



MINUTES OF THE MEETING OF THE PLANNING COMMITTEE

TUESDAY 10 JANUARY 2023
VIA A DIGITAL MEETING FACILITY

Committee Members Present:

Councillor N Hampshire (Convener)
Councillor L Allan
Councillor J Findlay
Councillor A Forrest
Councillor N Gilbert
Councillor C McGinn
Councillor S McIntosh
Councillor K McLeod
Councillor J McMillan
Councillor C Yorkston

Other Councillors Present:

Councillor L-A Menzies

Council Officials Present:

Mr K Dingwall, Service Manager – Planning
Ms E Taylor, Team Manager – Planning Delivery
Ms S McQueen, Planner
Mr D Taylor, Planner
Ms F Haque, Solicitor
Ms M Haddow, Transportation Planning Officer
Ms P Gray, Communications Officer
Ms L Hunter, Transportation Planner
Mr M Cernicchiaro, Architect
Mr C Clark, Senior Environmental Health Officer
Ms A Stewart, Housing Enabler

Clerk:

Ms B Crichton

Visitors Present/Addressing the Committee:

Item 2: Mr B Hampton, Ms S Lamb
Item 3: Mr S Herriot, Mr K Thomson, and Mr B Hickman
Item 4: Mr M Cernicchiaro

Apologies:

Councillor D Collins
Councillor C Cassini

Declarations of Interest:

None

1. MINUTES OF PLANNING COMMITTEE MEETING, 6 DECEMBER 2022

The minutes were agreed as an accurate record of the meeting.

2. PLANNING APPLICATION NO. 18/00109/PM: ERECTION OF 171 HOUSES, 24 FLATS, 14 BUSINESS UNITS (CLASS 4, 5, 6), ONE RETAIL UNIT (CLASS 1), RESTAURANT (CLASS 3)/BAR (SUI GENERIS) AND ASSOCIATED WORKS, LAND AT WINDYGOUL, ELPHINSTONE, TRANENT

A report was submitted in relation to Planning Application No. 18/00109/PM. Keith Dingwall, Service Manager – Planning, presented the report, summarising the key points. The report recommendation was to refuse consent.

Officers responded to questions from Members. Councillor McGinn raised questions relating to sports provision and traffic. Mr Dingwall advised that the applicant felt there was no policy basis for the planning authority to require a contribution to sports provision; officers countered that the Local Development Plan (LDP) and supplementary guidance said contributions should be considered for windfall housing developments. He added that infrastructure, including sports infrastructure, was a material planning consideration and therefore a competent reason for refusal. He said that all consultees had concluded there were acceptable links through the site. The core path between the east of the site and Windygoul South was to be upgraded as part of another development. He noted that Local Members regularly expressed concerns about the traffic on Elphinstone Road, but advised that transportation officers had not recommended refusal on that basis. Morag Haddow, Transportation Planning Officer, added that officers were happy with the Transport Assessment and the contributions being made towards the town centre changes in Tranent.

Responding to questions from Councillor McLeod, Mr Dingwall advised that the council did not ordinarily take on maintenance in a private area; it would be for the developer to make arrangements for the upkeep of the play areas. He said that the determination could only be made for the proposed level of affordable housing as part of the application, but there was provision for an applicant to seek to vary or amend the terms of the affordable housing contribution at a later date. Responding to questions from Councillor Gilbert, Anna Stewart, Housing Enabler, advised that 49 units would be for social rent, and the remaining affordable housing would be for midmarket rent; prices would be negotiated at a later stage, with a fall-back position within the local housing allowance. Who would deliver the midmarket rent properties had not yet been determined.

Responding to further questions, Mr Dingwall confirmed that the proposals satisfied Local Development Plan (LDP) requirements for open space. He acknowledged that the density of housing was higher than in some developments, but based on the layout, and the existing character of the housing to the north of the site, the density was considered to be acceptable. He confirmed also that there was still adequate land supply within the LDP to build the 10,050 houses required by the Scottish Government.

Bruce Hampton was present on behalf of Mactaggart and Mickel. Responding to questions from Councillor McGinn, he said that the developer disagreed with officers around policy interpretation and the size of the contribution required towards sports provision. He advised that legal advice had been taken on the matter and shared with the planning authority. He advised that all space that was not private/adopted spaces would be factored, but a factor had not yet been appointed. Mr Hampton and Councillor McGinn discussed the industry's approach to factors, and Councillor McGinn expressed concern that factors did not always abide by plans and the costs to residents could rise year-on-year. He asked that Mactaggart and Mickel undertake a review of factoring arrangements to ascertain whether customers were happy. He disputed that it was a simple process to remove and replace factors, and Mr

Hampton responded that the company reviewed past performance and satisfaction, and was keen to align itself with good factors. Councillor McGinn also remained concerned about the volume of traffic through Tranent and on Elphinstone Road, and that the application would substantially increase traffic. Mr Hampton said that extensive studies had been undertaken, and some of the developer contributions would go towards upgrading the road network to the north. He argued that the site was not suitable for business and employment use due to the unsuitability of the road network for articulated lorry transport, and said housing would be a better answer for the site. He pointed out that the development offered the opportunity to finish the southern link road, thus offering a better route from Windygoul South than would exist if the site remained undeveloped in the short term.

Councillor Menzies raised concerns over the voting arrangements in residents' associations for sites which had a large proportion of residents who are renting. Mr Hampton suggested that Members could require that a draft Deed of Conditions be approved prior to the development beginning. He gave an account of previous interactions with housing associations and said that the contract discussion could be built into the process earlier.

Responding to a question from Councillor Findlay, Mr Hampton gave an account of some of the reasons the site was considered unsuitable for economic development: there was an overprovision of industrial land and no market for 22 acres of employment land in that location; the juxtaposition with residential sites on the northern and eastern flanks did not work; and traffic issues would be caused by articulated lorries accessing the site. The developer had, however, committed a zone in the eastern corner to provide infrastructure and build an initial office block of 4000ft² to be used as a sale area.

Councillor McGinn, Local Member, said he would not support the application. He remained concerned over: the issues around sports provision; the volume of traffic increasing substantially; factoring arrangements; and it being a speculative application designed to override the LDP for more profitable housing. He suggested that the Committee write to the Scottish Government to discuss local authorities maintaining control of areas of economic development land identified under LDPs. He felt that if permission was not granted to take control, there was a danger of losing employment land to housing, or facing numerous speculative applications.

Councillor Menzies, Local Member, said that employment was right for the site, and said the area could not continue building satellite towns, and instead needed to provide sustainable employment and adequate healthcare within the county. She said that although the active travel provisions met requirements, she felt they plans were still poor and not where ambitions should lie. She noted issues of overcapacity within the school, GP surgery, and roads within the area. She also highlighted the difference between employment spaces and office blocks. Councillor McLeod, Local Member, echoed his colleagues' remarks, particularly since the site was earmarked for commercial use in the LDP. He would not support the application.

Councillor McIntosh highlighted local concerns about overdevelopment, building houses on agricultural land, and a lack of employment opportunities. As such, she would not support the development of housing on employment land. Councillor McMillan drew attention to the Economic Development Strategy and the key indicator to increase the number of jobs and inward investment in the county; it was known that there was a demand for small units for expansion. He highlighted National Planning Framework 4 (NPF4) and issues around the local economy and wellbeing. He supported Councillor McGinn's idea to write to the Scottish Government. He felt that the development did not help to strike the balance of the need for local jobs and leisure alongside housing, and would not support the application.

