



NOTICE OF THE MEETING OF THE PLANNING COMMITTEE

**TUESDAY 5 MARCH 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, 6 February 2024 (**pages 1-8**)
2. Minutes for Noting: Local Review Body (Planning), 16 November 2023 (**pages 9-24**)
3. Planning application no. 23/01439/P: Alternations and heightening of roof of building to form one flat and associated works, 50 School Brae, West Barns (**pages 25-30**)
Note: This application has been called off the Scheme of Delegation List by Councillor Collins for the following reason: Concerns from local residents regarding loss of privacy and road safety.
4. Planning application no. 23/01266/PPM: Planning permission in principle for residential development, public park, and associated infrastructure, Dolphingstone, Wallyford (**pages 31-46**)

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

27 February 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**

**TUESDAY 6 FEBRUARY 2024
VIA A DIGITAL MEETING FACILITY**

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Committee Members Present:

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

Other Councillors Present:

Councillor L Jardine

Council Officials Present:

Mr K Dingwall, Service Manager – Planning
Ms E Taylor, Team Manager – Planning Delivery
Mr N Millar, Planner
Mr C Grilli, Service Manager – Governance
Mr C Clark, Senior Environmental Health Officer
Ms P Gray, Communications Adviser
Mr J Canty, Transportation Planning Officer
Mr A Hussain, Transportation Planning Officer
Mr E Hendrikson, Team Manager – Active Business Unit
Mr G Miller, Team Manager – Capital Plan and Asset Management

Clerk:

Ms B Crichton

Visitors Present/Addressing the Committee:

Item 3: Mr P McDonagh, Ms E Hughes, and Mr S Miller

Apologies:

Councillor C Cassini

Declarations of Interest:

None

1. MINUTES FOR APPROVAL: PLANNING COMMITTEE, 5 DECEMBER 2023

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

2. MINUTES FOR NOTING: LOCAL REVIEW BODY (PLANNING), 30 NOVEMBER 2023

The Committee agreed to note the minutes.

3. PLANNING APPLICATION NO. 23/01207/P – PLANNING PERMISSION FOR INSTALLATION OF FLOODLIGHTING, WINTERFIELD TENNIS COURTS, NORTH ROAD, DUNBAR

A report had been submitted in relation to Planning Application No. 23/01207/P. Neil Millar, Planner, presented the report, highlighting the salient points. The report recommendation was to grant consent.

Officers answered questions from Members. Responding to questions from Councillor Yorkston, Mr Millar explained that the outer ring of the displayed diagram, which should comply with a 5 lux light spill, did not encroach onto any part of a neighbouring house. Prior to use of the floodlights, the planning authority would, through testing, seek to ensure that a light spill level of 5 lux was achieved, which may require further mitigation such as baffles and cowls.

Responding to questions from Councillors Gilbert and McGinn, Colin Clark, Senior Environmental Health Officer, explained that different lighting levels were required for different sports, but the 5 lux criteria referred to light spill outside of the sporting arena which may impact upon the windows of sensitive receptors, such as neighbouring residential properties. He advised that the area was an E2 Zone, an intrinsically dark rural location, and compared this to the lighting levels allowed in a more built-up E3 Zone with less stringent criteria. In this specific location, a 5 lux light spill until 11pm would comply with statutory guidance.

Councillor McMillan asked whether there could be engagement with residents as part of the testing period. Mr Millar advised that planning conditions required submission of a validation report. He advised that objectors could be made aware of the feedback from that test on the planning portal, but reassured Members that the floodlights could not be used if the 5 lux criteria could not be met. Councillor McMillan reiterated his request that testing times be shared with residents so they could confirm accuracy and ensure there would be no additional light spill onto properties. The Convener thought it would be possible for residents to be present since testing was arranged by the local authority.

Councillor Collins said that residents had raised concern about the slow response to issues raised with light spill, and asked whether baffles could be fitted to all floodlights. The Convener suggested that conditions could be added for the installation of baffles and for issues to be dealt with quickly.

Mr Clark was wary of previous statements that there would be no light spill onto neighbouring properties; he confirmed that minimal light spill was acceptable so long as it did not exceed the 5 lux criteria.

Ed Hendrikson, Team Manager – Active Business Unit, spoke to the application. He said the application had been brought forward to find a balanced resolution following concerns raised by residents and the tennis club. The courts at Winterfield Park were held by the Common Good and the tennis club held a 20-year lease. He said the courts were well used, and funding for resurfacing and new floodlights secured in 2019 had resulted in increased use. He advised

that an independent validation test confirmed that the current setup could not satisfy the 5 lux overspill requirements, so this planning application moved floodlighting further away from housing. He said that a further independent validation report would be undertaken, and this information would be shared to reassure local residents. He said that not permitting any floodlighting on the site would reduce the time the courts could be used, particularly in the winter months. He provided information on: the courts' use by members, the general public, and local school pupils, with around 36 hours per week of activity; the engagement of the club in the Active Schools programme; and an overview of the wellbeing benefits of participation in the sport. He said floodlighting the three courts nearest the road allowed the courts' positive impact to be year-round and allowed environmental health requirements to be met, whilst also addressing the concerns of residents.

Responding to questions from the Convener and Councillor McGinn, Mr Hendrikson advised that it would be possible for residents to be onsite during the validation assessment. He advised of ways in which court use would be restricted should floodlighting not be provided, imposing a barrier to people taking part in the activity over the darker months and causing some to travel further afield.

Peter McDonagh spoke against the application. He said issues had begun following installation of floodlights in 2019, and said that the application would move the same issue 20m north. He considered allowing play until 11pm to be antisocial. He felt that the wellbeing benefits of tennis must be balanced against the detrimental impact on residents' physical and mental health and loss of amenity caused by 13.2 lux light overspill and noise from the courts. The current arrangement meant that one bedroom and study of his home had been lost to light spill, but said new proposals would see the whole rear of his home affected. He pointed out that floodlights at Hallhill were shut off at 10pm, but said that Winterfield lights remained on for a significant time after play had stopped due to there being no effective shutoff timer. He said residents wanted a curfew of 9pm with an effective shutoff mechanism. He noted that Dunbar Community Council were broadly in favour of the proposals but asked for these same fair and reasonable conditions.

Responding to a question from Councillor McMillan, Mr McDonagh described his house as being 24m from the floodlights on the eastern side. He said that previous reports had not indicated his home would suffer light spill, but it had since been measured at 13.2 lux. He did not believe that the new proposals would see light spill stop short of his home.

Councillor McIntosh asked about time restrictions at other sporting facilities. Mr Hendrikson advised that there was a difference between planning restrictions and how a club decided to use the time. He understood that a 5 lux light spill until 11pm was standard in an E2 zone, and the tennis club had activities on until 10pm. He highlighted that competitive tennis could go beyond 10pm to finish a match, but understood that activity 10pm-11pm was uncommon. Mr Clark added that 11pm had been taken from statutory guidance. He said that frequency of occurrence would be taken into account when considering whether late play could be considered a nuisance. Although 11pm had been applied per statutory guidance, it may be possible to further restrict time. He confirmed that light spill of only 1 lux was acceptable in an E2 zone beyond 11pm.

