

REPORT TO: Planning Committee

MEETING DATE: Wednesday 24 June 2020

BY: Head of Development

SUBJECT: Application for Planning Permission for Consideration

Note - this application was called off the Scheme of Delegation List by Councillor Hampshire for the following reason: there is concern in the community about the condition on this site and the delay in work starting since Planning Consent was approved. I think members of the Planning Committee would benefit from visiting this site and hearing the history of the Planning Approvals.

Application No. **19/01201/P**

Proposal Erection of one dwelling house

Location **Land West of 1 Manor Gardens
Belhaven
Dunbar
East Lothian**

Applicant Mr James Brunton

Per Blueprint (Dunbar) Ltd

RECOMMENDATION Application Refused

REPORT OF HANDLING

This planning application raises important planning issues and a report on it is therefore placed on this Scheme of Delegation List.

PROPOSAL

This application relates to an area of land on the east side of North Street, Belhaven at its junction with Manor Gardens. To the west of the site on the opposite side of North Street, are single storey cottages as well as a two storey dwelling, all of which are listed as being of special architectural or historic interest (Category B).

The site is bounded to the north by a house set within its large garden grounds, to the east by a residential property and to the west by North Street beyond which are houses. To the south is the access road into Manor Gardens beyond which is house and also a late 18th century garden pavilion. That garden pavillion is listed as being of special architectural or historic interest (Category B).

The east and west boundaries of the site are enclosed by stone walls and a timber fence encloses the northern and southern boundaries of the site.

The site contains a number of mature trees, many of which are subject to a Tree

Preservation Order. By being within Belhaven the application site is within an area of residential character, as defined by Policy RCA1 (Residential Character and Amenity) of the adopted East Lothian Local Development Plan 2018. The site is also within Belhaven Conservation Area.

The site has an extensive planning history.

In June 1999 planning permission (Ref: 99/00531/FUL) was sought for the erection of one house with integral garage and associated works on the application site. A report on the application was placed before the Planning Committee meeting of the 6 March 2000. The report recommended that planning permission be refused for the following reasons:

"1 The proposed development would result in the loss from the site of four trees and possibly more. This loss would not preserve but would detract from the landscape character of Belhaven Conservation Area and would be contrary to the purpose and integrity of the Tree Preservation Order that covers them. Accordingly the proposal is contrary to Policies ENV1 and ENV5 of the approved Lothian Structure Plan 1994, Policies 15 and 19 of the adopted Dunbar Area Local Plan 1983, and Policies ENV10, NH5, NH6 and S4 of the draft East Lothian Local Plan 1994.

2 To facilitate a satisfactory standard of access to the proposed house the required upgrading of the existing access road off North Street would make the road, including its junction with North Street more prominent and significantly more intrusive in its locality. Such affect would not preserve or enhance, but rather would detract from, both the character and appearance of the Belhaven Conservation Area and the setting of the nearby listed Garden Pavilion and boundary wall. This would be contrary to Policy ENV5 of the approved Lothian Structure Plan 1994, Policy 15 of the adopted Dunbar Area Local Plan 1983 and Policies ENV10 and ENV11 of the draft East Lothian Local Plan 1994.

3 The proposed house would have a prominent and intrusive impact on the setting of the nearby listed Garden Pavilion and boundary wall, and the entrance to the larger, developed part of the walled garden off North Street and would have a contrary affect on the character and amenity of the Belhaven Conservation Area than that which currently derives from the landscape effect of the application site in its current form. Accordingly the proposal is contrary to Policies ENV1 and ENV5 of the approved Lothian Structure Plan 1994, Policies 15 and 19 of the adopted Dunbar Area Local Plan 1983, and Policies ENV3, ENV10 and ENV11 of the draft East Lothian Local Plan 1994".

At their meeting of the 6 March 2000 the Planning Committee agreed to continue the application in order to enable the application the opportunity of discussing alternative proposals with Council officers. In taking that decision, the Planning Committee accepted that the development of one house on the site was acceptable in principle. Application 99/00531/FUL was subsequently withdrawn in April 2004.

In December 2003 planning permission (Ref: 03/01484/FUL) was sought for the erection of one house on the application site. That application was withdrawn in April 2013 without it having been determined, following concerns raised by Council officers about the impact of the proposed development on mature trees located within the site.

