



NOTICE OF THE MEETING OF THE PLANNING COMMITTEE

**TUESDAY 6 FEBRUARY 2024, 10.00am
VIA A DIGITAL MEETING FACILITY**

Agenda of Business

Apologies

Declarations of Interest

Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

1. Minutes for Approval: Planning Committee, 5 December 2023 (**pages 1-22**)
2. Minutes for Noting: Local Review Body (Planning), 30 November 2023 (**pages 23-32**)
3. Planning application no. 23/01207/P – Planning permission for installation of floodlighting, Winterfield Tennis Courts, North Road, Dunbar (**pages 33-40**)
***Note:** This application has been called off the Scheme of Delegation List by Councillor Jardine for the following reason: This has been a contentious planning matter for some time...there remain unresolved concerns for some of the community most closely impacted. I feel it would be beneficial for all sides to have an opportunity to be heard and for the application to be decided upon by Councillors.*
***Note:** This application has been called off the Scheme of Delegation List by Councillor Collins for the following reason: To allow full discussion with local residents.*

**Monica Patterson
Chief Executive
John Muir House
Haddington**

30 January 2024

Planning applications can be viewed on the Council's website within Planning Online at:

<http://www.eastlothian.gov.uk/site/scripts/documents.php?categoryID=200192>

Planning Committee reports can be viewed on the Council's website within the Committee Pages at:

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**MINUTES OF THE MEETING OF THE
PLANNING COMMITTEE**

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**TUESDAY 5 DECEMBER 2023
VIA A DIGITAL MEETING FACILITY**

Committee Members Present:

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

Other Councillors Present:

None

Council Officials Present:

Mr K Dingwall, Service Manager – Planning
Ms E Taylor, Team Manager – Planning Delivery
Mr D Irving, Senior Planner
Mr C Grilli, Service Manager – Governance
Ms M Haddow, Transportation Planning Officer
Ms P Gray, Communications Adviser
Mr I Lennox, Team Manager – Assets & Regulatory
Mr M Greenshields, Senior Roads Officer
Mr J Canty, Transportation Planning Officer
Mr A Hussain, Transportation Planning Officer
Mr R Yates, Transportation Planning Officer

Clerk:

Ms B Crichton

Visitors Present/Addressing the Committee:

Item 3: Mr J Wheeler, Mr K Jamieson, Mr D Moynihan, Ms J Bell, Ms S Fletcher, and Mr C Bruce

Apologies:

Councillor N Gilbert

Declarations of Interest:

Item 3: Councillor Collins, due to the proposals as part of the application to lay cabling through her field.

1. MINUTES FOR APPROVAL: PLANNING COMMITTEE, 7 NOVEMBER 2023

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

2. MINUTES FOR NOTING: LOCAL REVIEW BODY (PLANNING), 31 JULY 2023

The Committee agreed to note the minutes.

Sederunt: Councillor Collins left the meeting.

3. PLANNING APPLICATION NO. 23/00612/PPM – PLANNING PERMISSION IN PRINCIPLE FOR ELECTRICITY TRANSMISSION INFRASTRUCTURE (SUBSTATION OR CONVERTER STATION) AND ASSOCIATED DEVELOPMENT INCLUDING BURIED CABLING, LAND BETWEEN SKATERAW AND BRANXTON

A report had been submitted in relation to Planning Application No. 23/00612/PPM. Daryth Irving, Senior Planner, presented the report, highlighting the salient points. The report recommendation was to grant consent.

Officers responded to questions from Members. Councillor Findlay raised local concerns that road closures during construction might impact on the bus service from Innerwick. Jon Canty, Transportation Planning Officer, advised that there would not be road closures during the construction period. He said there may be amendments to passing points, etc., but the bus service would continue to operate.

Councillor McIntosh asked how the planning authority would resource the work involved in the various recommended conditions to ensure impact on the community was minimised. Mr Irving agreed there were a number of conditions but felt they were necessary and served a specific purpose. He said there was a good relationship with the applicant and the other consultees, and it was not uncommon for a significant number of conditions to be attached to such a development. He would carry out the usual work to look at compliance. Keith Dingwall, Service Manager – Planning, added that he was acutely aware of the resource required for each of the different energy projects. He advised of ongoing discussions about resourcing with developers, including consideration of funding a planning officer post, however, he advised that this could not be a material consideration in this application.

Councillor McIntosh asked about the potential for heat recovery systems to benefit Innerwick. She also asked who would decide under Condition 29 whether a heat recovery system was feasible and appropriate in design terms and how to make this commitment from the developer stronger. Mr Irving said it had been agreed that the developer would explore this, but it could not yet be certain whether there would be potential to harness waste heat because the detailed design had not yet been agreed. Responding to further questions from Councillor McIntosh, Mr Canty advised that there should be no construction traffic routing through Innerwick due to display of construction traffic signage. He said there were mitigation measures in place, including passing places and use wherever possible of temporary haulage roads coming off the A1 soon after the Innerwick junction.

Councillor Jardine asked about reduction of speed when far larger vehicles would be on the roads than was usual. Mr Canty advised that speeds of construction vehicles had been discussed with the developer. Given the nature of the roads, it was not expected that vehicles would travel in excess of the HGV maximum of 40mph. He said there was potential to use

technology such as black boxes to ensure speed was limited, and to have discussions with drivers themselves. He advised that a temporary speed limit reduction had not been considered, however, the applicant had provided speed surveys in their transport assessment which showed recorded speeds were well below the speed limit, so it was not felt that traffic would be speeding to an extent that would cause concern.

The Convener asked how the need for renewable energy was balanced against the loss of prime agricultural land under NPF4. Mr Irving said on projects of this scale, there was always some overlap between safeguarding prime agricultural land and facilitating offshore energy transmission. He highlighted mitigations, including a soil management plan and reinstatement of disrupted soil along the cable route. He said that facilitating the national development outweighed the loss of prime agricultural land where the agricultural land could not be reinstated.

The Convener asked whether it would be possible to insist as part of the planning process that developers contribute to supervision of the conditions raised as part of the grant of applications. Mr Irving advised that there had been discussions about a single planning officer who could deal with condition compliance, but for now, it would be down to the current officers to monitor compliance. Mr Dingwall said it would not be reasonable to secure a payment, but agreed that there could not be an effective planning service without effective enforcement. He reiterated that this could not be a material consideration as part of this decision.

James Wheeler of Scottish Southern Energy (SSE) spoke to the application. He said Berwick Bank was one of the largest offshore wind proposals in the world. He noted that the council had recognised the importance of the climate crisis by declaring a climate emergency. At 4.1 gigawatts, Berwick Bank would make a significant contribution to low carbon electricity, helping Scotland to achieve: net zero carbon by 2045; a 70% reduction in emissions by 2030; and to increase energy security. Berwick Bank would also provide: critical stimulus for investment; creation of a Scottish supply chain; up to £8.3bn in economic benefit to the UK economy; and could create hundreds of local jobs and thousands of jobs across Scotland. He noted there were no objections from internal or technical consultees. He said that conditions had been raised to ensure that details would be subject to final consideration by the public, consultees, and the council. He said SSE had continued to engage with key community representatives and the East Lothian Energy Stakeholders Group and had been committed to working with other developers to establish core principals to guide ongoing work with the community. He said a detailed site and cable route selection process had been undertaken and considered various constraints of development in the area. He said the environmental impact assessment (EIA) and EIA addendum contained a cumulative impact assessment with additional development proposals in the area, including landscape, visual, and traffic and transport impacts. He said substantial infrastructure was required and SSE recognised the proposed development would affect the local area, particularly during the construction phase. He said SSE would proactively collaborate with other developers and were already engaging with the supply chain to ensure construction traffic management proposals took on community views, allowed for further engagement in their development, and included contractor-imposed speed limits and vehicle tracking. As the structures would be visible in the local area, they would work on the design and landscaping proposals to minimise the long-term impacts of the proposal and provide a net positive impact on biodiversity. SSE would also explore opportunities for community benefits linked to delivery of these aspects of the project. He said SSE remained fully committed to engaging with East Lammermuir communities, other developers, and the council as the project moved through the detailed design stages and into construction.

Responding to questions from Councillor McMillan on SSE's contribution to growth of the local economy, Mr Wheeler said that the project had continued to develop a supply chain engagement plan which would be critical in engaging local businesses in the project and identify bottom-up employment opportunities in the local area. Gary Donlin, also of SSE,

advised that that SSE was a member of the Mid and East Lothian Chamber of Commerce and had been supportive of events. He said SSE began its supply chain engagement forums in April 2021, were continually looking for local partners to work with, and had strong relationships with East Lothian Works and the Ridge in Dunbar. He said SSE would welcome further connections being made.

Councillor McIntosh asked how the excess heat generated would be cooled. Mr Wheeler advised that heat recovery technology would be trialled with the national grid in the next few years. He said the work was in its infancy and may not be achieved on this project, but SSE would see what could be achieved. He said that heat recovery for community use would require substantial infrastructure, but all options would be considered in reducing emissions through the build and subsequent energy efficiency measures. Following further questions on heat recovery, Mr Wheeler said the first stage was to understand whether it was technically feasible, and if so, SSE would look to engage with the community to see how it could be delivered. Mr Donlin advised that SSE had already committed to funding to insulate Innerwick under a programme to look at heating efficiency within the village, which was at the feasibility study stage.

Responding to further questions from Councillor McIntosh, Mr Wheeler reassured Members that safety came first. Although there could be difficulty to ensure adherence to rules and regulations with lower-tier contractors, SSE would give information on which measures worked best and had experience from other projects. He said SSE was committed to doing everything it could to identify anyone responsible for rule breaking, and would provide clear contacts to the community to raise complaints. He said that remote technology also helped to manage this efficiently. He advised that the traffic management plan would form part of SSE's submission. He had no objection to Condition 7 being extended to refer also to cyclists. He said that accommodation for workers would be considered at the next stage of the project; it was hoped that there would be a benefit to the local economy in using hotel space, but it was recognised that there would be a lot of workers. Mr Wheeler advised that 24-hour working was required on the cable landing sites where horizontal drilling was required. Where this was required around a railway, it had to be completed as quickly as possible, but most areas were adequately away from residential areas so as not to cause concern for the 24-hour working requirement.

The Convener asked about coordination of disruption. Mr Wheeler said that SSE had to coordinate with Scottish Power Energy Networks and had been doing so. He said the companies were in regular contact from engineering and planning points of view.

The Convener also asked about potential disruption to Tarmac's quarrying operations. Mr Wheeler advised that a condition had been recommended to ensure there was no operational development within the Tarmac area. SSE were in discussion with Tarmac to reach agreed parameters to ensure there would be no impact on their mining operations. Mr Irving added that Condition 5 stated that there was to be no operational development within the Oxwell Mains safeguarded area.

Responding to further questions from the Convener, Mr Wheeler advised that SSE had been in negotiation with EDF Energy, who owned the land, and were close to reaching full agreement. He said this was required to ensure SSE had access to the land in the long term, and the discussions had considered solutions to minimise impact on EDF's operations.

The Convener felt there needed to be a supervisor to minimise disruption to the community and so that residents could contact this person. Mr Donlin said that SSE were broadly supportive of this notion and had been in discussions about resourcing and safeguarding of community interests. He believed SSE had done a good job of engaging locally and had been open and honest about local impacts. He said that SSE had been on Berwick Bank for three years and contact details were available for people to raise concerns.

