (i) and criteria (ii) of Policy DC3 of the adopted East Lothian Local Development Plan 2018.

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, the proposal is not for enabling development and does not meet the criteria for a replacement dwelling in the countryside therefore the proposal is contrary to Policies DC1, DC3 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.

In conclusion there are no material planning considerations that outweigh the fact that the proposed development is contrary to Policies DC1, DC3, 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.

## **RECOMMENDATION**

That planning permission be refused for the following reasons:

- 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 Given the length of time (10 years) since the house that had previously existed on this site substantially collapsed and the remains removed from site, then it cannot be argued that the house was rendered uninhabitable recently. Therefore, and as what remains on site is the shell of part of that former house which can no longer be regarded as being a habitable house with lawful use rights, then there is no house on the site that is capable of being replaced. Therefore, the proposal does not comply with either criteria (i) or (ii) of Policy DC3 of the adopted East Lothian Local Development Plan 2018.
- 3 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.