Responding to further questions from Councillor McMillan, Mr Clark advised he was unaware of noise complaints regarding the tennis club. He expected the validation report to assess potentially affected properties. The light spill levels could not be predicted and there could be some changes until the final set up was established. He acknowledged that light spill of 13 lux clearly did not meet criteria and reiterated that light spill must not exceed 5 lux. Mr McDonagh responded that it was common for lights to be on until 10.30pm and beyond, and estimated this occurred 20-40 times per year. He said that lights were also left on after play had ceased and people had left the courts. He said that residents had been in contact with environmental health for three years before an independent survey was undertaken.

Esther Hughes spoke against the application. She said that from her home's position backing onto the park, it was possible to use her kitchen at night without putting on the light. She acknowledged that the coastal location may have seen weather conditions affect the cowl's positions, but said it was clear that further modification was required to minimise light spill when she could see bare bulbs from her home. She highlighted Winterfield Park as an accessible dark space, which few towns had, and raised concern about the effect of floodlighting on local wildlife. She highlighted the presence of hedgehogs, migrating birds, and pollinating insects, and said that biodiversity had markedly increased through the efforts of various groups. She highlighted the effect of light pollution on the feeding and sleeping patterns of birds, and the negative effect on insects and bats when perceived day and night lengths were impacted. She reported that guidance for sports floodlighting said that nature should be exposed to as little LED light as possible through various mitigations. She felt that moving existing lights further into a nature habitat would adversely impact wildlife. She questioned why, if mitigations could limit light spill to 5 lux in these proposals, they had not been set up to do so in the existing arrangement, and further questioned why East Lothian Council proposed to use the same supplier. She felt that the application would be pushed through to the detriment of biodiversity. She asked Members to consider reducing the hours the lights were used, to ensure the cowls effectively stopped light intrusion, and to check cowl positioning following storms. She felt the planning process did not adequately take account of surrounding properties or users of the park at night.

Stewart Miller spoke against the application. He said that if restriction on use of the lights until 11pm was left in the hands of court users, it was likely that the same issues would be experienced. He felt that disruption caused to residents was not commensurate with the very low number of tennis court users at night, and said only 12 people could use three illuminated courts at any one time. He asserted that those using the courts at night were the same group of people. He said there was little faith that the lights would be properly run after they had been moved. He objected to more taxpayers' money funding proposals which would cause stress and inconvenience to even more residents to benefit only a small group of court users. He noted that schools did not use courts outside of daylight hours, and listed several ways in which he felt money could be better spent.

Councillor Jardine, Local Member, sought to provide a balanced view, said she valued the positions of court users and residents, and highlighted the Planning Committee's role in trying to achieve equilibrium. She spoke of her professional experience working with architects and designers, and their awareness of how light, colour, and texture impacted on how humans experienced the built environment. She had become increasingly concerned about the impact on the health of nearby residents, and reported having sat in nearby homes in winter and feeling as though car headlights were beaming into windows. She acknowledged that the lights would enhance the tennis players' experience and maximise their playing time. She also acknowledged that the residents considered their home to be a refuge and space to rest and recharge; she felt that the impact of the light on their retreat and rest must be recognised. She raised concern that the 2005 light engineer guidance provided as part of the application was not as robust as it needed to be due to the more recent proliferation of LED lighting. She was heartened that there was a commitment to a validation assessment following the relocation of the lights. She said it would be of crucial importance for the tennis club and residents to coexist in the space and she offered to help negotiate ways of working.

Councillor Collins, Local Member, reported that residents had been concerned about how they had been treated following their multiple attempts to make reports about light overspill. She felt that the lights being on so late was detrimental to sleep. She felt a compromise had to be reached on times the lights operated and asked that baffles be fitted on all lights. She advised that floodlighting at Meadowbank was shut off at 10pm, and felt that such a restriction would be beneficial to the health of residents.

The Convener, also a Local Member, commented that development of sport was a major area of investment for the council and facilities had been brought forward due to the multiple benefits provided. He acknowledged that outdoor sport was impossible in the winter months without floodlighting, and that tournaments which took place at the courts could not finish in darkness. He felt proposals sought to minimise impact on properties, and said any light spill reaching properties would be within the 5 lux limit. He highlighted the club membership and children's use of the courts, and said that more than 12 people could use the three illuminated courts if coaching was ongoing. He acknowledged the encouragement from Dunbar Community Council to consider measures that could minimise light spill. He said the issue of the 11pm shutoff had been discussed at the site visit; he reported that safety reasons meant that lights could not be automatically shut off without override, however, he said that action would be taken should the club operate beyond 11pm. He would support the proposals.

Councillor Findlay had consulted with Gullane and North Berwick Tennis Clubs and reported that their lights were shut off at 10.30pm. He therefore proposed that the time restriction be changed to 10.30pm, as this shutoff time was suitable to support these two very active clubs.

Councillor Allan thought participation in tennis was to be encouraged, but agreed that 10.30pm sounded like a more reasonable shutoff time. However, she thought that Gullane and North Berwick Tennis Clubs were situated further away from houses, and therefore proposed a shutoff time of 10pm, which she felt would be more suitable for Winterfield courts' surroundings. She thought that the current time of 11pm was far too late and would affect residents' sleep.

Councillor McIntosh seconded Councillor Allan's proposal of a 10pm shutoff time, as she felt it was unreasonable to ask residents to live with lights until 11pm. Councillor Findlay added that North Berwick Tennis Club was further away from houses, but advised that Gullane was fairly close to residential properties. He was content to support the proposal for a 10pm shutoff time and withdrew his earlier proposal for 10.30pm.

Councillor Forrest said that participation in sport was important for maintaining physical and mental health. He felt that a 10pm restriction would inhibit competitions taking place at the club, and may pose a barrier to participation for those who had to fit sport around their work. He would support the officer recommendations and would not support a 10pm shutoff.

Councillor McGinn supported the officer recommendation, but also appreciated the in-depth knowledge Local Members had of the area. He was pleased that tennis had become more accessible in East Lothian. He thought that officers had worked to establish compromises to try to bring along communities. He was confident that there were safeguards in place to address any problems.

Councillor McMillan said he would have appreciated hearing from the club about their management of the lighting and their relationships with neighbours. He thought the proposals would enhance the wildlife around the park and coastline whilst creating a balance with the activity. Considering the cost and benefit, he thought the proposals should go ahead because of the reduction of light spill to neighbours. He hoped that the club would think about its relationship with neighbours, look to manage potential noise and light spill, and ensure lights were switched off at the right time; he thought it was right to give the club this responsibility, and reminded neighbours that problems could be reported through environmental health.

Councillor McLeod thought that the timing issue was unified throughout the county. He would support the officer recommendation.

Councillor Collins supported the development of the sport, but said that children would not be playing late at night. She thought that a shutoff time would be useful, with possible exemptions for competitions, and suggested 10.30pm would provide some compromise. She said that

residents had lost trust in the system following a three-year loss of amenity. She reiterated that she would support a reduction in time and installation of baffles.

Councillor McIntosh suggested Mr Hendrikson take away an action to liaise with the club and produce an operational plan to habitually turn off the lights off at 10pm, apart from in specific circumstances, and also to undertake consultation with residents.

The Convener thought discussions would be held between the Landscape, Sport, and Countryside team and the tennis club about neighbour relations following the points raised. He said efforts must be made to rebuild relationships and for the tennis club to keep late nights to an absolute minimum. He proposed that Members approve the recommendations contained within the papers but asked officers to work with the club to help improve relationships.

Councillor Allan was concerned that asking relationships to improve provided no guarantee. She would not support the application if no time restriction was made.

