

REPORT TO: Planning Committee
MEETING DATE: 5 March 2024
BY: Executive Director for Place
SUBJECT: Application for Planning Permission for Consideration

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Application No. **23/01266/PPM**

Proposal Planning permission in principle for residential development, public park and associated infrastructure

Location **Dolphingstone
Wallyford
East Lothian**

Applicant East Lothian Developments Ltd

Per Holder Planning

RECOMMENDATION Application Refused

REPORT OF HANDLING

PRE-APPLICATION CONSULTATION

As the area of the application site is greater than 2 hectares and the proposal is for more than 49 residential units, the development proposed in this application is, under the provisions of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, defined as a major development and thus it cannot be decided through the Council's Scheme of Delegation. The application is therefore brought before the Planning Committee for a decision.

As a statutory requirement for major development proposals this development proposal was the subject of a Proposal of Application Notice (Ref: 20/00003/PAN) and thus of community consultation prior to this application for planning permission in principle being made to the Council.

As an outcome of that and as a statutory requirement for dealing with major development type applications a pre-application consultation report is submitted with this application. The report informs that a total of 6 people attended the pre-application community consultation events, which was held at the Wallyford Miners Welfare Society and Social Club on 10 and 31 May 2023 respectively and that those attendees made a number of queries and suggestions regarding the proposals. The PAC report informs that no

completed feedback forms were received following the consultation event. The development for which planning permission in principle is now sought is of the same character as that which was the subject of the community engagement undertaken through the statutory pre-application consultation of the proposal.

APPLICATION SITE

This application relates to some 4.42 hectares of undeveloped land located to the south and east of Wallyford, situated within the wider Dolphingstone expansion area which is allocated for development by Proposal MH10 of the adopted East Lothian Local Development Plan 2018.

The application site is an area of land in the southeast corner of the wider Dolphingstone site and is bound by a grass bund and the A1 trunk road to the southeast, agricultural land to the northeast and the wider Dolphingstone expansion area to the southwest and northwest. It slopes from south to north and has a rough grass finish with no trees or any other landscape features present on it.

SITE HISTORY

On 30 November 2009 planning permission in principle (Ref: 09/00222/OUT) was granted for a mixed use development on some 86 hectares of predominantly agricultural land to the east, south and southwest of Wallyford. The site included Wallyford Community Woodland, the public roads of Salters Road and Inchview Road, and land to the south of Fa'side Avenue South, to the south of the existing village. The land is the allocated housing site of Proposal MH9 of the adopted East Lothian Local Development Plan 2018.

Planning permission in principle (ref: 12/00924/PPM) was subsequently sought for the renewal of planning permission in principle (ref: 09/00222/OUT), as submitted to the Council on 26 November 2012. On 1 April 2014 the Council resolved to approve the application subject to the required Section 75 Agreement and planning permission in principle was duly granted with conditions on 14 November 2014 following the registration of that agreement.

In September 2015 planning permission in principle (ref: 14/00903/PPM) was granted for amendments to planning permission in principle 12/00924/PPM, including an increase in number of residential units from 1050 up to a maximum of 1450, relocation and redesign of open space, development for residential purposes of areas previously proposed as open space and relocation and redesign of the proposed local centre.

The elements of the approved mixed use development include residential development, community buildings including a new school and community facilities, office units, a restaurant, business units, general industrial units, storage and distributions units, trade counter units, a residential institution, a non-residential institution, hot food takeaways, playing fields, open space, allotments, landscaping and associated infrastructure provision.

In December 2020 planning permission in principle (ref: 15/00537/PPM) was granted for residential development with associated educational and community facilities and open space on the land known as Dolphingstone to the immediate south and east of the site the subject of planning permission in principle 14/00903/PPM. Through a condition attached to the grant of planning permission in principle 15/00537/PPM, the number of residential units on the combined sites the subject of planning permission in principle 14/00903/PPM and 15/00537/PPM is limited to no more than 2050. A revised indicative masterplan was submitted and approved as a part of planning permission in principle 15/00537/PPM to

show that the positions shown for the distributor road, SUDS ponds, school campus and local centre would be the same as that approved by planning permission in principle 14/00903/PPM.

The indicative masterplan docketed to planning permission in principle 15/00537/PPM shows an area in the southeast corner of the site as a large area of open space, denoted as a public park incorporating a play area, which public park is to serve future residents of the Dolphingstone site. It is the largest consolidated area of open space shown on the masterplan, the other areas of open space being small areas formed between the housing development sites.

In March 2023 approval of matters specified in conditions (ref: 22/00749/AMM) was granted for infrastructure works including the construction of roads, cycle/footpaths, vehicular access, landscaping, SuDS, the formation of areas of open space and play areas and associated works on land on the northeastern part of the larger site to which planning permission in principle 15/00537/PPM relates.

