

REPORT TO: Planning Committee
MEETING DATE: 28 March 2023
BY: Executive Director for Place
SUBJECT: Application for Planning Permission for Consideration

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Application No. **23/00059/P**

Proposal Change of use of agricultural land to form car park, erection of gates and fencing (Retrospective)

Location **Hopes Estate
Yester
Gifford
Haddington
East Lothian
EH41 4PL**

Applicant Moorfoot Capital Management Ltd

Per Wright Planning and Development Ltd

RECOMMENDATION Grant Permission Retrospectively

REPORT OF HANDLING

The site the subject of this application is a 0.08 hectare area of land located within the East Lothian Countryside to the south east of the Gifford and north east of Hopes Reservoir. The application site is bound to the north, south and west by grassed agricultural land and to the east by a public access road which encompasses route core path 55 on the opposite side of which lies a Scottish Water Filter House and compound and the residential property of Mid Hopes Cottage. The application site is located adjacent to the Lammermuirs Local Biodiversity Site (LBS) and within the Hopes to Yester Special Landscape Area.

PLANNING HISTORY

Following an enforcement investigation ref: 22/00232/COM regarding the alleged unauthorised change of use of land and formation of a car park it was established that the works were unauthorised and that planning permission was required. The applicant was advised of this and informed that a retrospective planning application required to be submitted.

PROPOSAL

Planning permission is retrospectively sought through this application for the change of use of the agricultural land to form a car park, erection of gates and fencing. The car park which has been formed is an irregular shaped area of ground which is accessed off the existing access road which runs to the immediate west of Hopes Filter House and Mid Hopes Cottage. The drawing submitted with the application indicate that the car park can accommodate 20 car parking spaces although the car park does not have defined parking spaces within it. The car parking area is enclosed by a timber post and wire fence some 1.1 metres in height with two metal gates, one at the north entrance and one at the south both measuring some 4.2 metres wide and 1.1 metres in height.

The applicant has submitted a supporting statement which states that during recent repair work to the Hopes Reservoir carried out by Scottish Water in 2020 this area (approx. 0.08ha) was used by Scottish Water as a compound (hardcore from a nearby Estate quarry/borrow pit topped with Type 1) for accommodation, welfare facilities and parking for the duration of the works. The works concluded in June 2020 but there is a strong likelihood that they will require further work and need this facility again in the future. Following completion of the works, and in light of there being no parking provision (with associated adverse impacts on Scottish Water and agricultural operations by inconsiderate parking by the public at the end of the public road) in an area popular with hillwalkers (Core Path 55 passes the car park, and a wider path network exists) it was considered logical to retain the area for use by the public (predominantly local people) and to resolve the issues arising from inconsiderate parking. This work was completed 1st July 2020. The area is also used from time to time for gathering sheep associated with the wider agricultural operations. Users of the car park are prompted by the signage to acquire a permit (£5 for a month) from the local shop the proceeds of which are donated to Gifford Church and other local charities.

The applicant received a letter from the Enforcement Officer (Amelia Smith) under reference 22/00232/COM on the 31st August 2022 and we have been in contact with the Enforcement Officer to clarify elements of the proposal that require permission. It is our understanding from discussions with the Enforcement Officer that the elements requiring permission comprise "the change of use of land to form car park and the erection of gates". The fence posts have been reduced to 1m in height meaning they do not require consent, the CCTV camera and pole are being removed.

An application for advertisement consent will follow this application if permission is granted for the proposal.

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 National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018.

Policies 1 (Tackling the climate and nature crises), 3 (Biodiversity), 4 (Natural Places), 22 (Flood Risk and Water Management) and 29 (Rural Development) of NPF4 are relevant to the determination of the application. Policies DC1 (Rural Diversification), DC9 (Special Landscape Areas), NH3 (Protection of Local Sites and Areas), DP1 (Landscape Character), DP2 (Design), T2 (General Transport Impact), T4 (Active Travel Routes and

Core Paths as part of the Green Network Strategy), and NH11 (Flood Risk) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

REPRESENTATIONS

A number of written public representations have been received to the application. Thirty nine letters of written representation have been received within the period of receipt of representations all of which object to the application.