Mr Millar advised that conditions could only be imposed if it met the test of the Use of Conditions per the Planning Circular, and one such tests was necessity. He said that restricting the floodlighting until 10pm would not be necessary because the floodlights would meet the 5 lux criteria up until 11pm, which the council's Senior Environmental Health Officer advised would accord with Scottish Government guidance on Statutory Nuisance Provisions. He suggested that Members could decide to set a control on times of use through the lease agreement, given that the council was the landowner. The Convener responded that operating times could be discussed between the council and tennis club, but this would have to concur with operational needs and he felt this should be dealt with outwith the planning process.

Mr Millar reiterated advice that there was no planning reason that the lights could not be on until 11pm. On this basis, Councillor McIntosh withdrew her seconding of the proposal for a shutoff time of 10pm. She said that she would still like for the club to habitually shut off the lights at 10pm, but agreed that the matter may be best pursued through other means. Councillor Allan withdrew her proposal for a 10pm shutoff on the basis that it was not a competent amendment, but still wished for options to be pursued through other means, such as an amendment to the lease. The Convener suggested that this would have to be negotiated with the club through Sport, Countryside, and Leisure.

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

Grant:	8	(Councillors Hampshire, Allan, Forrest, McGinn, McIntosh, McLeod, McMillan, and Yorkston)
Refuse:	0	
Abstain:	3	(Councillors Collins, Findlay, and Gilbert)

Decision

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

- 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.

Signed

Councillor Norman Hampshire
Convener of the Planning Committee



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

2

**THURSDAY 16 NOVEMBER 2023
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor C Cassini
Councillor J Findlay
Councillor A Forrest (Chair)
Councillor S McIntosh (present for Items 2 – 5)

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Ms J Squires, 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. Councillors Findlay and Cassini indicated that they would be content for Councillor Forrest to chair the Local Review Body (LRB) on this occasion.

Introductory Statement by the Planning Adviser

The Planning Adviser provided some general remarks on the status of the development plan, and the policy position on short term lets, North Berwick Conservation Area and biodiversity which were common to all the applications being considered by the LRB.

She advised that planning permission was required where there was a material change of use from a dwelling house to short term let. Councils could designate Control Areas for short term lets, however East Lothian Council had not done so, and this matter was still under consideration.

She reminded Members that section 25 of the Town and Country Planning (Scotland) Act 1997 required that applications be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan for the area was National Planning Framework 4 (NPF4) and the East Lothian Local Development Plan (LDP). As the application site lay within North Berwick Conservation Area, section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 was also relevant. She outlined the policies within NPF4 which were relevant to determination of the application, including, policies 1, 3, 7 and 30E; and similar provisions within the LDP.

She drew particular attention to NPF4 Policy 30E covering short term lets. This policy included two criteria which must both be met for the use of an existing building as a short term let to be supported. The first test was the proposal must not result in an unacceptable impact on local amenity or the character of a neighbourhood area. The second was that loss of residential accommodation would not be supported unless the loss was outweighed by demonstrable economic benefits. She emphasised that the requirement that there be no unacceptable impact on local amenity, or the character of the neighbourhood should be considered as a stand-alone test. Impacts on amenity and character should not be weighed against economic benefit. Economic benefit should only be weighed against the effect of loss of residential accommodation.

While there was no specific policy on short term lets within the LDP, it stated that a range of hotel, guest house and other accommodation attracted visitors and encouraged them to stay and benefit the East Lothian economy. The East Lothian Economic Development Strategy 2012-21 identified tourism as one of the strengths of the East Lothian economy, and a source of employment opportunities.

Since the 1 October 2023 all properties let for more than 5 weeks a year required a licence. *[Post Meeting Note: It was confirmed, following the meeting, that there was no minimum period for which a property could be let without requirement for a licence.]* The Short Term Let register showed that there were around 90 properties in North Berwick which had, or which had applied for, a licence. The Council's Licensing Team stated that there was a backlog of

around 120 applications in East Lothian which were not yet on the register. Research carried out by Arneil Johnston into the Private Rental Sector in East Lothian in 2022 found 225 short term lets in the North Berwick Area Partnership Area.

The Planning Adviser also reminded Members that the Council had recently declared a Nature Crisis. NPF4 Policy 1 required significant weight to be given to the global climate and nature crisis. Policy 3 aimed to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks. The applications before the LRB constituted local development that was non-householder. Policy 3 Part C required that proposals for local development included appropriate measures to conserve, restore and enhance biodiversity proportionate to the nature and scale of development. Where physical measures were not possible, this could include contributions to improvements offsite, or measures to promote the protection local biodiversity to guests.

1. PLANNING APPLICATION NO. 23/00306/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 3 WEST BAY COURT, NORTH BERWICK

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 a retrospective application for change of use of flat to short term holiday let at 3 West Bay Court, North Berwick. She summarised the details and location of the property, including its site and surrounds, and access to and via communal areas. The applicant had stated that the flat had been marketed and used for short term lets for four years. At the time of application, the applicant had stated the maximum number of guests was four, but in the applicant's appeal submission the number of guests was stated as two.

She noted that three objections had been made to this planning application including one from the North Berwick Environment and Heritage Trust. The grounds for objection were summarised by the case officer but included impacts on neighbours, impact on housing stock and the cumulative effects of three units in a single block of six. North Berwick Community Council also objected to this application due to the potential for disruption for permanent residents of the building.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The Case Officer had noted legislation and policy on Conservation Areas but had not offered an assessment of whether the proposal preserved or enhanced the Conservation Area. However, the Planning Adviser considered that as there were no physical alterations involved in the proposal there was no detriment in terms of the built environment. Similarly, given the levels of applications made and approved so far in North Berwick, this proposal would not in the Planning Adviser's view cause harm to the character of the Conservation Area either alone or cumulatively.

The case officer had then considered Policy 30 Part E of NPF4, and Policy RCA1 of the LDP. He had considered that there would be extra levels of activity, including guests arriving with luggage and at unsociable hours, and for cleaning, which would be harmful to the amenity of the occupants of the residential properties within the building. Allowing short term guests access to otherwise secure shared areas would change the actual and perceived security of residents. He had considered this incompatible with and harmful to the amenity of occupiers of properties within West Bay Court, individually and cumulatively with the two other flats in the building subject to separate applications and appeal. The case officer had not considered it possible to impose conditions that could control this. The case officer had noted that the Councils' Housing Strategy and Development service did not support this application due to

the density of short term lets in North Berwick combined with a constrained housing market, especially of 1 and 2 bed properties. The Council's Economic Development Service Manager, however, advised that there were demonstrable local economic benefits delivered by short term holiday lets.

To meet the terms of NPF4 Policy 30E, there should be no unacceptable effects on residential amenity, AND the local economic benefits should outweigh the loss of residential accommodation. The Planning Adviser explained that if the ELLRB Members considered that the effects on amenity were acceptable, and that demonstrable economic benefits outweighed the loss of residential accommodation, the proposal was acceptable under Policy 30E. However, economic benefit should not be weighed against residential amenity, which must be considered separately.

No biodiversity enhancement had been included in the application as required by NPF4 Policy 3. The Planning Adviser considered that this should have been included in a manner proportionate to the application. If it was not possible to make any changes to the property or surroundings to improve biodiversity, contributions to offsite improvements should have been considered, or provision of information on protecting the biodiversity of the area supplied to guests. This enhancement could be secured by condition.