In July 2016 conservation area consent (Ref: 16/00240/CAC) was granted for the demolition of the fence that encloses most of the southern boundary of the application site.

In November 2017, planning permission (Ref: 17/00585/P) was granted for the erection on the site of a one and a half storey, 4 bedroomed, detached house and associated access and hardstanding area. The existing stone walls at the site boundary would be extended to

enclose the southern boundary of the site where the property would also be accessed from along Manor Gardens. Garden areas would be provided to the front, side and rear of the proposed house.

A further application for Conservation Area Consent (Ref: 17/00671/CAC) was also approved in September 2017 for the demolition of the fence.

In November 2018, planning permission (Ref: 18/00618/P) was granted for the erection on the site of a one and a half storey, 4 bedrooomed, detached house and associated access and hardstanding area. The existing stone walls at the site boundary would be extended to enclose the southern boundary of the site where the property would also be accessed from along Manor Gardens.

Garden areas would be provided to the front, side and rear of the proposed house. The house size, massing and type was different to that approved in the 2017 application.

Through this application planning permission is again sought for the erection of a house on the application site. The now proposed detached house would again be positioned centrally within the site, would be one and a half storeys (some 8m) in height with a pitched roof clad with grey roof slates. The external finishes of the proposed house would be white coloured smooth render, with a grey brick base course. Its doors and the frames of its windows would be grey aluminium.

Two off-street car parking spaces would be provided the front of the house on the driveway which would be formed of Marshalls Tegula Paviers. The existing boundary treatments enclosing the west, east and north boundaries of the plot would be retained and a new stone wall to match the existing wall would replace the existing timber fence enclosing the south boundary of the plot, which would have a vehicular access within it to allow access from Manor Gardens.

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 South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018.

There are no relevant policies of the approved South East Scotland Strategic Development Plan (SESplan). Policies DP1 (Landscape Character), DP2 (Design), DP7 (Infill, Backland and Garden Ground Development), RCA1 (Residential Character and Amenity), CH1 (Listed Buildings), CH2 (Development within Conservation Areas), NH8 (Trees and Development), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018.

Material to the determination of the application are Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development within a conservation area given in Scottish Planning Policy: June 2014.

Scottish Planning Policy echoes the statutory requirements of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area. It is stated in Scottish

Planning Policy that proposed development that would have a neutral affect upon the character or appearance of a conservation area (i.e. does no harm) should be treated as one which preserves that character or appearance. The design, materials, scale and siting of new development within a conservation area should be appropriate to the character of the conservation area.

Also material to the determination of the application is the Scottish Government's guidance on housing design and quality given in Planning Advice Note 67: Housing Quality.

Planning Advice Note 67: Housing Quality 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: (i) the design of new housing reflects a full understanding of its context - in terms of both its physical location and market conditions, (ii) the design of new housing reinforces local and Scottish identity, and (iii) new housing is integrated into the movement and settlement patterns of the wider area. The creation of good places requires careful attention to detailed aspects of layout and movement. 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 quality of development can be spoilt by poor attention to detail. The development of a quality place requires careful consideration, not only to setting and layout and its setting, but also to detailed design, including finishes and materials. The development should reflect its setting, reflecting local forms of building and materials. The aim should be to have houses looking different without detracting from any sense of unity and coherence for the development or the wider neighbourhood.

Also material to the determination of this planning application is the supplementary planning guidance on Cultural Heritage and the Built Environment, which was adopted by East Lothian Council on the 30 October 2018.

REPRESENTATIONS

One representation has been received in relation to this proposal. The main grounds of representation include: (i) The resultant loss of trees from the site would be contrary to the Belhaven Conservation Area Character Statement which states that 'the extensive tree cover forms an overall landscape setting for the village', and (ii) the proposed scale of the house is out of keeping with the Conservation Area.

COMMUNITY COUNCIL

No comments received.

PLANNING ASSESSMENT

The application site is within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. Policy RCA1 does not actively promote the development of land for new build residential development. The principal purpose of Policy RCA1 is to ensure that the predominantly residential character and amenity of its area of coverage is safeguarded against the impacts of land uses other than housing. However, Policy RCA1 does state that infill, backland and garden ground development will be assessed against Policy DP7 of the adopted East Lothian Local Development Plan 2018.