The Convener asked further questions of SSE representatives. Mr Donlin said best practice guidance for community benefit did not exist for the offshore wind space, but a consultation was underway. He advised that there would be formal establishment of a community benefit fund and this would be shaped by best practice guidance. He advised that the developer was still in the process of understanding whether a converter station or substation was required, but an AC solution was currently being progressed to detailed designs. Mr Donlin said that a conversation on funding improvements to A1 junctions would be welcomed, but East Lothian Council would need to direct what was required. He said that SSE was keen to look at a significant improvement or legacy for the local area. Mr Wheeler advised that the main construction access would be the A1 junction to Innerwick and then onto the minor road. For specific loads, there may be requirement to go further up this road, hence the proposals for passing places. He said there may be some disruption when a minor road would be crossed for a cabling route, and it may also be necessary to cross a minor road and provide a secondary access, but proposals on the Skateraw side would be rationalised and fleshed out as part of the detailed design. Mr Dingwall added that although the applicant had made commitment to providing community benefit, this could not be a material consideration in determining the application.

Councillor McMillan asked whether a high bund or wall with extra planting could hide the sheds, or whether there could be consideration for further mitigation to make sheds look more a part of the landscape. Mr Wheeler responded that SSE had looked to increase the amount of area to be used for landscaping to around 17 hectares, which would be larger than the substation itself. There would be excess material as part of the construction of the platform, so this would be considered as part of the detailed design process. SSE would engage with the community and the council to achieve a beneficial landscaping scheme.

Kevan Jamieson spoke against the application. He referenced the scale of the overall development, of which this was a small part, and asked that the project be done more coherently and sympathetically. He said that assurances had been vague. He considered that the Convener had pre-judged the application before conclusion of consultation. He felt that five-to-six years of disruption to the community was unnecessary because there were better solutions available. He considered the duration of the project to be due to the protectionist approach of energy giants and considered the council's approach to have been lazy and hands-off. He believed the Planning Committee to have had no real idea of the cumulative impact of the Eastern Link when it was approved. He said there was no evidence of collaboration between developers to minimise the footprint and coordinate the projects, and questioned where the masterplan was. He said East Lothian Council was struggling to cope with this scale of development and felt that no one would be worried about upsetting a small rural community by building Britain's biggest substation. He felt that previous failures to determine development had meant that following of process had become of greater importance to the council than finding the right answer with communities. He felt that the council had lacked leadership in this project, had not forced developers to work hard enough, and said there had been a clear failure to follow the spirit of NPF4 and its community engagement principles. He said acceptance of local issues had been non-existent at a recent meeting between the government, community, developer, and the council; he said stakeholders had defended their own part of a broken system. He asked that the Committee did not approve the proposals just to avoid government intervention, and asked them to demand and participate in finding a better solution for East Lammermuir and East Lothian.

Councillor Hampshire responded to some of Mr Jamieson's comments. He said that council staff were of highest quality. He said that Scotland needed to have renewable energy for its national infrastructure and said his comment to Mr Jamieson at his surgery had been that the government had taken this decision. He confirmed that he had only just read the submitted letters of objection and would make his decision during the meeting.

Councillor McMillan echoed Councillor Hampshire's remarks about council officers and wanted to give opportunity for Mr Jamieson to clarify his experience and any evidence for there being a better alternative. Mr Jamieson suggested that north of the A1 at Torness was a better solution on the brown field land since the Scottish Government would not be building more nuclear power stations. He said that the protectionist attitudes of EDF, the Office of Nuclear Regulation, and the Nuclear Liabilities Fund would be an issue, with everyone defending their corner rather than seeking the best solution. He wanted the council to deliver an answer with a proper masterplan for all the individual components. He said developers were not working together and a better answer could be found with less impact on the community and environment.

The Convener reminded the Committee that the submitted application had to be dealt with. He said that the policy of the current Scottish Government was not to build nuclear power stations, but a change in government could lead to a change in this policy.

Dominic Moynihan spoke against the application. He said the application should not be consented as currently presented and should be subject to public inquiry. He believed the council did not have sufficient information to competently determine the application without full information about the other electrical infrastructure projects which were inextricably linked. He provided a list of four projects, the cumulative effect of which had been considered under this application, but listed a further six electrical infrastructure projects that the National Grid Tech Register indicated were also planned for the small community. He said that any planning application must take full cognisance of other similar projects that may take place at a similar time and location as the project under consideration. He said that currently published information showed that the schemes he had listed would all be under construction from 2025 Q1 – 2028 Q3, and the change in use from prime agricultural to heavy industrial would be huge. He referred to a map he had produced to illustrate this pressure. He did not consider that sufficient attention had been given to locating the hub of all these schemes at Branxton substation. He did not accept the reasons given to site the mega grid connection at Branxton, and said it should be sited around Torness. He highlighted that the underground direct cable and the temporary road to be constructed would be of smaller scale and cost should the grid connection be sited at Torness, and upgrades to cabling would be less costly. He displayed the schedule of projects listed and a map to illustrate where the schemes would be active.

The Convener asked who would determine if a public inquiry was necessary. Mr Dingwall said the government set out who should determine planning applications and he confirmed that it was right and proper that the local authority determined this application. Mr Irving added that this development did not fall into any of the categories which required notification to Scottish ministers, and any right of appeal would be to Scottish ministers.

Councillor McIntosh asked whether the planning authority had any power to ask for a masterplan to be brought further forward. Mr Dingwall said that the planning application had been submitted and had to be determined on its own merits. He said a masterplan could be developed but this would have significant time considerations. He said that consideration would be given under LDP2 as to whether policies should be imposed or areas set out for such development, but stressed that the application had been submitted and must be determined on its own merits.

Chris Bruce made representation on behalf of East Lammermuir Community Council. He said the decision would have an impact on the biodiversity of the area and on the wellbeing of people living and working in East Lammermuir. He said local people supported the move to towards renewable energy, but believed the improvements must be carefully considered and take account of the environment and potential for co-location of infrastructure. He highlighted all the industrial sites located within East Lammermuir. He said the small community had learned about cumulative impact since the first industrial works had been consented in 1966, and highlighted the report's consideration that the impact on Innerwick was acceptable

because the area was already industrialised. He asked whether the Committee was confident that officers had genuinely and effectively discharged the planning authority's duty to consider the cumulative impact on local areas and their communities, and highlighted six projects which had not been taken into account. He said the sheer scale of the developments meant that planning officers could not make assessment of anything other than landscapes and visual perspectives, let alone assess the complexity and interplay of the ten developments, due to a lack of resourcing. He said a single masterplan was needed to allow for sensible siting, co-locating where feasible, and alignment of access to minimise environmental damage and allow an effective ongoing contribution to the national grid. He questioned whether any Member had seen a map showing how the developments would fit together, prior to Mr Moynihan's displayed map. He urged Members to reject the proposals until such time as a masterplan could be produced and assessed. He said the willingness of developers to work together required to be assessed against what was being delivered. He reported that East Lammermuir had been left to convene the first meeting with all known developers in April 2023, where developers agreed to share their plans and make available a single map of developments proposed, a single planning tracker, and a single schedule of works. He reported that it had taken five months to produce the map, which was yet to be publicly shared and did not include three of the developments, with the planning tracker further behind. He said it was impossible to believe that meaningful cumulative assessment was being made without those elements. He said that a planning condition must be added to future consents to demand genuine collaboration between developers. Mr Moynihan added that he would be happy to provide a copy of the map and PDF he had displayed.

Suzanne Fletcher made representation on behalf of Cockburnspath and Cove Community Council as a co-opted member and local parish minister. She highlighted the lack of responsibility for collaboration with neighbouring authorities such as Scottish Borders Council regarding the construction plan and abnormal load plan. There were concerns regarding the difficulty accessing the roundabout from Cockburnspath and Cove given the additional volume of traffic. There were further concerns about how the severely inadequate bus service would continue during construction. Additional traffic from the Oldhamstocks area and beyond would be avoiding accessing the A1 in the Innerwick area, and she said the community council had a grave concern for the health and wellbeing of young people and the elderly given these circumstances. She said crowded roads would be dangerous for children, cyclists, buses, horse riders, and cars on already narrow local roads, and said Innerwick Primary Parent Council had lodged an objection about safe routes to school. She said the situation with reductions to speed limits must be revisited on a regular basis, and must now include parking and accommodation for construction workers. She highlighted concern over the major impact of HGV journeys on A1 junctions and on the narrow local roads, and said this would be harmful to the amenity of residents and a danger to other road users. She said the cumulative impact of proposals were a worry, and said there had not been a cumulative assessment of visual impact, traffic and transport, or other considerations. She felt the impact of road safety concerns would result in further isolation of remote communities. She said the A1 was woefully inadequate in East Lothian with a number of unsafe junctions, and the rural roads were insufficient for construction traffic. She said the construction phase would have significant negative impacts on the community, including danger to life. The community council felt there had been a gross oversight in trying to acknowledge the impact on communities and were disappointed in the early stages of non-engagement, absence of developers required to work together, absence of joined-up thinking with the local community, and absence of opportunity to ensure community benefits. She raised the potential for relieving fuel poverty. She raised the community's concerns about the huge loss of prime agricultural land, ability to find accommodation for construction workers, and availability of a skilled workforce. She concluded that there was a far greater cumulative impact on the community beyond traffic management, which was their primary concern.

Jacquie Bell made representation on behalf of West Barns Community Council, who were keen to support East Lammermuir Community Council in raising concerns. They

acknowledged the need for renewable energy, but felt that any developments had to be in the right place. They felt there was a lack of clarity about the structure, but either a substation or a converter station would be large and have significant visual impact on the surroundings. She highlighted the objections to the offshore turbines on environmental grounds and concerns over the impact on seabird migration, and noted that this consent could take time. She also noted the objections to the compulsory land purchase, and said Scottish Power were also seeking a substation at Branxton on the same land. She commented on the vastness of the area being impacted causing much disruption to residents, wildlife, and prime agricultural land. She questioned how mitigations to benefit wildlife would be monitored. She said that road safety was a real concern, particularly on the A1. She highlighted the dangerous junction at Innerwick and felt the developer should be asked for a contribution to this. She reiterated previous points made about risks to pedestrians, cyclists, and horse riders on rural roads. She felt work commencing at 7am was too early for nearby residents. She said the area was under significant pressure from energy related development but there was a lack of joined-up thinking, and she highlighted a lack of capacity for construction worker accommodation and concerns over a lack of a skilled workforce. The cumulative impact on the community meant there was an urgent need for joined-up thinking and a clear plan going forward. She said there was no idea of community benefits for offshore windfarms. She felt there was a lot of pain and no gain for the community, and she urged the Committee to reject or defer the application until information was brought forward on these points.

Councillor Jardine, Local Member, had made a point of trying not to get involved in planning matters as she did not sit on the Committee, but recognised she was the only Ward Member in a position to support the community in understanding how the process worked. She had become increasingly concerned since April about the impact of the various applications referenced as part of the discussions, and her concerns were about the impact on mental health and wellbeing of members of the community. She said Mr Moynihan had illustrated the cumulative impacts well. She welcomed the personal commitments from Mr Donlin, but said the personal frustration of objectors was palpable. She said there was limited evidence of a response to the community's desire for meaningful engagement, and questioned whether a co-produced solution was genuinely sought. She highlighted the resource issues brought by the projects. She understood the current hiatus between LDP1 and LDP2 meant there was limited overall strategic planning by developers or planning governing bodies, but that point did not serve the community well when they continually stressed their support for the government's carbon reduction targets. She asked whether refusal of the application would ensure those responsible for the critical strategic planning would be held responsible for the decision.