The Planning Adviser then summarised the applicant's review statement which noted that the property had been successfully let on a short-term basis for 4 years with no need for Council or police intervention. This was backed up by responses from the Police and the Council's Anti-Social Behaviour Team. The applicant had included letters in support from neighbours who stated that the holiday lets did not affect their residential amenity. The Planning Adviser noted that these were not received as representations to the planning application so the identity of the senders could not be verified by the planning authority, however considered there was no reason to think they were not genuine. The applicant had noted that long term occupancy could also give rise to amenity issues. He considered that issues with short term let guests were by their nature short term and that high quality small flats such did not have the problems that 'party flats' could. There was therefore no unacceptable effect on residential amenity.

The applicant had noted and commended the views of the Council's Economic Development Service Manager on economic benefit. He had also noted that other local businesses depended on tourism expenditure and activity in the area. The applicant had argued the demonstrable economic benefits outweighed the effect on residential amenity. The Planning Adviser reminded the ELLRB that economic benefit should only be weighed against loss of housing stock, not impact on amenity.

In a further submission, North Berwick Environment and Heritage Trust had considered that local amenity would be harmed, not just the amenity of the stairwell. They had considered that the figures offered by the Economic Development Service Manager were misleading as they had not considered the economic benefits of alternative uses of the flat as a permanent let.

The Planning Adviser stated that in her view the key issues for ELLRB Members to consider were firstly whether the proposal preserved or enhanced North Berwick Conservation Area, and secondly, whether there was unacceptable harm to residential amenity contrary to NPF4 Policy 30E and LDP Policy RCA1. Then, if there was not, whether any economic benefits outweighed the loss of residential accommodation.

The Planning Adviser concluded her presentation by reminding Members of the options open to them and that, should they be minded to grant planning permission, suggested conditions had been provided by the planning case officer.

The Planning Adviser and the Legal Adviser responded to questions from Members. They addressed the issue of maximum occupancy and the process for complaints, confirming that any complaint would need to be reviewed and corroborated. It would be challenging for officers to take forward enforcement and verify the position for guests taking overnight stays who may have introduced more guests to the premises. Discussions could be had with the owner around these complaints, but enforcement may be challenging if this was infrequent. The Planning Adviser and Legal Adviser also confirmed that it would be for the applicant to determine whether rental of the property would be undertaken on a seasonal or year-round basis.

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 Findlay considered that there were policies in the National Planning Framework which supported this application. In addition, the location of the property was important in considering the impact on amenity. He commented that the property was on the ground floor and the location and layout of the common entrance to the property was such that, in his opinion, would cause little disturbance to other residents of the building. He also noted that there had been no objections to the application from occupants of the building. On that basis, he did not consider there to be any negative impact on amenity, and he was minded to uphold the appeal.

Councillor Cassini agreed with the points made by Councillor Findlay. In particular, she supported the view that, as the property was on the ground floor and considering the location of the main entrance and flat door, there would be minimal impact on other residents from guests using the property. Accordingly, she was minded on this occasion to uphold the appeal.

The Chair disagreed with the views put forward by his colleagues. He referred to his personal experience of living in a flat, and while he noted the applicant's arguments that there was also impact from residential use, he took the view that the impact was of a different nature to short-term letting. He maintained that there would be increased noise from comings and goings in the common areas when guests were arriving and leaving with suitcases. As a result, he agreed with the case officer's assessment of the application and accordingly was minded to dismiss the appeal.

The members of the LRB confirmed their decision via roll call vote. They also agreed that the planning permission should be subject to the conditions set out by the case officer in his submission.

Decision

The ELLRB agreed, by majority, to uphold the appeal and to grant planning permission subject to the following conditions:

1. The property shall be let for overnight occupation by a maximum of four persons at any one time.

Reason: To ensure that the terms of the lets protect occupants of nearby residential properties from noise/disturbance.
2. A register of the date and number of occupants for each let shall be maintained for the property

by the owner/letting agent and shall be available at all reasonable times for inspection, on request, by the Planning Authority.

Reason: To ensure compliance with condition 1.

Sederunt: Councillor McIntosh joined the meeting.

The Planning Adviser repeated her introductory comments for the benefit of Councillor McIntosh.

2. PLANNING APPLICATION NO. 23/00307/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 5 WEST BAY COURT, NORTH BERWICK

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 a retrospective application for change of use of flat to short term holiday let at 5 West Bay Court, North Berwick. She summarised the details and location of the property, including its site and surrounds, and access to and via communal areas. The applicant had stated that the flat had been marketed and used for short term lets for four years. At the time of application, the applicant had stated the maximum number of guests was four, but in the applicant's appeal submission the number of guests was stated as two.

She advised Members that their decision on application 23/00306/P was now a material consideration.

She noted that three objections had been made to this planning application including one from the North Berwick Environment and Heritage Trust. The grounds for objection were summarised by the case officer but included impacts on neighbours, impact on housing stock and the cumulative effects of three units in a single block of six. North Berwick Community Council also objected to this application due to the potential for disruption for permanent residents of the building.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The Case Officer had noted legislation and policy on Conservation Areas but had not offered an assessment of whether the proposal preserved or enhanced the Conservation Area. However, the Planning Adviser considered, for the reasons set out in the previous application, the character of the Conservation Area to be preserved.

The case officer had then considered Policy 30 Part E of NPF4, and Policy RCA1 of the LDP. He had considered that there would be extra levels of activity, including guests arriving with luggage and at unsociable hours, and for cleaning, which would be harmful to the amenity of the occupants of the residential properties within the building. Allowing short term guests access to otherwise secure shared areas would change the actual and perceived security of residents. He had considered this incompatible with and harmful to the amenity of occupiers of properties within West Bay Court, individually and cumulatively with the two other flats in the building subject to separate applications and appeal. The case officer had not considered it possible to impose conditions that could control this.

The case officer had noted that the Councils' Housing Strategy and Development service did not support this application due to the density of short term lets in North Berwick combined

with a constrained housing market, especially of 1 and 2 bed properties. The Council's Economic Development Service Manager, however, advised that there were demonstrable local economic benefits delivered by short term holiday lets.

To meet the terms of NPF4 Policy 30E, there should be no unacceptable effects on residential amenity, AND the local economic benefits should outweigh the loss of residential accommodation. The Planning Adviser explained that if the LRB Members considered that the effects on amenity were acceptable, and that demonstrable economic benefits outweighed the loss of residential accommodation, the proposal was acceptable under Policy 30E. However, economic benefit should not be weighed against residential amenity, which must be considered separately.

No biodiversity enhancement had been included in the application as required by NPF4 Policy 3. The Planning Adviser considered that this should have been included in a manner proportionate to the application. This enhancement could be secured by condition.

The Planning Adviser then summarised the applicant's review statement which noted that the property had been successfully let on a short-term basis for 4 years with no need for Council or police intervention. This was backed up by responses from the Police and the Council's Anti-Social Behaviour Team. The applicant had included letters in support from neighbours who stated that the holiday lets did not affect their residential amenity. The Planning Adviser noted that these were not received as representations to the planning application so the identity of the senders could not be verified by the planning authority, however considered there was no reason to think they were not genuine. The applicant had noted that long term occupancy could also give rise to amenity issues. He considered that issues with short term let guests were by their nature short term and that high quality small flats such did not have the problems that 'party flats' could. There was therefore no unacceptable effect on residential amenity.

The applicant had noted and commended the views of the Council's Economic Development Service Manager on economic benefit. He had also noted that other local businesses depended on tourism expenditure and activity in the area. The applicant had argued the demonstrable economic benefits outweighed the effect on residential amenity. The Planning Adviser reminded the LRB that economic benefit should only be weighed against loss of housing stock, not impact on amenity.