A further 10 letters of written public representations have been received to the application after the expiry date for receipt of written representation.

The main grounds of objection of the letters received within the time period for receipt of written representations are:

- i) Industrial nature of the car park not in character with this special countryside location, the hardcore and Type 1 surface is not in character with the rural location;
- ii) Rationale for creating the car park is bogus ("in the light of there being no parking provision") as there is perfectly adequate public parking available in the adjacent Scottish Water car park, as well as the availability of verge parking on the public road right up to West Hopes.
- iii) Hopes Water has a history of flooding as can be seen where banks have been washed away and restored further upstream;
- iv) The supporting statement states that the car park is "a beneficial feature resolving local parking issues" but in fact the illegal creation of the car park CAUSED local parking issues, as the applicants, allegedly, claimed the existing (Scottish Water owned) car park belonged to them, and illegal signage continues to make this claim by stating that "no other parking is available". The applicant has, allegedly, ever since the structure was erected attempted to stop legal parking in the existing car park by erecting signage of an intimidatory nature, erecting signage purporting to be official Scottish Water signs, and demanding that visitors return to Gifford to buy a permit for the illegally constructed car park;
- v) The planning application makes no reference to the signage erected by the applicant in connection with the car park. These signs are numerous, unsightly, confusing, inappropriate for a public road, and are at best misleading and at worst mendacious. If retrospective consent is granted, it should be granted subject to the removal of all existing signage and all intended replacement signage should be approved by East Lothian Council Planning and/or Transportation Departments;
- vi) The planning application makes no reference to the obstructions erected on the public road verge (bollards, tree planting, fencing) solely to prevent legal verge parking and to direct visitors to the car park. If retrospective planning is granted, it should be granted subject to certain of these obstructions being removed to the satisfaction of East Lothian Council Planning and/or Transportation Departments;
- vii) The CCTV is offensive and not in character for this quiet rural setting and should be removed;
- viii) The gate with padlock and chain across the public road before the cattle grid was erected to intimidate potential verge parkers between the site of the car park and West Hopes. If planning consent is granted, it should be granted subject to the applicant being prevented from blocking the public road at this or any other point;
- ix) The permit system created by the applicants is restrictive and discriminatory, and this is reflected in the supporting statement by the frequent use of the word "local". It is contended that restricting access in this way to "local people" is discriminatory against diverse communities;

- x) The carpark is frequently closed with no obvious reason why this should be. There is simply a sign on approach stating car park closed today -rather late if one has driven there. If it is indeed intended for 'local' (much stressed in the application but not defined) people, it should be open at all times and not subject to purchase of a permit; rarely available and only from the Gifford newsagent;
- xi) Signage associated with the car park is intimidating and misleading;
- xii) Opening times of car park - should have no time restrictions, currently only open 3 days a week 9am-6pm with restricted permit availability;
- xiii) There is no need for the car park as ample parking is available on land owned by Scottish Water adjacent to the sludge tanks and on the verge of the public road which, despite the "Private Road" signs, extends as far as West Hopes. The applicant has, allegedly, placed barriers (posts, fences, wooden tree shelters and stones) on the verge within 2 metres of the public road solely to prevent legal responsible verge parking and direct people to his illegal construction. The applicant has also, allegedly, placed no parking signs on the verge wherever responsible parking would have been possible again it seems solely to direct people to his illegal construction;
- xiv) In 2021 Scottish Water spent £80,475 to create the hard standing, (although owned by the applicant) which is now the proposed car park, when they needed to do major engineering work. In 2020 East Lothian Council spent £50,000 resurfacing the road. As so much public money has been used a car park that restricts reasonable access should not be permitted. It is therefore inappropriate that public funding is to be used to finance a structure that is not properly publicly accessible;
- xv) Signage to the effect that the only parking is available to the public is private and within the new fenced off car park which the applicant has, allegedly, erected along the public access road is inaccurate, aimed at deterring visitors who are free and always have been free to use the car park owned by Scottish Water. Signage disallowing parking in the Scottish Water carpark needs to be removed. These are not Scottish Water signs - the applicant, allegedly, put them up. Signage on the road in suggesting the road is private should also be removed the road is a public road;
- xvi) the erection of a locked gate has had the effect of making one of the most scenic walks in East Lothian unavailable to the general public. The onerous procedure set up to get access to the car park is clearly designed to close it off to all but a small minority of intended walkers. At the very least access to the car park should be easily available to everyone who turns up without having to make a prior arrangement;
- xvii) If the land owner wanted to make a genuine attempt to facilitate access by building a carpark, then fair enough. Building a carpark, then making it impossible to procure a pass to use it, is obviously problematic - as is, allegedly suggesting to visitors that land owned by the council and by Scottish Water is private (owned by Moorfoot Capital Management), so cannot be accessed at all;
- xviii) The Hopes Estate owner has taken extraordinary measures to discourage legitimate visits to this area of natural beauty; Scottish Water has advised that the public are welcome to use their car park as long as Scottish Water vehicles get priority. A sign was put up to advise this but it soon disappeared by person(s) unknown. The Estate has, allegedly, erected a sign that says this car park is only for Scottish Water vehicles. The Estate has, allegedly, placed numerous unauthorised signs along the public road such as: "The Hopes Car Park. Permit Holders Only", "No other parking available", "and Private Road No Entry ", " The Hopes Estate Private No Entry". All these signs are unauthorised and / or are misleading. Some untruthful; wooden posts have been placed in the verge of the public road to restrict / prevent reasonable, legitimate verge parking. A gate with a padlock on it has been placed across the public road at the Scottish Water car park;
- xix) As a walker/runner in the hills I used to make regular use of Scottish Waters car park at the Hopes. Since the installation of the gate and new car park this has not been possible. I feel the whole idea goes against the Scottish Outdoor Access Code limiting access to a