The Convener noted the difficulties faced previously in finding land for 10,050 houses across the county, but said delivery of these houses and associated infrastructure was well

underway across all communities. He highlighted that landowners and developers were not bringing forward economic development land. He felt that the council needed power to bring this forward, to ensure new and expanding businesses could stay within the county. He agreed that the Committee should write again to the Scottish Government. Businesses in East Lothian were looking to expand and develop, but adequate facilities were not available. He said that approval of this application would mean the planning system was broken, and reiterated that the site was for economic development use and needed to remain so. He also noted the revenue consequences of new housing, only around 25% of which was covered by council tax; he said that East Lothian could not afford to develop any more housing than was allocated within the LDP. He recommended that Members support the officer recommendation to refuse consent.

Councillor McGinn proposed that the Committee write to Scottish Government Ministers regarding the protection of economic development land, and this was seconded by McMillan. The Convener moved to a roll call vote on this proposal, and this was supported unanimously by Members.

The Convener then moved to the vote on the report recommendation, taken by roll call. The officer recommendation to refuse consent was supported unanimously.

DECISION

The Planning Committee refused permission for the following reasons:

- 1 The proposed residential development would result in the loss of employment land that is part of the established employment land supply of Tranent, to the detriment of East Lothian's economy, contrary to Proposal TT3 and Policy EMP1 of the adopted East Lothian Local Development Plan and Scottish Planning Policy: June 2014.
- 2 The proposed residential development would lead to an unacceptable loss of prime agricultural land, contrary to Policy NH7 of the adopted East Lothian Local Development Plan 2018 and Scottish Planning Policy: June 2014.
- 3 Without the developer contributions towards sports provision the proposed development is unacceptable due to a lack of sports infrastructure and is therefore contrary to Policy DEL1 and Proposals TT3 and CF1 of the adopted East Lothian Local Development Plan 2018.

The Planning Committee also agreed to write to Scottish Government Ministers regarding the protection of economic development land.

3. PLANNING APPLICATION NO. 22/00992/AMM: APPROVAL OF MATTERS SPECIFIED IN CONDITION 1 OF PLANNING PERMISSION IN PRINCIPLE 21/01474/PPM - RELATING TO THE DETAILED LAYOUT, SITING, DESIGN AND EXTERNAL APPEARANCE OF THE ONSHORE SUBSTATION AND ONSHORE TRANSMISSION WORKS ASSOCIATED WITH THE OFFSHORE INCH CAPE WIND FARM, FORMER COCKENZIE POWER STATION SITE, PRESTONPANS

A report was submitted in relation to Planning Application No. 22/00992/AMM. David Taylor, Planner, informed the Committee that the council's Senior Engineer – Flood Protection had advised that a Surface Water Drainage Strategy submitted for the wider former Cockenzie Power Station site as part of Condition 10 of permission 21/01474/PPM included land which was the site of an onshore substation, the subject of the current application. Therefore, recommended Condition 6 in the report of handling for the current application would be

deleted. He then presented the report, summarising the key points. The report recommendation was to grant consent.

Officers responded to questions from Members, and Simon Herriot, agent, and Keith Thomson, on behalf of Inch Cape Wind, were also present to answer questions. Mr Taylor confirmed that a new fence would be erected along the existing site boundary to the west. Responding to questions from Councillor McIntosh, Mr Taylor confirmed that officers were satisfied with the flood event modelling, which had taken into account sea level rises. Councillor Gilbert asked about illumination of the facility at night. Mr Thomson reassured Members that lighting at night would be kept to a minimum, with the best technology used to make sure no disturbance was caused, but said there were no plans to light the facility in colour. Councillor McGinn asked about the closure of the John Muir Way, and Mr Taylor advised that the only closure of this section would be during landfill works; disruption and closure of the footpath would be kept to a minimum and restored accordingly on completion.

Bryan Hickman raised questions and representation about the application on behalf of Cockenzie and Port Seton Community Council. The community council noted that the Environmental Impact Assessment (EIA) had been produced in 2018, and felt this should be updated as the sight was now much busier. He raised that the EIA did not refer to sound pollution, or risk from fire or theft. He also questioned whether the site would be manned 24 hours per day. He noted that the John Muir Way was used for fishing as well as walking, and asked why the whole section had to be closed. He questioned some of the planting chosen for the site, and said that sea buckthorn was very invasive. He also asked about the impact on the existing road system when materials were delivered to the site, since the proposed new road was unlikely to be ready before this development began.

Mr Taylor responded to the questions raised by Cockenzie and Port Seton Community Council. He confirmed that the EIA had been produced in 2018 and then revisited in 2021. He advised that an Operational Noise Impact Assessment had been submitted and approved, with no issues raised by Environmental Health. Landscaping proposals had also been submitted but not yet approved; he highlighted Condition 4 which required a final scheme of landscaping to be submitted for approval, but said the applicant had taken on board Landscape Officer comments. He also advised that no concerns had been raised by Road Services over deliveries to the site during construction.

Mr Thomson also responded to the community council's comments. He advised that the site would generally be unmanned, but there would be regular presence of personnel in low numbers. He advised that mitigation against risk of fire had been factored into the design, including fire walls incorporated into the substation walls. He gave reassurance that this part of the John Muir Way would be kept open wherever possible, and a diversion would be in place when an area to the northwest of the site would have to be closed temporarily. Mr Herriot added that the planning permission in principle from 2018 (and renewed in 2021) contained 14 conditions, and these controls remained in place; the information before Members for the current application related only to Condition 1 of permission 21/01474/PPM. He noted that landscaping was controlled by Condition 1 and Condition 13 of the parent permission. Councillors McMillan and McIntosh raised landscaping, and Councillor McIntosh highlighted Biodiversity Officer comments that the scrubs would have to be maintained to avoid detriment to the wading birds. The Convener said that the Landscape Officer and Biodiversity Officer would ensure appropriate planting for the location would be put in place.

Councillor Yorkston commented on the historic importance of the site for the production and distribution of electricity, and said it made sense to utilise the resource. He noted that there was still a great deal of land left to develop other employment and economic development opportunities. He noted the polluting effect of the former power station, and he would support this proposal to expand the potential of the site to bring clean and green energy into the national grid. Councillor Gilbert echoed these comments, and was glad that the substation

would use as little land as possible to the north of the site, regarded as the prime area. He would support the lighting plan having received reassurance that it was as robust as it could be.

The Convener commented on the long process to bring the substation forward. East Lothian had played an important role in supplying the country's energy needs, and would continue to do so by helping to supply green energy. He commented that there was more to do across the county to ensure the energy supply was greener and safer. He then moved to the vote on the report recommendation, to grant consent, taken by roll call. Members unanimously supported the officer recommendation.

DECISION

Members agreed that Approval of Matters specified in conditions for the detailed layout, siting, design and external appearance of the Onshore Substation and onshore transmission works be granted subject to the following conditions:

- 1 The development hereby approved shall begin before the expiration of 3 years from the date of this permission.

Reason:

Pursuant to Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

- 2 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving finished ground levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

- 3 Notwithstanding that which is stated on the drawings docketed to this approval of matters specified in conditions, a detailed specification of all external finishes of the proposed development shall be submitted to and approved by the Planning Authority prior to the use of the finishes in the development. All such materials used in the construction of the development shall conform to the details so approved.

Reason:

To ensure the development is of a satisfactory appearance in the interest of the amenity of the locality.

- 4 The submitted landscape information is not hereby approved. Instead, and prior to the commencement of development, a scheme of landscaping taking account of the detailed layout of the Onshore Substation hereby approved 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 recontouring of the site, species, habitat, siting, planting distances and a programme of planting. It should also address long term management of the approved planting.