In a further submission, North Berwick Environment and Heritage Trust had considered that local amenity would be harmed, not just the amenity of the stairwell. They had considered that the figures offered by the Economic Development Service Manager were misleading as they had not considered the economic benefits of alternative uses of the flat as a permanent let.

The Planning Adviser stated that in her view the key issues for LRB Members to consider were firstly whether the proposal preserved or enhanced North Berwick Conservation Area, and secondly, whether there was unacceptable harm to residential amenity contrary to NPF4 Policy 30E and LDP Policy RCA1. Then, if there was not, whether any economic benefits outweighed the loss of residential accommodation. The use of flat 3 as short term let accommodation was also a material consideration and Members should consider whether the granting of permission for a second short term let in the same building would have an unacceptable impact on the amenity of other residents.

The Planning Adviser concluded her presentation by reminding Members of the options open to them and that, should they be minded to grant planning permission, suggested conditions had been provided by the planning case officer.

The Planning Adviser and the Legal Adviser responded to questions from Members. They provided some additional background on the calculation of economic benefit and confirmed that management of refuse and recycling could be controlled by condition.

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 McIntosh was supportive of the case officer's position. She noted that while there may be different impacts from residential use as opposed to short term lettings she considered that the impact of short term lettings would be detrimental on the amenity of neighbours within the building. She also noted that while there were currently letters of support from neighbours this did not mean that future occupiers of the properties would be supportive. She then considered the impact on housing and was of the view that the loss of housing outweighed the economic benefit. Accordingly, she was minded to support the case officer's recommendation and refuse the appeal.

Councillor Cassini agreed with the points made by Councillor McIntosh and was of the view that due to the layout of the building and the location of this property being on the first floor there would be a detrimental impact on the amenity of the residents. She also noted that that, as there was already a short term let on the ground floor, the cumulative effect of an additional short term let within the building would create an unacceptable detriment to amenity. Accordingly, she was minded to support the case officer's assessment and refuse this appeal.

Councillor Findlay was of the view that the location of the property was important in considering the impact on amenity. He commented that, notwithstanding the location of this property being on the first floor, he was mindful that there had been letters of support and no objections from other residents within the building. He was therefore of the view that the use of the property as a short term let would not adversely impact the amenity of the residents. Accordingly, he was minded to uphold the appeal.

The Chair noted the position of his colleagues and was also of the view that this proposal would have a detrimental effect on the amenity of the residents within the other properties. He noted the case officer's report and concurred with the assessment therein. Accordingly, he was minded to dismiss the appeal.

The members of the LRB confirmed their decision via roll call vote with a majority of three to one in favour of dismissing the appeal and refusing planning permission.

Decision

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

3. PLANNING APPLICATION NO. 23/00308/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 6 WEST BAY COURT, NORTH BERWICK

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 a

retrospective application for change of use of flat to short term holiday let at 6 West Bay Court, North Berwick. She summarised the details and location of the property, including its site and surrounds, and access to and via communal areas.

She advised Members that their decision on applications 23/00306/P and 23/00307/P were now material considerations.

She noted that three objections had been made to this planning application including one from the North Berwick Environment and Heritage Trust. The grounds for objection were summarised by the case officer but included impacts on neighbours, impact on housing stock and the cumulative effects of three units in a single block of six. North Berwick Community Council also objected to this application due to the potential for disruption for permanent residents of the building.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The Case Officer had noted legislation and policy on Conservation Areas but had not offered an assessment of whether the proposal preserved or enhanced the Conservation Area. However, the Planning Adviser considered, for the reasons set out in the previous application, the character of the Conservation Area to be preserved.

The case officer had then considered Policy 30 Part E of NPF4, and Policy RCA1 of the LDP. He had considered that there would be extra levels of activity, including guests arriving with luggage and at unsociable hours, and for cleaning, which would be harmful to the amenity of the occupants of the residential properties within the building. Allowing short term guests access to otherwise secure shared areas would change the actual and perceived security of residents. He had considered this incompatible with and harmful to the amenity of occupiers of properties within West Bay Court, individually and cumulatively with the two other flats in the building subject to separate applications and appeal. The case officer had not considered it possible to impose conditions that could control this.

The case officer had noted that the Councils' Housing Strategy and Development service did not support this application due to the density of short term lets in North Berwick combined with a constrained housing market, especially of 1 and 2 bed properties. The Council's Economic Development Service Manager, however, advised that there were demonstrable local economic benefits delivered by short term holiday lets.

To meet the terms of NPF4 Policy 30E, there should be no unacceptable effects on residential amenity, AND the local economic benefits should outweigh the loss of residential accommodation. The Planning Adviser explained that if the LRB Members considered that the effects on amenity were acceptable, and that demonstrable economic benefits outweighed the loss of residential accommodation, the proposal was acceptable under Policy 30E. However, economic benefit should not be weighed against residential amenity, which must be considered separately.

No biodiversity enhancement had been included in the application as required by NPF4 Policy 3. The Planning Adviser considered that this should have been included in a manner proportionate to the application. This enhancement could be secured by condition.

The Planning Adviser then summarised the applicant's review statement which noted that the property had been successfully let on a short-term basis for 4 years with no need for Council or police intervention. This was backed up by responses from the Police and the Council's Anti-Social Behaviour Team. The applicant had included letters in support from neighbours who stated that the holiday lets did not affect their residential amenity. The Planning Adviser noted that these were not received as representations to the planning application so the identity of the senders could not be verified by the planning authority, however considered

there was no reason to think they were not genuine. The applicant had noted that long term occupancy could also give rise to amenity issues. He considered that issues with short term let guests were by their nature short term and that high quality small flats such did not have the problems that 'party flats' could. There was therefore no unacceptable effect on residential amenity.

The applicant had noted and commended the views of the Council's Economic Development Service Manager on economic benefit. He had also noted that other local businesses depended on tourism expenditure and activity in the area. The applicant had argued the demonstrable economic benefits outweighed the effect on residential amenity. The Planning Adviser reminded the LRB that economic benefit should only be weighed against loss of housing stock, not impact on amenity.

In a further submission, North Berwick Environment and Heritage Trust had considered that local amenity would be harmed, not just the amenity of the stairwell. They had considered that the figures offered by the Economic Development Service Manager were misleading as they had not considered the economic benefits of alternative uses of the flat as a permanent let.

The Planning Adviser stated that in her view the key issues for LRB Members to consider were firstly whether the proposal preserved or enhanced North Berwick Conservation Area, and secondly, whether there was unacceptable harm to residential amenity contrary to NPF4 Policy 30E and LDP Policy RCA1. Then, if there was not, whether any economic benefits outweighed the loss of residential accommodation. The use of flat 3 as short term let accommodation was also a material consideration and Members should consider whether the granting of permission for a second short term let in the same building would have an unacceptable impact on the amenity of other residents.

The Planning Adviser concluded her presentation by reminding Members of the options open to them and that, should they be minded to grant planning permission, suggested conditions had been provided by the planning case officer.

The Legal Adviser reiterated that the decisions on previous applications 23/00306/P (to grant) and 23/00307/P (to refuse) were both material considerations.

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 Cassini was of the view that due to the layout of the building, the location of this property being on the first floor and the comings and goings of guests being greater than those of residents, there would be a detrimental impact on the amenity of the residents. Accordingly, she was minded to support the case officer's assessment and refuse this appeal.