The Convener added that the Scottish Government had licensed companies to establish offshore wind farms and a number would be brought on shore in East Lothian. Ideally a masterplan should have been provided when this decision was taken, but this had not happened and there was now a duty to determine the application before the Committee. He said that refusal would likely lead to an appeal and the planning authority would lose control of aspects of the development, as the government were determined that there would be a windfarm offshore of Dunbar and a connection to the grid would be required. He would try to make sure the disruption caused by the development would be kept to a minimum, but he would support the application. He said it was likely that the future applications would become part of LDP2. He said it was essential that the community suffering disruption gained some benefit from this, and the government had to be persuaded to put this in place.

Councillor Allan agreed that there seemed to be a large number of projects but no overall strategy, and was deeply worried by this. She asked what the power of the Committee was, and whether it could only look at the benefits of a single application or whether it could consider it in the context of the local community and the surrounding area to be impacted for many years. She looked forward to hearing the comments of others, but had grave concerns.

Councillor Forrest commented that the decision could not be based on what may come forward in the future, and should the application be appealed, much of the planning authority's control could be lost. On its individual merits, he could not see a reason for refusal and would support the officer recommendation to grant consent.

Councillor Findlay felt it was a difficult decision because the issue of clean energy and local economic benefit should be progressed, but he felt that the issue of cumulative impact on the community needed to be assessed properly. He would vote against the application in the hope the application would be appealed to the Scottish reporter to take into account the various applications coming forward.

Councillor Cassini felt that further industrialisation should not be justified just because the area was already industrialised, and there was a balance to be met in supporting renewable energy and protecting agricultural land. She said that the offshore windfarm was not already in place, and agreed that greater oversight was needed.

Councillor McMillan praised officers for their work on roads and flooding, and had been impressed by the input from all sides. He noted that no one had challenged the need for sustainable and low carbon energy options and was of the opinion that this connection was needed. Members were concerned that there was good engagement through stakeholders and communities; he urged the applicant to keep engaging and for community councils to keep communicating their concerns, and said the planning authority would monitor, change, and challenge where necessary. He noted that this was a decision in principle and details of safety and wellbeing could be taken in time. He thought we may be years away from a comprehensive masterplan given technological changes coming forward, and said that he did not want to delay the application. He was pleased to hear the applicants discuss preservation of the countryside. He thought the Committee needed to exercise its authority for the benefit of the local economy and local communities, but said there was also a responsibility to the national strategy for safe energy. He said that a response was needed from government on master planning and jobs. He wanted to reassure the objectors that the process was rigorous and resilient, and he would support the application.

Councillor McIntosh agreed that the decision was a difficult one. She was utterly behind there being a need to bring offshore wind power to the national grid as soon as possible, but had heard coherent and reasonable objections which understandably caused anxiety. On balance, she would support the application, but felt somewhat reluctant as she would rather see it in the context of a masterplan, however, she understood that raising such a condition was beyond the scope of the Committee. She felt there was not time to delay on the transition to green energy but that communities had to be considered. She asked whether it would be possible for protection of the planting to be extended from five to 10 years. She was reassured to know that planners would consider the traffic plan at the construction stage. She felt the heat recovery scheme would be of real benefit to the community; she asked SSE to explore this fully, as there would be huge profits made and it would be ridiculous for the village to remain in fuel poverty for lack of developer ambition and imagination. She would support the application but did understand community concerns and hoped stakeholders would work with the community going forward.

Councillor Yorkston said that decision makers understood the need to speed up the transition to green energy. He said that East Lothian had been a key player in producing and distributing energy and said that developments and infrastructure such as this application were required to move away from fossil fuels and minimise the impact of climate change. He understood that residents were concerned about the impacts, but was minded to support development of such infrastructure given the climate emergency. He said such developments had to minimise impact on the community and biodiversity, and believed the recommended conditions would go some way to address the concerns raised.

Councillor McGinn said he would support the officer recommendation. He felt everyone had the right to be heard but felt that aspersions had been cast on officers and Members as if they were dismissive of residents of rural communities. He said decision making had to consider the very real climate and nature emergencies so that something would be left for future generations, and acknowledged some decisions would not be universally popular. He appreciated all contributions to the meeting. He would support the officer recommendation on this in principle application, and commented that there was still a long road to travel.

Councillor McLeod said he did hear the concerns of objectors and the pros and cons of the application, but would support the application on the basis of information presented from officers.

Councillors Allan and Cassini came back in to advise that since the application was for planning permission in principle, and would be granted subject to conditions that would mean that some control would be retained, they would support the officer recommendation to grant consent.

At the request of the Convener, Mr Dingwall gave provided wording for the two conditions suggested by Councillor McIntosh. With regards to the protection of planting being protected, wording in Condition 21 would be altered from five years to ten years. With regards to protecting cyclists, Condition 7(ii) would be amended to include the interaction of HGVs and cyclists. These changes were formally proposed by Councillor McIntosh and seconded by Councillor McMillan.

The Convener then moved to a roll call on the officer recommendation to grant consent, subject to the amended conditions above, and votes were cast as follows:

Grant:	9	(Councillors Hampshire, Allan, Cassini, Forrest, McGinn, McIntosh, McLeod, McMillan, and Yorkston)
Refuse:	1	(Councillor Findlay)
Abstain:	0	

Decision

The Planning Committee agreed to grant the application, subject to the following:

- 1 The development hereby approved shall begin before the expiration of 5 years from the date of this permission.

Reason:

Pursuant to Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended.

- 2 The submission for approval of matters specified in conditions of this grant of planning permission in principle shall include details of the layout, siting, design and external appearance of the substation/converter station, electricity cables and associated infrastructure, the means of access to them, the means of any enclosure of the boundaries of the site and landscaping (including landscape and visual mitigation) of the site in accordance with the matters listed below. No work shall begin until the written approval of the Planning Authority has been given, and the development shall be carried out in accordance with that approval.

a) Details of the finished ground levels and finished floor levels of the buildings;

b) The total height of any building (excluding any antenna/lighting rod or similar apparatus) shall not exceed 21 metres from the finished ground levels, as approved. The finished substation/converter station platform ground level shall be no higher than 44.3m AOD;

c) Details of the proposed colour treatment of the substation/converter station and any other landscape and visual mitigation (which shall include architectural mitigation) to be incorporated into its design and external appearance;

d) Details of all external lighting proposed;

e) Details of the area and positioning of the substation/converter station platform, which shall not exceed a footprint of 410 metres by 260 metres and which shall generally accord with that shown on the drawing no. LF000010-DEV-MAP-231 docketed to this planning permission in principle;

f) Details of the final route of the onshore export cables (with proposed micro siting limits), and the locations of any underground joint bay(s); and

g) Details of the siting, design and external appearance of any permanent above ground features associated with the onshore export cables including the cable bridge and water crossings; the cable bridge and water crossings shall be designed to pass the 200 year plus climate change flow without constriction and with an appropriate allowance for freeboard.

In this condition, the substation/converter station means all the electrical equipment, buildings, ancillary equipment, internal roads and any perimeter security fence to be located on the substation/converter station platform, as indicatively described in Chapter 5 (Proposed Development Description) of the Environmental Impact Assessment Report docketed to this planning permission in principle.

No part of the development hereby approved under that application for approval of matters specified in conditions shall be begun on the site until all of the above details pertaining to such development have been submitted to and approved in writing by the Planning Authority.

Reason:

To enable the Planning Authority to control the development in the interests of the amenity of the development and of the wider environment.

- 3 The development hereby approved shall be undertaken in accordance with the Environmental Impact Assessment Report and the Environmental Impact Assessment Report Addendum dated August 2023 docketed to this planning permission in principle, except where altered by the approval of matters specified in the condition above or by the conditions below, or unless otherwise agreed in writing by the Planning Authority.

Reason:

To ensure the reported likely environmental impacts of the development are not exceeded and the specified mitigation measures are fully implemented.

- 4 There shall be no commencement of the development hereby approved until it can be demonstrated to the Planning Authority that consent under Section 36 of the Electricity Act 1989 has been granted by the Scottish Ministers for the Berwick Bank Offshore Wind Farm.

Thereafter, the development hereby approved shall be used solely in connection with the Berwick Bank Offshore Wind Farm, or successor offshore wind farms located within the site of that development, to facilitate the transmission of electricity generated by that development to the grid and for no other purposes, unless otherwise agreed in writing with the Planning Authority.

Reason:

To ensure there is an operational requirement for the onshore electrical transmission infrastructure and to enable the Planning Authority to regulate and control the use of the land in the interests of the wider land use planning of the area.

- 5 There shall be no operational development within the Oxwellmains Quarry Mineral Safeguard area as identified in Inset Map 41 of the East Lothian Local Development Plan 2018.

Reason:

To safeguard the mineral resource of the quarry.

- 6 Unless otherwise agreed in writing with the Planning Authority, all ground levels where cables are to be buried shall be reinstated to pre-existing ground levels following completion of the development.

Where finished ground levels in respect of the cable route require to be raised above existing pre-development ground levels, detail of further assessment of any flood risk or hydrological effects associated with any change in levels including any associated mitigation measures shall be submitted to and approved in advance by the Planning Authority and development shall be carried out in accordance with the detail so approved.

Reason:

In the interests of flood management.

- 7 Prior to the commencement of development on any 'Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, a Public Access Management Plan for that Development Zone shall be submitted to and approved in writing by the Planning Authority. The Public Access Management Plan shall include the following details as they relate to each Development Zone:

(i) Measures to manage and control the speeds of construction traffic, including advisory speed limit signage on the local road network, specifically the roads detailed on drawing no. LF000010&11-DEV-MAP-184 titled Figure 12.4 Construction Vehicle Delivery Route (excluding the A1) contained within the Environmental Impact Assessment Report docketed to this planning permission in principle;

(ii) Details of the training of delivery drivers to make them aware of the sensitivities surrounding the interaction between HGVs and cyclists, and the interaction between HGVs and horses as referenced from the British Horse Society; and

(iii) Details of any temporary and permanent infrastructure that will be delivered to ensure the safe and convenient active travel routes in the local area, including a timetable for the implementation of the measures.

Thereafter, the Public Access Management Plan shall be implemented and complied with in accordance with the approved details, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure continuity of the core path network and active travel routes in the interests of public access.

- 8 Prior to the commencement of development on any 'Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, a Construction Environmental Management Plan (CEMP) for development within that Development Zone shall be submitted to and approved in writing by the Planning Authority. The CEMP shall identify potential noise, vibration and dust impacts that may arise during construction of the proposed development and specify any mitigation measures necessary to minimise any such impacts on sensitive receptors, shall include hours for construction work and the following requirements:

(i) a dust and air quality management plan including detailed measures for the mitigation of dust arising from construction activities and a complaint investigation and resolution procedure;

(ii) a construction noise and vibration management plan including the hours of operation for construction related activities, detailed measures for the mitigation of construction noise and vibration and a routine noise monitoring and complaint investigation and resolution procedure;

(iii) a Site Waste Management Plan (SWMP) including details for the management of pollution prevention monitoring and mitigation measures for all construction activities;

(iv) a Soil Management Plan including a map showing locations of stockpiles of excavated materials, details of use and/or disposal of unsuitable subsoil, details of the management and mitigation of soil resources in accordance with biosecurity best practice;

(v) a scheme for the identification of drainage systems (including field drains, culverts, septic tanks and soakaways) and private water supplies, and measures for their protection during

development and/or mitigation of impacts associated with the development including the temporary of alternative facilities as required; and
(vi) a scheme for the reinstatement following the completion of the construction of the cable route (or phase thereof) including the reinstatement of agricultural land, drainage systems and landscape resources.