The drawings docketed to approval of matters specified in conditions 22/00749/AMM approved the detail of the landscaping and open space strategy for the Dolphingstone site to which planning permission in principle 15/00537/PPM relates. This included for the provision of a large, consolidated area of open space in the southeast corner of the site to serve future residents of the allocated Dolphingstone expansion area, in the same position shown for it on the indicative masterplan docketed to planning permission in principle 15/00537/PPM.

PROPOSAL

The site the subject of this application is the land approved for the large, consolidated area of open space to serve future residents of the allocated Dolphingstone expansion area, both by the indicative masterplan docketed to planning permission in principle 15/00537/PPM and the detailed drawings docketed to approval of matters specified in conditions permission 22/00749/AMM.

Through this application, planning permission in principle is sought for a proposed residential development of the site to include for up to 150 homes along with associated access, infrastructure, landscaping, open space and a play area.

An indicative development framework plan has been submitted with the application indicating how up to 150 residential units could be accommodated on the application site. It is also indicated how an area of recreational open space and play facilities could be accommodated on the northwestern part of the site and how landscape planting could be formed on the northeastern and southwestern boundaries of the site.

The indicative development framework plan indicates that vehicular access to the site could be taken from one of the internal distributor roads to serve the Dolphingstone site that was the subject of approval of matters specified in conditions permission 22/00749/AMM by way of two new access junctions.

THE DEVELOPMENT PLAN

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the adopted National Planning Framework 4 (NPF4) and the

adopted East Lothian Local Development Plan 2018 (ELLDP).

Policies 1 (Tackling the climate and nature crisis), 2 (Climate Mitigation and adaptation), 3 (Biodiversity), 7 (Historic assets and places), 13 (Sustainable Transport), 15 (Local living and 20 min neighbourhoods), 16 (Quality Homes), 18 (Infrastructure first), 21 (Play, recreation and sport), 22 (Flood risk and water management) and 31 (Culture and creativity) of NPF4 are relevant to the determination of this application.

Also relevant to the determination of the application are Proposals MH10 (Land at Dolphingstone), ED1 (Musselburgh Cluster Education Proposals), CF1 (Provision of New Sports Pitches and Changing Accommodation), T3 (Segregated Active Travel Corridor), T9 (Larger Station Car Parks), T10 (Platform Lengthening), T15 (Old Craighall A1(T) Junction Improvements), T17 (A1(T) Interchange Improvements), T21 (Musselburgh Urban Traffic Control System), T27 (Tranent Town Centre One-Way System) and T28 (Junction Improvements at Elphinstone Road and Edinburgh Road), and also Policies HOU3 (Affordable Housing Quota), OS3 (Minimum Open Space Standard for New General Needs Housing Development), OS4 (Play Space Provision in New General Needs Housing Development), T1 (Development Location and Accessibility), T2 (General Transport Impact), T32 (Transport Infrastructure Delivery Fund), W3 (Waste Separation and Collection), NH5 (Biodiversity and Geodiversity Interests, including Nationally Protected Species), NH10 (Sustainable Urban Drainage Systems), NH11 (Flood Risk), NH13 (Noise), CH5 (Battlefields), DP1 (Landscape Character), DP8 (Design Standards for New Housing Areas), and DEL1 (Infrastructure and Facilities Provision) of the ELLDP.

Also material is East Lothian Council's approved Developer Contributions Framework Supplementary Guidance, the Council's Design Standards for New Housing Areas Supplementary Planning Guidance and Sustainable Drainage Systems (SuDS) Supplementary Planning Guidance.

Also material is the Council's approved East Lothian Open Space Strategy 2018.

REPRESENTATIONS

No written representation have been received to the application.

COMMUNITY COUNCIL

Wallyford Community Council have been consulted on the application but no consultation response has been received.

ENVIRONMENTAL IMPACT ASSESSMENT

Under the provisions of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 the proposed development falls within the category of a Schedule 2 Development, being one that may require the submission of an Environmental Impact Assessment (EIA). Schedule 3 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 sets out the selection criteria for screening whether a Schedule 2 development requires an EIA. On 23 June 2023 the Council issued a formal screening opinion to the applicant. The screening opinion concludes that it is East Lothian Council's view that the proposed development is not likely to have a significant effect on the environment such that consideration of environmental information is required before any grant of planning permission. It is therefore the opinion of East Lothian Council as Planning Authority that there is no requirement for the proposed development to be the subject of an EIA.

PLANNING ASSESSMENT

If planning permission in principle were to be granted, the details of the siting, design and external appearance of the proposed residential units, the landscaping of the site and the means of access to the proposed development would require the subsequent approval of the Planning Authority. Through the subsequent determination of such details, planning control would be exercised to ensure that the built form of the development could be carried out in an acceptable way, with due regard to the need to safeguard the character and appearance of this site. Subject to the appropriate controls, the housing development could be satisfactorily designed and laid out to ensure that it was in keeping with the character of the housing approved by planning permission in principle 15/00537/PPM.