very few people;

xx) It restricts access by preventing people from parking in the car park for most of the week. The owner frequently locks the access gates and deliberately restricts access to the Scottish Water car park preventing walkers and runners accessing the Lammermuirs. In addition displaying unauthorised signs in the Scottish Water car park stating that people cannot park there;

Regarding the matter of alleged unauthorised signage the **Council's Enforcement Officer** has been in contact with the applicant and advised that an application for advertisement consent is required for the signage. Any forthcoming advertisement consent application for the signage will require to be determined on its own merits. The signage is not located within the application site the subject of this application and as such is not a material planning consideration in the determination of it.

Regarding the matter of alleged unauthorised works to the public road, including the grass verge which forms part of it, the **Council's Road Services** have advised that they will be investigating this matter and contacting the applicant direct. The alleged unauthorised works to the public road are not located within the application site the subject of this application and as such are not a material planning consideration in the determination of it.

Matters raised regarding the alleged behaviour/action of the applicant in claiming that land belonging to Scottish Water/The Council is in his ownership is a legal matter and not a material consideration in the determination of this application.

Matters raised regarding the hours of opening and payment method of the car park which is located on privately owned land are not material considerations in the determination of this planning application.

Other matters raised which are material considerations in the determination of this application are addressed in the Planning Assessment below.

COMMUNITY COUNCIL COMMENTS

Gifford Community Council have provided comments and state:

The Hopes Estate and land around the Hopes Reservoir is popular with hillwalkers from both the immediate neighbourhood and visitors to Gifford. The land includes Core Path 55 with access to a number of other paths.

Since 2021, the change in parking arrangements for visitors to the Hopes Estate has been a cause of concern for many Gifford residents. It is accepted that there has been a problem with inconsiderate parking on the verges and gateways along the approach road to Mid Hopes. This was a particular issue during the pandemic, when visitor numbers increased. The voluntary creation of a car park at Mid Hopes by the landowner is therefore very much to be welcomed.

However, the restrictions on use of the car park are such that they severely limit public access to the hills:

- o The requirement to pre-purchase a monthly parking permit from a shop in Gifford is not practical for visitors from outside the local area.
- o The limit to the number of permits available for purchase is unnecessarily low. The car park is never anywhere near full.
- o There is no need for the car park to be open only on certain days of the week and for limited hours (currently 3 days a week and from 9am to 6pm). Whilst overnight parking is

to be discouraged, walkers should be allowed to park in the early morning and into the evening.