With regards to noise the CEMP shall adopt "Best Practice Guidance" as recommended in BS 5228-1:2009+A1:2014 "Code of practice for noise and vibration control on construction and open sites, Part 1: Noise".

With regards to vibration the CEMP shall adopt "Best Practice Guidance" as recommended in BS 5228-1:2009+A1:2014 "Code of practice for noise and vibration control on construction and open sites, Part 2: Vibration".

With regards to the control of dust the CEMP shall include details regarding practicable control measures for reducing visible dust emissions affecting properties beyond the site boundary. Control measures to be considered are identified in Section 8 of the Institute of Air Quality Management Guidance on the assessment of dust from demolition and construction (2014).

The development shall thereafter be carried out in strict accordance with the approved CEMP unless otherwise approved in writing by the Planning Authority.

Reason:

To minimise the impact of construction activity in the interests of the amenity of the area and in the interest of safeguarding biodiversity.

- 9 Prior to the commencement of any development on the 'Zone 4b: Onshore substation/converter station construction Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, a Noise Impact Assessment for the operational phase of the development shall be submitted to and approved in writing by the Planning Authority. The Noise Impact Assessment shall be based upon the detailed site layout approved pursuant to Condition 2 and shall identify any mitigation measures (including design and location of acoustic bunds and enclosures) considered necessary to ensure the Rating Level Limit, dBLArTr of specific noise arising from the development, including on-site vehicle movements, does not exceed the Rating Level Limit (dBLAr,Tr) specified in Table BK-SSE-000-CON-REQ-0001 Figure 1 of part 2.1 of the Onshore Operational Noise Limits Table document docketed to this planning permission in principle when measured in freefield conditions at least 3.5m from the façade of any independent neighbouring residential property. All measurements to be made in accordance with BS 4142:2014+A1:2019 "Methods for rating and assessing industrial and commercial sound":

Reason:

In the interests of the amenity of nearby sensitive receptors.

- 10 Prior to the commencement of development on any 'Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, to ensure that the site is clear of contamination, a Geo-Environmental Assessment shall be carried out for development of that Development Zone and the following information shall be submitted to and approved in writing by the Planning Authority:

1. A survey of the extent, scale and nature of any contamination, and reporting on the appropriate risk assessment(s) carried out with regards to Human Health, the Water Environment and Gas Characteristic Situation as well as an updated conceptual model of the site.

The Assessment must be undertaken by suitably qualified, experienced and competent persons and must be conducted in accordance with the relevant guidance and procedures.

If it is concluded by the Reporting that remediation of the site is not required, then Parts 2 and 3 of this Condition can be disregarded.

2. Prior to any works beginning on that Development Zone (and where risks have been identified), a detailed Remediation Statement should be produced that shows the site is to be brought to a condition suitable for the intended use by the removal of unacceptable risks to all relevant and statutory receptors. The Statement should detail all works to be undertaken on that Development Zone, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. It should also ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land following development; and

3. Following completion of the measures identified in the approved Remediation Statement for that Development Zone, a Verification Report should be submitted that demonstrates the effectiveness of the remediation carried out.

Reason:

To ensure that the site is clear of contamination and that remediation works are acceptable.

- 11 In the event that unexpected ground conditions (contamination) are encountered at any time when carrying out the permitted development, 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.

Reason:

To ensure that the site is clear of contamination.

- 12 Prior to the commencement of development, a Construction Traffic Management and Routing Plan (CTMRP) for the construction phase of the development shall be submitted to and approved in writing by the Planning Authority in consultation with Transport Scotland. The CTMRP shall, unless otherwise approved in writing by the Planning Authority, include the following details:

(i) detail of the construction period working hours (this should generally be 0700-1900 hours Monday to Friday and 0700-1300 on Saturdays only other than for delivery of abnormal loads. Subject to prior agreement, limited 24-hours per day / 7 days a week working may be permitted in relation to construction utilising the trenchless technique and the shore end export cables at landfall).

(ii) full details of all construction vehicle access routes to the application site from the A1;

(iii) detailed swept path assessments of all construction vehicle types along their prescribed routes on temporary / permanent haul roads and on the local road network;

(iv) full details of any new temporary or permanent access junctions or enhancements / modifications (such as passing places) to the existing local and trunk road network along the construction routes including appropriate visibility splays;

(v) details of measures to minimise the number of construction vehicles wherever possible;

(vi) updated information on the construction programme, vehicle types and numbers;

(vii) updated review of potential cumulative impacts of nearby related developments;

(viii) details of traffic management measures deemed necessary on the local and trunk road networks including an escort strategy;

(ix) details of temporary signage in the vicinity of the site warning of construction traffic;

(x) details of wheel washing facilities which must be provided and maintained in working order during the period of construction and/or decommissioning of the site. All vehicles must use the

wheel washing facilities to prevent deleterious materials being carried onto the public road on vehicle wheels;

(xi) details of how the behaviour of contractor and subcontractor drivers will be monitored and enforced with particular regards to vehicle speeds; and

(xii) a Staff Travel Plan to include measures to minimise dependency on the private car to and from the construction compounds.

The development shall thereafter be carried out in accordance with the approved CTMRP unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of road safety and in the interest of the promotion of sustainable modes of transportation.

- 13 Prior to the commencement of development, a Route Impact Report (RIR) for the construction phase of the development shall be submitted to and approved in writing by the Planning Authority in consultation with Transport Scotland. The RIR shall, unless otherwise approved in writing by the Planning Authority, compare access routes in terms of their likely impacts (noise, dust, road safety etc) of the construction traffic on the existing local road network. The report shall fully consider the use of the temporary haul roads in preference to the use of the existing road network where possible.

Reason:

In the interests of road safety.

- 14 Prior to the delivery of any Abnormal Indivisible Loads (AILs) within any 'Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, an Abnormal Load Transport Management Plan (ALTMP) covering all the abnormal load movements within the relevant Development Zones that require delivery of AILs shall be submitted to and approved in writing by the Planning Authority in consultation with Transport Scotland. The ALTMP shall, unless otherwise approved in writing by the Planning Authority, include the following details:

(i) details of the numbers and types of the AILs expected, together with a schedule of their arrivals during the construction program;

(ii) full details of all AIL vehicular routes to the site from the A1;

(iii) detailed swept path assessments of all AIL routes on temporary / permanent haul roads and the local road network;

(iv) full details of temporary or permanent changes to the existing local and trunk road network along the construction routes to facilitate the AIL deliveries and proposals for reinstatement post construction;

(v) details of traffic management measures deemed necessary on the local and trunk road networks for the AILs;

(vi) details of temporary signage required;

(vii) details of the mechanisms and schedules for liaison with the emergency services, community groups and local businesses to ensure that their activities are not impeded by the abnormal load activity; and

(viii) details of any updates to the proposed abnormal load delivery process that have arisen following recent liaison with the emergency services, community groups and local businesses to ensure that their services are not impeded by the abnormal load delivery activity.

The development shall thereafter be carried out in accordance with the approved ALTMP unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of road safety and in the interest of the promotion of sustainable modes of transportation.

- 15 No heavy goods vehicles (over a weight of 3500kg or 6.1m in length) associated with the development shall be routed across the Thornton Bridge.

Reason:

In the interests of safeguarding existing roads and associated structures, as well as road safety.

- 16 Prior to the commencement of development within any 'Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle that require works to the public road network, a Stage 1 and Stage 2 Road Safety Audit shall be submitted to and approved by the Planning Authority, which shall be undertaken for the preliminary and detailed design of all works to the local and trunk road networks (including those to be introduced on a temporary basis) and shall include an implementation programme describing when measures identified in the audits will be provided in relation to construction of the proposed development.

Immediately following completion of the works, the date of which shall be provided in writing to the Planning Authority, a Stage 3 Road Safety Audit - Post Opening shall be submitted to and approved in writing by the Planning Authority.

12 months following approval of the Stage 3 Road Safety Audit, a Stage 4 Road Safety Audit shall be submitted to and approved in writing by the Planning Authority for all works that are to remain permanently in place.

All the Road Safety Audits shall be carried out in accordance with GG119 Road Safety Audit Rev 1.

Reason:

In the interests of road and vulnerable user safety.

- 17 Prior to the commencement of the development hereby approved a programme for monitoring the condition of the public and trunk roads to be used by construction traffic, prior to and immediately following the completion of the development, shall be submitted to and approved in writing by the Planning Authority in consultation with Transport Scotland. The public roads to be monitored shall be the sections of roads identified on drawing no. LF000010&11-DEV-MAP-184 titled Figure 12.4 Construction Vehicle Delivery Route contained within the Environmental Impact Assessment Report docketed to this planning permission in principle, and shall include the sections of the A1 trunk road.

Thereafter the approved programme of monitoring shall be implemented. Any remedial works required to those public and trunk roads shown by the monitoring as arising from the construction of the development shall be undertaken by the applicant within 3 months of the completion of the final monitoring undertaken, unless an alternative means of securing the works is approved in writing by the Planning Authority. Any damage to the road surface as a direct result of the construction process of the development that is identified during the monitoring which could result in a significant risk to road safety shall be repaired immediately.

Reason:

To ensure that damage to the public road network resulting from the proposed development is rectified.

- 18 Prior to the commencement of development within any 'Development Zone' to the south of the A1 trunk road, the 'Development Zones' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, the detailed design and specification of the proposed left-in junction with the A1 trunk road as illustrated on SWECO drawing no. 62501721-DRG-102 Revision 2 and titled "Substation 8 & 9 Existing Road Improvement Plan Sheet 1" contained within Appendix 12.2 Abnormal Load Route Assessment of the Environmental

Impact Assessment Report docketed to this planning permission in principle, shall be submitted to and approved in writing by the Planning Authority in consultation with Transport Scotland.

Thereafter, and prior to the commencement of development within any 'Development Zone' to the south of the A1 trunk road, the 'Development Zones' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, the junction shall be constructed in accordance with the approved detailed design and specification.

Within 1 month of completion of the development hereby approved, the left-in junction with the A1 trunk road shall be permanently closed and the A1 trunk road reinstated to its pre-development condition in accordance with detail to be submitted to and approved in advance in writing by the Planning Authority in consultation with Transport Scotland

Reason:

To ensure that the standard of the left-in junction with the A1(T) complies with the current standards and that the safety of the traffic on the trunk road is not diminished.

- 19 Prior to the commencement of any development within 'Zone 3: Landfall to Onshore Substation/Converter Station Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, the detailed design of the Under-Track Crossing (UTX) to pass under the East Coast Main Line shall be submitted to and approved in writing by the Planning Authority in consultation with Network Rail. Thereafter the development shall be carried out in full accordance with the detailed design so approved, unless otherwise approved in writing by the Planning Authority in consultation with Network Rail.