Policy 16(b) of NPF4 is relevant to this development proposal, which states that development proposals that include 50 or more homes should be accompanied by a Statement of Community Benefit to explain the contribution of the proposed development to:

- (i) meeting local housing requirements, including affordable homes; (ii) providing or enhancing local infrastructure, facilities and services; and
- (iii) improving the residential amenity of the surrounding area.

In this regard, the applicant's submitted Planning Statement includes a statement to outline the Community Benefits associated with the proposed development, which it states include:

- * Directly supporting 288 jobs per year during the construction phase;
- * Supporting 109 jobs per year (indirect and induced) during the construction phase as a result of the wider positive economic impact;
- * Directly contributing over £5 million in gross value added to the economy;
- * Indirect and induced contribution of over £7 million to the economy;
- * New residents would be expected to spend around £3m per annum, including local businesses;
- * Residents' expenditure would support 26 indirect and induced jobs; and
- * Contribute around £185,000 per year in Council Tax receipts

The **Council's Road Services** has considered the Transport Assessment submitted with the application, and advise that it evidences a robust assessment of the traffic impact of an additional 150 residential units on the surrounding road network focussing on the priority junction serving the masterplan area onto the A199 as well as the A1/ A199 Dolphingstone Interchange. Road Services advise that traffic modelling shows that both the existing interchange and the committed priority junction would continue to perform within acceptable limits of theoretical capacity with minimal change to the peak times operation and thus conclude that traffic likely to be generated by the proposed development could be satisfactorily accommodated on the local road network.

Roads Services advise that if planning permission in principle were to be granted, they recommend the following requirements should be met:

- * all access roads should conform to East Lothian Council's Transport Infrastructure in New Developments in relation to roads layout and construction, footways and footpaths, parking layout and number, street lighting and traffic calming measures;
- * car parking and cycle parking for the residential development be provided at a rate as set out in the E East Lothian Council's Transport Infrastructure in New Developments - Part 3.3 Parking provision;

- * driveways should have minimum dimensions of 6 metres by 3.3 metres. Double driveways should have minimum dimensions of 3.3m x 11m or 5m wide x 6m long;
- * vehicle accesses to private parking areas (i.e. other than driveways) should be via a reinforced footway crossing and have a minimum width of 5.5 metres over the first 10 metres to enable adequate two way movement of vehicles;
- * a swept path, or vehicle track assessment, of the road layout should be submitted. As the streets are designed using Designing Streets principals this is an essential requirement to ensure the layout can cope with the occasional larger vehicle. For the avoidance of doubt the Design Vehicle to be used is the "Large Rigid Vehicle" as outlined in the Freight Transport Association's document "Designing for Deliveries" - this will permit access by the occasional refuse/recycle collection vehicle, deliveries, social care buses and emergency & firefighting appliances;
- * EV charging infrastructure should be available for all properties; installation of one Type 2 charger per dwelling, either socketed or tethered with 7kW preferred to 3kW. Where it is not possible to connect to the household's own electrical supply e.g. in some flatted developments, then a factored arrangement can be considered, but the 1:1 ratio still applies;
- * a Quality Audit to independently assess walking, cycling, access and road safety aspects within and around the development should be submitted and approved by the Planning Authority prior to construction commencing. This will be reviewed after construction is substantially complete and the developer required to make good any issues;
- * prior to first occupation, a Travel Information Pack with information for residents to encourage use of sustainable modes of transport such as trains, buses, cycling and walking should be submitted to and approved by the Planning Authority. The Travel Information Pack will include local bus and train timetables, local cycling and walking maps, information on bike hire / car sharing, and shall include details of how it will be distributed to residents;
- * a Construction Method Statement to minimise the impact of construction activity on the safety and amenity of the area should be submitted to and approved by the Planning Authority prior to the commencement of development. The Construction Method Statement should recommend mitigation measures to control noise, dust, construction traffic (including routes to/from site and delivery times) and include hours of construction work;
- * wheel washing facilities should be provided and maintained in working order during the period of operation of the site. All vehicles must use the wheel washing facilities to prevent deleterious materials being carried onto the public road on vehicle tyres; and
- * prior to the commencement of development, a Stage 1/2 Road Safety Audit should be submitted to and approved by the Planning Authority, for the detailed design of the development, and should 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 development, the date of which shall be provided in writing to the Planning Authority, a Stage 3 Road Safety Audit - Post Opening should be submitted to and approved by the Planning Authority. 12 months following approval of the Stage 3 Road Safety Audit, a Stage 4 Road Safety Audit should be submitted to and approved by the Planning Authority. All the Road Safety Audits shall be carried out in accordance with the most recent revision of GG119 Road Safety Audit. The Road Safety Audits shall include the proposed roads, junctions, footways, cycle ways,

pedestrian crossings and double 'D' islands where applicable.