Councillor Findlay commented that his views on this application were similar to those on the previous case. He was mindful that there had been letters of support and no objections from other residents within the building. He was therefore of the view that the use of the property as a short term let would not adversely impact the amenity of the residents. Accordingly, he was minded to uphold the appeal.

Councillor McIntosh considered that the impact of short-term lettings would have an unacceptable impact on the amenity of residents within the building, and an unacceptable

impact on the availability of housing in North Berwick. Accordingly, she was minded to support the case officer's recommendation and refuse the appeal.

The Chair noted the position of his colleagues and was also of the view that this proposal would have a detrimental effect on the amenity of the residents within the other properties. He concurred with the case officer's assessment and was minded to dismiss the appeal.

The members of the LRB confirmed their decision via roll call vote with a majority of three to one in favour of dismissing the appeal and refusing planning permission.

Decision

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

4. PLANNING APPLICATION NO. 23/00455/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 1 CREEL COURT, NORTH BERWICK

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 a retrospective application for change of use of flat to short term holiday let at 1 Creel Court, North Berwick. She summarised the details and location of the property, including its site and surrounds, and access to and via communal areas. According to the applicant, the property had been operating as a short term let for nine years and the maximum number of guests was four.

She noted that three objections had been received to this application. The case officer had summarised the reasons which included, amenity and security issues for residents, lack of evidence that short term lets in North Berwick provided a local economic benefit that outweighed the requirement for housing, impacts on the character and amenity of the local area due to the overabundance of short term let property, and impacts on the housing market and housing stock in North Berwick.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The case officer had noted legislation and policy on Conservation Areas but had not offered an assessment of whether the proposal preserved or enhanced the Conservation Area. However, the Planning Adviser considered that as there were no physical alterations involved in the proposal there was no detriment in terms of the built environment. There were two other properties in Creel Court which either had a short term let licence or for which a licence had been applied. Given the levels of applications made and approved so far in North Berwick, this proposal would not in the Planning Adviser's view cause harm to the character of the Conservation Area either alone or cumulatively.

The case officer had then considered Policy 30 Part E of NPF4, and Policies RCA1 and TC2 of the LDP. He had considered that while guest did not have to walk past other flats, the hall and stairway were nonetheless shared. There would be extra levels of activity, including guests arriving with luggage and at unsociable hours, and for cleaning, creating disturbance and reducing actual and perceived security. This would be harmful to amenity and contrary to LDP Policy RCA1 and NPF4 Policy 30E. The case officer had not considered it possible to impose conditions that could control this.

The case officer also considered NPF4 Policy 27 and LDP Policy TC2 which related to acceptable uses within town centres. The Planning Adviser addressed these and also referred to the North Berwick Town Centre Strategy Guidance which was part of the development plan. Reading the plan as a whole, she considered use as a short term let to be acceptable in this first floor, backland town centre location.

The case officer had noted that the Councils' Housing Strategy and Development service did not object to this application, however they stated that there was a need and increased supply in long-term rental housing, especially in the east of the county, with significant pressure on supply of 1 and 2 bed properties. The Council's Economic Development Service Manager also advised that there were demonstrable local economic benefits delivered by short term holiday lets.

To meet the terms of NPF4 Policy 30E, there should be no unacceptable effects on residential amenity, AND the local economic benefits should outweigh the loss of residential accommodation. The Planning Adviser explained that if the ELLRB Members considered that the effects on amenity were acceptable, and that demonstrable economic benefits outweighed the loss of residential accommodation, the proposal was acceptable under Policy 30E. However, economic benefit should not be weighed against residential amenity, which must be considered separately.

No biodiversity enhancement had been included in the application as required by NPF4 Policy 3. The Planning Adviser considered that this should have been included in a manner proportionate to the application. If it was not possible to make any changes to the property or surroundings to improve biodiversity, contributions to offsite improvements should have been considered, or provision of information on protecting the biodiversity of the area supplied to guests. This enhancement could be secured by condition.

The Planning Adviser then summarised the applicant's review statement which noted that the property had been operating successfully without complaint for over 9 years and was only rented out for around 10 weeks per year. The applicant had noted pre-application advice from the planning service that their application would not necessarily be rejected because it had a common stairwell and felt misled as this then was the primary reason for refusal. However, this was not relevant to the determination of the application on its merits. In addition, the applicant referred to a judgement by Lord Baird stating that the Council policy was unlawful. [This referred to the court case brought on Petition of Averbuch for judicial review of the City of Edinburgh Council's short term let policy.] The Planning Adviser informed Members that this was not relevant as the Council did not have a short term let policy or planning guidance applicable to short term lets.

In a further submission, North Berwick Environment and Heritage Trust had considered that local amenity would be harmed, not just the amenity of the stairwell. They had considered that the figures offered by the Economic Development Service Manager were misleading as they had not considered the economic benefits of alternative uses of the flat as a permanent let.

The Planning Adviser stated that in her view the key issues for ELLRB Members to consider were firstly whether the proposal preserved or enhanced North Berwick Conservation Area, and secondly, whether there was unacceptable harm to residential amenity contrary to NPF4 Policy 30E and LDP Policies RCA1 and TC2. Then, if there was not, whether any economic benefits outweighed the loss of residential accommodation.

The Planning Adviser concluded her presentation by reminding Members of the options open to them. Should they be minded to grant planning permission, suggested conditions had been provided by the planning case officer and they might also consider a condition on biodiversity enhancement.

The Planning Adviser and the Legal Adviser responded to a question from Councillor Findlay. They indicated that every application was considered on its individual merits and that East Lothian Council did not have a short term let policy or planning guidance applicable to short term lets.

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 Findlay commented that North Berwick was a tourist destination and there were a number of short term let applications being taken forward in the town. He noted that there was no current planning policy on this matter, set out by the Planning Authority, and he felt that this area would benefit from a policy being put in place. Notwithstanding this, in this case he was of the view that the location of the property within the communal stair meant that no other residents' doors would be passed within the building. He also noted that there were no objections from residents and the Community Council only made general objection to short term lets. Accordingly, he was of the view that in relation to this application, he did not believe there was a detrimental effect to amenity and therefore was minded to support the application.

Councillor Cassini commented that, in her view, as this property was above a shop there would be less impact on overall amenity to neighbours. On basis of the economic development report, she was of the view there would be more spend at shops within North Berwick and in relation to this application would support economic development over housing. She added that, if the application was approved by the LRB, she would seek a condition regarding management of recycling and waste from the property. Accordingly, she was minded to approve the application.

Councillor McIntosh stated that she was supportive of the case officer's position. She noted that the while there may be different impacts from residential use as opposed to short term lettings, she believed that the impact would be detrimental to the amenity of neighbours within the building. She noted that other neighbours within the block had personal effects, such as plants, within the communal area and felt that this may not be maintained should the application be approved. Accordingly, was minded to support the case officer's recommendation and refuse the appeal.

The Chair noted the position of his colleagues and was also of the view that this would have a detrimental effect on the amenity of the residents within the other properties. He commented that having stayed in a flat anything that occurred at the entrance of the property would have an impact on other residents. There would be impact and noise detrimental to the amenity of other residents. Accordingly, he agreed with the case officer's assessment of the application and was minded to dismiss the appeal.

The members of the LRB confirmed their decision, by casting vote of the Chair, to dismiss the appeal and refuse planning permission.