Reason: To ensure that the design of the under-track crossing adequately protects the East Coast Main Line.

- 20 Prior to the commencement of any development on the 'Zone 4a: Onshore substation/converter station enabling works Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, a drainage strategy for that Development Zone shall be submitted to and approved by the Planning Authority. The drainage strategy shall be designed to accommodate a 1 in 200 annual probability event plus a climate change allowance and shall include a timetable for its installation.

The drainage strategy as so approved shall be implemented in its entirety, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the development is appropriately protected against flood risk and does not give rise to increased flood risk elsewhere.

- 21 Prior to the commencement of development on any 'Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, a scheme of landscaping and/or reinstatement for development within that Development Zone, taking account of the detailed site layout and other details proposed or approved under the terms of Condition 2 shall be submitted to and approved in writing by the Planning Authority. The scheme shall provide details of: existing and proposed levels (the levels plan shall show; proposed spot heights at the top and bottom of slopes, existing and proposed contours at 0.5m intervals of any mounding on or re-contouring of the site including SUDS basin/ponds; how the proposed development will relate to the existing topography including to the East Coast Main Line and A1 levels to the north of the site); the height and slopes of any mounding on or re-contouring of, the site; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall include indications of all existing trees and hedgerows on the land and details of any to be retained, and measures for their protection in the course of development. It should also address long term management of the approved planting and boundary treatments.

In accordance with the approved scheme, all planting, seeding or turfing 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 managed in accordance with that scheme. Any trees or plants which within a period of ten 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.

- 22 Prior to the commencement of development on any 'Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, a tree survey, arboricultural impact assessment and tree protection plan within that Development Zone shall be submitted to and approved in writing by the Planning Authority.

The tree survey shall be carried out by an arboriculturist plotting all existing trees and affording each a retention category. The Root Protection Area (RPA) as defined by BS5837: 2012 should be plotted for all trees. The arboricultural impact assessment shall be undertaken for the Development Zone and the tree protection plan shall show the location of temporary protective fencing (if required) on a scaled and dimensioned drawing to help with setting out on site.

Reason:

To ensure the retention and protection of the trees which are an important landscape feature of the area.

- 23 There shall be no commencement of development on any 'Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle unless and until tree protective measures have been installed in the positions and in accordance with the details approved within the relevant tree protection plan approved by Condition 22 above. Unless otherwise specified in the approved tree protection plan, the temporary protective fencing shall comprise of Heras fencing (2m high x 3.5m wide) fixed insitu with scaffold poles or wooden stakes measuring 100 x 100mm, 1.8m long driven into the ground at the ends of each panel and include supporting struts to the vertical posts at 45 degree angles and fix into the ground on the tree side using a minimum of three clamps to hold on each vertical section of heras fence. The temporary protective fencing shall be erected under the supervision of an arboricultural consultant prior to development commencing and retained on site and intact through to completion of development. All weather notices should be erected on said fencing with words such as "Construction exclusion zone - Keep out" and the fencing shall remain on site and intact through to completion of the development. An arboricultural consultant shall be the main point of contact for all matters relating to tree removal, management, retention and protection. No tree removal or management works other than those approved under this planning permission in principle shall be carried out without the prior approval of the Planning Authority, which shall be sought by the arboricultural consultant submitting a written report with photographs identifying the tree location on approved plans.

All weather notices shall be erected on the temporary protective fencing with words such as "Construction exclusion zone - Keep out". Within the areas so fenced off the existing ground level shall neither be raised or lowered and no materials, temporary buildings, plant, machinery or surface soil shall be placed or stored, no handling, discharge or spillage of any chemical substance, including cement washings, and no fires shall be lit thereon without the prior written approval of the Planning Authority. 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. Details of any trenches or services required in the fenced off areas shall be submitted to and approved by the Planning Authority prior to any such works being carried out and such trenches or services shall be excavated and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

Reason:

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

- 24 No development shall take place on site until a person who has, through relevant education, training and experience, gained recognised qualifications and expertise in the field of trees in relation to construction, been employed by the developer to monitor the site works, including the installation of the temporary protective fencing as required by Condition 23 above. The arboriculturist employed shall be required to approve the temporary protective fencing and submit written confirmation and photographic evidence that this has been installed for the prior approval of the Planning Authority prior to the commencement of development.

The arboricultural consultant shall remain the main contact for all tree related matters or queries that arise on the development site. Arboricultural monitoring shall include the supervision and reporting (to include both written and photographic updates). The arboricultural consultant shall be responsible to come up with an appropriate solution to resolve any damage or loss to trees and hedgerows shown to be caused by the development, the details of which shall be included in ongoing site inspection reports to the Planning Authority which shall be submitted quarterly. The Arboricultural consultant shall inspect the remaining trees and hedgerows on completion of the development, updating the tree condition survey and tree management schedule where required.

Reason:

To ensure the retention and protection of trees which are an important feature of the area.

- 25 There shall be no commencement of development until the Planning Authority has approved in writing the terms of appointment by the applicant of an appropriately experienced and qualified Ecological Clerk of Works (ECoW) in consultation NatureScot. The terms of the appointment shall:

- o impose a duty to monitor compliance with the ecological mitigation measures described in the Environmental Impact Assessment Report docketed to this planning permission in principle and the conditions imposed on this planning permission in principle; and
- o detail the stages of the construction phase of the development when the ECoW shall be in post.

The ECoW shall be appointed on the approved terms unless otherwise agreed in writing by the Planning Authority.

Reason:

To avoid or minimise disturbance of wildlife.

- 26 There shall be no commencement of development on any 'Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle (including demolition, ground works, and vegetation clearance) until an Ecological Construction Method Statement (ECMS) (or equivalent document) for that Development Zone has been submitted to and approved in writing by the Planning Authority. The ECMS shall include, but not necessarily be limited to, the following:

- (i) Pre-clearance ecological mitigation works, including advance planting and, for example, the creation of ponds and hibernacula for great crested newts;
- (ii) ecological risk assessment of potentially damaging construction activities;
- (iii) identification of 'biodiversity protection zones';
- (iv) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- (v) the location and timing of sensitive works to avoid harm to biodiversity features (e.g. daylight working hours only starting one hour after sunrise and ceasing one hour before sunset);
- (vi) the times during construction when specialist ecologists need to be present on site to oversee works;

Responsible persons and lines of communication;

- (vii) use of protective fences, exclusion barriers and warning signs, including advanced installation and maintenance during the construction period; and
- (viii) ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The ECMS shall also include a timetable for the implementation of the measures identified within it.

The development shall thereafter be carried out in accordance with the approved ECMS unless otherwise approved in writing by the Planning Authority.

Reason:

To avoid or minimise disturbance of wildlife.

- 27 Prior to the commencement of development on any 'Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, a biodiversity Habitat Management and Enhancement Plan (HMEP) for development within that Development Zone shall be submitted to and approved in writing by the Planning Authority. The HMEP shall utilise the SSER BNG toolkit and Defra metric in accordance with the baseline assessment detailed in Appendix 1: Onshore Initial Biodiversity Net Gain Assessment contained within the Environmental Impact Assessment Report Addendum dated August 2023 docketed to this planning permission in principle, and shall include, but not necessarily be limited to, the following:

- (i) description and evaluation of features to be managed; including location(s) shown on a site map;
- (ii) landscape and ecological trends and constraints on site that might influence management;
- (iii) aims and objectives of management;
- (iv) appropriate management options for achieving aims and objectives;
- (v) prescriptions for management actions;
- (vi) preparation of a work schedule (including an annual work plan capable of being rolled forward over a 5-10 year period);
- (vii) details of the body or organisation responsible for implementation of the plan;
- (viii) a Biodiversity Monitoring Strategy, including details of the appropriate success criteria, thresholds, triggers and targets against which the effectiveness of the various biodiversity mitigation, compensation and enhancement measures being monitored can be judged; frequency, timings and locations for data gathering; methods for data gathering and analysis; mode, method, frequency of updates and reporting to the local planning authority, including how contingencies and/or remedial action will be identified, agreed with the local planning authority, and then implemented; and,
- (ix) a timetable for reviewing the plan.

The HMEP shall also include a timetable for the implementation of the measures identified within it.

The development shall thereafter be carried out in accordance with the approved HMEP unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the development results in an enhancement in biodiversity.

- 28 There shall be no commencement of development on any 'Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle until the applicant has undertaken and reported upon a Programme of Archaeological Work (Geophysical survey and Archaeological Evaluation by trial trench) within that Development Zone in accordance with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the Planning Authority.

Reason:

In the interests of archaeological and natural heritage.

- 29 Prior to the commencement of any development on the 'Zone 4b: Onshore substation/converter station construction Development Zone' as shown on drawing no. LF000010-DEV-MAP-271 docketed to this planning permission in principle, a report on the actions to be taken to reduce the Carbon Emissions from the build and from the completed development shall be submitted to and approved in writing by the Planning Authority. This shall include the provision of renewable technology for all new buildings including the consideration of any opportunities for heat recovery systems, where feasible and appropriate in design terms. The report shall also

include details of any car charging points and infrastructure for them, where feasible and appropriate in design terms. The details shall include a timetable for implementation.

Development shall thereafter be carried out in accordance with the report so approved.

Reason:

To minimise the environmental impact of the development.

30 Within 24 months of the permanent cessation of generation at the offshore Berwick Bank Wind Farm, confirmation shall be given in writing to the Planning Authority whether or not the development hereby approved continues to be required for electricity transmission purposes. Where the development is not required for electricity transmission purposes beyond the operational period of the offshore Berwick Bank Wind Farm, within 24 months of the permanent cessation of generation at the offshore Berwick Bank Wind Farm, a decommissioning and site restoration plan (the 'Demolition and Restoration Scheme') shall be submitted to and approved in writing by the Planning Authority. The Demolition and Restoration Scheme shall include details of:

- i) The extent of substation/converter station and cable infrastructure to be removed and details of site restoration;
- ii) Management and timing of works;
- iii) Environmental management provisions; and
- iv) A Traffic Management and Routing Plan and Abnormal Load Transport Management Plan to address any traffic issues during the decommissioning period.

The Demolition and Restoration Scheme shall be implemented in its entirety, unless otherwise approved in writing by the Planning Authority.

Where the development is required for electricity transmission purposes beyond the operational period of the offshore Berwick Bank Wind Farm, within 24 months of the development no longer being required for electricity transmission purposes, a decommissioning and site restoration plan (the 'the Demolition and Restoration Scheme') shall be prepared and shall be submitted to and approved in writing by the Planning Authority.

The Demolition and Restoration Scheme shall include details of:

- i) The extent of substation/converter station and cable infrastructure to be removed and details of site restoration;
- ii) Management and timing of works;
- iii) Environmental management provisions; and
- iv) A Traffic Management and Routing Plan and Abnormal Load Transport Management Plan to address any traffic issues during the decommissioning period.

The Demolition and Restoration Scheme shall be implemented in its entirety, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure that the application site is satisfactorily restored in the interests of the amenity of the area.

Signed

Councillor Norman Hampshire
Convener of the Planning Committee



**MINUTES OF THE MEETING OF THE
LOCAL REVIEW BODY**

**THURSDAY 30 NOVEMBER 2023
VIA THE DIGITAL MEETINGS SYSTEM**

2

Committee Members Present:

Councillor D Collins
Councillor A Forrest (Chair)
Councillor N Gilbert
Councillor K McLeod

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Mr P Zochowski, Planning Adviser to the LRB

Clerk:

Ms F Currie, Committees Officer

Apologies:

None

Declarations of Interest

None

Introductory Statement by the Legal Adviser

The Legal Adviser outlined the procedure for the Local Review Body to reach a decision on the planning application before it and reminded them that further advice would be provided on procedure, should they conclude they did not have enough information to determine the application today.