Road Services also recommend that another conditional requirement be that prior to occupation of any residential unit a signal controlled pedestrian toucan crossing should be provided on the A199 to the north of the site in the vicinity of the new bus stop infrastructure approved by the grant of approval of matters specified on conditions permission 22/00749/AMM to facilitate safe access to the current footway and proposed active travel route on the north side of the carriageway.

The site is located within the wider Dolphingstone expansion area which is allocated for development by Proposal MH10 of the adopted East Lothian Local Development Plan 2018 and thus would be located within an area that would, in time, allow future occupants of the development to walk or cycle for shopping, work, school and other leisure activities and to access means of public transport.

Transport Scotland advise that their response is provided on the understanding that East Lothian Council will secure appropriate and proportionate financial contributions from this site in order to address the cumulative impact on the strategic transport network arising from development, and specifically, at Dolphingstone and Salter's Road Junctions. Transport Scotland further advise that they are satisfied that the financial contribution towards the upgrade of Old Craighall Junction can be addressed through the existing Minute of Agreement (dated 25th March 2014) under Section 48 of the Roads (Scotland) Act between Scottish Ministers and the applicant, East Lothian Developments Ltd.

Transport Scotland raise no objection to the application but do advise they recommend conditions be attached to a grant of planning permission in principle, were that to be the decision, namely:

- * the number of residential units should not exceed the 150 maximum proposed;
- * prior to the commencement of the development, details of the lighting within the site should be submitted for the approval of the Planning Authority, after consultation with Transport Scotland;
- * prior to commencement of the development, details of the landscaping treatment along the trunk road boundary should be submitted to and approved by the Planning Authority, after consultation with Transport Scotland. All landscaping shall be located such that it can be installed and maintained from within the development without requiring access to the trunk road;
- * prior to commencement of development, details of any fencing / barrier proposals along the trunk road boundary shall be submitted to and approved by the Planning Authority, after consultation with Transport Scotland and thereafter implemented; any fencing / barrier proposals shall be located such that they can be erected and maintained from within the development without requiring access to the trunk road; and
- * there shall be no drainage connections to the trunk road drainage system.

Subject to the above recommendations of Road Services and Transport Scotland, which could be secured by conditions imposed on a grant of planning permission in principle were that to be the decision, the proposed development would not conflict with Policies 13 or 15 of NPF4 or with Policies T1 or T2 of the ELLDP.

Policy DEL1 of the ELLDP states that new development will only be permitted where the developer makes provision for infrastructure required as a consequence of their development. Policy T32 of the LDP specifically relates to the package of transportation interventions to mitigate the cumulative impact of development on the transport network which have been identified by the Council in consultation with Transport Scotland. In line with Policy DEL1, relevant developments are required to contribute to the delivery of these

transportation interventions, on a proportionate, cumulative pro-rata basis, as set out in the Developer Contributions Framework Supplementary Guidance.

The Council's Road Services advises that the contributions required for each transport intervention for this development are:

- * Improvements to Old Craighall junction (PROP T15): £2,329
- * Improvements to Salters Road Interchange (PROP T17): £22,016
- * Improvements to Bankton Interchange (PROP 17): £3,351
- * Musselburgh Town Centre improvements (PROP T21): £1,047
- * Tranent Town Centre Improvements (PROP T27 and T28): £4,640
- * Rail Network Improvements (PROP T9 and T10): £46,624
- * Segregated Active Travel (Prop T3): £73,252

The total contribution required for transportation improvements resulting from cumulative impacts of the development is therefore £153,759.

The total developer contributions towards the transportation interventions of £153,759 (indexed linked) can be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The applicant has confirmed in writing that they are willing to enter into such an agreement.

The **Council's Waste Services** advise that they are satisfied that the proposed development could be serviced by waste collection vehicles.

Due to the proximity of the A1 trunk road to the application site a Noise Impact Assessment (NIA) has been submitted with the application. The **Council's Senior Environmental Health Officer** has appraised the applicant's submitted NIA, and advises it assumes the existing topography/bund on the southeast side of the site is in place and that noise impacts can be mitigated against by way of the orientation of properties/gardens to noise sources, the provision of 2 metre high close boarded acoustic fencing to gardens and upgraded glazing units and acoustic vents in residential properties to ensure satisfactory external/internal noise levels can be achieved. The NIA concludes that the site can be suitable for residential development subject to such appropriate mitigation.