In accordance with the approved scheme all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of

the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason:

In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

- 5 Prior to the commencement of any development of the offshore export cables from the Inch Cape offshore wind farm to the northwest of the application site and the closure of the coastal footpath to the north, details of the footpath diversion to be provided shall be submitted to and approved by the Planning Authority.

The details submitted shall comply with the following requirements:

- i) the section of the coastal footpath to the north to be closed-off shall include only that area of development of the offshore export cables from the Inch Cape offshore wind farm to the northwest of the site and public access to the remaining areas of coastal footpath shall be retained;
- ii) during periods when no development of the offshore export cables from the Inch Cape offshore wind farm is undertaken the coastal footpath will remain fully in use;
- iii) a signage strategy to ensure that adequate signage shall be erected at each access to the footpath diversion at least 14 days prior to its implementation and for the duration of its use to include information on the diversion route, the dates during which it will operate and contractor contact details; and
- iv) all areas of the footpath diversion shall be finished in a permeable hardsurface.

Thereafter the footpath diversion shall be available for use by the public for the duration of the construction phases of the offshore export cables from the Inch Cape offshore wind farm to the northwest of the application site unless otherwise agreed by the Planning Authority.

Reason:

To safeguard safe access by members of the public.

4. PLANNING APPLICATION NO. 22/00180/PM: ERECTION OF SCHOOL/CHILDREN'S NURSERY AND ASSOCIATED WORKS, WHITECRAIG PRIMARY SCHOOL AND LAND TO THE SOUTH WEST OF WHITECRAIG PRIMARY SCHOOL, WHITECRAIG, MUSSELBURGH

A report was submitted in relation to Planning Application No. 22/00180/PM. Stephanie McQueen, Planner, presented the report, summarising the key points. The report recommendation was to grant consent.

Officers responded to Member questions, and Michael Cernicchiaro, Architect, was present on behalf of East Lothian Council. Mr Cernicchiaro advised that work was expected to begin on site in June 2023, with building work completed by the end of the August school break in 2024. Ms McQueen said that the Flooding and Drainage Officer was satisfied that there were appropriate controls in place to mitigate flooding risks. Officers would welcome children being involved in selecting which trees would be planted and would suggest to the school that pupils become involved in this way. Mr Cernicchiaro confirmed that the dining hall design had been calculated using peak roll projections for the school, so there would be room to feed all children at the same time. He said consideration had been given to retrofitting existing buildings, but the condition of the existing building, including poor energy efficiency and the presence of asbestos, meant that a decision was made to replace. Energy performance modelling had shown that installation of air source heat pumps, detailing to

increase the airtightness of the building, and incorporating higher levels of insulation met all leap funding requirements for energy and sustainability, as well as all planning requirements.

Responding to questions from Councillor McGinn, Ms McQueen advised that Road Services had been satisfied that all roadside disabled parking spaces would be retained, and driveway access would also be retained. The setback required for signalised junctions would actually have a positive impact on the access driveways, which would be less likely to be blocked by people trying to park close to the roundabout. Liz Hunter, Transportation Planner, added that double yellow lines would be installed on Cowpits Road over the first 15m north from the new signalised junction; this would give greater protection to the white bar markings currently covering two driveways.

Members welcomed the new Whitecraig Primary School, commenting on the innovative design as being ambitious and an investment in Whitecraig's young people, staff, and community. Councillor McGinn said he was delighted with the timescales involved. Councillor McIntosh noted that it was the first public building she had considered as a Planning Committee Member that was being built to Passivhaus standards, and Councillor McMillan highlighted the importance of encouraging behaviour change towards active travel to school.

The Convener noted the rate of growth within the school estate and the revenue and capital pressures the council faced. He welcomed the building's energy efficiency, which would keep costs down, and its spectacular design. He then moved to the vote on the report recommendation, to grant consent, taken by roll call. Members unanimously supported the officer recommendation.

DECISION

The Committee agreed planning permission for the proposed primary school and its associated works be granted subject to the following conditions:

- 1 The development hereby approved shall begin before the expiration of 3 years from the date of this permission.

Reason:

Pursuant to Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

- 2 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
- c. the ridge height of the proposed shown in relation to the finished ground and floor levels on the site.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

- 3 Prior to any works beginning on site (and where risks have been identified), the remediation of the site shall be carried out in accordance with the Remediation Strategy docketed to this grant of planning permission unless otherwise approved in writing by the Planning Authority in consultation with the Council's Contaminated Land Officer.

The approved Remediation Statement must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out the agreed remediation. Following completion of the measures identified in the approved Remediation Statement, a Validation Report shall be submitted that demonstrates the effectiveness of the remediation carried out. The Validation Report shall be submitted to and approved in advance in writing by the Planning Authority prior to the commencement of use of the new school hereby approved.

In the event that 'unexpected' ground conditions (contamination) are encountered at any time when carrying out the development hereby approved, work on site shall cease and the issue shall be reported to the Planning Authority immediately. At this stage a Site Investigation and subsequent Risk Assessment may have to be carried out, if requested by the Planning Authority. It may also be necessary to submit a Remediation Strategy should the reporting determine that remedial measures are required. It should also be noted that a Verification Report would also need to be submitted confirming the satisfactory completion of these remedial works.

If no 'unexpected' ground conditions are encountered during the development works, then this should be confirmed to the Planning Authority prior to the commencement of use of the new development.

Reason:

To ensure that the site is appropriately remediated and is clear of any contamination found to be present prior to the use of the building approved.

- 4 Prior to the commencement of use of any part of the school hereby approved, the proposed signalised junction also hereby approved, shall have been installed, made operational, and been subject to an independent Stage 3 Road Safety Audit and any points raised by that Audit satisfactorily addressed. The proposed signalised junction shall be laid out in accordance with the details for it shown on docketed drawing no. J5278-sk001 Rev G (G3 Consulting Engineers drawing) unless the Planning Authority agree to any variation.

Double yellow line restrictions shall be installed on the east side of Cowpits Road in line with the extents shown on docketed drawing no. J5278-sk001 Rev G (G3 Consulting Engineers drawing) in order to maintain forward visibility to the signalised junction. A Traffic Regulation Order will need to be progressed.

Thereafter the proposed signalised junction shall be retained for such use unless the Planning Authority agree to any variation.

Reason:

In the interests of road and pedestrian safety.

- 5 Prior to the commencement of development, a Construction Method Statement which sets out how the impact of construction activity on the safety and amenity of the area will be mitigated shall be submitted to and approved in advance in writing by the Planning Authority. The Construction Method Statement shall include details of:

- (i) mitigation measures to control noise, dust, construction traffic (including routes to/from site and delivery times);
- (ii) hours of construction work;
- (iii) routes for construction traffic;
- (iv) how building materials and waste will be safely stored and managed on site; and
- (v) wheel washing facilities or alternative facilities to prevent deleterious materials being carried onto the public road on vehicle tyres.

Thereafter, the Construction Method Statement shall be implemented and complied with in accordance with the approved details for the period of construction of the development hereby approved and the wheel washing facilities or any alternative facility so approved shall be provided and maintained in working order during the period of construction operations at the site.

Reason:

To minimise the impact of construction traffic in the interests of road and pedestrian safety in the locality and relative to school generated vehicle and pedestrian movements.

- 6 Prior to the development hereby approved being brought into use, a School Green Travel Plan shall be submitted to and approved in writing in advance by the Planning Authority in consultation with the Council's Road Services. The School Travel Plan shall have particular regard to provision for walking, cycling and public transport access to and within the site, including the identification of appropriate Safer Routes to School, and will identify the measures to be provided, the system of management, monitoring, review, reporting and duration of the plan.