The Legal Adviser then invited nominations to chair the meeting. Councillor McLeod nominated Councillor Forrest, and this was seconded by Councillor Collins. It was agreed that Councillor Forrest would chair the Local Review Body (LRB) on this occasion.

1. PLANNING APPLICATION NO. 23/00124/P: REPLACEMENT WINDOWS, ELCHO PLACE HALL, 124 HIGH STREET, COCKENZIE EH32 0DN

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the planning application related to the replacement of front (south) facing and side (east and west) elevation windows at Elcho Place Hall, 124 High Street, Cockenzie. He provided details of the application site and the size, shape and features of the existing windows. He advised that a previous planning permission had been granted in 2019 for replacement doors and windows in the north, south and east elevations of the building. This planning permission was only partially implemented and remained extant.

He believed the proposed windows in the most recent application would be visibly different from the existing windows. The case officer in his report had noted that this would be in respect of their thicker window frames and non-traditional 'plant-on' rather than through astragals. The Planning Adviser added that the curved windows to the front elevation would also have a visibly different glazing pattern with a wider central pane.

He reminded Members that section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The local development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). He indicated that the following policies were relevant to this case: Policy 7 of NPF4 and Policies CH2 and DP5 of the LDP. Also material was section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Council's adopted Supplementary Guidance on Cultural Heritage and the Built Environment 2018.

The Planning Adviser noted that there had been one letter of objection from the Architectural Heritage Society of Scotland which considered uPVC 'an intrusive modern material which would damage the appearance of the building', expressed concern at the lack of traditional features in the replacement windows and the potential impact on the curve of the main window, and queried the absence of a window condition report or statement.

The Planning Adviser explained that a window condition survey/report was only required where replacement windows were proposed to a listed building. The building the subject of this application was not listed.

He agreed with the case officer's conclusion that the proposed windows did not comply with NPF Policy 7 part d, where proposals affecting a conservation area would only be supported where the character and appearance of the conservation area and its setting was preserved

or enhanced, with relevant considerations being the architectural and historic character of the area and the need to use suitable materials. He also agreed that it did not comply with LDP Policy CH2 which again stated that proposals should accord with the size, proportions and materials of nearby buildings, in this case within a designated conservation area, and, where the building makes a positive contribution to the character of that area, that were the application to be approved it would set an undesirable precedent for the installation of similar windows. Similarly, there was no support from LDP Policy DP5 and the proposal did not comply with any of the three possible exceptions for window replacement outlined in the Supplementary Planning Guidance to the LDP.

The Planning Adviser noted that the applicant's review statement indicated that in their opinion the proposed windows did not have a visibly different appearance, that they could not afford timber windows (not a planning consideration) and noted that their inefficient current windows were not helping with energy costs.

The Planning Adviser concluded his presentation by reminding Members of the options open to them, noting that the applicant already had extant permission for suitable timber framed windows.

In response to questions from Councillor McLeod, the Planning Adviser confirmed that, to his knowledge, planning permission had not been sought for double-glazed windows in the extensions to the existing buildings.

The Chair asked his colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Gilbert noted that the property already had some uPVC windows and that the proposed windows would be more thermally efficient and lead to energy savings and costs savings for the applicant. He considered that they would also be more weather and climate resistant. In his view, this was a more modern building, not in keeping with other properties in the street and, in addition, some other properties in the street had already been fitted with double glazed windows. For these reasons, he was minded to vote against the case officer's recommendation.

Councillor McLeod observed that with so much mixed glazing on different sides of the building, the proposed replacement windows would enhance building rather than detract from it. Furthermore, the current windows did not appear to be very environmentally friendly. While he noted the previous planning permission, he was of the view that to provide uniformity over the whole building and to bring the glazing up to good standard planning permission should be granted. Accordingly, he was minded to uphold the appeal.

Councillor Collins was of a similar opinion to her colleagues. She noted that the proposed replacement windows would vastly improve energy efficiency and uniformity, uPVC would last longer than wood in that location and this was not a listed building. For these reasons, she was minded to vote against the case officer's recommendation.

The Chair said it was always useful to view the site and he agreed that the building currently had a mix of glazing types. However, he did not consider that the existing uPVC enhanced the look of the building and he felt that the proposed replacement windows would detract further. Accordingly, he would be upholding the case officer's decision to refuse planning permission.

The members of the LRB confirmed their decision via roll call vote. They agreed by a majority of three to one to uphold the appeal and to grant planning permission.

Decision

The ELLRB agreed, by majority, to uphold the appeal and to grant planning permission.

2. PLANNING APPLICATION NO. 23/00600/P: REPLACEMENT WINDOWS AND DOORS, 1 MARKETGATE, ORMISTON, EH35 5LS

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the planning application related to the replacement windows and doors at 1 Marketgate, Ormiston. He provided details of the application site and advised that the proposal was for replacement uPVC windows where the existing windows were timber. Earlier this year, the applicant had been granted planning permission for uPVC windows, where they were not visible from a public place, and for double glazed timber framed windows and doors where they were visible from a public place within the conservation area. However, he had subsequently submitted this application for uPVC double glazing throughout which was the subject of this appeal.

He reminded Members that section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The local development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). The case officer had identified the following policies as being relevant to this case: Policies 7, 14 and 16 of NPF4 and Policies CH2 and DP5 of the LDP. Also material was the Council's adopted Supplementary Guidance on Cultural Heritage and the Built Environment 2018.

The Planning Adviser noted that there had been three letters of objection, including one from the Architectural Heritage Society of Scotland. In summary, they identified that the property was part of the historic farm, the buildings of which enhanced the character of the conservation area; the windows were visible from public places; introducing uPVC would damage the strong visual contribution which the property made to the conservation area; the proposal was contrary to the Council's planning policies; uPVC was not a like for like replacement; and the proposal would harm the character of both the building and the surrounding area – more so since the applicant had previously accepted timber frames under a previous planning permission; no justification had been provided for the change now proposed and no window or heritage survey had been submitted.

Considering these points, the case officer had noted that the applicant did not have to justify the changes proposed. However, the Planning Adviser commented that NPF4 Policy 7 stated that development proposals with a potentially significant impact on historic assets or places should be accompanied by an assessment which was based on an understanding of the cultural significance of the historic asset and/or place. The issue here was how one judged what was a significant impact.

The windows were clearly visible from a public place. Its existing timber windows were a part of the architectural character of the property and the property made a significant positive contribution to the wider Ormiston Conservation Area. The main determining issue was therefore the detailed design of the windows and the material from which they were made.

The case officer had reported that because of their thicker frames and non-traditional astragals they would be visibly different in appearance from the windows they would replace and that this difference would be such that it would not preserve the positive contribution the traditional timber framed sash and case windows and doors made to the architectural character and appearance of the property or to the special architectural or historic interest of the Ormiston Conservation Area. As a result, and notwithstanding that the replacement windows and doors proposed for the north and west elevation of the house were acceptable, the whole application had been refused.

The Planning Adviser agreed that the proposed windows would be visibly different for the reasons provided by the case officer (thicker frames, non-traditional astragals in terms of profile and being plant on rather than through astragals and a wider spacing between the panes of glass and the different material of construction) and that, for these reasons, the windows could be considered to be harming rather than preserving the character of the conservation area.

The Planning Adviser then summarised the review submission provided by the applicant's agent which asserted that uPVC windows were less expensive, that they performed better and were more durable than timber windows, that the windows were intended to look exactly the same as the existing, that they would look the same from a distance and for that reason the character of the area was not lost or changed. The submission also noted that a previous appeal decision by the Local Review Body overturned a similar refusal for replacement windows, also by the same manufacturer as this proposal, at a location in North Berwick. In relation to this point, the Planning Adviser reminded Members that all applications had different circumstances and affected the character of a different conservation area and against sometimes different planning policy and guidance.

In response to the applicant's review submission, a further objection had been made countering the claims in relation to the difference between timber windows, which the objector would have liked to see retained, and uPVC windows which the objector was opposed to.

The Planning Adviser concluded his presentation by reminding Members of the options open to them - whether they agreed that the reasons for refusal were correct, noting that the applicant already had permission for suitable timber framed windows, or whether the decision should be overturned and allowed.

The Planning Adviser responded to questions from Members on the proposed astragals, whether they would be visually similar to the existing and whether a particular type of astragal could be specified in a condition of any planning permission.

The Chair asked his colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor McLeod noted the importance of taking each case on its own merits. During the site visit he had observed that the front of the house was clearly visible to the public and that other properties nearby had wooden frame windows. He felt that uPVC windows in a front aspect would adversely affect the character of the conservation area. Accordingly, he was minded to uphold the case officer's decision.

Councillor Gilbert commented that it was quite obvious that this was conservation area and that the front windows and door of the property were easily visible to the public. He noted

that the applicant already had planning permission for wooden framed windows and, for those reasons, he was minded to refuse application.

Councillor Collins acknowledged that applicant's attempt to make the replacements look similar to the existing. However, the property was in a conservation area and the applicant already had planning permission for wooden framed windows. She was of the view that replacing with uPVC would adversely affect the character of building and the surrounding conservation area. Accordingly, she was minded to support the case officer's decision to refuse the application.

The Chair commented that the property was clearly visible within the high street and the wider conservation area, and to introduce uPVC would, in his opinion, create a problem. If the proposal had been for wooden frames he may have had a different view, however, on the basis of this application, he would be voting to uphold the case officer's decision.

The members of the LRB confirmed their decision via roll call vote. They agreed unanimously to dismiss the appeal and to refuse planning permission.

Decision

The ELLRB agreed, unanimously, to dismiss the appeal and to refuse planning permission for the reasons set out in the planning case officer's report.

3. PLANNING APPLICATION NO. 23/00209/P: ERECTION OF 1 HOUSE AND ASSOCIATED WORKS, SITE ADJACENT TO WEST COTTAGE, FENTON NEW MAINS ROAD, FENTON BARNES, EAST LoTHIAN

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the planning application related to the erection of 1 house and associated works on a site adjacent to West Cottage, New Fenton Mains Road, Fenton Barnes. He provided details of the site and its surroundings and of the proposals outlined in the application.

He reminded Members that section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The local development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). The case officer had identified the following policies as being relevant to this case: Policies 1, 2, 3, 5, 14, 15, 16, 17 and 29 of NPF4 and Policies DC1, DC4, DC5, DP2, NH7, NH8, T1 and T2 of the LDP. While he agreed that all the stated policies were relevant to this application, he noted that the interpretation of some of these policies differed between the case officer and the applicant's agents.

The Planning Adviser noted that there had been a total of 20 representations to the application – 14 in support, 5 objecting and one commenting. Although all were valid objections it was noted that 7 of the letters of support were from outwith East Lothian. One objection was from an organisation, the Architectural Heritage Society of Scotland. The letters of representation had been summarised in the case officer's report. He also noted that there had been 7 consultation responses – with no objections noted from the Council's Environmental Health officer, Contaminated Land Officer and the Archaeology/Heritage Officer.