The Senior Environmental Health Officer raises no objection to the application on the matter of potential noise impacts on the amenity of future occupiers of the proposed residential development subject to the submission for a further noise report when a detailed scheme of development is finalised, with the updated noise report requiring to detail specific mitigation measures in form of orientation of properties/gardens, acoustic screening and glazing/ventilation specification to ensure the following design criteria can be met:

* to ensure compliance with daytime and night-time internal noise levels specified in Table 4 of BS8233:2014 "Guidance on sound insulation and noise reduction in buildings" due to noise associated with road traffic on the A1 and A199; and

* to ensure compliance with the upper guideline value for daytime garden noise levels of 55dBLAeq,T specified in paragraph 7.7.3.2 of BS8233:2014 "Guidance on sound insulation and noise reduction in buildings" due to noise associated with road traffic on the A1 and A199.

In relation to considerations of contaminated land issues, the **Council's Environmental**

Protection Officer (Contaminated Land) recommends that in the event that unexpected ground conditions (contamination) are encountered at any time when carrying out site works, 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.

Subject to the above recommended controls, which can reasonably be imposed as conditions on a grant of planning permission in principle were that to be the decision, the proposed development does not conflict with Policy NH13 of the ELLDP.

The **Council's Biodiversity Officer** does not advise that the application site is of a high biodiversity value given the current nature of the land, and raises no objection to the application subject to the submission of a Biodiversity Enhancement Plan which should set out measures for ecological enhancement opportunities. Subject to this recommended control, which can reasonably be imposed as a condition on a grant of planning permission in principle were that to be the decision, the proposed development does not conflict with Policy 3 of NPF4 or with Policy NH13 of the ELLDP.

Historic Environment Scotland have been consulted on this application and they have raised no objection to the proposed development nor do they have any comments to make in terms of impact of the proposals on the Battle of Pinkie Battlefield Site.

The **Council's Archaeology/Heritage Officer** advises that the application site has already been evaluated archeologically and reported on in 2018 as part of planning permission in principle 15/00537/PPM and that no further archaeological work is required for this application. Thus, the Archaeology/Heritage Officer raises no objection to the application.

On these considerations the proposed development does not conflict with Policy 7 of NPF4 or Policy CH5 of the ELLDP.

In respect of landscape matters the **Council's Landscape Officer** advises that the application site was intended to remain as open space to serve future residents of the allocated Dolphingstone expansion area, as approved both by the indicative masterplan docketed to planning permission in principle 15/00537/PPM and the detailed drawings docketed to approval of matters specified in conditions permission 22/00749/AMM, to be accessible for future residents to enjoy.

The Landscape Officer advises that if planning permission in principle were to be granted, in a future detailed design he would expect to see areas of landscaping interspersed throughout the development with selective large specimen trees and groups of trees within these to allow larger trees to fully establish, which would, in time, grow above the roof lines and visually soften the 'hard' elements of a proposed development by punctuating the skyline and greening up the site. He recommends that a detailed landscape planting plan be submitted. This recommendation could be made a condition of a grant of planning permission in principle, were that to be the decision.

The Scottish Environment Protection Agency (SEPA) raise no objection to the application on the grounds of flooding or drainage.

The **Council's Senior Engineer - Flood Protection** raises no objection to the proposed development. He does recommend that conditions be imposed on a grant of planning permission in principle, were that to be the decision, requiring the submission of a drainage

strategy, including a drainage layout drawings and SuDS provision, and the submission of Scottish Water approval for the drainage arrangements. Subject to the imposition of such conditions the proposed development does not conflict with Policy 22 of NPF4 or with Policies NH10 and NH11 of the adopted East Lothian Local Development Plan 2018 and with the Council's Supplementary Planning Guidance 'Sustainable Drainage Systems (SuDS)'.

Scottish Water raise no objection to the application.

Proposal CF1 of the ELLDP states that development proposals for 5 or more homes must make provision for the delivery of new sports pitches and changing accommodation as set out in the Developer Contributions Framework Supplementary Guidance.

The **Council's Service Manager for Sport, Countryside & Leisure** and the **Council's Planning Obligations Officer** have advised that the proposed development would generate a requirement for additional sport provision at Wallyford and therefore a financial contribution of £146,400 (£976 per residential unit) is required as set out in the Developer Contributions Framework Supplementary Guidance for the Musselburgh Area Contribution Zone

The required payment of a financial contribution of a total of £146,400 towards additional sport provision at Wallyford can be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The applicant has confirmed in writing that they are willing to enter into such an agreement.

The **Council's Executive Director - Education and Children's Services** informs that the application site is located within the school catchment areas of Wallyford Primary School and Rosehill High Community Campus. Proposal ED1 (Musselburgh Cluster Education Proposals) of the ELLDP stipulates that the Council will provide new primary and secondary school establishments and campus land and that developer contributions will be sought from developers of relevant sites to fund the cost of this provision.