The proposed new house plot is within a predominantly residential area with residential properties to the north, east, and west and beyond the public road and footpath of Manor Gardens to the south. The building of a house on the site would amount to urban infill housing development, the principle of which is supported by Policy DP7 of the adopted East Lothian Local Development Plan 2018.

Accordingly, the development of the site for the erection of a house on it can be defined as being infill housing development within the predominantly residential area of Belhaven. The principle of such development is supported by Policy DP7 of the adopted East Lothian Local Development Plan 2018.

With respect to infill, backland and garden ground development Policy DP7 of the adopted East Lothian Local Development Plan 2018 states that, amongst other principles of development, it must, by its scale, design and density be sympathetic to its surroundings and not an overdevelopment of the site.

Policy DP2 of the adopted East Lothian Local Plan 2008, amongst other things, requires that all new development must be well designed and integrated into its surroundings.

In this case regard must also be paid to the desirability of preserving or enhancing the character or appearance of the Belhaven Conservation Area as required by Scottish Planning Policy: June 2014 and Policy CH2 of the adopted East Lothian Local Plan 2008.

The proposed house would again be well contained within its enclosed site. It would however be visible from both North Street and Manor Gardens. Its impact would be reduced by the high stone boundary wall and trees that are to be retained. It would be seen in the context of the historic built form of the Category B Listed buildings to the west of the site and thus relative to the character of that part of the Conservation Area. The proposed house would be sited predominantly towards the junction of North Street and Manor Gardens and would be one and a half stories in height.

The proposed dwelling would not significantly alter the pattern and density of the established layout of the houses and other buildings within Manor Gardens and North Street. The proposed dwelling would sit comfortably in its relationship with the neighbouring buildings and would not be a crammed form of infill housing development. It would have a similar plot density to the other houses of Manor Gardens. In its positional circumstance and by virtue of its size, scale, height, positioning, form, design, external materials and enclosed nature behind a high level stone wall and trees, the proposed house would appear appropriate to its location and would not be harmful to the character and appearance of the Belhaven Conservation Area.

The proposed house would be positioned such that it would not harmfully impose itself on the setting of the listed Garden Pavillion. It would not harm the setting of that listed building or that of the listed buildings that are located to the west of the application site.

Whilst it is not essential to replicate existing building styles to build successfully in a Conservation Area and indeed in other locations both national and development plan policy nevertheless state that in designing proposed new buildings developers should think about the qualities and the characteristics of places. The development should reflect its setting and local forms of building and materials. The aim should be to have houses looking different without detracting from any sense of unity and coherence for the development or the wider neighbourhood.

The properties in this part of the Conservation Area are predominantly of a traditional architectural form and design. The external walls of the proposed house would be finished with white painted render which would be in keeping with the existing built form of this part of the Belhaven Conservation Area. They would sit comfortably with the architectural style, finish and appearance of the neighbouring houses/ buildings in this part of the Conservation Area.

The frames of the windows and doors of the proposed house, would be of a grey aluminium

construction. The majority of the frames of the windows of the buildings in this part of the Conservation Area are of timber construction. The majority of the windows of the proposed house would be visible in public views from outwith the site from the public footpath which runs parallel to the south east boundary of the site. Window frames of composite construction are not normally acceptable where they are visible in the Conservation Area and therefore, the frames of the windows of the proposed house should be of timber construction so as not to be harmful to the character and appearance of this part of the Conservation Area. Therefore were planning permission to be granted, the construction material of the window framing should be controlled by condition.

The proposed hardstanding area to be formed would provide a driveway and parking area for two cars. Given its immediate relationship with the proposed house the proposed tarmac driveway would be visible outwith the site but would not appear incongruous. By its position, form and surface materials the proposed driveway would not be harmful to the character and appearance of the Conservation Area.

On these matters of design and layout, and subject to the aforementioned controls, the proposed house and associated works accords with Policies DP2, DP7, CH1 and CH2 of the adopted East Lothian Local Development Plan 2018.

Policies DP2 and DP7 of the adopted East Lothian Local Development Plan 2018 require, amongst other considerations, that new development should not result in any significant loss of daylight, sunlight or privacy to adjoining properties as a result of overshadowing or overlooking.