Thereafter, the approved School Green Travel Plan shall be implemented prior to the use of the primary school building hereby approved.

Reasons:

In the interest of road safety.

- 7 Prior to the commencement of the development hereby approved, a detailed Construction Risk Assessment and Method Statement for the proposed works to the culverts on the application site shall be submitted to and approved in advance in writing by the Planning Authority. Amongst other details, the Construction Risk Assessment and Method Statement shall include a timetable for the implementation of the works to the culverts. The development shall thereafter be carried out in strict accordance with the detailed Construction Risk Assessment and Method Statement so approved, unless otherwise agreed in writing by the Planning Authority.

Reason:

To ensure that development is not at risk from flooding.

- 8 Prior to the commencement of development on the site, full details of the proposed Sustainable Drainage System (SuDS) including a Surface Water Management Plan for the development shall be submitted to and approved in writing by the Planning Authority.

The details shall include confirmation of Scottish Water's technical approval of the SuDS proposals, if relevant.

Thereafter, the approved details shall be implemented as approved, unless otherwise agreed in writing with the Planning Authority.

Reason:

To ensure that development is not at risk from flooding, there is no increase in flood risk elsewhere and appropriate long-term maintenance arrangements are in place.

- 9 Prior to the commencement of use of the primary school hereby approved, the proposed access roads, parking spaces, cycle parking and footpaths shall all have been constructed on site in accordance with the docketed drawings.

Those areas of land shall not thereafter be used for any other purpose than for accessing and for the parking of vehicles in connection with the use of the primary school and shall not be adapted or used for other purposes without the prior written approval of the Planning Authority.

Reason:

To ensure that adequate and satisfactory provision is made for access and for parking in the interests of road safety.

- 10 Prior to the commencement of use of the school hereby approved, the turning head of the vehicular access from Whitecraig Road (Service Vehicular Entrance) shall be marked out as a 'keep clear' or 'no parking' area to ensure that there would be no obstruction to vehicular manoeuvres, and details of the marking out of that 'keep clear' or 'no parking' area shall be

submitted to and approved in advance in writing by the Planning Authority in consultation with Road Services and Waste Services prior to the works being carried out. Thereafter, the 'keep clear' or 'no parking' area shall be marked out in accordance with the details so approved and shall be retained as such in perpetuity unless otherwise approved by the Planning Authority.

Reason:

In the interests of road safety and to ensure adequate turning and manoeuvring space on the site.

- 11 Any proposed plant/equipment associated with the operation of the school hereby approved shall be selected, designed and located so as to ensure that any noise emanating therefrom shall not exceed Noise Rating Curve NR25 at any octave band frequency within any neighbouring residential property, with all measurements to be made with windows open at least 50mm.

Reason:

In the interests of safeguarding the amenity of the occupants of existing neighbouring residential properties.

- 12 The design and construction of the floodlighting of the artificial sports pitch hereby approved shall take account of the Guidance contained within Annex 1 to Appendix 2 of Scottish Government Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008 to ensure that the following criteria be met prior to any external lighting becoming operational:

(i) Light Trespass onto windows of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 10 Lux between the hours of 07.00 and 23.00 on any day and shall not exceed 2 Lux between the hours of 23.00 to 07.00.

The lighting shall thereafter be maintained as approved unless the Planning Authority given written consent to any variation.

The floodlights of the artificial sports pitch of the development hereby approved shall only operate between 07.00 and 23.00 hours on any day.

Reason:

To prevent lighting from spilling onto neighbouring land, in the interests of safeguarding the amenity of the occupants of neighbouring residential properties.

- 13 A schedule and samples, of materials and finishes, including their colours, to be used on the exterior of the primary school building hereby approved shall be submitted to and approved in advance in writing by the Planning Authority prior to their use in the development. Thereafter, the materials and finishes, including their colour(s), used shall accord with the schedule and samples of them so approved.

Reason:

To enable the Planning Authority to control the materials, finishes and colours to be used to achieve a development of good quality and appearance in the interest of the visual amenity of the area.

- 14 Prior to commencement of development, details of the electric vehicle charging facilities including a timetable for their implementation and availability for use shall be submitted to and approved by the Planning Authority.

The electric vehicle charging facilities shall thereafter be carried out in accordance with the details and timetable so approved and those areas of land shall not thereafter be used for any other purposes than for electric vehicle charging facilities.

Reason:

To minimise the environmental impact of the development.

- 15 Other than the trees, as detailed on docketed drawing no. L(94)010 rev P04, that are to be removed, all other existing trees on the application site shall be retained and shall not be

damaged or uprooted, felled, lopped or topped without the prior written consent of the Planning Authority.

Reason:

In order to ensure the retention and health of trees or shrubs on and adjacent to the application site which are important to the landscape character of the area.

- 16 No development shall take place on the site until temporary protective fencing has been erected and installed and confirmed in writing by the Planning Authority to protect the retained trees on the site. The temporary protective fencing shall be erected in the positions shown for it on the drawings docketed to this grant of planning permission, unless otherwise approved in writing by the Planning Authority.

The temporary protective fencing shall comprise Heras, or similar approved, weld mesh enclosed panels joined together with a minimum of two anti-tamper couplings, and supported on preformed panels weighted footings, stayed and fixed into the ground to withstand impact from machinery and access into the construction exclusion zone, in accordance with British Standard BS5837: 2012 "Trees in relation to design, demolition and construction". The temporary protective fencing shall be 2.3 metres in height, erected prior to works commencing, kept in good condition through the works and shall be retained on site fully intact through to the completion of the site development. The position of this temporary protective fencing shall be outwith the root protection area (RPA) as defined by BS5837:2012 for the existing retained trees.

All weather notices shall be erected on the fencing referred to in paragraphs 1 and 2 of this condition with words such as "Construction exclusion zone - Keep out" and the fencing shall remain on site and intact through to completion of the development.

Within the fenced off areas creating the construction exclusion zones the following prohibitions shall apply:-

- No vehicular or plant access;
- No raising or lowering of the existing ground levels;
- No mechanical digging or scraping;
- No storage of temporary buildings, plant, equipment, materials or soil;
- No hand digging;
- No lighting of fires; and
- No handling, discharge or spillage of any chemical substance, including cement washings.

Planning of site operations shall take sufficient account of wide loads, tall loads and plant with booms, jibs and counterweights (including drilling rigs), in order that they can operate without coming into contact with retained trees.

Reason:

In order to ensure the protection of the trees within and adjacent to the application site in the interests of safeguarding the landscape character of the area.

- 17 Any works within the root protection area of any retained tree shall be dug and backfilled by hand. Within such hand dug operations, tree roots exceeding 25mm diameter shall be avoided. If roots exceeding 25mm diameter are encountered the excavation shall be backfilled and lightly compacted immediately and another hole dug. Any tree roots 25mm in diameter or smaller encountered shall be cleanly cut.

Reason:

To ensure the protection of the trees within and outwith the application site in the interests of safeguarding the landscape character and appearance of the area.

- 18 All planting, seeding or turfing comprised in the approved details of the landscaping scheme shown in the drawings docketed to this grant of planning permission shall be carried out in the first planting and seeding season (October - March) following the school building being brought into use or the completion of the development hereby approved, whichever is the sooner.

Any trees or plants which die, are removed or become seriously damaged or diseased within a period of 10 years shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason:

To ensure the implementation of landscaping in the interests of the character, appearance and amenity of the area.