The Executive Director - Education and Children's Services advises that Wallyford Primary School and Rosehill High Community Campus will not have sufficient capacity to accommodate children that could arise from the proposed development the subject of this application. Therefore she advises that she would object to the application on the grounds of lack of permanent capacity at those schools. However, she would withdraw that objection provided the applicant makes a financial contribution to the Council of £3,228,225.90 towards the provision of additional school accommodation at Wallyford Primary School and Rosehill High Community Campus.

The required payment of a financial contribution of a total of £3,228,225.90 towards the provision of additional school accommodation can be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The applicant has confirmed in writing that they are willing to enter into such an agreement and on this consideration the proposed development does not conflict with Policy 18 of NPF4, Proposal ED1 or Policy DEL1 of the ELLDP or with the Council's approved Developer Contributions Framework Supplementary Guidance.

Policy 16e) of NPF4 states that Development proposals for new homes will be supported where they make provision for affordable homes to meet an identified need. Proposals for

market homes will only be supported where the contribution to the provision of affordable homes on a site will be at least 25% of the total number of homes. Policy HOU3 of the ELLDP states that development proposals that in their totality will bring forward five or more dwellings must make provision for affordable housing , with the required proportion being 25% of the total number of dwellings proposed for their site.

The **Council's Housing Enabler - Strategy and Development** advises that, in accordance with Policy HOU3, a grant of planning permission in principle would require to be subject to provision of 25% of all residential units to be developed as affordable housing.

The terms for the provision of this affordable housing requirement could be the subject of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Subject to the Council securing the affordable housing requirement, which the applicant is willing to do, the proposal would be consistent with Policy 16 of NPF4, Policy HOU3 of the adopted East Lothian Local Development Plan 2018 and with the Council's Affordable Housing Supplementary Planning Guidance.

As the application site is within a Coal Mining Development High Risk Area the Coal Authority have been consulted on the application. A report on Intrusive Site Investigations has been submitted with the application. The Coal Authority advise that they consider that an adequate assessment of the coal mining risks associated with the site has been carried out, but further information is required in order to ensure that sufficient information is provided to demonstrate that the site is safe and stable for the proposed development.

The Coal Authority recommends that should planning permission in principle be granted that intrusive investigation works be undertaken prior to the commencement of development and that in the event that the site investigations confirm the need for remedial works to treat any areas of shallow mine workings, development not begin until a scheme of remedial works on the site has been submitted to and approved in writing by the Planning Authority. This can be required by a condition of any grant of planning permission in principle, were that to be the decision.

Policy 31 of NPF4 states that "development proposals that involve a significant change to existing, or the creation of new, public open spaces will make provision for public art. Public art proposals which reflect diversity, culture and creativity will be supported". The proposal the subject of this application include for the creation of a new public open space and it would therefore be appropriate for artwork to be incorporated either as an integral part of the overall design or as a related commission. Were planning permission in principle to be granted for the proposed development then the artwork could be secured through the imposition of a planning condition, consistent with Policy 31 of NPF4.

At its meeting on Tuesday 27th August 2019 the Council approved a motion declaring a Climate Emergency. Thereafter, at its meeting on Tuesday 3rd September 2019 the Council's Planning Committee decided that a condition requiring a developer to submit for the approval of the Planning Authority a report on the actions to be taken to reduce the carbon emissions from the building and from the completed development should be imposed on relevant all applications for planning permission. Such a condition should be imposed on a grant of planning permission in principle for this proposed development, were that to be the decision.

Notwithstanding the above considerations, another material consideration in the determination of this application is whether or not sufficient open space with play facilities

can still be provided to serve the wider Dolphingstone expansion area approved by planning permission in principle 15/00537/PPM and the housing development proposed in this application, given that the site the subject of this application is the land approved for the large, consolidated area of open space to serve future residents of the allocated Dolphingstone expansion area, both by the indicative masterplan docketed to planning permission in principle 15/00537/PPM and the detailed drawings docketed to approval of matters specified in conditions permission 22/00749/AMM.

Policy 21 of NPF4 states that development proposals likely to be occupied or used by children and young people will be supported where they incorporate well-designed, good quality provision for play, recreation, and relaxation that is proportionate to the scale and nature of the development and existing provision in the area.

Paragraph 3.119 of the ELLDP states that high quality open spaces are multifunctional and contribute to an area's sense of place and identity; multifunctional open spaces can help to create better places, for example by including provision for a range of formal and informal leisure activities. Policy OS3 of the ELLDP requires open space to be provided at a rate of 60m² per dwelling.