We therefore suggest that the lockable gates to the car park should be removed and the permit system be replaced with either a ticket machine or honesty box at the car park. If considered necessary, height restrictions could be installed at the entrance and exit to the car park to prevent entry by camper vans.

We note that the applicant states that he intends to apply for Advertisement Consent for the various signs which deter parking outwith the car park. The legality of these signs would be the subject of consideration under this separate application and would involve determining whether the access road was public or private and whether parking in the area adjacent to the Scottish Water works was allowed. Until such time as this future application has been submitted and considered, we suggest that all signage should be removed.

PLANNING ASSESSMENT

The application site is located within the East Lothian countryside as defined by Policy DC1 of the adopted East Lothian Local Development Plan 2018. It is located adjacent to the Lammermuirs Local Biodiversity Site (LBS) and within the Hopes to Yester Special Landscape Area.

The area of land the subject of this retrospective application was originally hard surfaced by Scottish Water as a statutory undertaker through permitted development rights to form a site compound while carrying out Scottish Water works. It is a requirement of permitted development rights for statutory undertakers that on completion of the survey or investigation, or at the expiration of 6 months from the commencement of the development, whichever is the sooner, all such operations shall cease and all such buildings, plant, machinery or apparatus shall be removed and the land restored as soon as reasonably practicable to its former condition (or to any other condition which may be agreed with the planning authority). The area of land which has been hard surfaced has not been returned to its former condition and the applicant, not Scottish Water, is now seeking the permanent change of use of the land through this retrospective application to enable it to be retained and used as a car park.

The area of former agricultural land, the subject of this retrospective change of use, is positioned immediately to the west of the existing public road which encompasses route core path 55 with a Scottish Water Filter House and compound and the residential property of Mid Hopes Cottage located on the opposite side of the road. It is irregular in shape, surfaced in a brown/grey coloured hardcore and measures some 0.08 hectare in area. It is only visible in limited, short duration, views from the unnamed public road to the east, it is also visible from longer views from within the Lammermuir Hills. Due to its size, form and scale and of its close proximity to the existing road, Scottish Water Filter House and compound and the residential property of Mid Hopes Cottage, the retrospective change of use of the area of agricultural land for use as a car parking area does not appear harmfully incongruous or exposed within its landscape setting or harm the character and appearance of the surrounding area or the Hopes to Yester Special Landscape Area. The use of the area of agricultural land as a parking area does not, due to its location, prejudice any well-defined settlement boundary or landscaped edge. It is not contrary to Policy 29 of NPF4 or Policies DC9, DP1 and DP2 of the adopted East Lothian Local Development Plan 2018.

The erected length of 1.1 metres high post and wire fencing and metal gates which enclose the boundaries of the area of land the subject of the retrospective change of use

by virtue of their extents, forms, materials and positions, are appropriate to their place and well absorbed into their surroundings. They do not appear harmfully incongruous or exposed within their landscape setting or harm the character and appearance of the landscape of the area. They are not contrary to policy 29 of NPF4 or Policies DC9, DP1 and DP2 of the adopted East Lothian Local Development Plan 2018.

The **Council's Road Services** have been consulted on the application and advise that they raise no objection to this retrospective planning application for the formation of the car park the subject of this retrospective application being satisfied it is not contrary to Policy T2 of the adopted East Lothian Local Development Plan 2018. However Road Services allege that the applicant has, without authority, placed signs, saplings and other obstructions on the grass verge which is part of the adopted road network. These works are located outwith the application site the subject of this retrospective planning application. Road Services also allege that gates have also been installed on the adopted road. As requested by Road Services the applicant has been advised that all works within or affecting the public road including works on the footway and verge must be authorised in advance by East Lothian Council as Roads Authority. Road Services have advised that they will be contacting the applicant directly regarding the alleged unauthorised works which have been undertaken to the public road network and will be investigating this matter.