- 19 Any tree felling shall not be carried out during the bird breeding / nesting season (March to August, inclusive each calendar year) unless it is implemented wholly in accordance with a Species Protection Plan which shall be submitted to and approved in writing in advance by the Planning Authority, and thereafter, the development shall be carried out in accordance with the Species Protection Plan so approved, or it has been demonstrated to the satisfaction of the Planning Authority that no nesting birds are present prior to works commencing and the Planning Authority have approved such details in writing in advance.

Reason:

To ensure the protection of wildlife and biodiversity from significant disturbance arising from the construction associated with the development hereby approved.

Signed

.....

Councillor Norman Hampshire
Convener of the Planning Committee

REPORT TO: Planning Committee
MEETING DATE: 7 March 2023
BY: Executive Director for Place
SUBJECT: Application for Planning Permission for Consideration

Application No. **22/00757/P**
Proposal Installation of lighting (Retrospective)
Location **26 Victoria Road
North Berwick
East Lothian
EH39 4JL**

Applicant Mr Stirling Stewart
Per Somner Macdonald Architects

RECOMMENDATION Application Refused

REPORT OF HANDLING

PROPOSALS

This application relates to the building of the former coastguard station at 26 Victoria Road, which is now in use as a restaurant and takeaway known as 'The Rocketeer'.

The application site is on the east side of Victoria Road, close to the junction of Victoria Road with Melbourne Road. The building of 26 Victoria Road is detached and is single storey in height.

The application site is bounded to the west by a narrow strip of footpath beyond which is the public road of Victoria Road, on the opposite side of which are residential properties. To the north, south and east of the site is land of the public open space of 'Anchor Green'. On the area of open space to the south of the site is the Memorial Cross. The scheduled ancient monument of St Andrews Kirk, including the Old Parish Kirk Porch is also to the north of the site. Further to the north are residential properties, the harbourmaster's office and the buildings of the Scottish Seabird Centre. The East Lothian Yacht Club building at 36-40 Victoria Road, which is located some 35 metres to the north of the application site, is listed as being of special architectural or historic interest, Category B.

The application site is located within an operational harbour area as identified by Policy EMP2 of the adopted East Lothian Local Development Plan 2018, and is part of the developed coast as defined by Policy DC6 of the adopted East Lothian Local Development Plan 2018. It is also within North Berwick Conservation Area. It is outwith but close to part of the southern edge of the North Berwick to Seton Sands Special Landscape Area (SLA) as defined by Local Development Plan Policy DC9. The southern part of harbour promontory, including the application site, is not within the SLA.

PLANNING HISTORY

On 11th January 2012 planning permission 11/00064/P was granted for: (i) the change of use of the former coastguard station building and its associated land at 26 Victoria Road to use as a restaurant and takeaway with an external decked seating area; (ii) the installation of vents and a flue on the building; and (iii) the addition of a bin store onto the north elevation wall of the building. The use of the building as a restaurant and takeaway that is named 'The Rocketeer' has commenced therefore, planning permission 11/00064/P has been implemented.

On 6th November 2012 planning permission 12/00410/P was retrospectively granted for alterations and additions to the building of 26 Victoria Road comprising: (i) the addition of a painted timber bin store and maitre d station onto the west elevation wall of the building; (ii) the installation of a rectangular aluminium vent grille in the west elevation wall of the building; (iii) the removal of the white rendered finish of the north and south elevation walls of the building and the cleaning of the resultantly exposed stonework of those elevation walls; (iv) the re-rendering of the east elevation wall of the building with a buff/brown coloured render; (v) the provision of a circular glass window in the entrance door of the south elevation wall of the building; (vi) the installation of two wall mounted lights, one to each side of the entrance door in the south elevation wall of the building; (vii) the installation of two wall mounted lights on each of the north, east and south elevation walls of the building; and (viii) the installation of a dark green coloured gas meter housing cabinet in a position low down on the north elevation wall of the building. Planning permission 12/00410/P was also retrospectively granted for the formation of Indian sandstone slabs that had been laid around the building; between the building and the rubble stone boundary wall, and for the 1.3 metres wide, black painted metal open railing type gate that had been erected across the pedestrian entrance in the west boundary wall.

Planning permission 12/00410/P did not grant approval for two wall mounted heaters with associated wiring boxes that had been installed on each of the north, east and south elevation walls of the building, or for a retractable awning that had been installed on each of the south and east elevation walls of the building, as also retrospectively applied for. These elements of unauthorised development carried out at the premises were refused by conditions of planning permission 12/00410/P.

The decision to refuse by condition of planning permission 12/00410/P the installation of the retractable awnings was subsequently appealed to the Scottish Ministers (Directorate of Planning and Environmental Appeals Ref: PPA/210/2032). That appeal was dismissed on 28th March 2013.

The decision to refuse by condition of planning permission 12/00410/P the installation of the wall mounted heaters and their associated wiring boxes was not appealed to the Scottish Ministers.

Planning application 13/00065/P was registered in March 2013 for the erection of a glazed extension to the building. Following discussions between the Applicant, his Agent

and the Planning Officer, that application was withdrawn whilst the Applicant considered the specifics of the design of the extension proposed.

On 16th May 2014 planning permission 14/00185/P was granted for the temporary siting for a period of two years of five foldaway gazebos on the areas of land to the south and east sides of the building, between the building and the rubble stone boundary wall. Two of the gazebos would be sited on the area of land to the south of the building and three would be sited on the area of land to the east of the building. Planning permission 14/00185/P has now lapsed.

On 6th March 2015 planning permission 14/00980/P was granted for the addition of two canopies to be attached to the building. One canopy would be attached to the south elevation wall of the building and one would be attached to the east elevation wall of the building. Planning permission 14/00980/P also granted approval for the addition of windbreaks to the south, east and north boundary walls that enclose the narrow strips of land on each side of the four sides of the building. Planning permission 14/00980/P was implemented.

At Planning Committee on the 13th March 2017, planning permission 16/00860/P was granted contrary to officer recommendation for the erection of two additional canopies on the building, one on the north elevation and an additional one on the southeast elevation. Condition 3 of planning permission 16/00860/P granted planning permission for the 2 additional canopies to be erected between April and October in each calendar year. Planning permission 16/00860/P was implemented in April 2017.

On 2nd February 2018, planning permission 17/00746/P was granted for the addition of an extension with glazed walls and a glazed roof to be wrapped around the building and therefore attached to its north, east, south and west elevations and to the boundary walls that enclose the land on each side of the building thereby enclosing all of the land between the building and those rubble stone boundary walls. Planning permission 17/00746/P also approved: (1) the replacement of the existing roof light on the south elevation roof slope of the building with an air conditioning grille of the same size as the existing roof light it would replace; (2) the resurfacing of a 10m length of the footpath that is to the southwest side of the building, outwith the rubble stone walls that enclose the land that surrounds the building, to match the surfacing within the enclosed outdoor seating area of 'The Rocketeer', and (3) the re-positioning of the existing BT pole that is adjacent to the inner wall of the wall enclosing the north boundary of the property to a position some 11 metres to the west of its position and adjacent to the northwest corner of the boundary wall. Planning permission 17/00746/P has been implemented.

On 11th May 2018 planning permission 18/00266/P was granted for the variation of Condition 3 of planning permission 11/00064/P to change the opening hours of the business from 10:00 hours until 20:00 hours to 11:00 hours until 22:00 hours.