Decision

The ELLRB agreed, by casting vote of the Chair, to dismiss the appeal and to refuse planning permission for the reason set out in the planning case officer's report.

5. PLANNING APPLICATION NO. 23/00472/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 4 BRAMERTON COURT, 27 DIRLETON AVENUE, NORTH BERWICK

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 a retrospective application for change of use of flat to short term holiday let at Flat 4, Bramerton Court, 27 Dirleton Avenue, North Berwick. She summarised the details and location of the property, including its site and surrounds, and access to and via communal areas, and private parking arrangements. According to the applicant, the property had been operating as a short term let since April 2015 and the maximum number of guests was four.

She noted that three objections and two representations (both from the same person) had been received on this application. The case officer had summarised the grounds for objection which included, impacts on amenity for neighbours, impacts on availability of housing stock, and that the comments on previous applications by the Council's Economic Development Service were flawed and did not take account of the economic effects of long-term residents.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The case officer had noted legislation and policy on Conservation Areas but had not offered an assessment of whether the proposal preserved or enhanced the Conservation Area. However, the Planning Adviser considered that as there were no physical alterations involved in the proposal there was no detriment in terms of the built environment. Given the levels of applications made and approved so far in North Berwick, this proposal would not in the Planning Adviser's view cause harm to the character of the Conservation Area either alone or cumulatively.

The case officer had then considered Policy 30 Part E of NPF4, and Policies RCA1 and TC2 of the LDP. He had considered that while guest did not have to walk past other flats, the hall and stairway were nonetheless shared. There would be extra levels of activity, including guests arriving with luggage and at unsociable hours, and for cleaning, creating disturbance and reducing actual and perceived security. This would be harmful to amenity and contrary to LDP Policy RCA1 and NPF4 Policy 30E. The case officer had not considered it possible to impose conditions that could control this.

The case officer had noted that the Councils' Housing Strategy and Development service did not object to this application, however they stated that there was a need and increased supply in long-term rental housing, especially in the east of the county, with significant pressure on supply of 1 and 2 bed properties. The Council's Economic Development Service Manager also advised that there were demonstrable local economic benefits delivered by short term holiday lets.

To meet the terms of NPF4 Policy 30E, there should be no unacceptable effects on residential amenity, AND the local economic benefits should outweigh the loss of residential accommodation. The Planning Adviser explained that if the ELLRB Members considered that the effects on amenity were acceptable, and that demonstrable economic benefits outweighed the loss of residential accommodation, the proposal was acceptable under Policy 30E. However, economic benefit should not be weighed against residential amenity, which must be considered separately.

No biodiversity enhancement had been included in the application as required by NPF4 Policy 3. The Planning Adviser considered that this should have been included in a manner proportionate to the application. If it was not possible to make any changes to the property or

surroundings to improve biodiversity, contributions to offsite improvements should have been considered, or provision of information on protecting the biodiversity of the area supplied to guests. This enhancement could be secured by condition.

The Planning Adviser then summarised the applicant's review statement. The applicant considered that the Council had mishandled his case, resulting in unfairness. He stated that the property was removed from the residential market in 2015 with the permission of the Council. The Planning Adviser clarified that planning consent had not been obtained at that time and was now required. She further advised that the applicant's complaint should be taken forward through different channels and was not relevant to the determination of the application.

The applicant considered that NPF4 and the LDP 2018 policies should not apply as the use of the flat as a short term let pre-dates these policies. The Planning Adviser reminded Members that NPF4 and the LDP were the development plan for the area and that legislation required that decisions on planning applications must be made with those plans unless material considerations indicated otherwise.

The applicant provided comments on the report of handling, the development plan, representations and the planning assessment. The appellant noted that he had let the property since 2015 and there had been no impact on local amenity or the character of the neighbourhood. He maintained that the Council had not provided any evidence that the visitors were a nuisance or had led to unwelcome impacts on neighbours. The police and anti-social behaviour unit had no record of complaints. No specific instances of issues in the communal space had been raised through representation. Referring to the level of occupancy, he noted that the occupants used the communal space less than normal residents would. He noted that parking provision was adequate.

He commented on the issues of pressures on housing stock, and the impact of short term lets on the wider housing market whether through purchase or long-term rental. The applicant considered the views of the Economic Development Service manager on the economic benefits of short term lets to be convincing.

The applicant considered that those such as him with unblemished records should be allowed to continue trading. The Council had not taken account of his unique relationship with the property and residents. The appellant also discussed issues with the deeds to the property which were not planning matters.

In a further submission, North Berwick Environment and Heritage Trust had considered that local amenity would be harmed, not just the amenity of the stairwell. They had considered that the figures offered by the Economic Development Service Manager were misleading as they had not considered the economic benefits of alternative uses of the flat as a permanent let.

The applicant responded, stating that the focus of the Trust's submission was not sufficiently on his application but on the wider short term let situation. None of the immediate neighbours had raised amenity issues. There were no wider amenity issues as the block was screened by a high hedge and parking was self-contained. He did accept that tourists in general had a demonstrable impact on the town, including its parks, bins, public toilets and car parks. However, he argued that North Berwick needed a short term let market and anecdotally the sector was contracting. He considered the Council's economic figures to be inflated and that the figures in the report for City of Edinburgh Council, cited by the Trust, were not transferrable to North Berwick.

The Planning Adviser stated that in her view the key issues for ELLRB Members to consider were firstly whether the proposal preserved or enhanced North Berwick Conservation Area, and secondly, whether there was unacceptable harm to residential amenity contrary to NPF4

Policy 30E and LDP Policies RCA1 and TC2. Then, if there was not, whether any economic benefits outweighed the loss of residential accommodation.

The Planning Adviser concluded her presentation by reminding Members of the options open to them. Should they be minded to grant planning permission, suggested conditions had been provided by the planning case officer and they might also consider a condition on biodiversity enhancement.

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 McIntosh stated that she was supportive of the case officer's position. She noted that the communal area where the property was situated represented a small space with the doors to other properties within the building being close to each other. Accordingly, she was of the view that amenity would be impacted, and she was minded to support the case officer's recommendation and refuse the appeal.

Councillor Findlay was of the view that the loss of amenity in this case was driven by the residents within the building and the impact on them. Given that there had been no objections received from other residents in the building, he did not feel that their amenity had been detrimentally impacted by the use of the property as a short term let. Accordingly, he was minded to support the appeal.

Councillor Cassini considered that there was a difference between residential use and use as a short term let. She was of the view that continually changing occupants/guests along with the impact of the open stairway within the building would affect the residential amenity of the building. For the reasons set out in the case officer's report, she was minded to refuse this application.

The Chair noted the position of his colleagues and was also of the view that this would have a detrimental effect on the amenity of the residents within the other properties. He commented that noise travelled, and he considered that there would be a different level and type of noise dependent on the use of the property. He was of the view that this change in noise would be detrimental to the amenity of residents in the building. He agreed with the case officer's assessment of the application and was minded to dismiss the appeal.

The members of the LRB confirmed their decision, by a majority of three to one, to dismiss the appeal and refuse planning permission.

Decision

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

Signed

Councillor Andrew Forrest
Chair of Local Review Body (Planning)

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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Note: This application has been called off the Scheme of Delegation List by Councillor Collins for the following reason: Concerns from local residents regarding loss of privacy and road safety.