In this regard the applicant has submitted a 'Phase 6 Dolphingstone Landscape and Visual Appraisal Open Space & Landscape Strategy' (LVAOSLS) document and a 'Dolphingstone Phase 6 Amenity Green Space Provision within the Wallyford Expansion Area' (AGPP) document in which they seek to demonstrate sufficient open space and play facilities would remain within the wider Dolphingstone site the subject of planning permission in principle 15/00537/PPM even with the proposed development in place. In the 'Open Space' provision table within the applicant's submitted AGPP document it states a total of 12.59 hectares of open space would be provided within the wider Dolphingstone site, an over provision of the 6.462 hectares that document asserts is necessary to meet the requirement of Policy OS3 of the ELLDP.

On the consideration of open space and play, the **Council's Team Manager - Strategy, Policy and Development** advises that the land to which this application relates is land approved as open space through planning permission in principle 15/00537/PPM and the detailed infrastructure application 22/00749/AMM; specifically, this land is approved as open space with a large play area required to serve the housing development approved under planning permission in principle 15/00537/PPM. The infrastructure application secured this area of land as open space for informal recreation, and included a large play area deemed necessary for the wider Dolphingstone development.

The Team Manager - Strategy, Policy and Development advises that this proposal for an additional 150 housing units on this site would require an additional 60m² of open space per dwelling, as per the requirement of Policy OS3 of the ELLDP, and that there would also be a requirement for play provision arising from the proposed development as required by ELLDP Policy OS4, specifically a play area suitable for children aged 0 - 8, noting these requirements would be in addition to the previously approved open space and play approved through the infrastructure application ref: 22/00749/AMM.

The Team Manager - Strategy, Policy and Development notes that the applicant has provided an Open Space Strategy plan within their submitted LVAOSLS document which shows linear areas of landscape planting approved through the infrastructure application ref: 22/00749/AMM and areas alongside the main distributor road/footpath, and that she is supportive of the proposed landscaping/planting connectivity, which appear to form linear green networks and would enhance the site. However, she notes the applicant has included these linear landscaping features in their open space provision calculations for the wider Dolphingstone site.

The Council's Design Standards for New Housing Areas Supplementary Planning Guidance and paragraph 3.127 of the ELLDP state that incidental landscaped areas or areas of planting, footways, roads, private gardens, and allotments, will not contribute to open space requirements and that in large developments with a number of house builders it may be better to consolidate an open space into a large area.

In line with Policy OS3 of the ELLDP, in relation to quantity of open space, the Council's approved Open Space Strategy states "East Lothian Council sets a quantity standard for open space that requires all settlements to seek to secure: 60m² of Open Space and Play Provision per household (incl. public parks, amenity greenspace, playspace)".

The Council's approved Open Space Strategy defines "Amenity Greenspace" as:

"Landscaped areas providing visual amenity or separating different buildings or land uses for environmental, visual or safety reasons and used for a variety of informal or social activities such as sunbathing, picnics or kickabouts."

In relation to quality of open space, the Council's approved Open Space Strategy states:

"Quality is a key component of open space. Open spaces need to be "fit for purpose" and serve local communities by providing a level of service and functional provision to meet informal leisure and recreational needs. There is a commitment to increasing multi-functionality of spaces to maximise their contribution to quality of place and the benefits that they provide to local communities..."

The applicant's submitted AGPP document shows open space provision across the Wallyford expansion area including areas of open space which were previously approved as part of the separate Wallyford expansion (ref: 14/00903/PPM) and subsequent matters specified in conditions permissions relating to that planning permission in principle. The open space areas already approved, and which contribute towards the Wallyford open space provision, cannot be counted again as open space provision for Dolphingstone.

In regard to the applicant's 'Open Space Provision' table within their AGPP document it includes a 'Dandara - 87 units' and 'Wheatley Homes - 90 units' figures, however the developments these figures refer to have been approved as matters detailed under the Wallyford 14/00903/PPM permission (refs: 22/00651/AMM and 22/00009/AMM respectively) and so should be excluded from the open space requirement calculation for Dolphingstone.

Taking the provided figure for 750 homes for the Dolphingstone site plus the additional 150 residential units proposed in this application makes a total of 900 residential units. Policy OS3 of the ELLDP requires a minimum of 60m² per housing unit therefore there requires to be provided a minimum 54,000m² (900 x 60m²) of open space, which equates to 5.4 hectares of open space provision for the wider Dolphingstone site, including the development proposed in this application.

The drawings docketed to approval of matters specified in conditions 22/00749/AMM approved the detail of the landscaping and open space strategy for the Dolphingstone site to which planning permission in principle 15/00537/PPM relates, and the Team Manager - Strategy, Policy and Development has used this to calculate the open space provision for Dolphingstone, whilst also including the additional open space proposed in this application.