On 5th February 2021 planning application 20/01241/P was refused for the change of use of an area of open space of the southern part of 'Anchor Green' to use as an outdoor seating area for the restaurant and takeaway known as 'The Rocketeer', at 26 Victoria Road for a temporary period of 3 years and for the formation of hardstanding areas to the north, south and west sides of the building of 26 Victoria Road. The reasons for refusal being: (1) The proposed change of use of the area of public amenity open space to use as an outdoor seating area in association with the existing restaurant/servery/takeaway business of 'The Rocketeer' at 26 Victoria Road would result in an unacceptable harmful impact, detrimental to the recreational function of the area of amenity open space and would significantly compromise the visual amenity and landscape character of the area, contrary to Policy OS1 of the adopted East Lothian Local Development Plan 2018; (2)

The proposed change of use of the area of public amenity open space to use as an outdoor seating area in association with the existing restaurant/servery/takeaway business of 'The Rocketeer' at 26 Victoria Road would result in the temporary loss of an area of amenity open space that makes a significant positive contribution to the landscape character of this gateway approach to the harbour promontory and as a result would be significantly harmful to the landscape character and appearance of this part of the North Berwick Conservation Area, contrary to Policy CH2 of the adopted East Lothian Local Development Plan 2018, and with Scottish Government guidance on development affecting a conservation area given in Scottish Planning Policy (Revised December 2020); (3) The proposed hardstanding areas to the north, south and west sides of the building of 26 Victoria Road, by virtue of their modern appearance and uniformity and their positioning around all sides of the building, would be out of keeping with the character and appearance of the surface finishes of the area, and as unsympathetic areas of hardstanding would be harmful to the landscape character of the area and of this part of the North Berwick Conservation Area, contrary to Policies DP2 and CH2 of the adopted East Lothian Local Development Plan 2018, and with Scottish Government guidance on development affecting a conservation area given in Scottish Planning Policy (Revised December 2020); (4) As unsympathetic development that would have a harmful impact on the landscape character and visual amenity of the area and of this part of the North Berwick Conservation Area, the proposed change of use of the area of amenity open space to use as an outdoor seating area would also have a detrimental impact on the setting of this part of the North Berwick to Seton Sands Special Landscape Area, and the public benefits of the proposed development would not clearly outweigh any adverse impact on the setting of the Special Landscape Area. Accordingly, the proposed change of use of the land to use as an outdoor seating area would be contrary to Policy DC9 of the adopted East Lothian Local Development Plan 2018; and (5) As development contrary to Policies OS1, CH2, DP2 and DC9 of the adopted East Lothian Local Development Plan 2018, the proposed development would also be harmful to this part of the East Lothian coastal area and contrary to Policy DC6 of the adopted East Lothian Local Development Plan 2018.

The decision to refuse planning permission 20/01241/P was subsequently appealed to the Local Review Body. The Local Review Body decision on 9th July 2021 was to dismiss the review and to uphold the refusal of planning permission.

On 1st October 2021 advertisement consent 21/00424/ADV was approved for the retrospective display of advertisements on and adjacent to the property of 'The Rocketeer', at 26 Victoria Road.

On 25th March 2022, planning permission 22/00107/P was granted for the formation of a new length of footpath along the south side of the building of 26 Victoria Road and for the re-surfacing of an existing footpath along the west side of the building of 26 Victoria Road.

PROPOSAL

This current application seeks retrospective planning permission for the installation of LED string/strip lighting that has been installed on the eaves gutter of the south and north sides of the building and on the east and west gables of the building, which is in use as a restaurant and takeaway known as 'The Rocketeer'.

The LED string/strip lighting is encased in a waterproof enclosure and is installed along the eaves gutter lines of the north and south elevations and on an alignment with the bottom edge of the stone skewers of the east and west gable elevations.

The applicant states that he believed he had permission for the lighting as part of an earlier permission.

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.

At the time this report was written the development plan is the approved Edinburgh and South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018. However, on the 13th February 2023, and thus before the expiration of this Scheme of Delegation List, the Scottish Government adopted National Planning Framework 4 (NPF4), at which time NPF4 became part of the statutory development plan and SESplan and Scottish Planning Policy: June 2014 will be withdrawn.

The purpose of the approved Edinburgh and South East Scotland Strategic Development Plan (SESplan) is to set out the strategic planning framework to assist preparation of local development plans. Its policies are generally not relevant for assessing individual applications.

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

Policies EMP2 (Operational Harbours), DC6 (Development in Coastal Areas), DC9 (Special Landscape Areas), CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), CH4 (Scheduled Monuments and Archaeological Sites), DP5 (Extensions and Alterations to Existing Buildings) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

Policies 1 (Tackling the Climate and Nature Crises), 2 (Climate Mitigation and Adaptation), 3 (Biodiversity), 4 (Natural Places), 7 (Historic Assets and Places), 10 (Coastal Development) and 14 (Design, Quality and Place) of NPF4 are relevant to the determination of this application.

Material to the determination of the application are Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development affecting a listed building or its setting, and on development within a conservation area given in Scottish Planning Policy: June 2014 and in NPF4.

Scottish Planning Policy and NPF4 echo the statutory requirements of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that in considering whether to grant planning permission for development which affects a listed building or its setting a planning authority shall have special regard to the desirability of preserving and enhancing the building, its setting and any features of special architectural or historic interest which it possesses.

Scottish Planning Policy and NPF4 echo 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 within conservation areas and proposals outwith which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area. Proposals that do not harm the character and appearance of the conservation area should be treated as preserving its character and appearance.

It is stated in the Historic Environment Policy for Scotland (HEPS): April 2019 and Scottish Planning Policy: June 2014 and NFP4 that scheduled monuments are of national importance and that they should be preserved in situ and within an appropriate setting. Where works requiring planning permission would affect a scheduled monument, the protection of the monument and the integrity of its setting are material considerations in the determination of whether or not planning permission should be granted for the proposed development.

Also material to the determination of the application is the planning history of the site.

REPRESENTATIONS

One public representation has been received to the application. That representation has been submitted by the Architectural Heritage Society of Scotland (AHSS). The representation raises objection to the proposed development and the main grounds of objection as summarised are:

1. that the applicant has a history of submitting retrospective planning applications;
2. there is considerable history behind the question of lights on the building;
3. the LED lighting is garish, prominent and intrusive and completely at odds with the historical and architectural character of this part of the Conservation Area, which includes the historic harbour with its piers, promenade and scheduled ancient monument;
4. whether or not illuminated signage is accepted should not form a precedent for this intrusive lighting;
5. the LED strip lighting has far reaching visual impact and can be seen from a distance away, along the East Bay;
6. the LED lighting does not uphold the peaceful, coastal ambience that lends a night-time quality to the visual amenity and landscape character of this part of the Conservation Area; and
7. the AHSS maintain that the existing street lighting, together with light spillage from the interior lighting of the glazed extension of the building is sufficient a source of external lighting.

Whether or not the application is made retrospectively and whether or not the applicant has a history of submitting retrospective planning applications, the application nonetheless stands to be determined on its own merits.

The application drawings show an existing board sign on each of the east and west gables of the building. The positioning of signage, whether illuminated or not, does not require planning permission and therefore does not form part of this application and is shown on the drawing for information only. The board signs and any illumination of them does require advertisement consent. No application of advertisement consent has yet been submitted. Whether or not specific lighting of such signage and the position of that

signage on the building of 26 Victoria Road requires or has the benefit of advertisement consent is not a material consideration in the assessment of this application for planning permission for the LED string/strip lighting that has been attached to the building but rather can, if relevant, be investigated as a separate matter by the **Council's Planning Enforcement service**. It would be through the determination of any future application for advertisement consent that it will be decided if such illuminated signage is appropriate and will be supported.

COMMUNITY COUNCIL

North Berwick Community Council has been consulted on the application and advises that they have no comments to make on the application.