Application No. **23/01439/P**

Proposal Alterations and heightening of roof of building to form one flat and associated works

Location **50 School Brae
West Barns
East Lothian
EH42 1UA**

Applicant Mr Irfan Khan
Per Scott Allan

RECOMMENDATION Consent Granted

REPORT OF HANDLING

PROPOSAL

This application is being reported on this Scheme of Delegation List as it raises important planning issues in that the proposal does not accord with East Lothian Council's Parking Standards and therefore is not supported by Roads Services.

The property to which this application relates to is a single storey building in use as a convenience store and its associated land, which is located within a predominantly residential area as defined by policy RCA1 of the adopted East Lothian Local Development Plan 2018.

The property is bound to the north by a small substation and an area of hard surfaced public realm. To the east lies School Brae public road. To the south and west are neighbouring residential properties. The site lies on a slope with the land rising to the south.

Planning permission is sought for the replacement of the existing roof of the building with a new steeper pitched roof to allow the formation of a flatted dwelling above the shop.

The proposed new roof would have two dormers and two rooflights in its east elevation, facing onto the public road, and a single dormer in its west (rear) elevation. The existing eaves height would remain the same and the ridge will be raised 2m. The dormer windows are set back 750mm from the eaves. The raised gables and the dormers will be finished in render. The windows will be of uPVC construction and the roof will be finished in concrete pantiles.

Access to the new flatted dwelling would be from a new external stair to be attached to the north side of the building. The existing parking area to the north side of the building would be used as a parking space for the flat and a drying green and bin store would be formed for the occupants of the flat. The parking layby located to the front of the shop would be retained and would continue to be used as for parking and the servicing of the shop.

DEVELOPMENT PLAN

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

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

Policies 1 (Tackling the climate and nature crisis), 2 (Climate mitigation and adaptation), 13 (Sustainable Transport), 14 (Design, Quality and Place) 16 (Quality Homes) of NPF4 and Policies DP5 (Extension and Alterations to Existing Buildings) and T2 of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

REPRESENTATIONS

No public letters of objection have been received in relation to the application.

COMMUNITY COUNCIL

West Barns Community Council have raised a number of concerns about the application.

- i. Concerns that the current structure would not be able to bear the weight of the new roof;
- ii. The height of the proposed extension being out of keeping with the area;
- iii. Overlooking of neighbouring residential properties;
- iv. Insufficient parking;
- v. Impact on safe access to adjacent substation;
- vi. Concerns the shop will remain open during building works;
- vii. The road network around the site is very busy and it is not clear where construction traffic will park for deliveries or where construction workers will park;
- viii. As the site is in a residential area there should be restrictions on working times to protect residential amenity.

The matter of the structure being able to bear the weight of a new roof is not a matter relevant to the determination of this planning application. That is matter for Building Standards.

There is no encroachment onto the adjacent substation or any indication that access to it would be impacted by the proposal.

Whether or not the shop will remain open during construction is a matter for the owners/operators of the shop. It is not a matter relevant to the determination of this planning application.

This is not an application of a scale that would require a construction management plan or a restriction on working times. The parking of vehicles and arrangement of deliveries during the construction phase would be for the applicant to manage and to obtain any necessary permits from Roads Services if required.

The matter of noise nuisance is a matter controlled by other legislation and any noise nuisance complaints could be investigated by ELC Environmental Health Service if required.

PLANNING ASSESSMENT

The existing building is a single storey building of a form and character that reflects its use as a convenience store. The replacement of its roof with a steeper pitched roof with dormers would be a change to the character of the building but not in a manner that would make the building harmfully out of keeping with its surroundings. Due to the position of the building at the bottom of a slope, the building, even with its new roof, would be no higher than the neighbouring houses to the north and south. Furthermore, there are other houses in this part of West Barns that have dormers on their roofs. Therefore, as so altered, the building would not appear inappropriate to its location or out of keeping with its surroundings. By virtue of its form, size and scale the proposed new roof extension with dormers would be appropriate to its setting and would not be harmful to the character and appearance of the existing building or harmful to the character and appearance of the wider area.

In assessing whether or not a proposed new development would result in harmful overlooking and therefore loss of privacy to existing neighbouring residential properties it is the practice of the council, as a planning authority to apply the general rule of 9 metres separation distance between the windows of a proposed new development and the garden boundaries of neighbouring residential properties. This proposal incorporates a single dormer to the rear which would serve a new bathroom which would directly face and be within 9m of the rear garden of the neighbouring house to the west. However, application drawings indicate that the proposed window would have obscure glazing which would prevent harmful overlooking of the neighbouring property to the west. Furthermore, the rear garden of that neighbouring property is open to public views from School Brae and therefore does not enjoy any significant degree of privacy. Therefore, any overlooking from the external stair would be little different to that already possible from School Brae.

The dormers and rooflights to be formed on the front east facing roof slope would face onto the public road of School Brae and would not directly face any windows of any neighbouring residential properties. Therefore, they would not allow for harmful overlooking of any neighbouring residential properties.

The proposals would not allow for harmful overlooking of any neighbouring residential properties.

As the neighbouring properties lies to the south and west the majority of the overshadowing from the increased height will fall in the application site or on the substation to the north. Owing to its size, form, orientation and position the proposed roof extension would not give rise to a harmful loss of daylight or sunlight received by any neighbouring residential property.

The **Council's Senior Environmental Health Officer** raises no objection to the application.

When first submitted the application did not propose any in-curtilage parking for the proposed. Therefore, **Road Services** objected to the proposal as it does not make adequate provision for car parking for the new dwelling and therefore does not accord with East Lothian Council's Parking Standards.

In response the applicant has amended the proposal and the existing parking space to the north side of the shop building will now be for use by the occupants of the new flat. However, Road Services have maintained their objection as this space is currently used by the shopkeeper and therefore is not an additional parking space. As such the proposal still fails to accord with East Lothian Council's Parking Standards.

Whilst noting that the application does not accord with ELC's Parking Standards in this instance the shop has a parking/service layby immediately outside the front of the shop on School Brae which allows for off street parking. In addition, the public roads of School Brae and Forth View are not subject to unduly high parking demand and have adequate space to accommodate any additional parking generated from the shop. Furthermore, the site is relatively well served by public transport being a very short distance from the bus stop on Edinburgh Road. For these reasons it is considered that there is adequate provision for vehicles to park in association with the new dwelling and the existing shop. As Roads Services did not raise any concerns about road safety, in this particular circumstance, the proposal whilst not according with ELC Parking Standards is not contrary to Policy 13 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 buildings and from the completed development should be imposed on relevant applications for planning permission. In this instance, no details of measures to reduce carbon emissions are provided in the drawings submitted in support of this application. However, a condition can reasonably be attached to any grant of planning permission issued for the development hereby proposed. Pending compliance with this condition, the proposals do not conflict with Policies 1 and 2 of National Planning Framework 4.

Given the above considerations the proposals are consistent with Policies 13, 14 and 16 of NPF4 and Policy DP5 of the adopted East Lothian Local Development Plan 2018. In conclusion, the proposals are largely in accordance with the provisions of the stated relevant Development Plan policies. 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 No development shall be carried out until a schedule of materials and finishes has been submitted to and approved in writing by the Planning Authority.

Reason:

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

- 3 Prior to the occupation of the flat hereby approved the parking area, drying green and bin store shall be laid out and available for use by the occupants of the flat and thereafter retained as such unless otherwise approved by the Planning Authority.

Reason:

In the interests of the amenity of the occupants of the flat.

- 4 Prior to the commencement of development, 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, where feasible and appropriate in design terms, and new 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.

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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 Dolphinstone), 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.