The Council's Planning Policy Officer had noted that NPF4 Policy 17 and LDP Policies DC1 and DC4 did not support the application. The Council's Roads Officer had stated that the proposals were in line with LDP Policy T2 subject to a redesign to accommodate a double length driveway. The Council's Landscape Officer had stated that the development was unlikely to be undertaken without harm to the trees that were important on the site. [The trees were now correctly identified as subject to a Tree Preservation Order which was a material consideration in the determination of the application.] Lastly, Scottish Water had raised no objection but commented that private treatment options for waste would be required in the absence of any public Scottish Water waste water infrastructure.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The case officer had assessed the application first on the principle of development in a countryside location against national and local planning policy and then on design matters including the effect on the mature trees on the site. He had concluded that the proposal should be refused for the following reasons:

- it was contrary to NPF policy 17 and policy DC1 and DC4 of the adopted LDP;
- that the proposed house was not proposed to enable the restoration of a historic building asset or another desirable asset contrary to Policy 17 and adopted LDP policy DC5;
- that its design scale form materials and finish was inappropriate to its setting and out of keeping with its surroundings therefore contrary to Policy 14, 16 and 29 of NPF and DP1 and DP2 of the adopted LDP; and
- that it had not been demonstrated that the site could be developed for one house without harm to the trees, both in the site and immediately adjacent to the eastern boundary of the site, contrary to Policy 6 of NPF and NH8 of the adopted LDP.

The Planning Adviser then summarised the review statement submitted by the applicant's agent and architect. He noted that their interpretation of policy differs from that of the case officer, and they had sought a more flexible approach to the interpretation of a number of matters. Their statement included the following points:

- The application site was a previously developed site, capable of accommodating a new home, in keeping with its surroundings and adjacent to other residential properties.
- The application met key design and siting criteria and policy considerations.
- It would not be sporadic and isolated development in the countryside instead would sit comfortably with other properties at Fenton Barns.
- It complied with NPF Policy 17 requirements for a house in a rural area to be suitably scaled, sited and designed in keeping with the character of the area.
- The site would reuse brownfield land and be appropriate in terms of its location, access, and environmental impacts.
- The proposed development would not compromise any aspect of the East Lothian countryside complying with the aims and objectives of planning policies which were written to avoid inappropriate and unsympathetic development in countryside locations.
- Planning must be about working together to deliver appropriate outcomes for an application site. The proposed house would be a beautiful and sustainable addition to the area and accorded with policy 17.
- The site was a vacant and derelict plot, not prime agricultural land.
- Trees on the site could be preserved with bespoke foundation design which could be made the subject of a condition.

The Planning Adviser noted that 2 further representations had been received in response to the appeal. These were further objections from people who have previously made

representation. The applicant's agent had also responded resting their case on the appeal statements submitted.

He also drew Members' attention to a current Planning Enforcement investigation relating to alleged unauthorised works on the site including work to trees and the dropping of waste material on the site. He advised that, if action was required following the investigation it would be appropriate for the Council to serve a Wasteland Notice as a way of dealing with the condition of the site. Alleged unauthorised tree work would be addressed separately.

The Planning Adviser concluded his presentation by reminding Members of the options open to them. Should they choose to refuse the application, his advice was that they do so for the same reasons given in the original decision notice, with amendment of the reference to 'Scottish Planning Policy' with 'NPF4' and adding reference to the fact that the trees on site were now subject to a Tree Protection Order (TPO). He also pointed out that, if Members were minded to grant planning permission, suggested conditions had been provided by the case officer.

The Planning Adviser responded to question from Councillor Gilbert providing further information on the proposed construction materials, with particular reference to their colour and the likelihood of them weathering/fading over time.

The Chair asked his colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Collins commented that the sycamore trees were quite old, and any work done on the site would affect their roots and those of the tree on the other side of the plot. She was also concerned about the proposed scale and building materials, which were, in her view, nothing like those of the surrounding development. She noted that the proposed house would not be supporting agriculture or any rural business but would be a new build in the countryside. For these reasons, she would be supporting the case officer's decision to refuse the application.

Councillor Gilbert stated that he had similar concerns about the application: that it would be a new build in countryside; that the design and materials would not be in keeping with the surrounding development; and that the work would cause damage to the trees on the site. He also noted that this was effectively a two-storey building and the surrounding buildings were all single storey. For these reasons, he would be supporting the case officer's decision.

Councillor McLeod also referred to the potential for the building to cause damage to the trees which were now covered by a TPO. He concurred with his colleagues' remarks on other aspects of the proposals and said he would be supporting the case officer's decision to refuse the application.

The Chair commented on the importance of the site visit in bringing to life the information within the reports and other appeal documentation. He said he would have difficulty in seeing a way of developing this site without damaging the trees and for that reason he would be supporting the case officer's decision.

The members of the LRB confirmed their decision via roll call vote. They agreed unanimously to dismiss the appeal and to refuse planning permission. They also accepted the revisions to the reasons for refusal as suggested by the Planning Adviser.

Decision

The ELLRB agreed, unanimously, to dismiss the appeal and to refuse planning permission for the reason set out in the planning case officer's report, subject to the amendments suggested by the Planning Adviser.

Signed

Councillor Andrew Forrest
Chair of Local Review Body (Planning)

REPORT TO: Planning Committee
MEETING DATE: 6 February 2024
BY: Executive Director for Place
SUBJECT: Application for Planning Permission for Consideration

3

***Note:** This application has been called off the Scheme of Delegation List by Councillor Jardine for the following reason: This has been a contentious planning matter for some time...there remain unresolved concerns for some of the community most closely impacted. I feel it would be beneficial for all sides to have an opportunity to be heard and for the application to be decided upon by Councillors.*

***Note:** This application has been called off the Scheme of Delegation List by Councillor Jardine for the following reason: To allow full discussion with local residents.*

Application No. **23/01207/P**

Proposal Installation of floodlighting

Location **Winterfield Tennis Courts
North Road
Dunbar
East Lothian
EH42 1AU**

Applicant East Lothian Council

Per Halliday Lighting

RECOMMENDATION Consent Granted

REPORT OF HANDLING

SITE CONTEXT

This application relates to the three northernmost tennis courts (tennis courts 4, 5 and 6) of the six tennis courts of Dunbar Tennis Club, which are located on a southern part of Winterfield Park and, thereby, on the north side of North Road.

The courts, which are the subject of this planning application, comprise the northern three tennis courts of the block of six tennis courts that are enclosed by high wire mesh fencing that is green in colour. Additionally, there is a dividing length of fencing along the southern side of courts 4, 5 and 6; between those courts and courts 1, 2 and 3 to the south of them. The tennis courts are part of the large area of recreational and amenity open space of Winterfield Park. They are bounded to the north and east by other parts of the recreational and amenity open space of Winterfield Park. Further to the east is a row

of residential properties that have frontages with North Road. To the west of the tennis courts is the tennis club pavilion. Beyond that is a vehicle access, a car park and the residential property of Rowan Cottage. Beyond them are other parts of the recreational and amenity open space of Winterfield Park. To the south is the public road of North Road beyond which there are neighbouring residential properties.

There are trees and shrubs along the southern roadside boundary of the tennis courts with North Road. There are also trees along the western side of the block of 6 tennis courts.

The tennis courts and pavilion are within the Firth of Forth Site of Special Scientific Interest and the Belhaven Bay Special Landscape Area.

The nearest residential properties are Westwynds some 28 metres to the west, Forth View some 25 metres to the east and the properties of Aytonlea, Warkworth House and Greenbank that are some 9 metres to the south, on the south side of North Road.

RELEVANT PLANNING HISTORY

In May 2012, planning permission (Ref: 12/00065/P) was granted for the installation of floodlighting for tennis courts 1, 2 and 3. The approved scheme consisted of a floodlight being positioned in each of the northwest, northeast, southeast and southwest corners of the block of the three tennis courts 1, 2 and 3 and 2 floodlights being positioned along each of the northern and southern sides of that block of three tennis courts. Planning permission 12/00065/P lapsed on 25th May 2017 without it having been implemented.

In April 2019, planning permission (Ref: 19/00141/P) was again granted for the installation of floodlighting for tennis courts 1, 2 and 3 in the same positions that were approved by planning permission 12/00065/P. Planning permission 19/00141/P has been implemented. Condition 1 of this planning permission states:

"The lamps on top of each of the eight lighting columns hereby approved shall at all times be positioned, directed and shielded so as to focus the light from them downwards onto the surface of tennis courts 1, 2 and 3 to the satisfaction of the Planning Authority. The lighting shall thereafter be maintained as such unless the Planning Authority gives written consent to any variation.

The design and construction of any proposed floodlighting 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. In particular, the floodlighting hereby approved shall at all times comply with the following criteria:

Light Trespass (onto windows) of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 5 between the hours of 0700-2300 and shall not exceed 1 between the hours of 2300-0700.

Reason:

To prevent lighting from spilling onto neighbouring land, in the interests of safeguarding the amenity of nearby residential properties, the character and appearance of the area."

In July 2023, planning permission (Ref: 22/00277/P) was refused for the variation of condition 1 of planning permission 19/00141/P to increase the amount of light trespass onto windows of neighbouring residential properties from not exceeding 5 Lux to not exceeding 10 Lux. Planning permission 22/00277/P was refused for the reasons outlined

below:

1. The increase in light spill levels from not exceeding 5 Lux to not exceeding 10 Lux is harmful to the amenity of nearby neighbouring residential properties. The proposed variation of condition 1 is therefore contrary to Policy 11 of NPF4 and Policy DP2 of the adopted East Lothian Local Development Plan 2018; and
2. The increase in light spill levels from not exceeding 5 Lux to not exceeding 10 Lux has a harmful impact on surrounding biodiversity and will not be minimised through careful planning and design. The proposed variation of condition 1 is therefore contrary to Policy 3 of NPF4 and Policy NH3 of the adopted East Lothian Local Development Plan 2018.

PROPOSAL

Planning permission is now sought for the installation of floodlighting for tennis courts 4, 5 and 6.

As is proposed, the four southernmost floodlights (numbered M1 to M4 on the submitted site plan drawing) currently serving courts 1, 2 and 3 would be re-located to serve courts 4, 5 and 6 in a position along the most northern part of those tennis courts. Moreover, the remaining four floodlights (numbered M5-M8) which are located along the northern most end of courts 1, 2 and 3 would be re-positioned some 180 degrees to serve courts 4, 5 and 6.

No other changes to the existing floodlights are proposed.

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 3 (Biodiversity), 4 (Natural Places), 6 (Forestry, woodland and trees), and 21 (Play, recreation and sport) of NPF4 are relevant to the determination of this application. Policies OS1 (Protection of Open Space), NH2 (Protection of Sites of Special Scientific Interest and Geological Conservation Review Sites), NH3 (Protection of Local Sites and Areas), DP2 (Design) and DC9 (Special Landscape Areas) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of this application.