On these considerations the proposed new house would not have a harmful impact on the residential amenity of the neighbouring residential properties. The proposed house should also receive a sufficient amount of daylight (skylight) and the garden of it a sufficient amount of sunlight. On this matter, the proposed development is consistent with Policies DP2 and DP7 of the adopted East Lothian Local Development Plan 2018.

In assessing whether or not a proposed new development would result in harmful overlooking and therefore loss of privacy to existing neighbouring residential properties it is the practice of the Council, as Planning Authority, to apply the general rule of a 9 metres separation distance between the windows of a proposed new building and the garden boundaries of neighbouring residential properties and an 18 metres separation distance between directly facing windows of the proposed new building and the windows of existing neighbouring residential properties.

There would be windows within the ground floor and first floor level of the side (southwest) elevation of the proposed house that would be within 8 metres of the southwest boundary of the site. They would also be within 15 metres from a neighbouring house on the west side of North Street to the west of the application site. However, the west boundary of the site is enclosed with a high stone boundary wall which would prevent harmful overlooking from the ground floor windows of the proposed house. Furthermore the neighbouring house on the west side of North Road is a single storey house and therefore has no first floor windows that the proposed house would directly. Therefore the proposed openings would not give rise to harmful overlooking of the ground floor windows of that neighbouring house.

As such, the proposal would not lead to overlooking or a loss of privacy to any neighbouring residential properties. The occupiers of the proposed house would also have sufficient privacy and residential amenity.

In that the application site is within a conservation area further windows or other openings, including roof windows, could not be formed in any of the elevations of the proposed house

without the requirement for planning permission and thus without the control of the Council, as Planning Authority.

By virtue of its size, height, positioning and orientation the proposed house would not give rise to a harmful loss of daylight or sunlight to the neighbouring properties, and therefore would not have a harmful affect on the residential amenity of those properties.

On these matters of residential amenity, the proposed development accords with Policies DP2 and DP7 of the adopted East Lothian Local Plan Development 2018.

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

The Council's Road Services are concerned that the access to the site may have implications to road safety as the access arrangement offers substandard visibility owing to the driveway being placed in close proximity to the high stone boundary wall on the corner of North Street and Manor Gardens. Therefore were planning permission to be granted, a detailed drawings showing a revised driveway arrangement to achieve a safe level of visibility should be submitted prior to the commencement of any development. This can be controlled by condition.

It is now necessary to consider the impact of the proposed development on the mature trees that are within the site.

Policy DP1 of the adopted East Lothian Local Development Plan 2018 states that all new development, with the exception of changes of use and alterations and extensions to existing buildings, must be well integrated into its surroundings by responding to and respecting landform, and by retaining and where appropriate enhancing existing natural and physical features at the site.

Policy NH8 states that development affecting trees, groups of trees or areas of woodland will only be permitted where any tree, group of trees or woodland that makes a significant positive contribution to the setting, amenity of the area has been incorporated into the development through design and layout. Development (including extensions to buildings) must also conform to British Standard 5837:2012 Guide for Trees in Relation to Design, Demolition and Construction, or any subsequent revisions.

The Council's adopted supplementary planning guidance on Cultural Heritage and the Built Environment advises that trees have particular biodiversity, landscape and cultural value. The visual impact of trees within our conservation areas is often an important part of the overall quality of the townscape. It states that proposals leading to the loss of trees that would be detrimental to the character and appearance of a Conservation Area will not be supported. The Council will use planning conditions to protect any tree within a proposed development site that makes a significant contribution to the setting and amenity of the conservation area. Where trees are to be retained any development must accord with British Standard BS5837:2012 and subsequent revisions. Where removal is permitted, replanting with one or more trees of appropriate species will normally be required.

The Belhaven Conservation Area Character Statement informs that the Conservation Area comprises the old village of Belhaven centred on High Street, Duke Street and North Street and the larger, later individual houses surrounding it. The centre of the village contains buildings dating from as early as the late 17th century. Most are 18th and 19th century with some more recent infill housing. The Character Statement advises that it is important that any new development must not result in the loss of trees that form the setting of both the

individual buildings and the Conservation Area itself.

The scheme of developments approved by planning permissions 17/00585/P and 18/00618/P both allowed for the removal of 3 trees on site to facilitate the approved one house development. Those trees have since been removed, and it is understood that this removal was undertaken by a previous owner of the site.