PLANNING ASSESSMENT

The application site is outwith the town centre of North Berwick. However, it is part of a 'hub' area for tourists and visitors, with attractions including the east and west beaches, the harbour, the Scottish Seabird Centre and other occasional events held on parts of 'Anchor Green'.

The application site is located within an operational harbour area as identified by Policy EMP2 of the adopted East Lothian Local Development Plan 2018. The principle purpose of Local Development Plan Policy EMP2 is to safeguard the harbour uses. Policy EMP2 states that within harbour areas the Council will give preference to uses that relate to fishing or other industry connected with the harbour. The Council will consider other uses provided they do not prejudice these uses.

The LED string/strip lighting that has been installed on the building of 26 Victoria Road is used in association with the existing commercial use of the restaurant/servery/takeaway of 'The Rocketeer' that is operating from the property of 26 Victoria Road with the benefit of planning permission granted. Although that existing business is not related to fishing or other industry connected with the operational harbour, it is nonetheless an established business within the operational harbour area. In its use in association with that existing restaurant/servery/takeaway business of 'The Rocketeer', the LED string/strip lighting does not in principle conflict with Policy EMP2 of the adopted East Lothian Local Development Plan 2018.

The LED string/strip lighting, for which retrospective planning permission is sought through this application, has been installed on the building along the eaves gutter of the south and north sides of the building, and on an alignment with the bottom edge of the stone skews of the east and west gable elevations of that part of the building of 26 Victoria Road. The LED string/strip lighting is encased in a white coloured waterproof enclosure.

Being at the junction of Victoria Road with Melbourne Road, the building is located in a prominent position on the harbour promontory and on the approach to the harbour area. In such location, it is readily visible in views within the iconic backdrop of the harbour area, the approach to the Category B listed North Berwick Harbour, some 35 metres to the south of the Category B listed East Lothian Yacht Club building, and being alongside the Memorial Cross and the Scheduled Ancient Monument of St Andrew's Kirk, including the Kirk Porch. As a consequence of all of this, this is a sensitive location where particular care is required to design appropriate alterations to the building, and this has been noted in past planning and appeal decisions for the building.

In such locational circumstances, the building and thus the lighting that has been

installed on it is readily visible in views within the iconic backdrop of the harbour area within this part of the North Berwick Conservation Area, including the relationship of 26 Victoria Road with the adjacent scheduled monument of St Andrew's Kirk.

Although the building of 26 Victoria Road has been altered in the past, nonetheless, as part of this iconic location around the Anchor Green on the harbour promontory, the building and its setting are an important part of the Conservation Area.

Notwithstanding the addition of the glazed extension to it, the simple single storey gabled form and architectural character of the building of 26 Victoria Road is still legible and remains a dominant component of the building, and makes a positive contribution to the character of this part of the harbour area, and the North Berwick Conservation Area.

Although the physical size of the LED string/strip lighting and its waterproof enclosure is small, the LED string/strip lighting extends along all elevations of the building and seen as it is alongside the panel signs and their illumination, creates clutter along the eaves and gables of the building, detracting from its simple architectural character. Furthermore, the white colouring of the waterproof enclosure of the LED string/strip lighting, is seen in stark contrast to the stone of the skews of the building and consequently appears as an incongruous feature on the east and west gables of the building.

Thus, by virtue of its positioning, form and colouring, the LED string/strip lighting is an unsympathetic addition to the building, which detracts from its simple architectural character and is an incongruous feature on the building, harmful to the character and appearance of the building, and by being an unsympathetic and harmful addition to the building, the LED string/strip lighting is harmful to the character and appearance of this part of the North Berwick Conservation Area.

The character of this part of the North Berwick Conservation Area is not confined to daylight hours. During the hours of darkness, the harbour promontory differs significantly from the more prolific illumination of shop frontages found on the High Street and other streets within the Town Centre. In contrast the harbour promontory, of which the application site is a part, has a simple more subdued street-lit appearance with buildings and roofscapes having a simple unilluminated appearance.

By its character when illuminated, the LED string/strip lighting the subject of this application detracts from the simple unilluminated appearance of the roofscape of the building and the surrounding buildings of the harbour promontory and is a visually intrusive feature on the building that is harmful to the character and appearance of the building. When illuminated, the LED string/strip lighting, has far reaching visual impact and can be seen from a distance away, along the East Bay and West Bay, detracting from the subdued ambience of the night-time quality of the visual amenity and landscape character of this part of the Conservation Area. Consequently, as an incongruous, intrusive and unsympathetic addition to the building, the LED string/strip lighting the subject of this application, has a harmful impact on the character and appearance of the streetscape of the harbour promontory, and thus is visually harmful to the character and appearance of this important part of the North Berwick Conservation Area.

Accordingly, the LED string/strip lighting conflicts with Policies DP5 and CH2 of the adopted East Lothian Local Development Plan 2018 and Scottish Government guidance on development affecting a conservation area or its setting given in Scottish Planning Policy: June 2014 and would also conflict with Policies 7 and 14 of NPF4.

Whether unilluminated or illuminated, as an incongruous, intrusive and unsympathetic

and harmful addition to the building, the LED string/strip lighting has a harmful impact on the character and appearance of the streetscape of the harbour promontory, and thus is visually harmful to and detracts from the setting of and approach to the Category B listed North Berwick Harbour and East Lothian Yacht Club building, and the setting of the scheduled ancient monument of St Andrew's Kirk. Accordingly, the LED string/strip lighting conflicts with Policies CH1 and CH4 of the adopted East Lothian Local Development Plan 2018 and Scottish Government guidance on development affecting a listed building or its setting, and the setting of scheduled monuments given in Scottish Planning Policy: June 2014 and the Historic Environment Policy for Scotland (HEPS): April 2019, as relevant and would also conflict with Policy 7 of NPF4.

Historic Environment Scotland have no comment to make on the application.

The application site is also close to part of the southern edge of the North Berwick to Seton Sands Special Landscape Area (SLA) as defined by Local Development Plan Policy DC9. The southern part of harbour promontory, including the application site, is not within the SLA but is located only some 12 metres away from its southern edge. The character statement for the SLA does however comment that the area of the SLA pertaining to North Berwick is popular for recreation and that the popular recreation areas around the sandy bays and harbour headland are an important part of the setting of North Berwick with strong aesthetic appeal that provides diversity and scenic views and comprises an open landscape facing the sea varying in nature from estuaries to dunes and rocky shore (...) as well as several urban areas set directly onto the coast. The Character Statement identifies that there are many excellent views, including that of the North Berwick Beach and Harbour. One of the guidelines for development of the SLA Character Statement is that any proposed development must not harm the recreational and scenic appeal of beaches, including access to them.

The application site is located on the North Berwick Harbour promontory and is at a prominent approach to the harbour and the east and west beaches. As unsympathetic development that has a harmful impact on the visual amenity of the area and of this part of the North Berwick Conservation Area, the LED string/strip lighting also has a detrimental impact on the setting of this part of the North Berwick to Seton Sands Special Landscape Area (SLA), and the public benefits of the proposed development do not clearly outweigh any adverse impact on the setting of the SLA. Thus, the LED string/strip lighting conflicts with Policy DC9 of the adopted East Lothian Local Development Plan 2018 and Policy 4 of NPF4.

The application site is also part of the developed coast as defined by Policy DC6 of the adopted East Lothian Local Development Plan 2018. Policy DC6 states that new development within the developed coast will be supported in principle if it complies with other relevant Plan policies.