The **Council's Biodiversity Officer** has been consulted on the application and advises that with regards to designated sites the proposed development is located adjacent to the Lammermuirs Local Biodiversity Site (LBS). This site is designated for its habitat diversity and connectivity, particular heathland, blanket bog and grassland habitats associated with the uplands. The Council's Biodiversity Officer advises that the loss of the grassland habitat at this location is not significant in relation to the LBS. The proposal will facilitate increased recreation across the biodiversity site which may result in trampling and erosion of priority habitat, disturbance of ground nesting birds, and increased litter and/or fire damage; however given the existing core path and other tracks, and the capacity of the car park the increase in recreation is unlikely to result in significant impacts on the LBS. The Council's Biodiversity Officer advises that she has no records of protected or priority species in this area. The grassland may have supported pollinating species and provided cover and foraging opportunities for small mammals and birds. There is sufficient alternative habitat for these species however, and therefore the loss of this habitat is unlikely to result in negative impacts on protected and priority species. The Council's Biodiversity Officer notes the submission of details of tree planting that has been undertaken on site. This includes Oak, Rowan, Silver Birch, Gorse, Wild Roses and Broom. Given the site characteristics and proximity to woodland areas identified within the CSGN Woodlands Habitat Network this planting is acceptable and contributes to woodland connectivity on a local level. It therefore satisfies the requirements under Policy 3 of NPF4. Accordingly the Council's Biodiversity Officer raises no objection to the application being satisfied it is not contrary to Policy 4 of NPF4 or Policy NH3 of the adopted East Lothian Local Development Plan 2018.

The **Council's Access Officer** has been consulted on the application and advises that he has had many people contact him about this car park. The Council's Access Officer advises that while he has no grounds to object to this retrospective application for the car park which is not contrary to Policy T4 of the adopted East Lothian Local Development Plan. However he wishes the following noted:

There has been a car parking area at the Hopes for many years, this was the ground on either side of the road by the filter tanks. However when Covid lockdown eased in 2020 the applicant, allegedly, took it upon himself to undertake work on the verges and at the old car park to restrict parking. The Council's Access Officer has advised that after much

research it has been established that Scottish Water own the area in front of the filter tanks. Scottish Water have also said that they are happy for the public to park there, providing Scottish Water vehicles have priority. The road is public to beyond this parking area, so the public would have a right to drive to the Scottish Water filter tanks and park in front of them. The Council's Access Officer states that the new carpark is very restrictive, in that people have to firstly buy a permit from the newsagent in Gifford. Only a few permits are made available each month and the start date is the middle of the month. So, if a member of the public arrives at the carpark, they will see they need a permit, then have to drive back to Gifford and will most likely find out that all of the permits have been sold. In addition to this, the carpark is only open on certain days of the week and at certain times of the day. There are also signs along the access road stating that there is no parking ahead unless by permit. This is actually not the case because people can park in the Scottish Water area. All of the above severely impacts on public access to the Hopes area. This leaves a bit of an anomaly as under the right of responsible access, landowners are supposed to respect that right. However, there is no requirement for a landowner to provide any parking and there is no right to take a motorised vehicle onto private land.

The **Council's Senior Engineer - Flood Protection** has been consulted on the application and advises that the site is at risk from a flood event with a return period of 1 in 200 years. That is the 0.5% annual risk of a flood occurring in any one year. Car parking falls under amenity uses within SEPA's Land Use Vulnerability Guidance and it is stated that "amenity open space" is a "water compatible use" within SEPA's guidance. Development that is defined as a water compatible use is allowed in the functional flood plain; the definition of amenity in the guidance is relatively vague and open to interpretation. Accordingly The Council's Senior Engineer - Flood Protection advises he has no objection to the principle of this car park being located in the functional flood plain. Therefore the proposal is not contrary to Policy 22 of NPF4 or Policy NH11 of the adopted East Lothian Local Development Plan 2018.

The **Council's Senior Environmental Health Officer** has been consulted on the application and advised that he has no comment to make on the application, being satisfied that the development would not have an adverse impact on any neighbouring land uses.

Scottish Water as a consultee on the application have raised no objection to it, they have also confirmed that they own land immediately to the east of the application site.

The **Council's Landscape Officer** has been consulted on this application but has not provided any response.

In conclusion on the above considerations the proposals are consistent with Policies 1, 2, 3, 4, 22 and 29 of NPF4 and Policies DC1, DC9, DP1, DP2, NH3, T2, T4 and NH11 of the adopted East Lothian Local Development Plan 2018. Therefore, the proposals are considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposal's accordance with the Development Plan.

CONDITIONS:

1 None