REPRESENTATION

Five objections and one representation to this application have been received. The main grounds of objection are:

- (i) the existing lights were extremely bright, totally out of keeping with the surrounding neighbourhood, in breach of the conditions imposed on the original consented planning application (Ref: 19/00141/P) and seriously affected the mental health, wellbeing and quality of life for many of the local residents;
- (ii) it has now been established, through the refusal of planning application 22/00277/P, that the brightness of the existing floodlights are causing unacceptable levels of light

pollution to surrounding properties and wildlife;

(iii) the re-location of the existing floodlights will still result in light pollution and light intrusion that will impact neighbouring residential properties in what is currently a dark area;

(iv) the glare and Lux intrusion that comes from the existing floodlights is unacceptable and thus, if re-located, they must be pointed downwards onto the tennis courts and not angled towards neighbouring properties;

(v) any baffles and cowls to reduce light spill should remain in place and put on all of the correct floodlights e.g. cowls on the furthest away floodlights and baffles on those nearest to neighbouring residential properties;

(vi) re-locating the floodlights further into Winterfield Park will have a greater impact on existing wildlife to the detriment of their natural feeding and breeding cycles, habitats and behaviour;

(vii) very few people benefit from using floodlights to play tennis in comparison to the number of people impacted by the light pollution;

(viii) this application should be subject to a full environmental impact study, modelling of light pollution levels, test and trials at key properties to ensure light levels are acceptable before any work commences;

(ix) consideration should be given to restrictions on the hours of use, limits on overall duration of use and the latest time the floodlights can operate that is controlled by a timing switch should planning permission be granted;

(x) other organisations use Winterfield Park (such as Friends of Winterfield, Cricket club, rugby and football training) and they should be consulted on this planning application;

(xi) if the application is to be approved conditions should be imposed to ensure that the lights cannot be used after 9pm and that the light spillage outside the actual tennis courts is kept to an absolute minimum; and

(xii) should the floodlights be re-located to serve courts 4, 5 and 6 assurances will need to be given to ensure that the light spill levels have been thoroughly checked and verified before they are used.

The representation received to this application raises concerns to the proposal to move the existing floodlights and fittings to a different section of the tennis courts to which it is claimed will only result in the same issues being displaced elsewhere. It states that should planning permission be granted it should be made a condition that (i) the light fittings be positioned, directed and shielded so that they focus downwards onto the courts; and (ii) that there is a restriction on light spill onto residential properties of no more than 5 Lux for most of the day and a lower reading e.g. 1 Lux for overnight. The hours considered as night-time might be from say 10pm to 7am.

COMMUNITY COUNCIL COMMENTS

Dunbar Community Council, as a consultee to this application, state that they are aware of, and fully appreciate, the damaging impact that the current lighting arrangement, and the poor management of same, has had over the past years on some neighbours who live close to the tennis courts. They also state that they equally appreciate that many of the 250+ tennis club members, including juniors, rely upon artificial light to enable them to play and train during the darker months and the positive health and wellbeing impacts that this activity has.

They state that they see the current proposal as one that will ensure that light levels will be less than 5 Lux when the light spill reaches neighbouring properties and North Road and thus they support this application but ask that consideration be given to minimising potential of negative impacts through the imposition of the following conditions on a grant of planning permission:

- (a) the applicant to be obliged to meet or improve upon the designed light contour profiles, as submitted with the application;
- (b) the lights to be shrouded to ensure that the light is focussed on the playing areas and that side 'spill' outwith the court area is kept to an absolute minimum;
- (c) the Tennis Club provide assurances as to the way in which the lights are used to ensure that the minimum number of lights is used;
- (d) lights are not left on when there is no play; and
- (e) a curfew be agreed that would include a time for close of play and, possibly, at least one 'rest day', when there would be no evening play.

The matter of the light levels is addressed in the planning assessment below. With regards the Community Council suggestion that a curfew be agreed that would include a time for close of play and possibly at least one rest day with no evening play, as the lux levels of the proposed flood lights would not harm the residential amenity of neighbouring residential properties and are therefore acceptable, there is no justification for the imposition of a condition requiring a curfew or a rest day when the floodlights are not operated.

PLANNING ASSESSMENT

Policy 21 of NPF4 seeks to encourage, promote and facilitate spaces and opportunities for play, recreation and sport. Policy OS1 states that such recreational, leisure and amenity open space and facilities, including outdoor sports facilities, will be safeguarded to meet the recreational needs of the community or protect the amenity or landscape setting of an area.

By being part of the larger recreational and amenity open space area of Winterfield Park, all of the six tennis courts of Dunbar Tennis Club are covered by Policy 21 of NPF4 and Policy OS1 of the adopted East Lothian Local Development Plan 2018. However, the proposal the subject to this current application would not change the existing leisure and recreational use of the tennis courts at Dunbar Tennis Club. Rather, the installation of the floodlights for tennis courts 4, 5 and 6 would facilitate the continued use of the existing recreational facilities of Dunbar Tennis Club and thus the recreational use of this part of the land of Winterfield Park. Accordingly, the proposal does not conflict with Policy 21 of NPF4 or with Policy OS1 of the adopted East Lothian Local Development Plan 2018.

The floodlights would have a narrow, slim-line form and would measure some 10 metres high. When viewed from public places to the north, south, east and west they would be seen in the visual context of the tennis courts that they would serve and in the context of the existing trees and planting that are to the west and south sides of the block of six tennis courts. In this context, the proposed floodlights would not be inappropriate to their place from where they would not be unduly prominent, intrusive or incongruous features in their setting. A condition can be imposed on a grant of planning permission to require that if the proposed floodlights are to be painted, the colour of paint to be applied to them should be agreed in advance by the Planning Authority. Subject to this control, the proposed floodlights would not be harmful to the character and appearance of the tennis courts and would, by their architectural forms, scales, positions and external finishes, be compatible with their surroundings. They would not be harmful to the landscape character and appearance of the area and would not have an adverse impact on the Belhaven Bay Special Landscape Area. Accordingly, the proposal does not conflict with Policies DP2 and DC9 of the adopted East Lothian Local Development Plan 2018.

The applicant has confirmed that the floodlighting would be directed downwards onto the surface of tennis courts 4, 5 and 6. The nearest neighbouring residential properties are Westwinds some 35 metres to the west, Forth View some 40 metres to the east and the

properties of Aytonlea, Warkworth House and Greenbank some 52 metres to the south on the southern side of North Road. The trees along the south and west sides of the block of six tennis courts would provide some screening of the proposed floodlights when viewed from those residential properties to the west and south.

The **Council's Senior Environmental Health Officer** advises that, in order to overcome concerns associated with the proposed development and to ensure that the use of the floodlights do not result in a loss of amenity to the occupiers of neighbouring residential properties, it is recommended that light trespass from the proposed floodlights should not exceed the criteria 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. This would ensure that light trespass (onto windows) of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 5 between the hours of 0700-2300 and shall not exceed 1 between the hours of 2300-0700. This can be secured by a conditional grant of planning permission for the proposed development. It would also be prudent to exercise planning control to ensure that the lighting is directed downwards onto the surface of tennis courts 4, 5 and 6 so that it does not spill onto any neighbouring land and/or neighbouring residential property. Furthermore, the Council's Senior Environmental Health Officer also recommends that a lighting validation report be submitted to and approved in advance by the Planning Authority prior to the floodlights becoming operational. He advises that the validation report shall confirm that light trespass onto windows of neighbouring residential properties complies with the criteria set out above and, if necessary, shall specify mitigation measures to ensure that this criteria can be met. Subject to these recommended planning controls being made a condition on a grant of planning permission the Council's Senior Environmental Health Officer is satisfied that the proposed floodlights to serve tennis courts 4, 5 and 6 would not result in a loss of amenity to the occupiers of any neighbouring residential properties.

Subject to compliance with the above recommended conditions, the proposed floodlights would not harm the amenity of neighbouring land uses or any neighbouring residential properties.

The **Council's Biodiversity Officer** advises that the conditions recommended by the Council's Senior Environmental Health Officer will adequately mitigate the impact on the adjacent habitats and any wildlife within the vicinity and thus raises no objection to this planning application. Accordingly, the proposal does not conflict with Policy 3 of NPF4 or with Policy NH3 of the adopted East Lothian Local Development Plan 2018.

The **Council's Landscape Officer** advises that a condition was imposed on the grant of planning permission 19/00141/P to ensure that a method statement and arboricultural watching brief was agreed prior to the commencement of works to ensure that the cabling routes avoid cutting through any of the existing tree roots of the trees that run north to south adjacent to the western boundary of the application site. Accordingly, the Council's Landscape Officer advises that the same condition would again be relevant to this planning application. Subject to this recommended planning control, the proposed floodlights would not result in harm to the nearby trees.

The **Council's Sport, Countryside & Leisure Service** advise that the proposed floodlighting at Winterfield Tennis Courts will enhance the opportunity and development for tennis within the town and wider county. They state that it will support tennis at all levels and for all age ranges and as they support this application for the active and wellbeing opportunities it supports.

The **Council's Road Services** note that this proposal moves the existing lighting

arrangements further away from the public road and thus they raise no objection to this planning application.

The application site is within the Firth of Forth Site of Special Scientific Interest (SSSI). At this location, the SSSI is designated for its special geodiversity features - a series of extensive shore platforms, some of which predate the last glaciation. NatureScot, as a consultee to this planning application, advise that they have no comments to make on this proposal relating to the flood lighting placement and that there is no predicted impact on the SSSI from this proposal. Accordingly, it can be reasonably deduced that the proposal does not affect the SSSI and does not therefore conflict with Policy 4 of NPF4 or with Policy NH2 of the adopted East Lothian Local Development Plan 2018.

On these considerations, the proposed floodlights are consistent with Policies 3, 4, and 21 of National Planning Framework 4 and Policies OS1, NH2, NH3, DP2 and DC9 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 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 If the floodlighting columns and/or lamps are to be painted, a sample of the paint colour(s) to be applied to them shall be submitted to and approved in advance by the Planning Authority and thereafter the paint colour(s) applied to the floodlighting columns and/or lamps shall accord with the sample so approved unless otherwise approved by the Planning Authority.

Reason:

In the interests of preserving the character and appearance of the area.

- 3 The lamps on top of each of the eight lighting columns hereby approved shall at all times be positioned, directed and shielded so as to focus the light from them downwards onto the surface of tennis courts 4, 5 and 6 to the satisfaction of the Planning Authority. The lighting shall thereafter be maintained as such unless the Planning Authority gives written consent to any variation.

The design and construction of any proposed floodlighting 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. In particular, the floodlighting hereby approved shall at all times comply with the following criteria:

Light Trespass (onto windows) of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 5 between the hours of 0700-2300 and shall not exceed 1 between the hours of 2300-0700.

Reason:

To prevent lighting from spilling onto neighbouring land, in the interests of safeguarding the amenity of nearby residential properties, the character and appearance of the area.

- 4 Prior to any use being made of the floodlights hereby approved a lighting validation report shall be submitted to and approved in writing by the Planning Authority. The validation report shall confirm that light trespass onto windows of neighbouring residential properties

complies with the criteria set out in condition 1 and, if necessary, shall specify mitigation measures to ensure that this criteria can be met. The floodlights shall thereafter operate in accordance with the details and, if relevant, mitigation measures so approved.

Reason:

To safeguard the privacy and amenity of neighbouring residential properties in accordance with condition 3.

- 5 Prior to commencing the works the Council's tree officer shall be informed of the start date. The applicant and/or their contractor shall arrange a site meeting with the Council's tree officer prior to breaking ground and to agree a method statement and arboricultural watching brief throughout all trenching works. The applicant and/or their contractor shall accord with the Council's tree officer's instructions in respect of all works that may affect the existing trees and their roots.

Reason

To safeguard the existing trees and their root plates.