There remains a number of trees on the application site.

The applicant submitted an arboricultural survey in support of their planning application. The survey advised that of the 16 trees on site, 4 are of high quality and 11 are of medium quality. The survey includes a Tree Constraints Plan, which shows the root protection areas (RPAs) for each tree. The survey advises that the proposed development is shown to conflict with the RPAs of trees 2891, 2892, 2894, 2902 and 2905. The RPAs shown are based on calculations in the BS5837 (2012) but may not represent the actual rooting areas. On this matter the survey advises that "tree root protection areas (RPAs) have been drawn as symmetrical polygons. This is a standard representation of the assumed rooting area, however it is unlikely that it is representative of the actual rooting area. Roots are opportunistic and will grow where conditions allow them to. Hard objects such as foundations, walls, pavements and roads can cause roots to be deflected. In such a case, the RPA may be increased in other directions".

The applicant's arboricultural survey further informs that another qualified arboriculturalist had excavated three exploratory trenches to ascertain the presence or otherwise of tree roots within the footprint of the proposed dwelling. It advises that in all three trenches, no significant tree root growth was observed. Notwithstanding this, the applicant's arboricultural survey advises that "it is not known exactly where the trial pits were dug. Although the depth of the investigation was sufficient, the length of the trial pits do not accommodate the whole perimeter of the proposed development, therefore there is still uncertainty over the location of tree rooting within the site".

The Council's Landscape Officer confirms that he is unable to support the application due to the unacceptable level of tree root protection incursion, which is contrary to British Standard 5837: 2012 Trees in relation to design, demolition and construction. On this matter, the Landscape Officer advises that the Tree Constraints Plan within the applicant's arboricultural survey only addresses circular tree root protection zones, in reality these will be larger than is shown. This is due to underground obstacles and boundary walls preventing the tree roots growing radially. This results in the same root protection area but in the form of polygons extending further into the site, thus filling the site with the trees' root protection areas. This, the Landscape Officer advises, is pertinent to the row of trees along North Street (trees 2891 to 2896), and the extremely large Horse Chestnut tree (2905) adjacent to Manor Gardens.

Many of these trees are visible from outwith the site, have a high amenity value and have the statutory protection as the site is within a Conservation Area and the trees are additionally protected by a Tree Preservation Order.

Based on the applicant's arboricultural survey and the advice of the Council's Landscape Officer, it is reasonable to conclude that the proposed house would be within the root protection areas of significant trees. It could well result in damage to, and potentially the loss of those nearby trees that make a significant positive contribution to the landscape setting and amenity of the area. The damage to or loss of those trees would be harmful to the character and appearance of the Belhaven Conservation Area. Accordingly the proposal is contrary to Policies DP1 and NH8 of the adopted East Lothian Local Development Plan 2018, Scottish Planning Policy: June 2014, and to the Council's adopted supplementary

planning guidance on Cultural Heritage and the Built Environment.

It is now necessary to consider whether or not there are any material considerations that would outweigh this conflict with the development plan.

As stated above, planning permission (Refs: 17/00585/P and 18/00618/P) has been already been granted for the erection of a house on the site. However subsequent to their determination, it has become apparent that there was anomalies in the drawings submitted by the applicant and that they didn't accurately show the RPA's of the existing trees. It was on the basis of those drawings that the Council granted planning permission 17/00585/P and 18/00618/P. The approved house cannot be built in accordance with those approved drawings because of these anomalies. In these circumstances, there is no fallback that would justify a grant of planning permission for the house now proposed. There are no material considerations that would outweigh the proposal's conflict with the development plan, and planning permission should therefore be refused.

RECOMMENDATION

That planning permission be refused for the following reason:

- 1 The proposed house would be within the root protection areas of significant trees. It could well result in damage to, and potentially the loss of those nearby trees that make a significant positive contribution to the landscape setting and amenity of the area. The damage to or loss of those trees would be harmful to the character and appearance of the Belhaven Conservation Area. Accordingly the proposal is contrary to Policies DP1 and NH8 of the adopted East Lothian Local Development Plan 2018, Scottish Planning Policy: June 2014, and to the Council's adopted supplementary planning guidance on Cultural Heritage and the Built Environment.