In that the LED string/strip lighting is unsympathetic development, harmful to the character and appearance of the building and of this part of the North Berwick Conservation Area, the setting of the nearby listed buildings and scheduled monument and thus is contrary to Policies DP5, CH1, CH2, and CH4, and in that it is harmful to the setting of the North Berwick to Seton Sands Special Landscape Area contrary to Policy DC9, the retrospective development the subject of this application is also harmful to this part of the East Lothian coastal area contrary to Policy DC6 of the adopted East Lothian Local Development Plan 2018.

Policy DP5 requires, amongst other considerations, that new development should not result in a loss of amenity with neighbouring uses or be harmful to existing residential amenity, through loss of privacy from overlooking or from loss of sunlight or daylight.

The proposed development (i.e. installation of LED string/strip lighting) is of a nature that does not have an impact on the sunlight or daylight received by any neighbouring property or land use, and does not result in harmful overlooking or loss of privacy to any neighbouring property.

The **Council's Senior Environmental Health Officer** advises that there is the potential for the LED string/strip lighting that has been installed on the building to have a detrimental impact on the amenity of neighbouring residential properties through light spill/trespass, and he requests that a lighting assessment be submitted in order to confirm that the lighting installed on the building takes into account the Guidance contained within Annex 1 to Appendix 2 of Scottish Government Guidance to accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008. The Council's Senior Environmental Health Officer advises that this information should be submitted prior to the determination of the application.

A request for a lighting assessment was made to the applicant's agent however, the applicant has chosen not to provide the requested lighting assessment. Thus, it has not been demonstrated that the LED string/strip lighting meets the Guidance set out in the paragraph above and therefore it has not been demonstrated that the LED string/strip lighting that has been installed on the building does not have a detrimental impact on the amenity of the neighbouring residential properties.

Accordingly, on this consideration of amenity, the LED string/strip lighting is contrary to Policy DP5 of the adopted East Lothian Local Development Plan 2018.

The **Council's Road Services** raises no objection to the LED string/strip lighting that has been installed on the building of 26 Victoria Road, which is the subject of this application for planning permission. Accordingly, the retrospective development the subject of this application does not conflict with Policy T2 of the adopted East Lothian Local Development Plan 2018.

It must now be considered whether there are any other material considerations that outweigh the LED lighting's conflict with the development plan as set out in this assessment report.

Of consideration is the potential benefit to the business of 'The Rocketeer' from the additional illumination of the building.

Although the site is outwith the town centre of North Berwick, the business of 'The Rocketeer' is in a 'hub' area for locals, tourists and visitors, with attractions including the east and west beaches, the harbour, the Scottish Seabird Centre and other occasional events held on parts of Anchor Green. Reviews on social media indicate that 'The Rocketeer' is a popular venue within North Berwick.

From evening and night-time visits to the locality, it is not unreasonable to conclude that the existing street lighting in the locality, together with visible illumination from the interior lighting of the glazed extension of the building, along with the approved advertisements being displayed on the building, are together a sufficient source of external lighting and advertisement of the business premises. It is also therefore not unreasonable to conclude that any benefit that may possibly accrue to the business from the LED lighting the subject of this application would not make a noticeable difference to the operational business of 'The Rocketeer'. Thus, any possible benefit to the business would not outweigh the conflict with Policies DP5, CH1, CH2, CH4, DC9 and DC6 of the adopted East Lothian Local Development Plan 2018 or conflict with Policies 4, 7 and 14 of NPF4.

Therefore, on balance and notwithstanding that on matters of road and pedestrian safety and being part of an existing established business of the harbour promontory, the LED string/strip lighting the subject of this application would not conflict with Local Development Plan Policies on those matters, it is not considered that there are any material considerations sufficient to outweigh the conflict with Policies DP5, CH1, CH2, CH4, DC9 and DC6 of the adopted East Lothian Local Development Plan 2018 and would also conflict with Policies 4, 7 and 14 of NPF4.

On the foregoing design and amenity considerations, the LED string/strip lighting is an incongruous, intrusive and unsympathetic form of development, harmful to the character and appearance of the building and of this part of the North Berwick Conservation Area, harmful to the setting of the nearby listed buildings and scheduled monument, the setting of the North Berwick to Seton Sands Special Landscape Area and to this part of the East Lothian coastal area, and it has not been demonstrated that the lighting is not harmful to the amenity of neighbouring residential properties. On these counts, the LED string/strip lighting is contrary to Policies DP5, CH1, CH2, CH4, DC6 and DC9 of the adopted East Lothian Local Development Plan 2018, and Scottish Government guidance on development affecting a listed building or its setting, and the setting of scheduled monuments given in Scottish Planning Policy: June 2014 and the Historic Environment Policy for Scotland (HEPS): April 2019, as relevant and would also conflict with Policies 4, 7 and 14 of NPF4.

In conclusion, the retrospective development the subject of this application does not accord overall with the relevant provisions of the current Development Plan and there are no material considerations which outweigh the retrospective development's discordance with the Development Plan. The retrospective development the subject of this application also does not accord with the policies of NPF4.

The LED string/strip lighting the subject of this application is unauthorised and therefore constitutes a breach of planning control. If within one month of the date of the refusal to grant planning permission for the LED string/strip lighting no steps have been taken by the applicant to have it removed from the building, then enforcement action will be taken to secure the removal of it, with the period for compliance with the enforcement notice being a further period of one month.

REASONS FOR REFUSAL

- 1 It has not been demonstrated that the LED string/strip lighting installed on the building does not have a detrimental impact on the amenity of neighbouring residential properties through light spill/trespass, and accordingly, the LED string/strip lighting conflicts with Policy DP5 of the adopted East Lothian Local Development Plan 2018.
- 2 By virtue of its positioning, form and colouring, the LED string/strip lighting is an unsympathetic addition to the building, which detracts from its simple architectural character and is an incongruous feature on the building, harmful to the character and appearance of the building, and by being an unsympathetic and harmful addition to the building, the LED string/strip lighting is harmful to the character and appearance of this part of the North Berwick Conservation Area, contrary to Policies DP5 and CH2 of the adopted East Lothian Local Development Plan 2018 and Scottish Government guidance on development affecting a conservation area given in Scottish Planning Policy: June 2014 and Policies 7 and 14 of NPF4.

- 3 As an incongruous, intrusive and unsympathetic and harmful addition to the building, the LED string/strip lighting is harmful to the character and appearance of the streetscape and thus is visually harmful to and detracts from the setting of and approach to the Category B listed North Berwick Harbour and East Lothian Yacht Club building, and the setting of the scheduled ancient monument of St Andrew's Kirk. Accordingly, the LED string/strip lighting conflicts with Policies CH1 and CH4 of the adopted East Lothian Local Development Plan 2018, and Scottish Government guidance on development affecting a listed building or its setting and archaeological sites given in Scottish Planning Policy: June 2014 and the Historic Environment Policy for Scotland (HEPS): April 2019, and NPF4 as relevant and Policy 7 of NPF4.
- 4 As unsympathetic development that would have a harmful impact on the landscape character and visual amenity of the area and of this part of the North Berwick Conservation Area, the LED string/strip lighting has a detrimental impact on the setting of this part of the North Berwick to Seton Sands Special Landscape Area, and the public benefits of the lighting do not clearly outweigh any adverse impact on the setting of the Special Landscape Area. Accordingly, the LED strip/strip lighting is contrary to Policy DC9 of the adopted East Lothian Local Development Plan 2018 and Policy 4 of NPF4.
- 5 As development contrary to Policies CH1, CH2, CH4, DP5 and DC9 of the adopted East Lothian Local Development Plan 2018, the LED string/strip lighting is also harmful to this part of the East Lothian coastal area and contrary to Policy DC6 of the adopted East Lothian Local Development Plan 2018.