The Team Manager - Strategy, Policy and Development, advises that it is her view that when adding all the open space areas together this would provide a total of 3.84 hectares

across the Dolphingstone site when taking into account this proposed development. Therefore there would be a shortfall of open space provision of 1.56 hectares and thus there would be provided insufficient open space as a result of this now proposed development.

However, the Team Manager - Strategy, Policy and Development advises that, as stated above, the Council's Design Standards for New Housing Areas Supplementary Planning Guidance and paragraph 3.127 of the ELLDP state that incidental landscaped areas or areas of planting, footways, roads, private gardens, and allotments, will not contribute to open space requirements.

Therefore she advises that such areas should be excluded from the open space calculation, an exclusion of 13,987m², which results in an open space area provision of 24,499m², or 2.44 hectares.

Therefore the Team Manager - Strategy, Policy and Development advises that the actual shortfall in provision of useable amenity open space is 2.96 hectares.

The Team Manager - Strategy, Policy and Development advises that the open space provided in the above calculation includes multifunctional open spaces for a range of formal and informal leisure activities, including areas of woodland with woodland walks, green networks and areas for informal play. However, she notes that areas that have been included within the open space provision calculation include a wooded landscape strip between housing areas, and narrow woodland areas, which although have a woodland path so do provide amenity value; neither of those areas provides a good range of formal and informal recreational opportunities and are in effect landscape or buffer strips rather than multifunctional, useable open space areas providing for a variety of informal or social activities.

Taking the above into account, the Team Manager - Strategy, Policy and Development advises that the development proposed in this application would result in a deficit in quality, useable, multifunctional open space for formal and informal recreation and amenity value for the wider Dolphingstone site, and it has not been demonstrated that the previously approved open space to be formed on the application site that would be lost a consequence of the proposed development can be compensated for, or that sufficient open space provision can be provided for the wider Dolphingstone site including for the additional 150 residential units proposed in this application.

The applicant's agent has submitted a critique of the consultation response from the Team Manager - Strategy, Policy and Development, stating it is not logical or appropriate to carry out an assessment of the open space based on the infrastructure application 22/00749/AMM boundary as that boundary excludes recreational open space which will serve Dolphingstone residents and thus her calculations are incorrect, with the correct calculations shown in their submitted AGPP document. The applicant's agent also goes on to state that the analysis by the Team Manager - Strategy, Policy and Development is therefore flawed in that it completely overlooks the wide range of open space options and facilities that will be available for all residents across the wider development in line with the original masterplan.

In this it appears the applicant's agent is asserting that the location and availability of open space areas approved in the separate Wallyford expansion area development (ref: 14/00903/PPM) should also count towards open space calculation for the wider Dolphingstone site approved by planning permission in principle 15/00537/PPM. However, through the assessment of each of those separate applications, it needed to be demonstrated there was sufficient open space provision to serve them in accordance with

planning policy and it is not the case open space should be double counted so one site is deficient. Through the assessment of planning permission in principle 15/00537/PPM it was deemed necessary to secure the large, consolidated area of open space to serve future residents of the allocated Dolphingstone expansion area, both by the indicative masterplan docketed to that planning permission in principle and further secured through the detailed drawings docketed to approval of matters specified in conditions permission 22/00749/AMM, and the proposal in this application, by removing the majority of that open space provision, would result in deficient open space provision for Dolphingstone.

It is considered that it would not be reasonable to include within the open space calculation for Dolphingstone the area of the SuDS in the far western end of that application site boundary given the distance to the housing areas of that site. It is considered both appropriate, reasonable and robust to calculate the available areas of open space as detailed above by the Team Manager - Strategy, Policy and Development.

Therefore, on the above consideration, due to the lack of provision of sufficient quality, useable, multifunctional open space for formal and informal recreation and amenity value for the wider Dolphingstone site which arises as a direct result of the proposed residential development of the application site, the proposed development is contrary to Policy 21 of NPF4, Policy OS3 of the ELLDP, the Council's Design Standards for New Housing Areas Supplementary Planning Guidance and the Council's approved East Lothian Open Space Strategy 2018.

In conclusion, the proposed development does not accord overall with the relevant provisions of the Development Plan and that there are no material considerations which outweigh the proposals discordance with the Development Plan.

RECOMMENDATION

It is recommended that planning permission in principle be refused for the following reason:

- 1 Due to the lack of provision of sufficient quality, useable, multifunctional open space for formal and informal recreation and amenity value for the development proposed in this application and the wider Dolphingstone site the subject of planning permission in principle 15/00537/PPM which would arise as a direct result of the proposed residential development of the application site, the proposed development is contrary to Policy 21 of NPF4, Policy OS3 of the adopted East Lothian Local Development Plan 2018, the Council's Design Standards for New Housing Areas Supplementary Planning Guidance and the Council's approved East Lothian Open Space Strategy 2018.

